

**SOMERSWORTH ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF MEETING**  
**September 5th, 2018**

**MEMBERS PRESENT:** Matt Keiser, Donald Routhier, Coty Donohue, Brad Fredette, Richard Brooks

**MEMBERS ABSENT:** Shawn Kinneavy

**STAFF PRESENT:** Shanna Saunders, Director of Planning and Community Development and Christien DuBois, Assessing/Code Clerk

The meeting was called to order at 7:00 pm.

**1) APPROVAL OF THE MINUTES OF THE MEETING OF August 1st, 2018.**

Donohue moved to approve the minutes, seconded by Brooks, motion passed 5-0.

**2) OLD BUSINESS**

A) Any old business that may come before the Board

There was none.

**3) NEW BUSINESS**

A) Jonathan and Melissa Tripp are seeking a variance from Table 4.A.3 of the Zoning Ordinance regarding the keeping of chickens on property located at 14 Chadwick Lane, in the Residential Duplex (R2) District, Assessor's Map 22, Lot 56-221, ZBA #08-2018- PUBLIC HEARING

Routhier clarified how much fencing was required per chicken.

Saunders answered 20 square feet of fencing was required per chicken.

Saunders stated that the application is to keep chickens on the property and she had included the chicken ordinance.

Melissa and Jonathan Tripp spoke to the fact that they were unaware of the chicken ordinance as they recently moved to the City and they are looking to keep the chicken coop where it is currently placed. They included a few different options of where they can move it on the property but it would still be within 20 feet of any property line. The applicants passed out pictures that show the coop from the front and side of the home.

Beth Nault, of 10 Chadwick Lane stated she spoke to the applicants after they added the chicken coop and asked if they could move it to the side or back yard and expressed concerns about the property values. She stated if the two options for moving the coop weren't available they would like to see the coop removed.

Paul Drager of 32 Chadwick Lane stated that part of the property abuts the Lenox Park Homeowners Association and he is the President of the Association. Drager expressed concerns about what the variance request is asking for. Drager stated that in 2003 the Planning Board approved a cluster subdivision of 25 homes. They allowed most of the properties to be comprised of 8000 square feet. The properties are very close to one another. When the backyard chicken ordinance became an issue in 2014, the statute was for chickens to be placed in back yard only. Drager cited 2 Zoning Board cases that were before the Board that dealt with chickens. One was for a very large property that was subdivided. The property had previously had been zoned agricultural that was now in R-2. The other variance that Drager stated he was aware of was in 2010 and the home owner owned a quarter acre of land and had a significant amount of obstructing foliage that concealed the chickens. Aside from those two, no other variances have been granted for backyard chickens to his memory. Drager continued that nothing in our ordinances discusses front yard chickens. The spirit of the ordinance was to be modeled after Rochester and Dover, whose ordinances speak to back yard chickens only, not front or side yard chickens. Drager stated that the idea of having residential homes with chickens in the front of the house doesn't belong in a neighborhood. Drager stated he reviewed the application and read an email that he received from the applicants that discussed organic bug relief due to the nearby wetlands. Drager stated that after the applicants had received notice from the City, they continued to make the coop more permanent. Drager continued that there is no unnecessary hardship due to the location of the property and would set a poor precedent considering how many homes are in the neighborhood and if it were granted, it would reduce property values. All of the properties are the same size and there is nothing unique about this one. Drager passed around to the Board a photocopy of the development plan and explained how almost all of the homes in the neighborhood are the same size.

Mark Hiller of 3 Lenox Street stated his property is within the development and that he is concerned about his property value being decreased and stated he just placed his home on the market. Mark stated his wife Karen, who works in real estate, is concerned about the value of the home being impacted. The nature of the development is a small and tight neighborhood. If the variance is approved, he would like to see the restriction that the coop had to be placed in the back yard.

Routhier asked what specifically is the applicant requesting.

Saunders stated that the applicant is asking to keep the chicken coop where it is and that they are willing to move it elsewhere.

Routhier asked if the existing coop is otherwise in compliance.

Saunders stated she isn't aware of how many chickens there are. Saunders stated that Code Enforcement noted several items that weren't in compliance with the chicken ordinance.

The applicant stated they have 6 chickens and the only item on the Notice of Violation was the location of the chicken coop.

Routhier asked when they first placed the coop.

The applicant stated in June.

Routhier asked why they didn't place the coop in the back yard.

The applicants answered that there is no room in the back of the building and the land isn't flat. In addition, they would still need a variance due to the setback line.

Routhier asked if they moved the coop to the rear how much of the coop would encroach on the setbacks.

The applicants answered approximately half the coop would encroach.

