July 8, 2019 - ZBA Meeting Minutes

**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**July 8, 2019**

# DATE APPROVED: 08/12/19

**TIME:** 7:00 p.m. – 9:07 p.m.

**CHAIRPERSON:** David Rogers

**VICE CHAIRPERSON:** Roger Racette

**MEMBERS:** Russell Galpin Dana Brien and Nancy Torres

# PLANNING DIRECTOR: Robyn Payson

**ALTERNATES:** Larry Baker and John Segedy

**ABSENT:** Larry Baker, Russ Galpin

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

**Others Present:** Randy Emery, Phyllis Emery, Chris Sieg, E. Mully Stark, Tara Cederholm, Peter Roth, Marcia Maxfield, John Riguira, Lornia Rae Watts, Robert Poutrie, Kathy Chappelle, Carol Fogarty, Cheryl Barlow, Richard McNamara

**CALL TO ORDER:**

Chairman Rogers called the meeting to order at 7:00 p.m. Mr. Segedy was appointed to take the place of Mr. Galpin who was absent.

**MEETING MINUTES**:

5/13/2019

6/10/2019

6/24/2019

A motion was made by Mrs. Brien to postpone review of the minutes until after the hearings, seconded by Mr. Segedy. The motion passed unanimously.

**PUBLIC HEARINGS**

**Variance from Setback Requirements**

**15 Turtle Bridge Crossing**

**Map 14, Lot 611**

**Randy Emery**

The applicant is seeking a variance request to erect a temporary shed that is in violation of setback requirements. Mrs. Payson read a letter from Mike Borden, the Code Enforcement Officer, stating the request to replace an existing structure and to connect the new shed with another shed that had been constructed and approved previously. (map attached)

Mr. Emery was invited to go through the criteria:

1. Granting the proposed Variance will not be contrary to the public interest because: The addition of his shed will not impact the surrounding properties.
2. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: The addition of his shed in the proposed location will allow me access to my classic vehicles. If the shed were located in a different location, I would not be able to access it due to my disability.
3. Granting the proposed Variance will do substantial justice because: It will allow me to use my property to the degree I wish.
4. Granting the proposed Variance will not diminish the values of the surrounding properties because: The shed will house classic cars inside a building rather than them being out in the yard.

3. A) Granting the proposed Variance will be in harmony with the general purpose and intent of the Zoning Ordinance because: It will allow full access to the use of my property with my disabilities.

Because this is a disability hardship, the Applicant stated that if he left the property, the sheds would go with him.

The Chairman opened the hearing for public comment. Mr. Poutrie of Rabbit Pass had concerns that the shed that will be on his property. He wanted to know if Mr. Emery had his land surveyed. Mr. Emery stated the new shed would not be near Mr. Poutrie’s property line.

Kathy Chappelle, 14 Turtle Bridge spoke in favor of the request.

Having no further input from the public the Chairman closed the public hearing and the Board went into deliberation.

Roll Call Vote:

A. Mrs. Torres – yes, Mrs. Brien – yes, Mr. Chairman – yes, Mr. Racette – yes, Mr. Segedy – yes.

B. Mrs. Brien – yes, Mr. Chairman – yes, Mr. Racette – yes, Mr. Segedy – yes, Mrs. Torres – yes.

C. Mr. Chairman – yes, Mr. Racette – yes, Mr. Segedy – yes, Mrs. Torres – yes, Mrs. Brien –yes.

D. Mr. Racette – yes, Mr. Segedy – yes, Mrs. Torres – yes, Mrs. Brien – yes, Mr. Chairman – yes.

3A. Mr. Segedy – yes, Mrs. Torres – yes, Mrs. Brien, Mr. Chairman – yes, Mr. Racette – yes

Mr. Segedy made a motion to grant, seconded by Mrs. Torres. The motion passed unanimously.

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**Variance from Frontage Requirements**

**12 Gould Pond Road**

**Map 14, Lot 611**

**Cheryl Barlow**

Mr. Segedy stated that he was an alternate for the Conservation Commission when the Commission granted the application. Mrs. Barlow had no issue with Mr. Segedy sitting in on this hearing.

The intention is to have shared frontage access on Gould Pond in order to create a two lot subdivision with access to the rear lot via an easement. After some discussion the Chairman opened the meeting to public comment. Mr. Lornia Rea Watts spoke in favor. No further comments were made. The public portion was closed.

The Board asked the applicant to go through the criteria starting with 2A:

A. Granting the proposed Variance will not be contrary to the public interest because: It will not alter the character of the local or rural district. The existing driveway is to be shared. There is no threat to general public or safety by granting a variance. By retaining lot 170’s 206-foot frontage the remaining lot that will be 63+/- acres will not become landlocked.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: The spirit of the ordinance is maintained by preserving rural character and allowing remainder of lot 170 to remain conforming with rural district zoning and keep the 63 +/- acres in current use in the family land trust.

C. Granting the proposed Variance will do substantial justice because the benefit to granting the variance for the 200’ frontage requirement is that a daughter can live next to her mother without making lot 170 landlocked and non-conforming. There is no public benefit to denying the variance.

D. Granting the proposed variance will not diminish the values of the surrounding properties because it will not be detrimental or out of character with the adjacent neighborhood, or create hazards or diminish values in surrounding rural district.

E. Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship” because: Owing to special conditions of the property that distinguish it from other properties in the area: 9i) 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 special conditions are: 1. Both lots family owned and in family trusts. 2. Lot 170 is 66 acres with 206’ frontage, if used now remaining lot is landlocked and nonconforming.

