

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JULY 5, 2017

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Donald Routhier, Richard Brooks and Roland Dumont.

MEMBERS ABSENT: None.

STAFF PRESENT: Shanna Saunders, Director of Planning and Community Development and Tracy Gora, Planning Secretary.

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

1) APPROVAL OF THE MINUTES OF THE MEETING OF JUNE 7, 2017.

Routhier made a typo correction to page 15 of the minutes.

Motion: Keiser moved to approve the minutes of the meeting of June 7, 2017 as amended.

Seconded by Brooks. Motion carried with a 5-0 vote.

2) OLD BUSINESS

- A) Kenneth Faucher is seeking a variance from Table 4.A.1 of the Zoning Ordinance for multi-unit dwellings on property located at 206 Green Street, in the Residential Single Family (R1) District, Assessor's Map 08, Lots 78 & 79, ZBA #04-2017.

Public hearing opened 7:02 pm.

Motion: Keiser moved that the request of Kenneth Faucher be removed from the table.

Seconded by Brooks. Motion carried with a 5-0 vote.

FX Bruton with Bruton & Berube, PLLC represented the applicant and addressed the Board. Stated that this has been before the Board for a few months and thanked the Board for their patience with this. Stated that this is an important project for his client and that they are hopefully seen as being willing to work with the Board. Stated that at the last meeting the variance to exceed allowed density was denied but that they are still requesting the variance for multi-family units. Stated that they have revised the plans and that it is entirely consistent with a density of 2.4 units per acre. Stated that they are now requesting two single family homes and 26 townhouse-style condos for a total of 28 units. Stated that they have completely eliminated the garden style apartment building and there will be more open space. Stated that he feels they have addressed the concerns of the Board and have come forward with a good project.

Gora read the attached letter into the record.

Brooks stated that the revised plans look to have boundary lines around them.

Bruton stated that it is just showing the limited common area but they will still be in the association.

Routhier stated that the revised plans show that a building was removed and a new one was added. Asked if the new building will be like the others that have been proposed.

Bruton showed on the plans and stated that they will be the same style as the ones. Stated that there is no garden-style building anymore.

Public hearing closed 7:10 pm.

Routhier stated that he supports this and that he feels they meet all the criteria for a variance. Stated that he thinks it is more attractive as revised.

Maskwa agreed and stated that he is pleased with the process.

Dumont agreed.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and move that the request of Kenneth Faucher for a variance from Table 4.A.1 of the Zoning Ordinance for multi-unit dwellings be **GRANTED**.

Routhier stated that he feels that this is keeping with the spirit of the ordinance and that the land unique so a variance is appropriate. Stated that this is keeping with the aesthetic factor of the neighborhood.

Seconded by Dumont. Motion carried with a 4-1 vote with Keiser opposed.

B) Any other old business that may come before the Board.

None.

3) NEW BUSINESS

A) William Slater is seeking a variance from Table 4.A.3.9 of the Zoning Ordinance to keep geese on property located at 253 High Street, in the Residential Duplex (R2) District, Assessor's Map 14, Lot 37, ZBA #09-2017.

Public hearing opened 7:14 pm.

William Slater, applicant and property owner addressed the Board and stated that he got the geese in 2001. Stated that one goose was a gift to his daughter and the other was given to his neighbor, which he inherited. Stated that he would like to keep them and he doesn't know how long they live but when one dies he will remove the other one.

Dumont confirmed that Slater doesn't know the life expectancy of the geese.

Slater confirmed.

Dumont asked why he is here tonight after all this time.

Slater stated that someone called the City, the Code Compliance Officer visited his property and he was told this was the avenue to take. Stated that he is not looking to cause a problem and that it was a gift to his daughter.

Maskwa confirmed that the intention is that when one dies the other one will be given away and he won't get any more geese.

Slater confirmed and stated that won't get more.

Keiser asked if he received complaints from his neighbor.

Slater stated that he received one complaint from a neighbor but a fence was put up and it was all set.

Keiser stated that the City has regulations about chickens, and, understanding that they are different from geese, there are some similarities. Asked if the geese roam free.

Slater stated that there is an enclosure but that they usually stay by the barn. Stated that they are in a contained area.

Maskwa asked if the enclosure is completely behind the house.