Fredette asked how they would place the fence if they had to move the coop.

The applicants explained that there is an existing chain link fence in the back yard and they would utilize that.

Saunders explained that both the fence and the coop would then encroach on the property line.

Fredette asked if they've discussed with the homeowners association about using the common land for the chickens.

The applicants stated they had asked the neighbors their thoughts, some loved the chickens being there and others, the applicants didn't hear back from.

Fredette asked if the HOA President could come give their opinion on the moving of the coop.

Keiser asked how far the deck is from the property line.

The applicants answered 5 feet.

Keiser asked how wide the deck was.

The applicants answered 15 feet.

Keiser asked how far the garage was from the rear property line.

The applicants answered between 20 and 25 feet and that it would still encroach on the side property line setback.

Keiser called Paul Drager back to answer questions

Fredette asked if he had any thoughts on the proposal to move the coop.

Drager stated there were other things to consider, such as the fact the development was built on a swamp. The City required there be a conservation easement given to the City. So while the property is owned by the association, the conservation easement is in the hands of the City of Somersworth. Drager stated that a letter from the former City Planner states that there was to be no alteration of terrain except a 20 foot area around any building. Drager also expressed concern about chicken excrement affecting the

conservation land. Drager stated otherwise he doesn't have an issue with it but stated it could affect the City in some way.

Saunders stated there is a 100 foot wetlands buffer and any change to that would require a Conservation Commission meeting and Planning Board meeting.

Routhier asked about the average lot size.

Drager stated approximately 8000 square feet.

Routhier asked if there were any other chickens in the neighborhood.

Drager answered that there were no other chickens in the neighborhood.

Drager stated in the past, there was a neighbor that had chickens roaming freely and once the neighbor was confronted with the ordinance, they removed the chickens.

Routhier stated that anyone who wanted to have a chicken in this neighborhood would be in violation of the ordinance.

Drager stated that was correct and the neighborhood wasn't designed for this. Just because an ordinance is there, it doesn't mean everyone can take advantage of it regardless of the size of the property.

Brooks asked if the HOA prohibits chickens.

Drager provided a background of how the HOA was formed and explained why the HOA doesn't speak to specific issues such as chickens and explained that the City and State didn't force the developer to submit the HOA bylaws. If they had been submitted it would have prohibited the keeping of chickens.

Brooks asked the applicant how large is the chicken coop and fenced area.

The applicants answered that the pen area is 8X12ft, the coop is 4X8ft but the physical fenced in area is much larger, essentially the entire front yard. The chicken wire height is 2 feet.

Keiser closed the Public Hearing at 7:43pm.

Keiser asked if the general opinion of the Board was unfavorable.

Donohue and Routhier answered that was correct.

Keiser entertained consideration for moving the coop to the back yard.

Routhier stated he did not believe the application met any of the 5 criteria. Moving the coop would only result in it being less obvious to the neighborhood. In addition it would affect property values. Moving it would not be a good alternative because the lot isn't designed for the backyard chicken ordinance. In addition, the conservation easement with the City could be impacted, and doesn't know enough about the other issues to

grant a variance in good faith. Granting the variance would cause more harm to the community than the benefit to the homeowner.

Keiser asked if sending the application to the Conservation Commission would address environmental concerns.

Saunders stated she wouldn't know without meeting with them.

Keiser asked who would rule on the matter.

Saunders stated the Conservation Commission would make a recommendation to the Planning Board.

Keiser stated that there is a path to adjudicate those concerns.

Saunders stated yes.

Brooks stated that looking at the 5 criteria he didn't see any of the criteria being met. Brooks stated that property values would be impacted, granting the variance would be contrary to the public interest and moving the coop to the wetlands would still not benefit the public interest. Brooks continued that there is no hardship to the applicant, no one has to have chickens to live there. Brooks stated he didn't see how allowing chickens would do substantial justice and that the proposal is contrary to the spirit to the ordinance.

Keiser stated that a cluster development is unique, but this particular property is not unique in relation to its neighbors or the development as a whole.

Brooks moved to deny the application due to all of the 5 criteria as discussed was not met, seconded by Donohue. Motion carried 5-0.