3. Keep one existing driveway for maintenance and utility, no new curb cut will be needed. 4. Detached ADU’s (accessory dwelling unit) are not allowed.

Roll call vote on criteria:

1. Mrs. Brien- yes, Chairman – yes, Mr. Racette, yes, Mr. Segedy – yes, Mrs. Torres – yes
2. Chairman- yes, Mr. Racette – yes, Mr. Segedy- yes, Mrs. Torres –yes, Mrs. Brien – yes
3. Mr. Racette – yes, Mr. Segedy – yes, Mrs. Torres – yes, Mrs. Brien – yes, Chairman – yes
4. Mr. Segedy – yes, Mrs. Torres – yes, Mrs. Brien – yes, Chairman – yes, Mr. Racette – yes
5. Mr. Segedy – yes, Mrs. Torres – no, Mrs. Brien – yes, Chairman –yes, Mr. Racette – yes. Vote is in favor with one opposed.

A motioned was made by Mrs. Brien to grant the variance, seconded by Mrs. Torres. Motioned approved unanimously.

**REHEARING**

**Variance from Setback Requirements-Loon Pond Ordinance**

**50 Grimes Cottage Road**

**Map 05, Lot 105**

**John Regura and Marcia Maxfield**

Mrs. Payson explained that whenever a variance is requested on Loon Pond, it is required that the Water/Sewer Commission be notified. The Town of Hillsborough was notified but the Water/Sewer Commission was not which meant there was a deficiency of notice. The original decision has been vacated. Proper notice went out for this rehearing. The applicants are looking to add a side deck to their house. The applicant has not yet applied to shore land, they wanted to make sure this project was possible before applying. After discussing the application, the Chairman opened for public comment.

Peter Roth of 78 County Road stated the property is hidden behind trees and the terrain is rough. Mr. Roth stated he would be in favor as long as the site from his house did not change, no tree disturbance. He is also concerned with lighting and requested downward facing lighting.

Tara Cederholm of 252 & 230 County Road is concerned about the size of the deck being proposed. She also would like to see none of the vegetation be disturbed during and after construction. She is also in favor of the downward lighting.

Chris Sieg, Department of Water & Sewer stated the reason for the Ordinance is to protect the drinking water supply. The ordinance states nothing can be built within 200 feet of the water because it could impact the purity of the water supply. Mr. Sieg read through the Loon Pond Ordinance. He doesn’t think granting the variance is in the best interest of the town.

The Board discussed Loon Pond Ordinance and its interpretation.

Mr. Richard McNamara of 28 County Road stated he has a deck on his house. He spoke in favor of the request with the conditions of no disturbance of vegetation and the downward lighting.

Having no further public wishing to speak, the public comment portion of the hearing was closed.

Mr. Regura had no issues with the conditions of no disturbance of vegetation. Mrs. Payson stated downward lighting on the deck is required.

At this time the applicants were asked to go through the five criteria.

A. Granting the proposed Variance will not be contrary to the public interest because: Extending the deck with ensure less disturbance and environmental impact of the land. It will not detract from the use and character of the neighborhood by the abutters or public.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because: Adding a deck will help mitigate damage to the surrounding environment and watershed. It will increase values, not diminish values of the area.

C. Granting the proposed Variance will do substantial justice because: Adding a deck will only add value to the neighborhood and will not diminish other property owners’ values. The variance will increase the ability of this owner to use and enjoy the property with minimal environmental impact.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because: The proposed variance will not affect the surrounding properties because of the distance from the property lines and it will in fact, if anything, increase the surrounding property values.

E. Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship” because: The house is already located within the set back. The property does not have easy access to the front without significant disturbance of the environment. A deck is a reasonable use accessory and is not contrary to the spirit of the ordinance.

Roll call vote on criteria:

1. Chairman – yes, Mr. Racette – yes, Mr. Segedy – No, Mrs. Torres – yes, Mrs. Brien – yes. Vote: four in favor, one opposed.
2. Mr. Racette – yes, Mr. Segedy – no, Mrs. Torres – yes, Mrs. Brien – no, Chairman – yes. Vote: three in favor, two opposed.
3. Mrs. Torres, - yes, Mrs. Brien – yes, Chairman – yes, Mr. Racette – yes, Mr. Segedy – yes
4. Mrs. Brien – yes, Chairman – yes, Mr. Racette – yes, Mr. Segedy – yes, Mrs. Torres – yes
5. Chairman – yes, Mr. Racette – no, Mr. Segedy – no, Mrs. Torres – yes, Mrs. Brien –yes, Vote three in favor, two opposed.

Mrs. Brien made a motion to approve the variance with the condition that water frontage vegetation be undisturbed as much as possible in compliance with Loon Pond Ordinance during or after construction, seconded by Mrs. Torres. Motion passed three in favor, two opposed.

**MEETING MINUTES**:

5/13/2019

6/10/2019

6/24/2019

Mr. Segedy made a motion to accept May 13, 2019 minutes as amended, seconded by Mrs. Brien. Vote: four in favor one abstention.

Mrs. Brien made a motion to accept the minutes of June 10, 2019, seconded by Mr. Segedy. Motion passed unanimously.

Mrs. Torres made a motion to accept the minutes of June 26, 2019, seconded by Mr. Racette. Motion passed unanimously.

# OTHER BUSINESS

Having no further business, the meeting was adjourned at 9:07 by motion.

Respectfully Submitted,

Dianne Rutherford

Administration/Land Use Secretary

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