Slater replied yes and stated that there is nothing in the front. Stated that the geese don't fly away and only make noise when it is feeding time then they quiet down.

Dumont asked if it is granted, if the variance stays with the land.

Saunders replied that it does.

Dumont asked if they can grant the variance just for these specific geese.

Routhier stated that they can make that a condition of approval.

Public hearing closed 7:20 pm.

Dumont stated that after having the geese for 15 years it would be hard to say no and there hasn't been too many complaints.

Maskwa stated that he likes Routhier's suggestion that the variance be limited to these two geese only. Stated that he supports that.

Keiser agreed with that and asked if there are any other conditions of approval they should have, like an annual permit. Stated that it is already behind the house and that he doesn't think they can apply the size criteria used for chickens. Stated that they are in an enclosure but suggested having that as a condition of approval. Asked if there should be anything else.

Saunders stated that it is up to the Board but that they can require a permit.

Routhier stated that it would be good to have monitoring.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and move that the request of William Slater for a variance from Table 4.A.3.9 of the Zoning Ordinance to keep geese be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. This variance shall not run with the land and is only applicable to the two existing geese and shall expire when these geese either pass or are removed from the property;
2. The geese shall remain in the existing enclosure only; and,
3. An annual permit to keep the geese shall be filed with the City.

Seconded by Routhier. Motion carried with a 5-0 vote.

- B) Francoeur Realty Trust is seeking variances from Section 10.G.2 of the Zoning Ordinance to install a septic system in the Groundwater Protection District and from Table 5.A.1 of the Zoning Ordinance to build a house within side setbacks on property located at 31 Cole's Pond Road, in the Residential Single Family (R1) District, Assessor's Map 49, Lot 16, ZBA #10-2017 and ZBA #11-2017.

Public hearing opened 7:29 pm.

Bob Stowell with Tritech Engineering Corporation represented the applicant and addressed the Board. Stated that they are asking for two variances and one is to install a septic system in the Groundwater Protection District (GPD). Stated that there is no City sewer here and that it is about one mile away. Stated that there is new technology with septic systems and they have a high treatment rate that is comparable to a wastewater treatment facility. Stated that the second variance is to build within the side setback. Stated that it is a small, narrow lot and that the house will only be 20 feet wide but ancillary items like the drip edge and stairs will be within the setbacks. Stated that the total building area will be 25 feet so they are seeking a variance to be five feet within the 20 setback.

Keiser asked why they aren't moving the building the other way.

Stowell stated that there is a number of ways they could have approached this and that they tried to limit the encroachment to one side instead of on both sides. Stated that if they move the location of the building then part of the building will be in the setback and not just the secondary items.

Keiser asked how close the neighbor's structure is.

Stowell stated that it is about seven feet and the other side is vacant.

Brooks asked if this lot is considered conforming otherwise.

Stowell stated that it is a nonconforming lot of record because they don't meet area or frontage.

Routhier asked why they are not requesting a variance for that.

Saunders stated that they are not creating a new lot; it is already existing.

Routhier confirmed that it was created before zoning.

Stowell confirmed.

Routhier asked if they have granted variances for these in the past. Stated that he wasn't aware that this was a conforming lot.

Stowell stated that the lot predates zoning so they don't have to speak to frontage and area. Stated that it is not an issue.

Keiser asked who approves the septic system.

Stowell stated that first the City reviews and then it goes to NHDES.

Routhier confirmed that this is part of the GPD.

Saunders stated that this has already gone before the Conservation Commission and the Planning Board.

Routhier asked if the septic system has already been approved.

Saunders stated that the Conservation Commission reviewed this first and suggested conditions of approval. Stated that they felt that the NHDES would give the property scrutiny.

Routhier stated that the only approval of the septic system will be the State and asked if the Conservation Commission has jurisdiction.

Saunders stated that they do but referred this to the State to make the approval. Stated that the Conservation Commission did a site walk but are relying on the expertise of the NHDES.

Maskwa stated that the NHDES still have to approve the septic system, which was a condition of approval from the Conservation Commission.

Routhier stated that every septic system gets review by the State.

Saunders stated that this one will be extra scrutiny because of its proximity to the water body.

Public hearing closed 7:40 pm.

