

# HILLSBOROUGH ZONING BOARD

April 24, 2013

## Approved Meeting Minutes

Present:

Members: Roger Racette, Chair; James Bailey, III; Larry Baker, Robert Hill, Richard Booth

Kelly Dearborn-Luce, Code Enforcement Officer

John P. Segedy, Recording Secretary;

Rachel Hawkinson, Vice-Chair Conservation Commission

Sharon Monahan, Site Succor Design LLC

Linda Megnin, Chuck Megnin,

William Phillips, Attorney

### CALL TO ORDER

The meeting was called to order at 7:12 pm by Roger Racette, Chairman.

A packet of information regarding agenda items was provided to Board members by Kelly Dearborn-Luce, Code Enforcement Officer.

Attorney William Phillips provided a memo to the Board.

### MINUTES

#### March 21, 2013

John Segedy noted a couple of corrections

**Larry Baker moved: *To approve the minutes of March 21, 2013 as amended.***

**James Bailey seconded. Motion passed 4-0-1 (Larry Baker abstained).**

### CONTINUED 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 re-opened the Public Hearing at 7:15 PM.

Chair Racette noted that a permit from the Department of Environmental Services (DES) for filling done last year and for the garage had been obtained and copies were in the Boards packet.

William Phillips addressed the Board on behalf of the applicants and asked for clarification/confirmation that the Board had already voted that the proposed structure was an appurtenance.

Chair Racette answered yes.

William Phillips thanked the Board for taking the time to read his memo and apologized for presenting it late. He said he wanted to address two issues to the Board, the first being that the applicants have received the DES permit which had been asked for by the commission.

James Bailey replied that the objection was to them not having gotten one for the previous work.

William Phillips said that was what they had been asked for.

Jim Bailey said they weren't saying that was what was needed for the variance.

Roger Racette read the Town Code Section 160-7 H:

*H. This chapter is enforced in addition to the minimum standards of shoreline protection as set forth in RSA 483-B, the Comprehensive Shoreline Protection Act. All property owners are required to meet the standards of this chapter in addition to those set forth in RSA 483-B. Where any provision of these rules is in conflict with state law or other local ordinances, the more stringent provision shall apply.*

William Phillips said yes, and it seemed that looking at the minutes and at what the Megnin's have told me, the issues in question after the last meeting was the permit and the hardship issue which I will get to next.

John Segedy clarified that the minutes don't say a vote was taken on any of the other criteria and in fact no vote was taken.

Will Phillips said he could go through all the points if the Board wanted.

Chair Racette said it was up to him, but unless he had something new to add didn't know if that was necessary.

William Phillips said that he would then address the hardship issue. He referred the Board to section II A of his memo explaining that it wasn't required that all the distinguishing characteristics be unique from all other properties.

He read through some of the conditions listed in his memo:

*"a. The lot layout is long and curved and narrow. It has 497' of lake frontage and road frontage with the widest part of the lot (105') in the area of the existing non-conforming house. The land is all sloped towards Loon Pond. County Road and Loon Pond restrict any further setback than what is proposed (54').*

*b. The house is located after a sharp bend in County Road.*

*c. Only the first 100' of the lot is altered where the existing house is, the rest of the lot is thickly wooded and undeveloped.*

*d. The area where the garage will be erected has safe sighting distance along County Road. ...*

*e. The Megnins' house is one of only four – out of nineteen – dwellings on County Road occupied year round."*

He referred to item h, that the septic system is a state of the art 'Clean Solutions' system.

Referring to item I, he noted that this was new information, that Chris Pinkham will be doing the construction and will build the panels off-site and then bring them to be erected. He will put up the rear panel first to block stuff from blowing towards the water.

William Phillips further read:

*"j. No existing vegetation will need to be removed in order to erect the garage.*

*k. There are no abutters who will be visually impacted by the erection of a garage in this location. The abutter across County Road is the Town. It is forested undeveloped Town land."*

William Phillips then directed the Board to a chart/list of properties in the attached to his memo. He said that there are three properties that don't have width greater than 200' and also don't have a garage. There was discussion of various properties with Linda Megnin pointing out some of the properties to Roger Racette on a map.

Linda Megnin commented on some of the properties:

Lot 121 Has 550' set back

Lot 126 Has a garage already.

Lot 127 Is narrow and took a garage down to put in a septic system.

Lot 129 Has a garage.

Lot 131 Has a garage.

Roger Racette said he thought they were getting to specific. He said it is the point of using 200' of setback as the basis for a variance.

William Phillips said the ordinance allows for a variance. He said he was trying to show that there are only three properties with less than 200' of setback and no garage.

Chair Racette suggested that they assume for the moment that they could find distinguishing characteristics of the property so they can move on.

William Phillips said that on that assumption then they would look to the next prong which is the purpose of the ordinance and how the application of the ordinance to the property fulfills the purpose. He said that the purpose of the ordinance is to protect the water quality and he didn't think one could make a credible argument that a garage wouldn't protect the water better. William Phillips explained that the garage will have a cement floor and be less porous than the gravel where the cars park now, and also that any leaks or drips can be cleaned up. He further said that based upon that 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.

Roger Racette replied that he sees the intent of the 200' setback to be related to the water quality, and then the question is does 50' (54) meet the same level of protection that 200' does.

William Phillips responded that the answer is yes because the garage is protecting the pond at 50' or 200'. The pond quality is better protected with a garage than without.

William Phillips then turned to the question of reasonableness referring to the 'Harrington' case as indicating that a test was whether the proposed use will alter the essential characteristics of the neighborhood. He referred to the other houses which already have garages in the area as evidence that the proposal will fit in with the neighborhood.

