

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
August 10, 2020**

DATE APPROVED: 01/11/21

TIME: 7:00 p.m. – 9:30 p.m.

CHAIRPERSON: Roger Racette

VICE CHAIRPERSON: Robert Hansen

MEMBERS: Russell Galpin Meg Curtis-Sauer Nancy Torres

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Lucy Pivonka

EXCUSED:

Present: Marissa Schuetz (attorney for applicant). Tim Banks (applicant) Noah Banks, Grace Banks, Oren Banks, Emma Banks, Richard Head, John Segedy, Sam Banks, Jonathan Duncklee, Christopher Duncklee, Andy Stevens, Kevin O'Donnell

CALL TO ORDER:

Chairman Roger Racette called the meeting to order at 7:00 p.m. and read the Covid-19 checklist. (attached)

Roll Call

Roger Racette-present, no one in the room

Russ Galpin-present, in the Planning Office with the Planning Director

Meg Curtis-present, no one in the room

Bob Hansen-present no one in the room

Nancy Torres-present no one in the room

MEETING MINUTES:

Chairman Roger Racette made a motion to defer the approval of the meeting minutes to the end of the meeting after the Public Hearing. Meg Curtis-Sauer seconded the motion.

Roll call vote:

Russ Galpin-Yea, Meg Curtis Sauer-Yea, Bob Hansen- Yea, Roger Racette-Yea, Nancy Torres-Yea,

The minutes were approved after the Public Hearing

08/12/2019 Russ Galpin made a motion to approve the minutes as corrected (typos). Nancy Torres seconded the motion.

Roll Call Vote:

Roger Racette-Aye, Nancy Torres-Aye. Russ Galpin-Aye, Meg Curtis-Sauer-Abstain, Bob Hansen-Abstain.

The Minutes are approved

07/29/2020 Robert Hansen made a motion to approve the minutes as amended (typos). Roger Racette seconded the motion.

Roll Call Vote:

Roger Racette-Aye, Nancy Torres-Aye. Russ Galpin-Aye, Meg Curtis-Sauer-Aye, Bob Hansen-Aye.

The minutes were approved.

Public Hearing

Variance-

Article II General Protections

Section 229-10 Stream and Shoreland Protection Ordinance

22 Piper Road Map 5 Lot 19

Timothy and Gina Banks

Chairman Roger Racette asked applicant's representative Attorney Marissa Schuetz to present the application.

The application is for a variance for an already constructed wood deck attached to the existing non-conforming single family dwelling on Contention Pond. The deck is within the 75' setback from the high water mark. The applicant has received DES approval to construct the deck within the 50' state mandated setback.

The builder, Victor Montanez, had found old footings from a prior deck in that location that been probably taken down multiple years ago.

Robert Hansen said that any deck that may or may not have been an existence prior to the renovation that we're dealing with is totally irrelevant to the application on hand.

Roger Racette said that if less than a year had passed the pre-existing deck it would be grandfathered. As it appears it has been considerably more than a year since any deck existed the point is irrelevant.

Russ Galpin asked if the size of the deck was 12' x 14' because the map provided shows it twice as long. Attorney Schuetz said that the deck was actually 12x 24

Chairman Racette asked the applicant to address each of the five criteria for a variance to be granted.

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

The deck is private not public so it is not contrary to the public interest. It does not alter the character of the area. It is a very simple deck that matches the house. It matches other houses on the lake. It is well built and conforms to the building code. It enhances the appearance of the pre-existing house. It will not alter or diminish anyone's property values

Roger Racette asked if any of the board members had questions regarding these criteria.

Nancy Torres, asked if the deck was built according to building code, and asked when the Building Inspector inspected it.

Attorney Schuetz said it was built to building standard. She said she understood it was built "out of order" (meaning built before a variance was obtained). She said there was a question of whether the building permit that was obtained included the deck

Tim Banks said the only person who met with the building inspector was Victor Montanez the contractor. He said he assumed the building inspector had been there.