Keiser stated that one of his concerns is the septic system approval process. Stated that someone needs to sign off and validate that it meets all requirements.

Routhier stated that the City Council approved this property and area as needing more protection than other areas and that the Board should respect that. Stated that he feels it should go back to the Conservation Commission at a minimum to be sure this is an appropriate design. Stated that he would want that to be a condition of approval.

Maskwa agreed.

Brooks agreed.

Routhier asked if it should go back to the Planning Board also.

Saunders stated that she doesn't feel that is necessary as it has already been to both.

Keiser stated that he doesn't have a problem with the setback request as he feels that it meet the criteria although he feels it would have been easier if the stairs were not on the side where there is already a house.

Maskwa agreed.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and move that the request of Francoeur Realty Trust for a variance from Table 5.A.1 of the Zoning Ordinance to build a house within side setbacks **GRANTED WITH THE FOLLOWING CONDITION:**

1. There shall be no more than five feet encroachment into the northerly side setback.

Seconded by Brooks. Motion carried with a 5-0 vote.

Keiser stated that he thinks there is a hardship with the sewer being far away. Asked if this would also be for the water supply since the City water line is a far distance away also. Stated that the finance of connecting to the City lines will be too much. Stated that it is within the spirit of the ordinance and won't affect property values. Stated that this meets the five criteria but that he feels there needs to be another review of it because this Board doesn't have technical knowledge.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and move that the request of Francoeur Realty Trust for a variance from Section 10.G.2 of the Zoning Ordinance to install a septic system in the Groundwater Protection District be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The final septic design shall be reviewed and approved by the Somersworth Conservation Commission to ensure that all purposes of the Groundwater Protection District are adhered to.

Seconded by Brooks.

Routhier asked if the well has to be final approval by anyone and if it impacts the GPD.

Public hearing reopened 7:49 pm.

Stowell stated that it will be a drilled artesian well and that he talked with the Conservation Commission about it. Stated that the well drillers have State rules to follow.

Public hearing closed 7:49 pm.

Motion carried with a 5-0 vote.

- C) Bradley Fredette is seeking a variance from the Historic District, Section 14 of the Zoning Ordinance for property located at 118 High Street, in the Residential/Business Historic District, Assessor's Map 10, Lot 158, ZBA #12-2017.

Public hearing opened 7:50 pm.

Brad Fredette represented the owners, his parents, and addressed the Board. Stated that they purchased the property in February with the goal of renovating it. Stated that the structure was built in 1952 with a store downstairs and apartments on the top. Stated that the store was partially converted into apartment space and that they would like to finish that conversion. Stated that the property is in the Historic District but that he doesn't feel that it should be. Stated that he would like the property to be more modern but that being in the Historic District limits the changes. Stated that the original use of the structure isn't in existence any more, which means its historic use isn't in existence anymore. Stated that wood trim was removed in the 1990s. Stated that everything original has been removed. Stated that the City survey admits that there is no historic significance. Stated that the hardship is to keep the structure in the Historic District. Stated that the closest abutter is the plaza and that is commercially zoned. Stated that the other abutter is the Housing Authority which is zoned R3. Stated that this is the only house in this area that is historically zoned.

Jenna Dunham, member of the Somersworth Historic District Commission (HDC) addressed the Board. Stated that it is a very common misconception that the HDC restricts what can be done to a structure in the district. Stated that this applicant has never come before the HDC so they haven't denied anything and that the Commission may be okay with it. Stated that it does concern her that they want to modernize the structure and that it would become a blemish in the Historic District because it would change the character of the district. Stated that the structure is non-contributing but they still have to abide by the guidelines.

Brooks asked if the property owner will reside there or rent it out.

Fredette stated that it is currently being rented out but his parents will reside there when they retire. Stated that the long-term goal is that it is not an income property.

Brooks asked what other improvements are planned other than windows.

Fredette stated that they also want to change the size and placement of the windows. Stated that he thought the best route was to change the zoning of the building.

Brooks stated that the applicant hasn't gone before the HDC yet.

Fredette stated that he started to put an HDC application together and found it to be a frustrating process. Stated that he sees the importance of it if it is a contributing building. Stated that he isn't a historian but that he doesn't see this building built in the

1950s as being historic. Stated that there aren't unique architectural features on this building.

