

# HILLSBOROUGH ZONING BOARD

February 21, 2013

## Approved Meeting Minutes

Present:

Members: Roger Racette, Chair; James Bailey, III; George Seymour, Robert Hill, Richard Booth

John P. Segedy, Recording Secretary;

Brett Cherrington, Chair Conservation Commission

Sharon Monahan, Site Succor Design LLC

Linda Megnin, Chuck Megnin, Mary Ann Hill Day

### CALL TO ORDER

The meeting was called to order at 7:00 pm by Roger Racette, Chairman.

### MINUTES

**November 19, 2012**

**James Bailey moved:** *To approve the minutes of November 19, 2012 as submitted.*

**George Seymour seconded. Motion passed 5-0.**

**November 26, 2012**

**James Bailey moved:** *To approve the minutes of November 26, 2012 as submitted.*

**Richard Booth seconded. Motion passed 5-0.**

### **PUBLIC HEARING - APPLICATION FOR VARIANCE - ZONING ORDINANCE Section's 160 and 229 Table 3. Charles and Linda Megnin, 138 County Road (Map 5, Lot 135)**

Chair Racette opened the Public Hearing at 7:10 PM.

Chair Racette read a description of the request from a memo written by Code Enforcement Officer Kelly Dearborn-Luce: *"...for a variance from required setbacks and Loon Pond regulations.*

*The applicants would like to construct a new garage (24x20) on their property at 138 County Road, Tax Map 5, and lot 135, on Loon Pond.*

*The application has been sent to the Water & Sewer Department, per regulations, in Chapter 160.*

*There shall be no new construction within 200' of the pond.*

*... The other setback variance request is for the location of the garage at the road side. Because this property is a lake lot, the front setback is the lake, therefore the road side is the "rear" and the rear setback for the lake lot district is 25'. The garage will be located 6' from the edge of the property line."*

Chair Racette noted that per the file, the hearing had been properly noticed.

Chair Racette noted a similar case about 10 years ago with this same applicant had hinged on the definition of appurtenance. He said that in that case the court had given a definition of appurtenance. Chair Racette said that Kelly Dearborn-Luce had contacted Town Attorney Michael Donovan who in an e-mail to advised using the same definition in this case as given in that court decision (taken from Black's Law Dictionary) which he then read aloud: *"That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal. A thing is appurtenant to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter."*

Chair Racette brought to the Boards attention the response he had received from the Town of Hillsborough Water & Sewer Commissioners. He read from the letter:

*“On page 1 of the application, under Description of Project/Proposal, the applicant states the proposed garage is to be constructed 'in an existing parking area permitted in 2012.' On Page 1 of the four pages of supporting evidence, the applicant states the garage is to be constructed 'wholly within a level parking area that was permitted by the Town in 2012' There are additional references to the 'permitted parking area' or existing parking area' on pages 2,3 and 4.*

*Judging from the photos accompanying the application, in particular the photos taken from within the property, it would appear the existing parking area a) would have constituted a project involving 'excavation, fill or construction' within 250 feet of Loon Pond; b) would have resulted in an increase in the impervious area on the lot and c) would therefore have required a Shoreland Permit.*

*In a recent query of the NH Department of Environmental Services Wetlands and Shoreland Permit list, however, no shoreland permit was found for the property and, more specifically, for the construction of the parking area on which the garage is proposed to be constructed.”*

Linda Megnin stated that the driveway was there already, they had just raised it up to level.

Chair Racette informed the Board that Kelly Dearborn-Luce had also sent an e-mail today that she couldn't be at hearing, and clarifying that Billy Goss, Road Agent had issued a permit for a parking area, not a driveway or garage. She had said that Billy Goss would like 10' setback from the road if a garage is allowed.

Roger Racette asked where the DES permit stood.

Sharon Monahan speaking for the applicant said that they probably should have gotten a permit when they did the parking area last year. She said that since they are planning on covering that area, they are not increasing the impervious area.

Roger Racette said that the Driveway Permit doesn't exempt them from needing a Shoreland Permit.

Sharon Monahan said that it is still under 1500 square feet. She said that it is moot to do a separate permit as they will be applying for one for this project. She said they would be applying for a permit by notification but they hadn't sent that in yet because they wanted to get the variance first.