Attorney Schuetz said she did believe the building Inspector was out to look at the other renovations that were completed and could not speak to the deck itself.

Roger Racette said that what the Board is focused on is finding if there are any features or conditions of the property which would make it unreasonably difficult for the applicant to enjoy his property and not focus on the building permit process.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because:

Attorney Schuetz said in this case, the ordinance is observed because the proposed use is consistent with the other lake front properties in the area. There is no threat to public health, safety or welfare. It is a place to appreciate the views that the house offers.

C. Granting the proposed Variance will not diminish the values of the surrounding properties because:

Attorney Schuetz said the general public does not realize any appreciable gain from denying this variance. It is a private deck that will be used in a private manner. It is not going to increase the number of cars or any traffic to the property, it's simply a place for the applicant to sit and enjoy their view.

- D. Granting the proposed Variance will not diminish the values of the surrounding properties because:

Attorney Schuetz said that this is a pre-existing single family house. It is built in a similar fashion to the existing house. It is built in a similar fashion to the other structures in the area. It is not going to diminish anybody's property value. And it is not going to cause any harm to other structures in the area.

Roger Racette asked if there were any questions on the criteria so far.

Robert Hansen said in his opinion the applicant was requesting a reasonable use, but the financial loss because the applicant would have to demolish that deck, built without receiving the proper permits, is not a valid argument.

Attorney Schuetz said she did not state that having to take down the deck would be a financial hardship under "substantial justice". She said that this was where the question of the building permit comes in. She said she believed the building permit issued included the renovations and the deck.

Bob Hansen asked the chairman to remind the applicant's representative that this is a variance hearing where the five criteria as stated in RSA 674:33 A-E must be met.

Roger Racette said that this process had nothing to do with the building permit process. He then asked Attorney Schuetz to address "By granting the variance, substantial justice is done" again

Attorney Schuetz said that "substantial justice" was a complicated thing to understand, and the guiding rule is usually that any loss to the individual was not outweighed by the loss to the general public.

In this case, if the general public does not realize any benefit from the denial of the variance, that would be an injustice. This is a rural, lakefront property on the edge of the waterfront, that poses no harm to the health, safety, or the wellness of the general public. Therefore, as there is no threat to health or safety or harm to the general public, there will be no appreciable gain from denying of this variance on the benefit of the general public.

Robert Hansen asked if Attorney Schuetz is arguing that there are no financial losses or gains resulting from the approval or denial of this application.

Attorney Schuetz said that was correct.

- E. Literal enforcement of the provisions of the ordinance will result in an unnecessary Hardships 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:

Attorney Schuetz said in this case, the unnecessary hardship is the non-conforming nature of the house. The ordinance requires a side setback of 25 feet from the abutting property lines and a setback of 75 feet the shoreline. The house is already within that 75-foot setback. The deck does not alter or increase that setback. The deck is in line with the front of the existing house, and it was part of a larger remodel to the house, greatly improving the quality of the dwelling.

There is no other place to locate the deck reasonably off the house. There are no other outside doors to the house. There is no other place to locate a deck, that one could use to view the pond.

Roger Racette asked if there were any questions

Bob Hansen said he has put s a lot of thought into the hardship issue and I want the applicant's representative to understand what he was saying. He said the deck location isn't the problem. It's a reasonable use of a pre-existing non-conforming structure.

Bob Hansen said granting the variance would not harm public interest, but the argument that was stated by the representative should have been about the physical location of the house compared to the other houses in the area. His problem is asking the board to take in to account the cost of reversing something that should not have been built in the first place.

Roger Racette said that The Board needs to think about this as a proposed structure, not one that has been built and would need to be taken down if denied.

Bob Hansen said financial hardship was created by the homeowner and the builder by not following proper procedure. If the applicant or his builder had come in before building the deck, it would be a very simple variance. The deck will harm no one. So it isn't a problem with what they're asking for. It's a problem using self-created hardship as a reason to expect the Zoning Board of Adjustment for Hillsborough to grant it. That that being said, I don't know if the board will want the applicant to go back and revise their hardship argument.

