**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**October 23, 2017**

 **DATE APPROVED**: 12/12/2017

**TIME:** 7:00 p.m. – 8:32 p.m.

**CHAIRMAN:** Roger Racette

**VICE CHAIRMAN:** David Rogers

**MEMBERS:** Russell Galpin, Dana Brien and Nancy Torres

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Larry Baker and John Segedy

**ABSENT:** David Rogers, Larry Baker

**Present:** Alternate John Segedy, Russell Galpin, Roger Racette, Dana Brien, Nancy Torres, Robyn Payson, Christina Perkins, owner, Nathaniel and Danielle Burrington

**CALL to ORDER:**

Chairman Roger Racette called the meeting to order at 7:00 p.m. John Segedy was appointed to vote for David Rogers who was absent.

**MINUTES:**

First order of business is to approve three sets of minutes. Mr. Galpin made a motion to approve the minutes until after the hearing. Mr. Segedy suggested that the prior minutes pertaining to this hearing be approved before proceeding forward. Mr. Rogers agreed. The minutes for October 16th would be approved prior to the hearing and the other minutes will be approved after the hearing. Mr. Segedy seconded the motion. No discussion. Motion passed unanimously.

Mr. Racette asked for a motion to approved or amend the minutes from October 16th. Mrs. Brien made a motion to approve. Mr. Galpin questioned whether or not the minutes could be approved since three members were at the prior meeting and two of them are present tonight. Mr. Segedy explained that those that were not present can abstain and members that were present may vote to approve or make amendments. Mr. Racette, Mrs. Torres and Mrs. Brien abstained. Mrs. Brien made the motion to accept the minutes from October 16, 2017, seconded Mr. Segedy. No discussion. Minutes were approved unanimously by two of the members present at the last meeting.

**PUBLIC HEARING:**

**Variance**

**Map 21, Lot 10 – 24 Pierce Lake Drive– Owned by Christina Perkins**

Chairman Racette introduced the hearing on an application submitted by Nathanial Burrington on behalf of Christina Perkins at 24 Pierce Lake Drive, Map 21, Lot 10. Application is for a variance from Chapters 229-10 Stream and Shore line Protection and second 229-36B 1 and C of the Zoning Ordinance to add an eight foot addition to the existing structure facing the lake.

Mr. Galpin stated his displeasure in the manner in which the application was submitted. Chairman Racette made note of Mr. Galpin’s remarks. Mr. Galpin continued the discussion also stating that according to his calculations, he thought the information submitted was incorrect. Chairman Racette stated that when an applicant/owner fills out and signs an application, they are attesting that the information provided is complete, true and accurate to the best of their knowledge. In addition, if the information provided is found to be false or misleading any permits or agreements granted on such information will be deemed void and null. Chairman Racette further stated that two people signed this application and they understand we expect truth and accuracy in our application process.

The Board also discussed whether or not members of the Board had authorization to inspect an applicant’s property. Chairman Racette read an email from Steve Buckely of NHMA addressing this issue.

“Although not written with the Zoning Board of Adjustment in mind, [RSA 674:1](http://www.gencourt.state.nh.us/rsa/html/LXIV/674/674-1.htm), IV does address property inspections for planning boards.  That paragraph states as follows:

 IV. The planning board, and its members, officers, and employees, in the performance of their functions may, by ordinance, be authorized to enter upon any land and make such examinations and surveys as are reasonably necessary and place and maintain necessary monuments and marks and, in the event consent for such entry is denied or not reasonably obtainable, to obtain an administrative inspection warrant under RSA 595-B.

I would use this statute by reference in determining the ability of a Zoning Board of Adjustment member to enter private property to conduct an inspection in furtherance of gathering information for a pending application.  Generally speaking, the ZBA application materials should contain a document that gives the written consent of the property owner to permit inspections of her property incident to an application submitted to the ZBA.  If the applicant does not give that consent, then a ZBA should not enter the subject property, or, in the alternative, the Town could seek an administrative inspection warrant under RSA 595-B.

If in this instance there was no written consent of the property owner to enter the subject property for an inspection, then the ZBA member in question did not act an appropriate manner.”

After discussing this topic in more detail, the applicant asked to speak. He stated that he did not pole the measurements the Certified Surveyor did, Dave Eckram (? Sp). He explained how the Surveyor took the measurements from the cabin to the high water mark. Again he reiterated he did not take the measurements the professional did. He is looking for approval from the town for the 7 x 8 structure prior to going to the State.

The applicant further stated that he objected to Mr. Galpin’s measurements and that the surveyor’s methods were accurate. Chairman Racette agreed that the professionals must be correct and the only information to be considered is the information submitted by the applicant. Any other information could be reason for appeal. Mr. Segedy suggested that a site visit should be planned for the Board Members. Chairman Racette stated that if the information was to be challenged, a site visit should be scheduled.

