

**TOWN OF HOLDERNESS**  
**Zoning Board of Adjustment**  
**Regular Meeting Minutes December 8, 2020**

**Members Present:**

Bob Maloney, Chairman	Jude Ruhm, Member	Kristen Fuller, Member
Bill Zurhellen, Member	Eric MacLeish, Member	Bryan Sweeney, Alternate

**Staff Present:** Nancy Decoteau, Landuse Board Assistant

<b>Others Present:</b> Nicolas Boyer	Michael Mingueneau	Ellen Faiella
Roy Tilsley	Matthew Iovanni	Tom Ange

**CALL TO ORDER:**

The meeting was held via Zoom.

Those participating in the Zoom meeting were informed the meeting was being recorded for the purpose of producing the meeting minutes.

The meeting was called to order at 6:15 P.M.

B. Maloney noted that a full Board is present with B. Zurhellen connected via telephone.

B. Maloney welcomed B. Sweeney to the Board as an Alternate member.

**PLEDGE OF ALLEGIANCE:**

B. Maloney led the Pledge of Allegiance.

**APPROVAL OF MINUTES:** November 10, 2020

**Motion: "To approve the minutes of November 10, 2020 as presented."**

Motion: K. Fuller

Second: B. Zurhellen

Discussion: None

Motion Passes: 5-YES 0-No

**CONTINUED PUBLIC HEARINGS:**

B. Maloney introduced the following continued application:

**Case 454-10-13:** Application submitted by Brett W. Allard, Esq. as agent for property identified as Tax Map 236-014-000 in the Rural Residential District located at 40 Mount Fayal Road owned by Michael D. Faiella & Ellen M. Smith Faiella for a variance from Article 300.4.2.1 to permit an accessory dwelling unit in the second story of the existing, detached garage on the property.

B. Maloney opened the Public Hearing at 6:20pm.

It was noted that Board members received the Utility Easement Plan and the Septic Design Plan for Case# 454-10-13.

It was noted that all the Board members were able to visit the property with the exception of E. MacLeish.

E. MacLeish stated the NH State law enacted in 2017 regarding accessory dwelling units has a provision for detached accessory dwelling units.

E. MacLeish stated the law requires at the option of the municipality regulations and criteria can be adopted for the approval of detached accessory dwelling units.

E. MacLeish stated the Town of Holderness has adopted regulations/criteria for the approval of attached accessory dwelling units but no regulations/criteria have been adopted for detached accessory dwelling units.

E. MacLeish stated because the Town of Holderness has not adopted any regulations/criteria for detached accessory dwelling units the Board can't legally consider Case# 454-10-13.

E. MacLeish recommended the ZBA go through the proper process to adopt regulations/criteria for detached accessory dwelling units so that the Board can consider Case# 454-10-13.

It was determined that if the ZBA recommended an amendment to the Zoning Ordinance to address detached accessory dwelling units to be voted on at the Annual Town Meeting on March 9, 2021 the earliest the ZBA could take action on detached dwelling units would be at the April 13, 2021 meeting.

R. Tilsley stated he was representing the applicant and disagreed with E. MacLeish regarding the ability of the ZBA to make a ruling on Case#454-10-13.

R. Tilsley stated he agrees the State law allows towns to adopt regulations to allow detached ADU's and that the Town of Holderness has not done that.

R. Tilsley stated his opinion that the town not having adopted regulations to allow detached ADU's does not prevent the Board from reviewing/approving Case 454-10-13 if the five criteria for a variance are met.

R. Tilsley stated the Zoning Ordinance does not allow a detached ADU, Case#454-10-13 meets the criteria for a variance and the Board is required to consider the application.

E. MacLeish stated the State law clearly states that if a town is going to allow detached ADU's requirements/criteria must be adopted.

E. MacLeish stated that taking action on Case#454-10-13 would be in violation of state law.

R. Tilsley stated the ZBA acts as a relief valve when the Zoning Ordinance has an unfair effect on certain properties because of a unique situation.

R. Tilsley stated the ZBA had the authority to grant a variance for a detached ADU even though the Town has not taken the State up on the invitation to adopt criteria for the regulation of detached ADU's.

K. Fuller stated her opinion that the variance being sought is incorrect because by definition an ADU is attached.

R. Tilsley clarified that attached ADU's (Accessory Dwelling Units) are allowed but the application seeks relief from the Zoning Ordinance to permit a detached ADU.