Attorney Schuetz asked if she revised the hardship argument to say that there is no other place on the property to locate a deck attached to the house that is not within the 75 foot setback would be acceptable.

Bob Hansen said the criteria for the variance have not been met, and with that, he would either ask the Chair for a continuation, so we can get clarification from their representative as to exactly what the hardship is, because in the current application he didn't see a hardship. In good conscience as Vice Chair of this Board he could not say that he was willing to accept this without everything being done correctly.

Roger Racette said the hardship that she stated was created by the fact that the house is within the within a 75-foot setback. They can't be asked to move the house, it is the hardship that they have to deal with.

Roger Racette opened the Public Hearing for comment. He asked if there was anyone from the public that wished to speak in favor of the application

Christopher Dunklee said he wished to speak. The lot in question abuts a lot that is owned by his brother-in-law. They grew up playing on the previous deck with the neighboring kids, so it did exist. The deck has been built on the same spot that that other was. From our border it can't be seen at all and it's the most common sense place to put this deck or put a deck. The way it's situated although it's not far back from the lake, it's actually elevated because the topography of the lake goes up so that when you're actually on the lake, you can't even see the deck. Basically, if you look at it, it would be a no-brainer. He said he was all about the improvements that are going on at his new neighbor's house. He's doing it, professionally, he's putting in a conforming septic system and is doing everything to improve the lot and improve the quality of the lake.

Roger called on Kevin O' Donnell to speak

Kevin O'Donnell, of 20 Piper Road said he is mister Bank's other abutter. He concurs with Chris Dunklee in regard to this deck. He said he believes that the board should agree in this particular case. He said his family lived in this house for 85 years.

Roger called on to speak.

Jonathan Dunkley said. Their family's has owned the property for over 100 years and they are ecstatic about the Bank's improvements to their septic system. They are great neighbors, and this is a replacement deck. He encouraged the Board to approve this variance.

Roger asked if there was anyone else to speak in favor of the variance. He reminded the public that whatever was previously built on that location was not relevant

Roger asked if anyone wanted to speak against approval of the variance.
He called on John Segedy

John Segedy said that it had been expressed that a DES permit had been obtained. He said he would like to have that submitted as part of the record that the permit was not found on the DES website. He said he was not sure when that was obtained, but, usually, the town gets copies of permits when they have been granted. He said it should be fairly easy to submit that, as part of the record, with the building permit.

Roger Racette asked Mr. Segedy why he believes that the DES permit would be part of the record.

John Segedy said you included the building permit with the application, but they did not include the DES permit. It does have some effect in that they are making the case that the reason they

didn't get a variance before building was that they didn't feel they needed a variance from the town if they had a DES permit. He said he wanted to speak to the "Spirit and Intent" of the ordinance. When the town adopted the 75-foot setback, the spirit wasn't to line up a nice straight line equidistant from the water. The purpose of such an ordinance is to limit the amount of impermeable surface close to the water. And the town in its infinite wisdom decided 75 feet was the correct distance to limit the amount of impermeable surface. If someone disagrees with that then the town could change that in March. But to say that the spirit of the ordinance is that everything is supposed to look the same, isn't quite accurate. He also stressed that the builder is a longtime builder in town and has no excuse for not knowing that he needed to follow the building permit requirements. On the other hand, (in his opinion) the building permit should not have necessarily been issued, so the town has some culpability also. You can take both of those into consideration.

Robyn Payson asked Chairman Racette if she could interject when Mr. Segedy was done speaking

Roger Racette said yes but he had one question for Mr. Segedy. He said that Mr. Segedy had reference that the 75-foot setback was established to prevent impervious surfaces, but he never could find the basis for it.

John Segedy said that limiting impervious surface was given as a talking point when the setback was proposed by the Planning Board

Roger Racette said he didn't want to get into the permitting here, but the State has its own criteria for non-conforming structures. If a non-conforming structure exists within the state's 50-foot setback limit the state requirements must be met to allow the building. The town has basically the same think with a 75-foot setback.