Roger Racette said that he spoke to someone at DES today and asked what the purpose of the 200' setback was. He said he was told that it was for filtration. He said that he understood that to imply that at 50' there is more potential for nutrients or pollution to reach the water.

William Phillips said that he (Roger) was assuming a situation where the cars weren't there. He noted that if they sold the property, there could be an owner with a leaky car, and there wouldn't be much that could be done about it.

Jim Bailey said that we don't know what someone else is going to do.

William Phillips said that while DES may be saying that with nothing there, than the greater distance would be better, but in this case there is use there already.

Sharon Monahan pointed out that the proposal is in the already developed area of the lot and that they have done everything they can to not increase any impact to the pond.

William Phillips asked her, "based on your expertise, is there any reason the garage is more harmful to the water?"

Sharon Monahan answered no, and in fact it will be less harmful.

Chair Racette noted that the application was for two variances and so far they have focused on the variance from the Loon Pond ordinance and not the rear setback.

After discussion it was the consensus of the Board, that they should address each separately.

William Phillips said that the reasons were basically the same but that he would go through them for the 25' setback.

A Granting the Variance will not be contrary to the public interest:

William Phillips said that the garage at 528 square feet will be smaller than the parking area at 800 square feet, that there is safe sighting distance along the road, that there are no views from neighbors that will be disturbed and that the Road Agent is ok with the setback., He noted that they don't have to show that the project promotes the public interest, only that it is not contrary to it.

B Granting the Variance will observe the spirit of the zoning ordinance:

William Phillips said this is similar to the first one. He said that the Road Agent has no objection based on either sighting or plowing, that the proposal will be consistent with other properties.

C Granting the Variance will do substantial justice:

William Phillips said this is a balancing test and in this case there is no benefit to the town but a substantial loss to the applicant if it is denied.

D Granting the Variance will not diminish the values of the surrounding properties:

William Phillips said that the Megnins' house is one of the more valuable in the area, that improvement tends to inflate value, that it will be consistent with other garages. He said that there will be no diminution in value, but likely an increase in values in the area.

E1. - Hardship

William Phillips said that the special features are identical to those identified for the other variance. He referred to the list provided in his memo, particularly items a, b, d, & g.

Sharon Monahan noted a specific restriction in that they can't go further back from the road because of the septic tank.

Referring to item e of his list, William Phillips said that others have garages within the setbacks that aren't year round residents.

Roger Racette noted that those are existing already and none were granted variances.

William Phillips said that only three properties would need variances.

Sharon Monahan said that there is no vegetation that will be removed and that the garage is consistent with current use.

William Phillips said that applying the criteria there is no negative impact, and it is a reasonable use because it is consistent with other properties. He noted that they were not making the second hardship argument, only the first.

Linda Megnin submitted a letter of support from a neighbor.

Chair Racette asked Rachel Hawkinson if she had any input from the Conservation Commission (HCC).

Rachel Hawkinson said no, that she was there primarily observing.

Charles Megnin said that they had met with the HCC and showed them what they were doing. He said that he thinks that Brett (Cherrington) said that if DES gave them a permit that he would be OK with the proposal.

Rachel Hawkinson said that the HCC did not take a position on the proposal, only that the permit was needed because of the previous work. She noted that the HCC doesn't have approval authority, only advisory authority and that it is DES that has authority over wetlands permits and the ZBA over town issues. She said that the Recording Secretary may remember something different.

John Segedy referred the Board to the minutes of the HCC meeting.

Rachel Hawkinson noted that they had discussed the panelized construction. She said they had also discussed the after the fact application being lumped in with the garage application and how in some cases DES may be looking at whether in an after the fact case, it may be more harmful to undo something, even if it shouldn't have been done in the first place. She also noted that the ZBA has a separate job to rule on the town's rules. Rachel Hawkinson also reported that the HCC had also had a general discussion about the town employee's knowing what to tell people.

Chair Racette asked if the Board had any further questions?

Answer was no.

Chair Racette closed the public portion of the hearing.

Chair Racette asked if there was any discussion from the Board members.

Answer was no.

Roger Racette said that his biggest concern was that Hillsborough already struggles with water quality and he wonders if reducing the setback by 150' in this case going to give the same protection to the water.

Chair Racette called for voting reading the criteria:

**Loon Pond Setback**

**Loon Pond Criteria**

1. **(Appurtenance). 4-1 (James Bailey no).**
2. **Not Contributing to pollution. 3-2 (James Bailey and Roger Racette no).**
3. **Waste water System. 5-0**

**Statutory Variance criteria**

1. **Not contrary to public interest. 5-0.**
2. **Meets the spirit of the ordinance. 3-2 (James Bailey and Roger Racette no).**
3. **Does substantial justice. 4-1 (James Bailey no).**
4. **Doesn't diminish property values. 5-0.**
5. **a. Hardship – Special conditions of the property. 3-2 (James Bailey and Roger Racette no).**

**Rear setback**

**Voting on all criteria as a whole. 5-0.**

**Bob Hill moved: *To grant the applicants application for variances to the Loon Pond setback ordinance (160), and the rear setback ordinance (229) based upon the application materials submitted to allow for construction of a garage 54' from the water and 6' from the road.***

**Larry Baker seconded. Motion passed 3-2 (James Bailey and Roger Racette no).**

**ADJOURNMENT**

**Richard Booth moved: *To adjourn.***

**Bob Hill seconded. Motion passed 5-0 at 8:59 pm.**

Respectfully Submitted:



John P. Segedy

Recording Secretary

Approved May 22, 2013