K. Fuller stated by definition what they are asking for would be a second dwelling on the parcel which the Zoning Ordinance does not allow.

R. Tilsley stated the noncompliance with the Zoning Ordinance is in the fact that the Accessory Dwelling Unit being proposed is not attached – but rather detached (because of the small size).

B. Maloney stated the Board did not want to imply/guarantee that if regulations/criteria are adopted by the Town for detached ADU's and the applicant decided to wait and have the case heard under the new regulations that the application would be approved.

R. Tilsley stated he understood that if new regulations are adopted the case would come back to be heard and would need to be in compliance with the new regulations.

R. Tilsley stated he understood that if new regulations are not passed the application can be revisited if the applicant wants to continue it to the April meeting.

B. Maloney stated the Board is ready to review the five criteria and bring Case # 454-10-13 to a vote and asked what the applicant wanted to do.

The applicant, E. Faiella, indicated she wanted to continue the hearing to the April meeting.

B. Maloney closed the Public Hearing at 7:00pm.

**Motion: "To continue Case# 454-10-13 to the April 14, 2021 meeting."**

Motion: E. MacLeish

Second: B. Maloney

Discussion: None

Motion Passes:        5-YES            0-No

B. Maloney opened the Public Hearing for the following application at 7:03pm:

**Case 457-12-08:** Application submitted by Thomas M. Ange as agent for property owned by Pookie Property Holdings, LLC identified as Tax Map 245-080-000 in the General Residential District located at 66 White Pond Road for Variances from Article 400.8.1, 400.8.1.1, and 400.8.2 to the degree necessary to permit the location of a well and a septic system to be within the setbacks.

T. Ange stated the property requires a new septic design as the current septic system is old and will need to be replaced.

T. Ange stated the new system requires that the existing well be relocated and the new well is further from the waterfront but is not in compliance with the 35ft. setback from the road and property line.

T. Ange stated the lot is .41ac and that the existing septic system is functioning but needs to be replaced.

T. Ange stated the ZBA should consider granting the Variances requested for the betterment and health and safety of the property owner and the community.

T. Ange stated the new septic system will be further away from the waterfront and there is no other place on the parcel where it could be located.

T. Ange stated the existing well would be right where the new septic system is proposed and moving the well closer to the road maximizes the distance between the well and the new septic system.

E. Macleish disclosed for the record that he lives on White Oak Pond but is not an abutter to the property. Other Board members stated they do not have concerns/comments on the application.

B. Maloney led a review of the five criteria as follows:

1. The variance will not be contrary to the Public interest as the new design meets State and manufacturer requirements to safely treat residential sewage, thus increasing public safety.
2. The spirit of the ordinance is observed as the new well and leaching bed locations are setback as much as possible to keep the intent of the ordinance.
3. Substantial justice is done as the general public will benefit from the proper treatment of residential sewage.
4. The values of surrounding properties are not diminished as the existing property will maintain and increase its' value which in turn helps keep surrounding property values up.
5. Literal enforcement of the provision of the ordinances would result in an unnecessary hardship as a new septic system can't be designed to meet current ordinances/requirements.

**MOTION: "To approve the variances requested for Case 457-12-08: Application submitted by Thomas M. Ange as agent for property owned by Pookie Property Holdings, LLC identified as Tax Map 245-080-000 in the General Residential District located at 66 White Oak Pond Road for Variances from Article 400.8.1, 400.8.1.1, and 400.8.2 to the degree necessary to permit the location of a well and a septic system to be within the setbacks."**

Motion: E. MacLeish

Second: J. Ruhm

Discussion: Septic Plan referenced:

Septic Design by Clearwater Septic Design, LLC

Owner: Pookie Property Holdings, LLC

ISOS Loc: 66 White Oak Pond Road, Holderness, NH 03245

Town Map# 0245 Lot # 0080

Revision Date: October 13, 2020

Motion Passed: 5 – Yes 0 – No

#### **OTHER BUSINESS:**

The next meeting of the ZBA is schedule for January 12, 2021.

It was noted that one new application has been submitted.

#### **ADJOURNMENT:**

At 7:15P.M. the following motion was made:

**MOTION: "To adjourn."**

Motion: K. Fuller

Second: J. Ruhm

Discussion: None

Motion Passed: 5 – Yes 0 – No

Respectfully submitted,

Nancy Decoteau  
Administrative Assistant