Brooks stated that he read the City survey that was done by Richard Casella and stated that his survey indicates that the structure lost its integrity due to the conversion. Stated that he agrees about the windows and that he thinks the HDC would agree also. Stated that the HDC looks at more than windows. Stated that by asking for removal from this entire section of the ordinance, then the Commission would have no say in anything moving forward.

Fredette stated that he understands and that he can't speak to the future but that it is a small lot and that he can't imagine this being anything else.

Keiser stated that it looks like the applicant isn't asking for a variance but for the Board to rezone the property.

Saunders stated that the ZBA doesn't have the right to rezone a property. Stated that this would be a variance from Section 14 of the Zoning Ordinance.

Keiser stated that the variance would be to wipe clean those rules and that they not be applicable to this property. Stated that one variance criteria is hardship and asked what the hardship is here.

Fredette stated that the hardship is the procedure and what he has encountered to get approval. Stated that there is a fair amount of work that has to be done but it is a long process with the HDC and he can't address it all at once so he would have to continue going back to the Commission. Mentioned the cost of adding materials to a building that didn't already have it. Stated that everything around this property isn't historically zoned.

Brooks stated that he doesn't think that the Board would make you put in something that was never there at any point. Stated that as far as the surrounding properties, the district boundary can be complicated but that the HDC has been working on that.

Fredette stated that he looked at the City tax records and found that the Housing Authority property and the store are not historically zoned. Stated that the apartments are not historically zoned.

Brooks referred to the Historic District map and stated that the property is in the Historic District.

Fredette stated that he was not supplied the map. Suggested having the requested tabled.

Keiser asked the applicant why he would want the request tabled.

Fredette stated that he would like more time to research what was brought up by Brooks and check the City assessing records.

Mike McLean of 113 High Street addressed the Board and stated that he lives across the street from the subject property, which he has seen go from a store to a residence.

Stated that he concern is that the applicant hasn't exhausted his avenues with the HDC and that he should try that first.

Public hearing closed 8:10 pm.

Keiser stated that he would like to know exactly where the property is and what district it is in.

Saunders showed the official Historic District map and stated that according to this map, the subject property and the ones surrounding it are in the Historic District.

Brooks stated that the HDC has a new working document for the Historic District boundaries but that it is still a working document.

Saunders stated that she will check the assessing records that show what district a property is in. Stated that a zoning district is different from an overlay district.

Dumont suggested the Board table this for clarification.

Maskwa agreed and stated that there isn't an HDC permit application showing difficulties working with them because he hasn't gone before them yet. Stated that if he was to vote on this now he would deny it. Stated that the property is in the Historic District and needs to be handled by them. Stated that he is not sure his position on that will change without additional information.

Keiser agreed and stated that he feels the Board should allow the applicant time to get more information and allow him due process.

Maskwa stated that he feels that the applicant's first visit should be to the HDC and not the ZBA.

Public hearing opened 8:15 pm.

Fredette stated that he went to the Development Services Office and got the appropriate paperwork for the proposal. Stated that he started putting the package together and needed more information. Stated that he asked Code Officer Metivier to review his application but that he wouldn't review it until the application had been formally submitted. Stated that he explored the issue further and came to the conclusion that this was the best avenue to take. Stated that his information was that the properties around him are not historically zoned. Stated that he would like the issue with the public record cleared up. Stated that he would like more time to research this as his information from the tax cards shows different zoning.

Public hearing closed 8:17 pm.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I move that the request of Bradley Fredette for a variance from Section 14 of the Zoning Ordinance be **TABLED**. The application is tabled for the applicant to research more information on the Historic District boundaries.

Seconded by Dumont. Motion carried with a 4-1 vote with Brooks opposed.

D) Any other new business that may come before the Board.

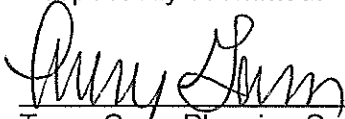
Maskwa stated that he will not be at the August ZBA meeting.

Motion: Keiser moved to adjourn the meeting.

Seconded by Routhier. Motion carried with a 5-0 vote.

Meeting adjourned at 8:20 pm.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Tracy Gora", written over a horizontal line.

Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment