**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**December 11, 2017**

**DATE APPROVED**: 03/12/2018

**TIME:** 7:00 p.m. –8:40 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, Russell Galpin

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

Also present: Julia & Ross Bross – Applicants, James Bailey, Dan Higginson and Roy Tilsley Attorney for the Applicant.

**CALL to ORDER:**

Chairman Roger Racette called the meeting to order at 7:00 p.m.

This a public hearing on an application submitted by Julia and Robert Bross at 147 Barden Hill Road where a variance from Chapter 229-21 Dimensional Standards 229 Table 3 of the Zoning Ordinance to construct a garage within the 25 foot side setback. Chairman Racette appointed Alternate John Segedy to vote in place of the regular member not present.

**MINUTES:**

Mr. Segedy made a motion to approve minutes from 10/23/17. Mrs. Torres made a correction, stating Mr. Baker and Mr. Rogers were absent. No other changes. Mr. Segedy made a motion to approve the minutes as amended, seconded by Mrs. Torres. The Board unanimously approved the minutes as amended with Mr. Rogers abstaining.

The Board discussed site walk minutes and determined that future site walks should be recorded.

Mrs. Brien made a motion to approve the minutes from October 30, 2017, seconded by Mr. Segedy. The Board unanimously approved.

**PUBLIC HEARING:**

**Variance**

**Map 21, Lot 3 – 147 Barden Hill Road– Owned by Julia & Robert Bross**

Chairman Racette asked the applicant if he was correct in stating that the placement of the proposed shed has been changed. Mr. Roy Tilsley from Bernstein, Shur Sawyer & Nelson Law Firm confirmed on behalf of the applicant. At this time Chairman Racette officially opened the public hearing.

Chairman Racette asked Mr. Tilsley if the abutters were notified of the changes to the location of the proposed shed. Mr. Tilsely stated he was not instructed to nor was there time to notify the abutters. He also stated that the change is consistent with building within the 25 foot setback which is what the request is for. Mr. Tilsley also stated that the abutters have not had an issue with these proposals or property lines. Mr. Racette stated that the proposed setbacks have been changed and Mr. Tilsley acknowledged that. The Board briefly discussed the time frame for changes to be accepted prior to a hearing. The Board also agreed to proceed with this hearing.

Chairman Racette invited Mr. Tilsley to present the application to the Board. Mr. Tilsley introduced Dan Higginson, Surveyor and his clients, Julia & Robert Bross, who own the property of 147 Barden Hill Road, Map 21, Lot 3. It is a one acre lot in the rural zoning district on Franklin Pierce Lake. It is currently improved with a single family home which located at the lake front tip of the lot. Mr. & Mrs. Bross are seeking a variance from Section 229-21 Table 3 to allow the building of a garage and shed within the 25 foot side setback. The shed will be within one foot of the property line and the garage originally was proposed to be six feet and now it is proposed to be four feet of the property line. Mr. Tilsley continued to describe the property in detail and the reasons for the placement of the proposed garage and shed on this pre-existing, nonconforming home constructed in 2009. Mr. Tilsley stated that the proposed location is to keep the main structure and accessory buildings in one area and not sprawled out over the property. The proposal is consistent with most properties in the neighborhood.

Mr. Tilsley stated that the variance will not be contrary to the public interest and it does not violate the Ordinance’s basic objectives; nor does it violate the character of the neighborhood, it does not threaten public health, safety or welfare.

Criteria two: The Spirit of the Ordinance is observed. Mr. Tilsley stated that the spirit of the Ordinance is to keep the development on the lot close together to create a building envelope. By following the Ordinance the results are the exact opposite requiring the structures to be positioned away from the dwelling.

Criteria three: Granting the variance would do substantial justice. The loss of denying a variance exceeds the gain to the general public in strictly enforcing the Ordinance. In this case there is no real gain to the public in denying the request. These are accessory structures consistent with other types of structures within the neighborhood. This is a uniquely shaped lot where it is difficult to meet the side setbacks. Enforcement of the Ordinance results in forces the applicant to not have a garage and shed or positions it far away from the main house and less useable.

Criteria four: The values of the surrounding properties will not diminish as they are consistent with other uses around the lake. These structures will not increase traffic, cause odors or other detrimental impact to the surrounding area.

Criteria five: Unnecessary Hardship. Several hardships have already been mentioned; the unique shape, topography, wetlands and location of the exiting house. Due to the conditions, no fair or substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. The purpose of this provision is to keep all development in a standard building envelope. In this case, the house is already outside the envelope. In this case the Ordinance drives the structures further away making them impractical. The proposed use is reasonable. Garages and shed are reasonable uses for a lake front home. Most surrounding properties have these structures.

Chairman Racette asked what was preventing the applicant from centering the structures on the lot. Mr. Tilsley responded that in one area the driveway would be blocked and if the driveway were to be relocated the buffer between properties would be lost. Mr. Segedy asked why it couldn’t go near the leach field. Mr. Higginson responded that the area was not wetlands but relief would still be needed. And he stated that the proposed position already had a turnaround access. Mr. Higginson stated that a shoreline permit was issued and the proposed location has the least impact to the environment and site. Also addressed were wetlands location and issues. Mr. Tilsley and Mr. Higginson addressed questions from the Board members. Mr. James C. Bailey, representing himself and abutter Desmond Maguire, spoke in favor of the applicant’s request.

The Board recessed from Public Session to deliberate the application. Chairman Racette offered the Board to make comments and ask questions. After a short discussion and some clarifications the Board was ready to vote. The Chairman closed the public hearing.

First Criteria: Granting the variance will not be contrary to public interest. Roll call vote: Mrs. Torres – Yes, Mrs. Brien- Yes, Chairman- Yes, Mr. Rogers – Yes, Mr. Segedy – Yes.

Second Criteria: The Spirit of the Ordinance is observed. Roll Call Vote: Mr. Segedy – Yes, Mr. Rogers – Yes, Mrs. Torres – Yes, Mrs. Brien – Yes, Chairman – Yes.

Granting the Variance will do substantial justice. Roll call vote: Mr. Rogers – Yes, Mr. Segedy – Yes, Mrs. Brien – Yes, Mrs. Torres – Yes, Chairman – Yes.

Four: The values of surrounding properties will not be diminished. Roll call vote: Mrs. Brien – Yes, Mrs. Torres – Yes, Mr. Rogers –Yes, Mr. Segedy – Yes, Chairman – Yes.

Five: Unnecessary hardship. Roll Call Vote: Mr. Rogers – Yes, Mr. Segedy – Yes, Mrs. Torres – Yes, Mrs. Brien – Yes, Chairman – Yes.

A motion to approve was made by Mr. Rogers, seconded by Mr. Segedy. The Board unanimously approved.

**OTHER BUSINESS:**

The Board discussed Rules of Procedure for the Zoning Board of Adjustment. Suggestions for some revisions were made. Mrs. Payson will provide an updated version for discussion at next meeting.

Chairman Racette would like to schedule workshop sessions to review Title L Water Management and Protection Chapter 483-B Shoreland Water Quality Protection Act and how it affects the Town of Hillsborough. The Board agreed.

Meeting adjourned at 8:38 p.m.

Respectfully Submitted,

Dianne Rutherford

Administration/Land Use Secretary