John Segedy said he would appreciate if the board asked them if they have a copy of the state permit to add to the record

Roger Racette thanked Mr. Segedy for his comments

Attorney said that they do have the permit and she believed the Planning Director had a copy.

She acknowledged that the permit does not address the Town's ordinance. They knew it was a separate factor. They knew that just because DES approved that the town may not approve.

Robyn Payson said she had a copy of the approval and the plans that went with it as part of the application, but she didn't have the application its self.

Attorney Schuetz said she would e-mail the application.

Roger Racette asked Robyn Payson if she wanted to respond to Mr. Segedy.

Robyn Payson said her comment was intended to be directly to Mr. Segedy but as the discussion has gone on there were other issues that needed to be addressed.

She said earlier in the meeting there had been discussion questioning whether the deck had been included in the original building permit application. She said that the building permit application states”

The applicant was:

“replacing a 304 square feet floor and adding 3 foot sliders and one window.”

She said it was very clear in the application that was issued, that that deck was not included in the approval for that permit.

Roger Racette said the point was taken. and that they were getting a little off track.

John Segedy said it was certainly appropriate for the public to bring these ideas up to talk about.

Roger Racette said the board should talk about it during the deliberations but the public has every right to bring up different points. He then asked if there was anyone else that wishes to speak about this ordinance.

Roger Racette acknowledged Richard Head.

Richard Head, Chairman of the Conservation commission spoke not on behalf of the commission but as a private citizen.

He said this issue was raised briefly at our meeting last Thursday, but only in that this hearing was going to occur, and we did not at our meeting have details about the project, so we did not deliberate on it or take any position on it. So I just wanted it to be clear that my comments today are not on behalf of the Conservation Commission, but as a resident of Hillsborough.

A couple of things, and John had mentioned a few of these issues, and I'm going to focus on the criteria 2-A and 2- B.

As attorney Schuetz noted in her application, the first step (2-A) is analyzing whether or not a Variance is contrary to the public interest. The way to do that is to examine the applicable zoning ordinance. In this case, I'm talking about the Stream and Shoreline Protection Ordinance.

2-B is to observe the spirit of the ordinance. And again, I'm talking about the Stream and Shoreline Protection Ordinance. I don't disagree with, with, a lot of attorney Schuetz said. She did not, specifically in any of the application, address the fundamental issue of the Shoreline Protection Ordinance and its purpose, and whether or not, ultimately, the deck here is appropriate given the 75-foot setback.

Impervious surfaces are, in fact, a relevant aspect of evaluating any project that is going to occur within the 75-foot setback, because ultimately, the goal of the ordinance is to protect the quality of the water and to protect, ultimately, the long term survival of the water body that we're talking

about in, terms of where the setback is located. In this case, what I would have expected to see within the application (and is not there) is, what steps were taken. Or, because it's, it's an after the fact, you still have to look at it as if it would be an original application.

What steps are to be taken in order to protect the ultimate thing the ordinance is driven towards, which is protecting that water body. How is it constructed? What is the nature of the impervious surface? Because the more impervious surface you have, the more runoff you have that's going to be heading into the lake. And as we know, as you get more runoff, you, you add more silt into that runoff and you ultimately add, silt into the lake which itself adds nutrients to the lake, which has an adverse impact on the lake, which is what the fundamental purpose of this ordinance is.

So what I would say is, in evaluating this application, you look at criteria and aspects that actually are not contained within the application.

So for example, what are the existing structures on this property and what is the total impervious surface that's going to be added to by putting this deck on the property. The more impervious surface you have, the less ability you have for the ground to absorb rainwater, the more runoff you're going to have.

So I would say you should look at that.

The other aspect is, is there a beach on this property? And if there is, what does the shore land look like? Because as you increase water flow towards the lake, you're going to be causing a greater level of erosion, and you want to see what is it that that water is going to be sheet flowing off of what is going to be flowing there.

