

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 7, 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 MAY 3, 2017.

Motion: Dumont moved to approve the minutes of the meeting of May 3, 2017.

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

2) OLD BUSINESS

- A) The DesMarais Family Revocable Trust is seeking variances from Table 4.A.5. of the Zoning Ordinance to allow a food sales use and an office space for property at 230 High Street, in the Residential Multi Family (R3) District, Assessor's Map 14, Lot 18, ZBA #03-2017.

Maskwa stated that the City received an email from the applicant requesting to remain on the table until the September ZBA meeting.

Saunders stated that she feels that because of the length of time this is to remain on the table, the applicant should pay to re-notify abutters and place the ad in the newspaper again.

Dumont stated that he feels that is justifiable.

Motion to have the applicant pay to re-notify abutters and place a new ad in the newspaper was approved and carried with a 5-0 vote.

- B) Kenneth Faucher is seeking a variance from Table 5.A.2 of the Zoning Ordinance to allow more than 2.5 dwelling units per acre and 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.

Routhier stated that at the last meeting the applicant referenced case law and a synopsis was supplied but not the actual case. Passed out court case (see attached).

FX Bruton of Bruton & Berube, PLLC represented the applicant and addressed the Board. Stated that he did an extensive review of the five criteria at the last meeting. Stated that they were proposing a total of 38 units with 12 of the units being a garden-style apartment building. Stated that there are 24 townhouse-style condos and two single-family homes and they would all be part of a home-owners association. Stated

that the idea is to create a controlled environment with attractive housing but put them in a reasonable price range. Stated that at the last meeting the Board talked about how the garden-style apartments don't look as residential and that is important. Stated that they revised the plans so that now instead of a 12-unit garden-style apartment building there will be three buildings with three units in each. Stated that parking will be underneath the unit so they have eliminated a mass of parking. Stated that the revised plans show a reduction in density and that they have addressed the residential look and feel of the area. Stated that the abutters like the look of the project and will be well-buffered and have two single family homes in the front. Stated that they are reducing the number of units so they are reducing density from 3.39 to 3.11 units per acre where 2.5 are allowed. Stated that if this development was across the street they would be allowed to have over 70 units by right but they are proposing less than half. Stated that this will provide a nice transition from an R3 zone. Stated that this is a unique property and referred to the *Rancourt v. Manchester* court case where there are special conditions when you consider the large nature of the lot, the unique configuration and the existence of wooded buffer. Stated that the Board and the abutters talked about this request being reasonable. Referred to the letter incorrectly dated March 19 (supposed to be dated May 19) that outlines ten scenarios on how the project would satisfy the general intent of the ordinance and reviewed those. Stated that it will preserve more open space, have less density than what would be allowed by right, have less impact on the environment, have less impervious surface and have less construction near the setbacks. Stated that the open space will have restricted access and that the design will reduce the impact on City schools and City services. Stated that these will be offered at a reasonable price range. Stated that there will be more uniform drainage under the control of one entity. Stated that there will be one approach to landscaping and will be controlled by the association. Stated that most variances have to do with dimensional requests but that they are asking for a variance for use.

Public hearing opened 7:15 pm.

Brian Grant of 200 Green Street addressed the Board and stated that the house that is going right next to his property has already been approved. Stated that he would rather the area stay a field but since it won't he would rather this development over individual homes. Stated that with this plan there will be rules and standards because of the association. Stated that if this plan doesn't pass then it will be chopped up for individual homes which will add noise and chaos. Stated that he would prefer this plan and to have neighbors that abide by rules and regulations.

Erika Auclair of 212 Green Street addressed the Board and stated that she is a direct abutter and supports this proposal. Stated that this will be right in her backyard and that she prefers this over single family lots. Stated that she agrees with the last gentleman that spoke and that there will be rules with the association. Stated that she fully supports this.

