

# HILLSBOROUGH ZONING BOARD

May 29, 2013

## Approved Meeting Minutes

Present:

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

John P. Segedy, Recording Secretary;

Gus Bakas

### CALL TO ORDER

The meeting was called to order at 7:37 pm by Roger Racette, Chairman.

### MINUTES

May 22, 2013

Larry Baker moved: *To approve the minutes of May 22, 2013 as presented.*

James Bailey seconded. Motion passed 4-0-1 (Robert Hill abstained).

### CONTINUED PUBLIC HEARING - APPLICATION FOR VARIANCE - ZONING

**ORDINANCE Section 229-10 and Table 3. Gus Bakas, 33 Hummingbird Lane (Map 17, Lot 222)**

Chair Racette re-opened the Public Hearing at 7:38 PM.

Chair Racette noted that Mr. Bakas is seeking a variance from Hillsborough Zoning Ordinance §229, Table 3 to allow construction of a 12' x 20' deck within the 75' setback from the shoreline.

He also noted that a Permit by Application had been received from DES (Department of Environmental Services)

Chair Racette asked about the size as he saw that it had been referred to as both 12' x 20' and 12' x 24'.

Gus Bakas answered that the deck will be 12' x 24' but that it an expansion of 20' as there is already 14' landing there.

Chair Racette clarified that the existing 4' is grandfathered.

Chair Racette asked for Gus Bakas to address the five criteria.

He read the first one:

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

Gus Bakas read his answer: "The existing home is located within the 75 foot setback requirement. The addition of an attached deck will not detract from the aesthetic features of the public interest". He said that he will be adding 176 square feet of additional impervious area which is about 1% of the lot area and well under the amount allowed by the state.

Chair Racette read:

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

Gus Bakas read his answer: "Since the home is already located within the 75 foot setback requirement, an attached deck would allow a consistent property setback. There would still be ample buffer space to comply with the spirit of the ordinance." He added that the deck will be setback from the side neighbor 69'.

Roger Racette noted that only 25' is required (for side setback).

Chair Racette read:

C Granting the Variance will do substantial justice:

Gus Bakas read his answer: "It will allow the property owner to enjoy the lakefront for its intended purpose". He added that it is already non-conforming. He also said that this part of the land is vacant and is the perfect place to put it (the deck). Gus Bakas added that the tax base will increase, that the deck will be more attractive than barren property and is typical of the area where many properties have decks.

Chair Racette read:

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

Gus Bakas read: "The deck as proposed will not hinder the views or the access to the lake. It will increase the values of the surrounding properties, since the house with the deck would increase in value, bringing area homes up in value as well".

Chair Racette read:

E Literal enforcement of the provisions of the ordinance will result in an "unnecessary hardship" because:

(1) Owing to special conditions of the property that distinguish it from other properties in the area: (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 because:

Gus Bakas answered that the sloping area prevents building in any other part of the lot. He said the only other use of the land would be to take down the trees.

Roger Racette said that the already non-conforming house is a condition of the property.

Chair Racette read:

E (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 because:

Gus Bakas answered that he thinks he meets this (criteria) due to the property being within the setback.

Chair Racette asked if the Board had any further questions?

Answer was no.

Chair Racette said that there were letters from two abutting neighbors who opposed the proposal. He noted that copies had been provided to the Board and they had been made part of the record. Roger Racette added that one of the letters just supported the position expressed in the other letter and asked if the applicant wanted to address those.

Gus Bakas said that 1. - The neighbor says he already has a deck, which isn't true and 2. - He says that it will devalue his property and there is more likely hood of increased noise.

It was noted that the abutter hadn't come in to defend his objection.

Gus Bakas showed the Board pictures of the property. He said that the neighbor in question has a deck and it is not credible that he should say he shouldn't have one also.

Larry Baker asked if other houses have decks?

Gus Bakas said he thinks about 75% do, 8 of 10 going up the road do.

Jim Bailey said he doesn't think it is necessarily relevant if one does or one doesn't. He said they have to look at the property itself.

Roger Racette said it might make a difference determining a reasonable use. He said the letter claims the applicant doesn't need a deck, but the Board's job isn't to determine if he needs one but just if it is reasonable.

Chair Racette closed the public portion of the hearing.

Bob Hill said that someone who would write but not show up to the hearing we can't really base decision on.

Roger Racette said that he doesn't provide any evidence.

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

Answer was no.

Chair Racette called for voting reading the criteria:

1. Not contrary to public interest. 5-0.
2. Meets the spirit of the ordinance. 5-0
3. Does substantial justice. 5-0
4. Doesn't diminish property values. 5-0.
5. Hardship – Special conditions of the property. 5-0

**James Bailey moved:** *To grant the applicants application for a variances to the setback ordinance (Sec. 229) based upon the application materials submitted to allow for construction of a 12' x 24' deck.*

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

There was discussion of posting minutes on the web site.

**Larry Baker moved:** *To post unapproved minutes (marked as such) to be replaced with approved versions on the Town Web site.*

**Jim Bailey seconded. Motion passed 5-0.**

There was discussion of a handout from a workshop.

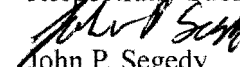
There was discussion of the practice of voting on the individual criteria.

#### **ADJOURNMENT**

**Jim Bailey moved:** *To adjourn.*

**Bob Hill seconded. Motion passed 5-0 at 8:30 pm.**

Respectfully Submitted:

  
John P. Segedy  
Recording Secretary  
Approved July 18, 2013