None of that detail is contained within this application.

Also, you have to look at what is the least impacting location, the least impacting size that would still perform the thing that is being requested?

The appropriate size is based upon the Shoreland Act, based upon what the ultimate impacts are to that water body. You also want to look at exactly how far back are we from, from the pond? And it said, you know, generally, after 75 foot back it is the rule, as you get closer to the pond, you're going to likely be creating greater impacts. So those then weigh on the impervious surface. The other aspect of it is, what measures are being taken to mitigate that?

How is how is water flow coming off of that?

How is it going to be captured in a way that doesn't direct toward the lake, or doesn't allow sheet flow?

There are none of those details in this application.

So, I would suggest you actually don't have enough information to approve this application, because it does not address the issues regarding the spirit of the ordinance.

And what is, is ultimately, in the, in the public's interest, meaning the town, who voted to put into place this, this ordinance, the 75-foot setback. Ultimately, I truly don't take a position on the application. But what I do ask is that the applicant address the issues that are specific to the shore land act or shoreline ordinance in order to properly provide this board with information upon which it can decide.

I'll just make one other note relative to John's comment about the, the Department of Environmental Services permit.

The only thing I know is I looked on DES's "One Stop", which is where they list the status of permits.

I couldn't find any permits for this location.

And to John's point, the only reason I raise it is that it was used by the applicant as one of its basis for going through the reasons for seeking this waiver.

I would suggest that, that the applicant should really go back and provide the information that is specific to this ordinance. As opposed to these very general phrasing of "no public health" and "public safety impact", that's really not the issue we're talking about.

It's, what is the capacity, or what is the impact on the pond? And we're talking about, a very close deck, a very close situation and you don't have any information.

What's happening between that deck and the pond?

And you don't know.

What it's going to run through is silt.

Sand isn't going to run through a level of brush, based on the photos of the town tax card, it looks to me like there's a beach, but I honestly don't know. So maybe there isn't one, but you don't have enough information, as, is.

Thank you very much, mister Chairman, for your, for your time and for your consideration today, and members of the Board.

Roger Racette said the purpose, the Shoreline Protection Act is to preserve the cleanliness of the water bodies that the state is responsible for. The state has responsibility for preserving the cleanliness of the water, so, so one could argue that, as far as preserving the cleanliness of the water that is a State issue. Now it's true, that the that the Shoreline Protection Act does grant communities the right make the set back further than what they require.

But they have established, and I'm sure, that it's some scientific process that they went through, that a 50-foot setback will ensure the cleanliness of the water.

Richard Head asked if he could reply. Roger Racette said he could.

Richard Head said with all due respect, I very strongly disagree, and I apologize for that, but I do know this is a town ordinance.

We don't look to what the state may or may not do, and maybe somebody made that point earlier, which is whether or not they got a state permit, is not really your purview.

Your issue is to implement the will of the town, a town meeting, which was to pass a stream and shoreline protection ordinance.

And that can only be to protect the quality of Contention pond. In this case, you can't say, we can leave it up to the state. Otherwise, it makes the ordinance completely meaningless.

Roger Racette said There is no stated purpose of why, we have a 75-foot setback, one can just say it's to just keep the water cleaner.

Richard Head said I think that's one of the purposes certainly, to keep the water cleaner and what I'm saying, and my point simply is you don't have enough.

You have to look very carefully at what is being proposed.

And what I'm saying is you have absolutely no information that is going to inform you as to whether or not this deck is going to adversely impact Contention Pond. You have no information. In fact, the argument wasn't even presented to you that there was no, there was no impact.

And I'm not even saying there, there will be.

All I'm saying is you have such little information to make this decision that you really need more information.

It may be they have gone above and beyond to ensure there is no flow onto the pond that they've taken all kinds of measures, you simply do not have information that allows you to make that decision tonight.

I'm simply saying, that you need that level of information in order to be able to evaluate the proposal.