At this time, Chairman Racette stated it was time for the applicant to address the five criteria. Page 1 of 3, section 2 criteria granting the proposed variance will not be contrary to the public interest. The applicant was asked to describe the plans. The applicant stated that they are renovating the small existing camp to make it more useable. Two additions would like to be added as the camp is only 14’ by 32’. They are renovating the entire camp without change to the foot print except for the two small additions which are laid out on the print. Chairman Racette asked if 44.2 square feet to this corner and you are adding 20. Is this a net 27.1? Meaning you are subtracting out what existed as a ramp? The applicant responded yes, we are taking that out and adding a 7 x 8 and an 8 x 6.6 addition. Chairman Racette asked the Board if there were any questions. Mr. Segedy asked for measurements for each action square. The applicant stated the first action square heading toward the lake is 7 feet and out to the existing edge of that addition 8 feet. Mr. Segedy repeated the information. Mrs. Brien wanted to clarify the distance from the corner of the closest to the lake, new construction is 7 feet? Applicant stated that it was 12.8 feet from the building at high water mark. The Board discussed at length the measurements of the new additions and ramp removal and impervious surfaces. Chairman Racette asked the use of the new additions. The applicant responded that the front area is an addition to the kitchen and add more space to the living room. The space will be used for utility room. Mr. Segedy asked if it was a one story. The applicant stated that is was a two story to square off the whole building. Mr. Galpin stated the back of the building would be three stories high and the bottom just being cellar, not living area but above two full stories. The applicant stated his past experiences with variance Boards,was the concern of boundary lines not how the whole structure was being used. He felt the information is more for the inspector thus the reason he didn’t supply that information. He is requesting the addition. Chairman Racette asked the existing square footage and the proposed new square footage? The applicant responded 640 square feet on each floor for a total of 1280 square feet. Chairman Racette stated he was more interested in the existing square footage. The applicant stated 980 square feet. Chairman Racette asked if this was two floors. The applicant confirmed. A discussion between the applicant and Board members continued regarding square footage and usage for several minutes.

Part Two of the criteria, granting the proposed variance will not be contrary to the public interest. The applicant stated in his opinion there is no other place to put a structure because of the septic; they are adding value to the camp which would increase taxes. Currently the property is run down and the proposed changes will be improvements.

The Board discussed possible easements and parking. In addition the Board inquired about septic plans. The applicant stated the existing septic would be used.

The Board moved on to discuss the criteria further: B- Granting of the proposed variance will observe the spirit of the Hillsborough Zoning Ordinance. The Applicant’s opinion is that his request for a variance is in the spirit of the Zoning Ordinance. The small addition will make the property more useful and it will improve appearance of the structure. State regulations will also be followed.

Part C – Granting the proposed Variance will do substantial justice. The Applicant stated that Ms. Perkins will be making improvements to the cabin and making it more presentable to the neighbors. Also, it does the shoreline justice as the improvements will help prevent erosion from rain water. Gutters and water collections will be added. The Board and Applicant discussed that the State will require certain conditions regarding erosion and also the building permit will also address the issue.

Part D – Granting the proposed Variance will not diminish values of surrounding properties. The applicant stated they would be adding value by making a run down camp nice again. New siding, new windows, gutters, new wires and insulation will be added.

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

 Part 1: Owing to the special conditions of the property that distinguish it from other properties in the area that: (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. The applicant responded that he didn’t quite understand what the Board was asking. The Board discussed that all the properties were the same on this lake. The Applicant was asked to address the proposed use. The Applicant responded that it was a reasonable use as the owner and her parents will be staying there and they need the extra space. In addition, they have several grandchildren who will also be staying at the cabin. The extra space will allow the family to gather in the living room together. Chairman Racette confirmed with the applicant that currently the cabin is seasonal but with these improvements the cabin will become useable year round. Year round use is permitted.

 Part 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 the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The Board agreed that all the properties share the same issue on the lake. Though this property will not be used as a year round residence, at some point in the future it could.

Chairman Racette stated this was the end of the statutory requirements and asked if there were any questions. The applicant stated that if the variance were not approved, renovations to the cabin would still be necessary as the cabin is not useable in its current condition.

Chairman Racette asked the other members of the meeting to state their names for the record. Christina Perkins, homeowner; Nathanial Burrington; Applicant and Danielle Burrington, Nathanial’s wife.

Chairman Racette closed the public portion. The Board recessed to discuss. There was a lengthy discussion between the Board Members and the need for the addition and hardship qualifications. They asked the Applicant to address this issue. The Applicant stated that this house is one of the smaller homes on the lake and are trying to improve the cabin’s living space with the least amount of impact.

The Chairman suggested a site visit of the property to better understand the need for the variance. The Board agreed a site visit is warranted. Mrs. Brien made a motion for a site visit, seconded by Chairman Racette. The Board unanimously agreed with no objections.

The Board agreed to a site visit on Saturday, October 28th at 9:00 a.m.

Mr. Segedy made a motion to continue the Public Hearing on Saturday, October 28th at 9:00 a.m. at the property, seconded by Mrs. Torres. No further discussion. All were in favor.

The Board also scheduled a continuance of this hearing for Monday, October 30 at 7:00 p.m.

MINUTES

May 15, 2017

Mr. Galpin made a motion to approve the minutes of May 15, 2017 as amended, Chairman Racette seconded the motion. Mr. Segedy made a motion to add the names of the votes. No second. Motion fails. No further discussion. All but one Board member was in favor of approving the May 15, 2017 as amended.

August 14, 2017

Mr. Galpin made a motion to approve the minutes of August 14, 2017 as amended. Mrs. Brien seconded the motion. The Board voted all in favor.

Meeting adjourned at 8:32 p.m.

Respectfully Submitted,

Dianne Rutherford

Administration/Land Use Secretary