- B) Kenneth Vincent is seeking a variance of Table 5.A.1 of the Zoning Ordinance for a two-lot subdivision without adequate frontage on property located at 19 Vincent Way, in the Residential Single Family R1 District, Assessor's Map 34, Lot 3A, ZBA #9-2018-PUBLIC HEARING

Kenneth Vincent, the applicant, stated he owns property in a few different locations around the City. Vincent passed out a map to the Board that shows where the new lot would be that he is proposing. Vincent provided an overview of his tenure in the City. He stated the reason for saying this is that he has roots in the City. Vincent stated that the need for variances arise from people taking advantage of the City. Vincent stated he was one of the largest property owners in the City. He bought the property in 2001 and raised his family there. Currently, his family is showing interest in his home and he is looking to subdivide a small piece of the property. He wants to convey his house to his family and build a small home next to it for himself. All of the properties that abut his property are in the front of his property. His driveway runs through the middle of his property. Vincent stated he is retired now and is not looking to develop the property. When he bought the property it was zoned agricultural. Vincent highlighted a red area of the map he provided and stated that would be the new lot that he would have surveyed. Vincent stated there would be no negative impact to the City or the area. Other people have subdivided their

home in this manner and cited a property on Lavoie Way. The property is currently in current use, and removing part of the property from current use would be of benefit to the City.

Keiser read an email received from Jason Fraiser of 89 Blackwater Road voicing concerns about the surrounding property values.

Jaime Wagner of 93 Blackwater Road explained that she is requesting that a buffer be placed as currently the area is wooded and it would be cleared and asked where the driveway would be placed.

Donald Smart of 38 Fischer Street in Dover, who owns 97 Blackwater Road stated that he doesn't really know what Vincent has planned. He currently rents out a duplex on the street. Smart stated that he doesn't really know what to ask as he doesn't have any information.

Saunders reminded the Board that the item that the Board is considering is the variance and not the subdivision approval.

Routhier asked about wetlands in the rear of his property and whether it was surveyed.

Vincent answered there has not been a survey but his property and the rear of it is one of the largest wetlands in the City.

Routhier asked if his driveway could become a City street.

Vincent stated he believed it could.

Routhier asked if he could access the new lot by the right of way or the 50 foot right of way.

Vincent stated he has driveway frontage and not road frontage. Vincent way is a private drive and not a city Road.

Saunders stated in order for Vincent way to be considered it would have to be built to City street standards. The applicant would need 230 feet total in order for it to be able to be subdivided.

Vincent stated he would never put a driveway next to their lot line and people value their privacy.

Fredette asked why the applicant couldn't put a 20 foot driveway along the 175 frontage.

Saunders stated the only other option the applicant would have would be to construct a City street to which the frontage requirement could rely on.

Keiser asked if Somersworth has a back lot zoning ordinance.

Saunders stated that it doesn't.

Donohue asked if Vincent Way is a private driveway.

Vincent answered that it is, but a driveway that is long has to be registered with E911.

Keiser closed the public hearing at 8:21pm

Routhier stated that this is a reasonable request and keeps with the spirit of the ordinance. The proposal would add value not subtract, there is a hardship and is in keeping with the spirit of the zoning ordinance.

Brooks stated he agreed with Routhier but the only concern Brooks has was granting the variance could result in more lots down the road and would consider asking for a restriction on the number of lots to two.

Fredette stated he agreed and asked for a plan before he made a decision.

Donohue stated he agreed with Routhier and the biggest point for him was the uniqueness of the property due to the shape. Having such a large lot that isn't subdividable is unique and creates a hardship. Donohue continued it was not contrary to the spirit of the ordinance and does substantial justice.

Routhier stated requiring a specific placement of a driveway is an undue financial burden to place and a new home being built is adding to the tax base.

Brooks stated he agreed that the Board should not force the applicant to put a driveway through the larger portion of land and using Vincent Way as the driveway is the best use of the property.

Routhier moved that because all 5 criteria have been met and that the request for a variance for 2 lots on this property be granted. Seconded by Brooks, motion carried 5-0.

- C) Teluck Properties, LLC is seeking a variance from Table 4.A.2 of the Zoning Ordinance for a veterinary hospital on property located at 275 High Street, in the Residential Duplex (R2) District, Assessor's Map 15, Lot 16, ZBA #10-2018-  
PUBLIC HEARING

Saunders stated this is a property that has long had a variance for a commercial business to operate there. The Commercial unit was approved in 1982. It had been used as an office too without permits recently, but this is a new owner asking for a new use.

Donohue asked when the hair styling business was approved and asked when the last variance was granted.

Saunders stated that was correct. The variance was very specific to be a hair salon and this application is very specific to be used as veterinary hospital.

Fredette mentioned that Saunders had recommended that the Planning Board conduct a site approval review.

Saunders stated that was a condition for the last variance and that it is an intense use of the property.