Laura Barry of 211 Green Street addressed the Board and stated that her biggest concern was all the individual homes that could go in there. Stated that she was concerned with absentee landlords and other issues that are already on Green Street but that she likes this plan because of the condo association. Stated that the association will keep people in line and provide a higher standard of living.

Mary Ann Davis of 242 Green Street addressed the Board and stated that she is not a direct abutter but lives down the street. Stated that she is concerned with rolling this into the R3 zone, which has the highest crime in the City. Stated that the development will probably be beautiful but that she is worried about multi-family units in a single family area. Stated that this would open doors for other people.

Routhier stated that the abutters are concerned with absentee landlords and high crime. Asked if the owner can rent out their unit.

Bruton stated that other R3 zones don't look like this and that this is different. Stated that they will be sold as a condo but they can't alienate against renting out the unit. Stated that in traditional home-owners' associations the people own their own yard but that this will be a common area for everyone. Stated that the condo aspect restricts the use of the common land.

Routhier stated that condos are more likely to be rented out than single family homes. Stated that this is home ownership but that it could be rented out and crime and drug use could occur.

Bruton stated that it speculation. Stated that landlords looking for rental property are usually looking for multi units but this is condo style and is just one unit. Stated that from his experience, condos have very few renters and have pride of ownership.

Routhier asked the applicant if they have facts from other similar developments in other communities.

Mike Patenode of River Valley Development addressed the Board and stated that he owns and has built other developments like this. Stated that he owns some in Dover that has business on the first floor with residential condos above that are about the same square footage as these. Stated that of the about 300 units he has developed over time about ten of the units were rented.

Routhier asked what the selling price will be.

Patenode stated that it would be around \$229,000 so renters would have to pay around \$2800 a month, which isn't likely to happen.

Routhier asked about increasing tax value. Stated that Indigo Hill Road has a lot of single family dwellings and they surround this property.

Patenode stated that the development won't stand out.

Routhier asked how it will fit in with the neighborhood.

Patenode stated that it will be a perfect transition and that they will just look like houses from Green Street.

Routhier stated that he is asking how this differs from other housing in the area, asked if it fits in. Asked how it compares with the entire neighborhood.

Patenode stated that he is looking at this lot because he built the two homes in the front and then looked into this lot. Stated that he was approached by the property owner. Stated that his broker was born and raised in Somersworth and found that after college he couldn't afford to come back to live. Stated that they want to offer good home prices. Stated that this will flow nicely when leaving the downtown area and going into the residential area.

Routhier asked about the uniqueness of the land. Stated that there isn't a lot of frontage but that there could be a road.

Bruton stated that every case is unique and that this property does abut a six-unit apartment building and a commercial use. Stated that it is located near a Business zone on Main Street and is only 250 feet from an R3 zone. Stated that the lot is oddly configured because of its shape. Stated that there will be less impervious surface than with single family homes. Stated that they are hoping to preserve 8.5 acres or more of open space but that it would be more developed with single family homes. Stated that it is unique based on the size and the existing natural buffer and the Planning Board will look at more buffering. Stated that the project is reasonable for the City. Stated that there are unique aspects that other lots don't have.

Routhier stated that he is having trouble with the uniqueness and asked about any hills and steep slopes with the land.

Bruton stated that it is unique in terms of surrounding properties. Stated that it is a large lot surrounded by postage stamp lots, which is unique.

Brooks stated that the applicant talked about the shape of the lot and being narrow in the front but that seems like something they did to themselves by building the two single family homes. Stated that it seems like self-induced uniqueness.

Bruton stated that it is still a very odd shaped property because there are many sides to it. Stated that they wanted to do a project that the abutters would also like. Stated that the developer met with the abutters to discuss this project. Stated that they have heard the Board's concerns and have amended the plans accordingly. Stated that the ordinance allows for 2.5 dwelling units per acre but only asking for 3.1. Stated that he feels that the Board liked the plan last time and they only made it better.

Brooks stated that the abutters like the plan but that they like it over a not-yet-proposed plans. Stated that he feels like they are stuck with the less of two evils.