Roger Racette said, to get back to the impervious surface issue, the state does a very thorough job of evaluating the impervious surfaces that are existing and the previous services that will be created there.

Richard Head said, with all due respect I object, in that you're simply saying, if the state is OK with it, you're OK with it, then renders the whole process here, meaningless.

What you have an obligation to do is take local knowledge locally, here and evaluate based on what it is that's being presented to you.

Not simply saying well, the state would have taken care of this if there was an issue, because otherwise there's no purpose to this ordinance, and there has to be. You have to be able to say the purpose is it is to ensure it is to ensure the protection of our water bodies for generations to come.

Roger Racette said when you see the stated purpose of the State Shoreline Protection Act, the purpose was to ensure the cleanliness of all water bodies.

Richard Head said I don't dispute that, but are you saying there's no purpose to our ordinance?

I think that doesn't make sense.

I appreciate you may not have thought this through, which is really my point in talking tonight, talking to the board.

You have an ordinance called the Stream in Shore Land Protection Ordinance.

I think it's fair to say that the purpose of this ordinance is to protect extremes and shorelines and protect the fish or nothing that is developed within that 75-foot buffer is going to adversely impact the pond.

And I would suggest respectfully that in order to do that, you need information that helps you evaluate at the information is simply not there, is the purpose of the ordinance is, is to protect health and safety.

The applicant has provided you with information, but that's not the purpose, as attorney Schuetz has said, you look in terms of analyzing whether or not contrary to public interest.

You examine the particular ordinance that we're talking about.

Nothing within this application addresses this particular ordinance.

So, my suggestion is, is simply that the ordinance does have a purpose, that the people within this town asked for you to help us preserve our, our shore lands, and our streams.

And that to do that, you have to be able to properly evaluate an application and that requires information.

I'm not saying you should approve or reject it.

I'm just saying tonight; you don't have enough information.

Roger Racette said part of our responsibility, in granting a variance is that we have to look the established features, or conditions of the property and those, conditions of the property, or that this structure was built many years ago.

And also the size of the lot and whether or not those existing conditions make it makes literal enforcement of the ordinance unreasonable. That's our primary purpose, and the deck is certainly a reasonable use.

Richard Head said I think you have to obviously take into account the size of the lot. It has already been agreed that this is not a grandfathered deck. It has to be taken into, into consideration, then a new deck going in within the 75-foot setback, that you have no information upon which to evaluate it as it relates to this ordinance.

And so my only point is, to ask the applicant to come back with detail, and with the appropriate photos, that show what is happening, How they've built the deck, How they've protected it relative to runoff, and where is that runoff going to go?

Because it has to go somewhere, because there's no longer soil that the rain is falling on, that amount of square footage of rain is going to flow somewhere.

You don't know where, you don't know what direction.

You don't know what's capturing it.

All I'm saying is, is you need more information.

Richard Head said I would suggest you're making an assumption that the applicant has given information to that, to that effect.

What direction are the slats going, do you have space between boards; you're going to get run off.

As you know, you get enough rain, those, those tiny gaps between boards, don't capture all the water, it's got to go somewhere.

So, I'm talking about, OK, you've got heavy rain. You are going to flow in to the pond. When you get sediment that flows into the pond, you are going to get nutrients that flow with that. And those nutrients have an adverse impact on a lake and that level of information is simply not there.

John Segedy asked to be recognized

John Segedy said. Keep in mind that the law actually specifically says that Towns can be more strict. So they are contemplating that in some towns. 50 feet might be acceptable to DES but 50 feet may not be enough for a local situation. And that's what this town in their wisdom decided whether or not you agree with it, the solution isn't to ignore it every time it comes to zoning board. It has come numerous times, and I cannot remember it being enforced by zoning board.

So if the situation is such that it shouldn't apply. Maybe it needs to go back to the voters to our redetermination, whether they still want it, but in the meantime, it exists for a reason.

Roger thanked Mr. Segedy for his statement.

Roger Racette asked if anybody else from the public wishes to speak against the variance?

