**TOWN OF HOLDERNESS**

**Zoning Board of Adjustment**

 **Meeting Minutes October 12, 2021**

**Members Present**:

Bob Maloney, Chairman Bill Zurhellen, Member Kristen Fuller, Member

Bryan Sweeney, Alternate

**Members Not Present:** Eric Macleish, Member Robert Dorff, Alternate Judith Ruhm, Member

**Staff Present:** None

**Others Present:** Bruce Barnard, Michael Hayes, Michael Bagge, Shirley Bagge, David Driscoll

**CALL TO ORDER:**

The meeting was called to order at 6:17 P.M.

**PLEDGE OF ALLEGIANCE:**

B. Maloney led the pledge of allegiance.

B. Maloney appointed B. Sweeney to fill the absence of member J. Ruhm.

**APPROVAL OF MINUTES**:

**Motion: “To approve the minutes of July 13, 2021 as presented.”**

Motion: B. Sweeney

Second: B. Zurhellen

Discussion: None

Motion Passes: 4-YES 0-No

B. Maloney stated that a 4-member board was in place for the meeting.

**NEW APPLICATIONS**

B. Maloney introduced the following new application:

**Case 464-10-12:** Application submitted by Matthew Barnard of B.A. Barnard Enterprises, Inc on behalf of Joseph Michael Hayes for property identified as Tax Map 228-059-001 located at 432 NH Route 175 in the General Residential District for a Variance from Section 400.8.2 to allow the location of a new septic system within the setback.

B. Maloney opened the Public Hearing at 6:23pm.

Bruce Barnard presented on behalf of the applicant. He reviewed the Septic Plan originally submitted and spoke to the conditions on the lot that require the variance. He noted that the replacement system would be better than the older system and would just need a variance from the Town setbacks as it met all of the State setback requirements. He also discussed the location of the shared well and the original home.

B. Maloney asked Mr. Barnard if there were other locations where the septic could be placed. Mr. Barnard replied, that this would be the best location for the system given the existing conditions on the lot.

B. Maloney asked if there were questions/comments from the Board. The board members did not have further questions for the applicant.

B. Maloney asked if there were comments/concerns from the public. There were none.

B. Maloney closed the public hearing at 6:27pm

B. Maloney led the Board in a review of the five criteria for a Variance.

1. It is not contrary to the public interest.

All 4 members of the Board indicated their agreement.

2. It is consistent with the spirit of the ordinance.

All 4 members of the Board indicated their agreement.

3. Substantial justice is done.

All 4 members of the Board indicated their agreement.

4. There will be no diminution of property values.

All 4 members of the Board indicated their agreement.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because conditions of the property distinguish it from other properties in the area so that the property can’t be reasonably used without the granting of the requested variances.

All 4 members of the Board indicated their agreement.

**MOTION: “To approve the variances requested for case 464-10-12: Application submitted by Matthew Barnard of B.A. Barnard Enterprises, Inc on behalf of Joseph Michael Hayes for property identified as Tax Map 228-059-001 located at 432 NH Route 175 in the General Residential District for a Variance from Section 400.8.2 to allow the location of a new septic system within the setback”**.

Motion: K. Fuller

Second: B. Sweeney

Discussion: Plans referenced: Effluent Disposal System Design, Tax Map 228- Lot 059, GR General Residential zone, Joseph Michael Hayes, 432 Nh Route 175 Point Road Holderness, NH.

Motion Passed: 4 – Yes 0 – No

B. Maloney introduced the next application.

**Case 465-10-12: Application submitted by Michael Bagge for property identified as Tax Map 241-077-000 located at 230 Shepard Hill Road in the General Residential District for a Variance from Section 400.8.1.1 to allow the location of a new 28” X 28” garage within the setback.**

B. Maloney opened the Public Hearing at 6:29 PM

The applicants, Michael and Shirley Bagge were present to review their application with the Board.

Mr. Bagge went through the plans provided making note of the layout of the property and their plans for the use of the garage noting that an existing shed on the property would be removed as it would no longer be needed. He also mentioned that the garage could not be attached as there was a basement bulkhead on the side of the house where the garage could go. He also wanted to allow some space for a plow to be able to clear between the house and the garage.

Mr. Bagge took questions from Board members who inquired about other options for the location of the structure. There were also questions regarding the height of the structure and the amount of usable space above the garage.

B. Sweeney expressed his concern that he is struggling with finding the hardship in this application. K. Fuller expressed her concern as well.

B. Maloney expressed his concern as well and suggested that a site visit by individual members of the Board might help them better understand the conditions on the ground. B. Maloney suggested that the hearing be continued to the next meeting to allow the Board time to visit the site. The applicant and the other Board members were in agreement.

The hearing will be continued to the November 9, 2021 meeting.