Kathy Alberto of 279 High Street stated that the first time she had been before the Board looking to expand her business. The applicant stated the expense of having a full site plan developed was prohibitive. Not granting the variance would cause financial hardship and would result in an empty building. The applicant stated she is looking to rent out the building. The applicant passed out pictures that show that the building is built as a business. The applicant provided an overview of what the business would be and provided the scope of how many people would be visiting the business per day. The property is not suited to be converted to residential use. Originally, it was a florist for a number of years, then it became a hair salon. A hair salon produces far more traffic than the acupuncture business would.

Dr. Tasha Wilson of 3 Loreda Lane in Rochester, and the perspective tenant of the property stated she had been looking for a clinic space for a number of years and she believes the property at 279 High Street is the perfect location. A number of her clients would want her to travel to their house to do house calls but also needs a spot for her business. Her business would not be open the entire week in order to accommodate these house calls.

Brooks asked if it would be inappropriate to discuss the nature of the use in general or does it have to be specifically for the variance. The use fits into the veterinary hospital category. Brooks then asked about surrounding zoning districts.

Saunders stated that because it's R-2 the Board has to consider each specific use, but the applicant could ask for a variance for more general uses such as retail and office space.

Fredette asked if it's possible to expand the variance to office space and the property owner makes a good case about having to come back each time they get a new renter.

Saunders stated she would be hesitant to do that tonight but the Board could invite the applicant to come back.

Routhier asked if a lease will be signed and if so, how long.

The applicant stated they hadn't gotten to that phase yet.

Routhier asked how many parking spaces exist.

The applicant stated around 15 and they own the duplex next to the property and a few of those spaces are leased to the tenants of the duplex.

Saunders stated they were on the same lot.

Routhier asked if any land would be used.

Dr. Wilson stated she hadn't thought that far into it but some land could be used for brief animal exercise.

Keiser closed the public hearing at 8:46pm.



Donohue stated it was a reasonable request and that the only question that he has is the spirit of the ordinance, but would like to hear other board member thoughts. Donohue asked if by it being zoned R-2 is the City trying to turn this area residential.

Routhier stated its zoned R-2 and R-3 and there is hardly anybody that complies with the ordinance. Routhier highlighted the surrounding areas that don't conform to the area and the building has been there for a number of years and it was clearly built as a business. Routhier continued that this seems like a good business that would enhance the area.

Fredette stated the spirit of the ordinance is to limit the construction of new commercial structures. Keeping the existing structures and character of High Street is not contrary to the spirit of the ordinance.

Donohue stated the comments from Fredette and Routhier clarified his question. He continued that the variance would do substantial justice. The building is unique to the area and would keep with the spirit of the ordinance and is not contrary to the public interest. Having an empty building there does diminish surrounding property values.

Keiser asked if there would be any limitations to the variance that the Board wanted to place.

Fredette stated he doesn't see a reason to not adopt Saunders's approval.

Routhier stated that typically approval is required for any changes to the outside of the building. Routhier asked if the Board wants to send this to the Planning Board as it would be an undue financial hardship.

Donohue asked Saunders why this should be set to Planning Board.

Saunders stated that it doesn't necessarily have to do with the outside of the structure; it also discusses change of use as well. Saunders discussed the local ordinance that discusses why the property needs to be sent to Planning Board.

Donohue motioned that after all 5 criteria being met that due to reasons previously given that the variance be granted pending Site Plan Approval, seconded by Brooks. Motion carried 5-0.

D) Any due business before the Board.

Keiser asked about the CMA Engineering letter included in the packets.

Saunders informed the Board of the TAP Grant that had been approved and the construction of the sidewalks on Cemetery Road and High Street.

Fredette stated that the Buffumsville Road fence that had been approved at the last meeting was not the fence that was voted on by the Board.

Saunders and Keiser stated they were under the impression it was to be a stockade fence.

Fredette asked if it was possible to have the Board packet scanned and emailed instead of mailed.

Saunders stated that could be done but she would be hesitant to do that for all Boards but could be done for the Zoning Board.

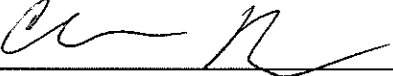
Saunders stated that if the Board could hand in their handbooks at the end of the meeting the Department will provide the Board with new handbooks.

Donohue stated he would like to discuss the court case.

Keiser asked the Board to enter nonpublic session pursuant to RSA 91-A:3, II Section E.

Donohue motion to enter into nonpublic, seconded by Keiser the roll call vote was unanimous and the meeting entered into nonpublic at 9:13.

Keiser re-opened the meeting at 9:23, Brooks to adjourn, seconded Fredette the motion carried 5-0 and the meeting adjourned at 9:23.

  
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Christien DuBois Assessing/Code Clerk  
Somersworth Zoning Board of Adjustment