Timothy Banks asked if he could make a statement. With regard to the impervious surface. could I speak to the board about the impervious surface?

Mr. Banks said, I'm probably going to get scolded by my attorney for stepping over and I beg your pardon, Marissa, but we hired an engineer to calculate impervious service, or application to DES, which, in fact, we have in hand, I thought it was in the packet, and I believe she sent it off to Robyn.

The state sets a very specific standard about impervious surface and we hired an engineer.

I just thought that was important information for you folks.

Roger Racette Thanked Mr. Banks

Attorney Schuetz said she wanted to add that the total impervious surface area of the preexisting structure plus the deck is still within the town ordinance.

Roger Racette asked if anybody else from the public had anything to say in favor or against the application before the public hearing was closed. No one expressed interest in speaking

Then at this time, we will close the public hearing, we will not take any further comments, and the board will deliberate.

Russ Galpin made a motion to close the public hearing. Meg Curtis seconded the motion.

Roll Call Vote:

Roger Racette-Aye, Nancy Torres-Aye. Russ Galpin-Aye, Meg Curtis-Sauer-Aye, Bob Hansen-Aye.

The public portion of the hearing was closed,

Bob Hansen said he was taken aback to the answers to the five criteria that are supposed to be met. He said he did agree with Richard Head. He agreed there is a problem with the answers to the five criteria and whether or not they have been met. In my opinion they they haven't.

I am not either saying yes or no. All I'm saying is, I think, a little bit more needs to be discussed.

Roger Racette asked what more needs to be discussed.

Bob Hansen asked why there is a 75-foot setback?

Roger Racette said we have a 75-foot setback, which is legal for a municipality on ponds. But everything is referred to on a State level, a D E S level. Well, they have jurisdiction up to 250 feet back, of the high watermark. The State has jurisdiction that is the state's responsibility to control. The one thing that they allow municipalities to do is to, is to increase that the set back to the primary restructure. Municipalities are allowed to set it greater than that.

Nancy Torres asked to speak.

Nancy Torres said she thought the reasoning behind 75 feet was to prevent overcrowding. Does that apply to this?

Roger Racette said the purpose of the 75-foot setback, has never been clearly established. Richard Head said, it's to protect the shore and 75 feet of course is going to be more effective than 50. It's not stated why, if you go back to say, when the town voted to establish a 75 foot, what the discussions were, what was it trying to accomplish. Whether it was overcrowding or whether it was to protect the water.

Russ Galpin said when the planning board proposed Ordinance 75 feet, they clearly stated their purpose and their reason behind it. It may not have been a part of what is recorded. But if anyone wants to go back and get the minutes of the meetings, it should be there. I'm not arguing whether this particular deck would adversely affect the water quality or not.

Roger thanked Russ Galpin

Roger said I'm quite sure that at the time pushing the setback to 75 feet made sense. But we don't really have any guidelines for doing that.

Bob Hansen said to make a clarification of a point, it doesn't matter why. The matter is it's there that is our town zoning ordinance, you either comply with it or you don't

Roger Racette said the ZBA has to determine if there are conditions are features of this property, which would make literal enforcement of the ordinance unreasonable. That's our function. So it's those conditions, or features exist that we have the right to grant there, and they, or their representative, to establish those conditions as a property. That being said, we do have to enforce the zoning ordinances in which we were empowered with enforcing.

Roger asked Meg Curtis-Sauer her opinion.

Meg Curtis said she understands exactly what Bob was talking about, and, that she is of the same mindset. We need more information.

Bob Hansen said if the board tabled this for now, we're not saying yes or no to the applicant as far as this variance goes, it's contradictory to what they're attorney put on this paper.

Once this is all clarified and their representative can be enlightened as to what we need, then we can see about holding another session. But in my view, after looking at all the evidence, and I've got paperwork in front of me, that this is not as simple cut and dry, yes or no, let's grant these people, it's a violation of zoning ordinance that cannot just lightly be a yes or no answer, and for us to grant a variance, or tonight, deny a variance tonight would not be doing the town justice, or the applicant justice.