B. Maloney introduced the third application of the evening.

**Case 466-10-12: Application submitted by David Driscoll of David Driscoll designs Agent for Pookie Property Holdings LLC for property identified as Tax Map 245-080-000 located at 66 White Oak Pond Road in the General Residential District for a Variance from Section 700.2.1.2 to allow for the enclosure of a three-season porch as conditioned living space.**

It was determined the B. Sweeney would recuse himself from this case as he is an abutter to the property.

B. Maloney opened the public hearing at 6:47 PM.

David Driscoll of David Driscoll Designs presented on behalf of the applicant. Mr. Driscoll provided color coded copies of the plan for the Board to use during his presentation. He provided some history on the property and explained that the area under the second floor living space was supported by posts and enclosed by awnings. It had a wooden floor and no foundation. The variance they were requesting was to fully enclose and condition that space for year-round use. The area under consideration is 161 square feet. The open space on the lower level would be incorporated into the existing conditioned space.

Members of the Board had questions regarding the orientation of the property and where the subject area was located within the existing structure. Mr. Driscoll provided some more detail in that regard. He noted that most of the house is non-conforming. B. Sweeney provided some pictures of the property to help the Board better understand the conditions on the ground. More discussion ensued regarding to the existing space and whether it was already living space.

B. Zurhellen commented that he did not see the area with the wood floor over the dirt to be existing living space and enclosing it would be contrary to the ordinance.

B. Maloney read from the ordinance. He noted that he did consider the existing area as year-round living space and to enclose it would be an expansion not allowed by the ordinance.

D. Driscoll commented that there is nothing in the ordinance that speaks to conditioned space.

B. Zurhellen stated that if you enclose it and heat it is living space. What exists is really exterior space.

K. Fuller commented that it would not be usable winter space.

D. Driscoll mentioned that it is used a lot during the three seasons.

B. Maloney noted that this would be an expansion of living space within a non-conforming structure. There was an ensuing discussion regarding this issue.

At Mr. Driscoll’s request, the Board reviewed the explanation of the hardship described in the application.

B. Maloney noted that he did not see the hardship in this case. It seemed to be more of a matter of convenience.

B. Maloney asked for any public comment. There was none.

Mr. Maloney closed the public hearing at 7:17PM.

There was more discussion regarding the lot and the definition of living space, conditioned versus non-conditioned. There was also more discussion regarding the planned improvements to the space.

B. Maloney commented that this issue is with the living space.

B. Zurhellen noted that the improvements would turn this area into living space.

With no further discussion amongst the Board members, B. Maloney led the Board in a review of the five criteria for a Variance.

1. It is not contrary to the public interest.

All 3 members of the Board indicated their agreement.

2. It is consistent with the spirit of the ordinance.

All 3 members of the Board indicated their agreement.

3. Substantial justice is done.

All 3 members of the Board indicated their agreement.

4. There will be no diminution of property values.

All 3 members of the Board indicated their agreement.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because conditions of the property distinguish it from other properties in the area so that the property can’t be reasonably used without the granting of the requested variances.

All 3 members of the Board indicated that they did not see the hardship in this case.

B. Maloney asked for a motion from the Board.

**Motion: “To deny the Application submitted by David Driscoll of David Driscoll designs Agent for Pookie Property Holdings LLC for property identified as Tax Map 245-080-000 located at 66 White Oak Pond Road in the General Residential District for a Variance from Section 700.2.1.2 to allow for the enclosure of a three-season porch as conditioned living space citing that only four of the five criteria for the variance had been met. There was no hardship proven”.**

Motion: B. Zurhellen

Second: K. Fuller

At this point the question of their being a quorum present to submit a motion arose.

B. Maloney wanted to verify that 3 members present would constitute a quorum. He suggested that the hearing be continued to the next meeting to clarify the matter.

Mr. Driscoll asked if the issue was setting a future precedent.

B. Maloney commented that this is always a concern, but he has an open question with regard to the quorum and would prefer to continue the hearing rather than take an improper vote.

B. Zurhellen commented that is a question of porch space versus living space.

Mr. Driscoll noted that the zoning Ordinance stated that a screen porch where windows are present would qualify as living space. He asked that the Board review that definition.

B. Maloney again suggested that the hearing be continued to the next meeting to allow some time to consider thew quorum question and other issues raised during the hearing. All were in agreement that the hearing would be continued to the November 9, 2021 meeting.

**OTHER BUSINESS:**

Next meeting: November 9, 2021 for continued hearings. No additional notice will be provided.

**ADJOURNMENT:**

At 7:27P.M. the following motion was made:

 **MOTION: “To adjourn.”**

 Motion: B. Zurhellen

 Second: K. Fuller

 Discussion: None

 Motion Passes: 4-YES 0-No

Respectfully submitted,

Michael R. Capone

Town Administrator