**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**October 30, 2017**

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

**TIME:** 7:00 p.m. –8:07 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:** Larry Baker

**Present:** Russell Galpin, Dave Rogers, Roger Racette, Dana Brien, Nancy Torres, Robyn Payson, John Segedy

 **CALL to ORDER:**

Chairman Roger Racette called the meeting to order at 7:00 p.m. This is continued from our previous meeting and our site walk conducted on Saturday, October 28th. A lengthy discussion took place between Mr. Galpin and the Board regarding the public notice. Also discussed by Mr. Galpin and the Board were court cases regarding approving or denying hardship variances, specifically in areas where residents share similar burdens.

Chairman Racette made a motion, Seconded by Mrs. Torres to have Mr. Rogers, a regular member of the Board, vote at tonight’s hearing in place of Mr. Segedy who is an alternate but attended the prior hearing. Vote ended in a tie with Mr. Rogers stepping down, allowing Mr. Segedy to have voting privileges. The hearing continued in recess allowing for Mr. Rogers to participate.

Chairman Racette asked Mrs. Torres if she had anything to share. Mrs. Torres felt the applicants were clear in their requests and felt that it is a natural expansion of a non-conforming use and the hardship is the building itself. She also stated that the original house is closer to the water than the addition.

Chairman Racette clarified with the applicant the total new non-impervious square footage would be 35 feet. Mrs. Brien also agreed the application was clear. Mr. Rogers felt the request was reasonable. He also, felt the request would enhance the property. Mr. Galpin would agree to the changes as long as all requirements are met. Mr. Galpin also stated that he does not believe agreeing to this variance request is not in context with the purpose of the ordinance. Chairman Racette stated that the courts have been consistent with allowing natural expansion of homes built in 1950’s and before that are no longer functional by today’s standards. Chairman and the Board discussed that personal uses of space is not relevant in the request of a variance. Mr. Segedy expressed his concern about the addition being so close to the water. His feeling is that the addition would be closer to the water than the original building. Mr. Segedy is also concerned about the drainage and runoff with the 75 foot setback. Mrs. Brien agreed. She also stated that the reasonable return versus harm or benefit to the public, in order to weigh those two things, it would be important to know the steps that the homeowner would have to take ensure minimal impact within our setback. Chairman Racette stated the Shoreline Protection would address some of these issues. The Board agreed that the Applicant did address the runoff issue at the previous meeting. After more discussion, the Chairman made a motion to re-open the public hearing. Mrs. Brien seconded the motion. All Board members were in favor. Public hearing was re-opened.

**PUBLIC HEARING:**

The applicant stated that they were waiting to hear from Shoreline Protection regarding the draining systems. The applicant stated that the owner did not realize she would not be able to add on to the building. The newest hardest is the grade is about 60 percent steep and not really useable to enjoy the earth. Most family members would be gathering inside, especially the elderly ones. Also, the septic system is outside the 75 feet and pumped away from the lake. DES will give their requirements for draining and the owner will follow these requirements. She wants to be above board and in compliance.

**Variance**

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

Chairman Racette closed the public portion and entered back into deliberation. The Chairman mentioned that if DES denies any of this, he would not want the variance. He would like to make a condition of the variance that DES approval is required, so if DES denies, the variance no longer stands. The applicant agreed. There was more discussion about drainage plans and the responsibility of DES.

Granting the proposed variance will not be contrary to the public interest. Roll Call Vote: Mrs. Torres – Yes, Mrs. Brien – Yes, Mr. Segedy – Yes, Mr. Galpin - No, Chairman votes Yes.

 Granting the proposed variance will observe the spirit of the Hillsborough Zoning Ordinance. Roll Call Vote: Mr. Segedy- No, Mr. Galpin –No, Mrs. Brien – Yes, Mrs. Torres – Yes, Chairman votes Yes.

Granting the proposed variance will do substantial justice. Roll Call Vote: Mrs. Brien – Yes, Mrs. Torres – Yes, Mr. Galpin – Yes, Mr. Segedy – Yes, Chairman votes Yes.

Granting the proposed variance will not diminish values of surrounding properties. Roll Call Vote: Mr. Galpin – Yes, Mr. Segedy - Yes, Mrs. Torres – Yes, Mrs. Brien – Yes, Chairman votes Yes.

Literal enforcement of the provisions of the Ordinance will result in an unnecessary hardship because, this is a two part criteria. Owing to the special conditions of the property that distinguish it from other properties in the area there is no fair and substantial relationship that exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property and the proposed use is a reasonable one. Roll Call Vote: Mrs. Torres – Yes, Mrs. Brien – No, Mr. Segedy – No, Mr. Galpin – No, Chairman votes Yes.

Part 2, If the criteria in subparagraph, which is the preceding one, immediately above are not established, then owing to the special conditions of the property that distinguish it from other properties in the area the property cannot be reasonably used with strict conformance and a variance is therefore necessary to enable a reasonable use of it. Roll Call Vote: Mrs. Brien – Yes, Mrs. Torres – Yes, Mr. Segedy – No, Mr. Galpin – No, and the Chairman votes Yes.

Chairman Racette made a motion to approve the variance subject to DES approval, seconded by Mrs. Torres. Mr. Segedy made a motion to amend to add a second condition that all roof runoff will be captured and disposed of in a manner approved by DES. Seconded by Mr. Galpin. The Board discussions following this motion determined that the condition is what the applicant has stated previously. For the record, the applicant was asked to restate the plans for the runoff for the record. The applicant stated the runoff will flow into a gutter and then captured into a dry basin possibly underground so the water does not erode the embankment within the 50 foot setback. The motion to the amendment passed unanimously by the Board. The motion is to approve the variance subject to DES approval and also to the runoff water being captured into a catch basin. Seconded by Mrs. Torres. All in favor with the exception of Mr. Galpin who opposed and Mr. Segedy abstained. The applicant will be notified of the positive decision in writing.

Mrs. Payson notified the Board that there will be ZBA training Saturday, April 28. She asked to save the date and will provide more information as it is provided.

A motion was made by the Chairman, seconded by Mrs. Brien to adjourn the meeting. The Board unanimously agreed.

Meeting adjourned at 8:07 p.m.

Respectfully Submitted,

Dianne Rutherford

Administration/Land Use Secretary