I request that, we table this, and until further time, until all the information can be presented by the applicant's representative.

Roger Racette said he would like to hear from other board members.

Russ Galpin said Mister Chairman, this application contains as much as or more information than we have had similar cases in the past. However, I have no objections to the continuation as such. I would like to point out my opinion that there are many things that are very lax in these applications. One thing, the map shows no measured distances anywhere on it, indicating how far back from the water, how far back from the sideline or anywhere else. The purpose of a map is supposed to be to delineate these things so people can understand so that we can understand. I disagree with Mister Hansen when he says, Our job is to enforce the ordinances in the town. It is not, our job is to allow exceptions to the Ordinances. That is, what a variance is, our job, to determine that. However, whether this Board, as a whole field, is that there was enough lacking information to ask for a continuance, I'm not arguing that Thank you.

Nancy Torres said she thought this applicant has provided plenty of information. I think we've discussed things that are not necessary about building the deck or not building a deck getting approval. I think that's not what we should be talking about that. We should only be considering the variance. And I think, as you go through each criteria, I think there's plenty of information here to make that decision.

She said she don't know what else people wanted.

I understand what Russ is saying about the map. I get that, but I think we can make a reasonable decision with the information we have. So if you could, clarify exactly what more information we're looking for, I have no objection to that.

Following further discussion the ZBA decided to vote on the application.

Criteria A- Granting the proposed Variance will not be contrary to the public interest	
Bob Hansen	Yea
Meg Curtis-Sauer	Yea
Nancy Torres	Yea
Roger Racette	Yea
Russ Galpin	Yea
Vote:	5 Yea-Criteria Passes

Criteria B- Granting the proposed Variance will not be contrary to the public interest	
Bob Hansen	Yea

Meg Curtis-Sauer	Yea
Nancy Torres	Yea
Roger Racette	Yea
Russ Galpin	Nay
Vote:	4 Yea 1 Nay-Criteria Passes

Criteria C- Granting the proposed Variance will do substantial justice	
Bob Hansen	Abstain
Meg Curtis-Sauer	Yea
Nancy Torres	Yea
Roger Racette	Yea
Russ Galpin	Abstain
Vote:	3 Yea 2 Abstain-Criteria Passes

Criteria D- Granting the proposed Variance will not diminish the values of the surrounding properties	
Bob Hansen	Yea
Meg Curtis-Sauer	Yea
Nancy Torres	Yea
Roger Racette	Yea
Russ Galpin	Yea
Vote:	5 Yea -Criteria Passes

Criteria E- Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship” because:	
<p>(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:</p> <p>(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:</p>	
Granting the proposed Variance will not diminish the values of the surrounding properties	
Bob Hansen	Nay
Meg Curtis-Sauer	Nay
Nancy Torres	Yea
Roger Racette	Yea
Russ Galpin	Yea
Vote:	3 Yea 2 Nay -Criteria Passes

Nancy Torres made a motion to grant the variance. Roger Racette seconded the motion.

Roll call vote:

Russ Galpin-Yea, Meg Curtis Sauer-Yea, Bob Hansen- Yea, Roger Racette-Yea, Nancy Torres-Yea,

The Variance is granted.

Meeting Adjourned 9:30 pm

Respectfully Submitted,

Robyn Payson
Planning Director

**Town of Hillsborough
ZBA
Right-to-Know Law Meeting Checklist
Meeting 08/10/2020**

As Chair of the Hillsborough Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

We are utilizing the GoMeeting platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the GoMeeting platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following:

Phone Number: +1 (571) 317-3122

Access Code: 663-325-837

We previously gave notice to the public of how to access the meeting using GoMeeting and instructions are provided on the Town of Hillsborough's website at: www.town.hillsborough.nh.us.

If anybody has a problem, please call Planning Director, Robyn Payson at **603-464-7971** or email at: **robyn@hillsboroughnh.net**

In the event the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled at that time.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states their presence, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.