

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
October 17, 2016**

DATE APPROVED: January 9, 2017

TIME: 7:02 p.m. – 8:25 p.m.

CHAIRMAN: Roger Racette

VICE CHAIRMAN: John Segedy

MEMBERS: Russell Galpin, David Rogers and Nancy Torres

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Larry Baker

ABSENT: Larry Baker

PRESENT: Germaine Colburn, Paul Colburn, Sharon Monahan, Sonny Shea, Patricia Shea, Donna Grimes and William Grimes.

CALL to ORDER:

Chairman Racette called the meeting to order at 7:02 p.m.

Chairman Racette read from New Hampshire Planning and Land Use Regulation, Page 359, RSA 673:5, III, “The term of office for an appointed local land use board member shall begin on a date established by the appointing authority, or as soon thereafter as the member is qualified, and shall end 3 years after the date so established. If no successor has been appointed and qualified at the expiration of an appointed member’s term, the member shall be entitled to remain in office until a successor has been appointed and qualified.” He noted that Mr. Segedy had not been reappointed and his successor has not been named as of today.

Mr. Rogers agreed as long as the member wishes to serve.

Mr. Segedy said he did wish to serve.

Mr. Galpin made a motion to continue with Mr. Segedy acting as regular member. Mr. Segedy seconded the motion. The Board voted all in favor, except for Mrs. Torres who voted no.

MINUTES:

Chairman Racette entertained a motion to accept the minutes of April 11, 2016.

Mr. Segedy questioned if Mr. Baker was in attendance.

Mr. Segedy made a motion to table the minutes of April 11, 2016 until it can be determined if Mr. Baker was in attendance. Mr. Galpin seconded the motion. The Board voted all in favor.

PUBLIC HEARING:

Variance:

Map 20, Lot 31 – 25 Morgan Road – Owned by Paul Colburn

Chairman Racette said the variance is to allow an accessory structure to be placed nine (9) feet instead of the required twenty-five (25) foot setback from the rear property line and nineteen and a half (19½) feet instead of the required twenty-five (25) foot setback from the side property line.

Mr. Roger indicated that Mr. Colburn had done some work for him but didn't feel it would compromise his ability to act on this application without prejudice. He asked for an opinion from the Board.

Chairman Racette made a motion to allow Mr. Rogers to participate in this hearing as a voting member. Mrs. Torres seconded the motion. The Board voted all in favor except for Mr. Rogers who abstained.

Chairman Racette asked if New Hampshire Department of Environmental Services had approved their application.

Ms. Monahan answered no. They requested more information regarding storm water runoff.

Ms. Monahan explained the project will be to demolish the non-conforming cottage and erect a garage. The garage will not meet the rear setback from the property line on Morgan Road.

Mrs. Torres said the twenty-five (25) foot setback by definition can be from the road or the property line. She feels they can meet the rear setback distance, leaving the distance from the side setback as the only issue.

Ms. Monahan said the garage can't be moved any further from the side property line because it would interfere with the Colburn's entrance to their cottage, in ground propane tank and access to the septic tank and leach field.

Chairman Racette said if there were no more questions from the Board he would like to review the criteria regarding the variance request.

Ms. Monahan read the criteria and explained each:

A. Granting the proposed Variance will not be contrary to the public interest because: Will not negatively affect any neighbors as most of the abutters are seasonal. The Colburn's spoke to their neighbors before contacting Ms. Monahan to design a plan.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: They will become more conforming by demolishing a cottage and replacing it with an accessory structure. This will be more in compliance with the ordinance. They are not seeking a setback greater than what the nonconforming cottage was, which is nineteen and one half (19½) feet.

C. Granting the proposed Variance will do substantial justice because: there is an existing cottage on site. We are proposing replacing it with a garage with no water or sewer.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because: We are the last lot at end of a dead end road. In no way impedes travel on road, right-of-way.

E. Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship” because:

(1) Owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one because: no impact on neighbors, as garage will be adjacent to unbuildable lot deeded as a beach access right-of-way. The location is dictated by the location of the septic system and propane tank.

(2) If the criteria in subparagraph E (1), immediately above, are not established, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with ordinance, and a variance is therefore necessary to enable a reasonable use of it because: odd shape of side lot line angled toward shore land. Garage will be erected at the widest part of the lot, adjacent to road, with no impact to lake or neighbors.

Chairman Racette closed the public comment portion of the hearing.

Chairman Racette said it seems no one knows how far a structure has to be from a buried propane tank. He added if this was approved he would want to make sure the propane supplier approves the location of the garage in relation to propane tank.

Mr. Segedy suggested several conditions: removal of the existing carports and the garage is not to be used commercially or for living space.

Ms. Monahan carports are temporary structures.

Mrs. Torres said the town code only allows for one residential building per lot.

Chairman Racette asked if the Board was ready to vote.

Chairman Racette said on criteria A: Granting the proposed Variance will not be contrary to the public interest. Mrs. Torres – yes, Mr. Rogers – yes, Mr. Segedy – yes, Mr. Galpin – yes, Chairman Racette – yes.