Sharon Monahan provided the Board with a revised plan that she said changed the size of the proposed garage to 24'x21'. She said that the setbacks were the same, but that her original calculations were off and they wanted to have the extra foot if possible.

Richard Booth noted the date said 2012 & he said he assumed she meant 2013 – Sharon Monahan agreed it was 2013.

Roger Racette noted the Road Agent wanted 10' between the road and garage.

Linda Megnin said she didn't understand that as there were two trees on either side of the driveway so it couldn't be plowed anyway.

Sharon Monahan said that there were other garages next to the road nearby.

Roger Racette said that Kelly Dearborn-Luce had said that those were grandfathered.

Linda Megnin said that if they had to make the garage smaller to leave 10' then it would be too small and they couldn't do it.

Charles Megnin said they couldn't move the garage away from the road because the septic box was right behind the driveway.

Chair Racette asked if anyone in the public had any comments.

Brett Cherrington said that although he was unprepared to comment on the details of the plan, he was concerned about the shoreland in general. He said the shoreland permit should have been gotten in the first place and that the fact that the parking area was constructed without one didn't change the need for one. He said they (the applicant) should file for an after the fact permit. Brett Cherrington recommended that the Board continue the hearing until the permit is obtained.

Linda Megnin said they didn't know that they needed to get it otherwise they would have. She said they just filled in to level it.

Roger Racette asked how much dirt they added.

Charles Megnin said he didn't know but described it in relation to the wall at the meeting.

James Bailey noted that although they say they just filled in to level the area, they actually filled in an area 24' wide whereas the driveway that had been there was probably only 10-12 feet wide.

Charles Megnin agreed that the driveway had been 12-15 feet wide. He said that the area next to it had a propane tank that they removed.

Linda Megnin said they put the boulders in matching what was there already. She agreed the area was widened but said it was leveled with the areas that were there to transition between them.

Sharon Monahan said they don't need Shoreland permit for just grading without changing footprint, but since they did change it they should have gotten permit. She said that whether or not the variance is granted, they would apply for the after the fact permit.

Roger Racette said that the second criteria deals with potential pollution. He said that without the permit he thinks they will have a hard time getting by that. He said he thinks the best thing would be to continue the hearing while they get the permit.

There was discussion of notice and continuing. Consensus was that they could continue it and then if necessary continue it again.

Richard Booth said they should clarify Billy Goss' concerns in the meantime.

Charles Megnin thinks there is enough room.

Roger Racette said they would at least clarify the question.

Roger Racette said they could address the question of appurtenance, because if they don't find it is an appurtenance then there is no point continuing anyway. He read the definition again.

Sharon Monahan noted that Black's Law Dictionary also gave numerous examples including gardens.

Chair Racette recessed the hearing at 8:00 PM.

**Chair Racette called for a vote on the question: *Whether the proposed garage was an appurtenance to the existing house.* Vote was 3 yes and 2 no (James Bailey and George Seymour).**

**Roger Racette moved: *To continue the Public Hearing until March 21, 2012 at 7:00 PM.***

**Richard Booth seconded. Motion passed 4-0-1 (George Seymour abstained).**

### **VACANCIES**

Chair Racette noted that there were two vacancies due to the terms of George Seymour and Richard Booth expiring.

Richard Booth said he was willing to continue to serve, while George said he would step down.

Roger Racette said he would submit Richards name to the selectmen.

Roger Racette suggested asking alternate Larry Baker if he was interested.

**Roger Racette moved: *To ask and recommend Larry Baker to fill the vacant position on the Board.***  
**Richard Booth seconded. Motion passed 5-0.**

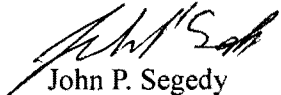
**CORRESPONDENCE**

Roger read a letter from a property owner regarding a decision of the Code Enforcer that he remove a trailer. Consensus of the Board was that he should be informed that if he wanted to formally appeal to the ZBA there was a form to do so.

**ADJOURNMENT**

**Richard Booth moved: *To adjourn.***  
**Roger Racette seconded. Motion passed 5-0 at 8:17 pm.**

Respectfully Submitted:



John P. Segedy  
Recording Secretary  
Approved March 21, 2013