Chairman Racette said on criteria B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance: Mr. Segedy – yes, Mr. Galpin – yes, Mrs. Torres – yes, Mr. Rogers – yes, and Chairman Racette – yes.

Chairman Racette said on criteria C: Granting the proposed Variance will do substantial justice: Mr. Rogers – yes, Mrs. Torres – yes, Mr. Galpin – yes, Mr. Segedy – yes and Chairman Racette – yes.

Chairman Racette said on criteria D: Granting the proposed Variance will not diminish the values of the surrounding properties: Mr. Galpin – yes, Mr. Segedy – yes, Mrs. Torres – yes, Mr. Rogers – yes and Chairman Racette – yes.

Chairman Racette said on criteria E: Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship ”because: (1) Owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one: Mr. Rogers – yes, Mrs. Torres – yes, Mr. Galpin – yes, Mr. Segedy – yes and Chairman Racette – yes

Mr. Segedy made a motion to grant the variance as proposed with the condition that the existing carports be removed and the porch is not to be used for vehicle storage. Mrs. Torres seconded the motion. The Board voted all in favor.

ELECTION OF VICE CHAIRMAN:

Chairman Racette said the last business tonight is the election of a vice chairman.

Mr. Segedy said this was not needed as we already have one until the Board of Selectmen appoints a new member.

The Board agreed to postpone this issue until the Selectmen make a new appointment.

Mr. Galpin said if anyone has a person in mind as a replacement they should submit their name to the Selectmen or Mrs. Payson.

Mr. Segedy said the Board should ask the Selectmen to approve his reappointment.

Mr. Racette will attend the next Selectmen’s meeting to make sure this issue is addressed.

ADJOURNMENT:

Chairman Racette entertained a motion to adjourn.

Mr. Rogers asked if an easel could be made available at future hearings to make viewing of plans and maps easier.

Mrs. Payson will see that one is available.

Mrs. Torres made a motion to adjourn. Mr. Rogers seconded the motion. The Board voted all in favor.

Meeting adjourned at 8:25 p.m.

Respectfully Submitted:

Iris Campbell
Recording Secretary

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September 12, 2016

TO: TOWN OF HILLSBOROUGH ZBA

RE: PAUL AND GERMAINE COLBURN VARIANCE, for 25 MORGAN ROAD, TAX
MAP 20 LOT 31, ZONING DISTRICT RURAL - LAKE LOTS

25' SIDE SETBACK - PROPOSED 19.5' SAME AS EXISTING COTTAGE

25' REAR SETBACK - PROPOSED 9' FROM PL 25' FROM TRAVELLED

WAY OF MORGAN ROAD

Dear Town of Hillsborough ZBA:

I have been a permitting agent on behalf of the Colburns regarding a Shoreland Permit Application and Plans with NH DES to demolish an existing accessory cottage and put up a Morton Building Garage with a porch in the same location. The Garage is larger than the cottage and will require local approval from the ZBA as a variance to the side and rear setbacks of 25' from property lines. The garage to be erected is 42' x 50' with a 10' x 25' porch addition.

Special Conditions of the Property and Hardships:

1. Morgan Road is a Private Road with no known recorded width of Right of Way. Two Stone Bounds were located to determine the property line. The Colburn lot is the last lot on the road.
2. The existing 2 bedroom cottage to be demolished is nonconforming to the rear and side setbacks and non conforming to the zoning district which only allows one dwelling per lot.

The erection of a garage as an accessory structure is a permitted use in the district.

3. The proposed building is to maintain the same side set back as the existing cottage which is 19.5' from the property line.
4. The adjacent abutter (lot 42) that the side setback is being sought from is a vacant deeded beach right of way so no neighbors are impacted by the project. The garage will have no impact on neighboring properties or the neighborhood.
5. The Lot Layout is unique in that the greatest width of the lot is Morgan Road 153' and then

both side property lines are at an angle to a width of 113' of frontage on Franklin Pierce Lake. The lot is fully within Shoreland Protection. The road side property line is also at an angle. The building is proposed to be located farthest from the lake in the widest part of the lot so it does not impact water quality and is accessible via Morgan Road.

6. The proposed building is to be 9' from the rear property line (which is the front yard to the house) and 25' from the edge of the traveled way of Morgan Road.

7. The spirit of the ordinance is observed by the building being setback 25' from the edge of the travelled way of Morgan Road and maintaining the existing 19.5' side setback in the same location of the cottage.

8. There are no other possible locations for the building. This is a year round residence and the Colburn's only residence.

9. The existing septic system and the buried propane tank limit any other location.

10. The location of the primary dwelling restricts the location of the garage. The garage cannot be put in front of the entry way to the primary dwelling or block access to the septic tank for maintenance.

11. A porch is proposed on the building so that it is aesthetically pleasing and fits in with the primary dwelling since it is situated in the front yard of the lot. The porch will meet the 25' front setback.

12. Due to special conditions of the property, it cannot be reasonably used in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property. The Colburns have no need to maintain a grandfathered additional dwelling on the premises but they do have a need to erect a large garage for their vehicles and storage of business supplies since this is their year round home.

Sincerely,

Sharon Monahan, SSD, CWS