Bruton stated that this is not an evil plan and that the single family home option is a permitted use so it is an option. Stated that they have presented an excellent plan and have made it better.

Brooks stated that at the last meeting the applicant mentioned a possibility of having about 75 residents with this proposal and asked if that is still the case with the amendment presented tonight.

Bruton stated that because they eliminated three units there would probably be 62 to 65 potential residents now.

Routhier stated that as a member of the Board he takes into consideration his personal knowledge of the area. Stated that this area seems to be the highest point and that it would be more difficult for single family homes because of the slope.

Christopher Berry with Berry Surveying & Engineering addressed the Board. Stated that Attorney Bruton talked about the unique shape of the land but that it also undulates and showed on the plans. Stated they placed the proposed structures along the ridgeline to meet standards. Stated that if the structure will be able to be seen they will look like single family homes and you won't be able to see the garage underneath. Stated that the undulation of the land allows for this and is unique. Stated that with single family homes you are forcing the land to fit the house where with this proposal you are forcing the structure to fit the land. Stated that is a special condition of the property. Stated that there are wetlands in the center of the property which they have aligned the structures to face that. Stated that less land would be preserved with single family homes.

Public hearing closed 7:51 pm.

Routhier stated that the court case that was mentioned last time was Rancourt vs. City of Manchester from 2003. Stated that there used to be a variance standard that was hard to comply with and that there was a new case with Simplex that had two definitions of a hardship. Talked about the Rancourt case and the configuration of the lot. Stated that he feels this is a tough case and that it boils down to how good it fits with the neighborhood. Stated that Indigo Hill Road is R3 but has single family homes on it and Green Street has many single family homes. Stated that the proposed units look like single family homes so it sort of fits in with the neighborhood. Stated that it wouldn't diminish property values. Stated that the land could be used for single family homes and that they are not prevented from doing that. Stated that there are some unique aspects to the land like it is steeper and higher, which can be considered. Stated that the proposal is supported by abutters which is a strong factor.

Maskwa stated that the Board is supposed to look at the five criteria and where they fit. Stated that Routhier mentioned that this is an R1 area but that the proposed buildings kind of look like single family homes. Stated that the writers of the Zoning Ordinance say it should be R1. Stated that he feels that the hardship would be if single family homes couldn't be put in here but they can. Stated that he is having a hard time getting past the hardship piece as it is. Stated that the spirit of the ordinance is that the area be single family. Stated that this is a difficult decision.

Brooks stated that he keeps going back to the density issue and stated that he would like it reduced more.

Keiser stated that he feels that this proposal does not meet criteria three or five. Stated that the idea is that this area be single family and to keep the density to a reasonable level. Stated that that doesn't see how this meets the criteria.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that #3 and #5 of the five criteria have NOT been satisfied and move that the request of Kenneth Faucher for a variance from Table 5.A.2 of the Zoning Ordinance to allow more than 2.5 dwelling units per acre be **DENIED**.

Seconded by Brooks.

Routhier stated that hardship has to do with if it's a reasonable use of the property given what the property is like. Stated that single family homes would cut up the land more and there won't be so much open space. Stated that single family homes can go in but it would be difficult. Asked himself if this is a reasonable use of the property and stated that he feels that it is. Stated that this keeps with the spirit of the ordinance because they are like single family homes. Stated that he feels that it meets the hardship test. Stated that the general purpose of the Zoning Ordinance is for single family dwellings and that he feels this use isn't much different. Stated that he feels that this would be a better use of the land because there would be less units than if there were single family homes.

Brooks stated that Routhier is speaking more to multiple units than density.

Maskwa stated that Routhier identified his dilemma as it looks like single family homes put together but it really isn't. Stated that he is having difficulty supporting this.

Motion to deny was approved with a 3-2 vote with Routhier and Dumont opposed.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that #3 and #5 of the five criteria have NOT 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 **DENIED**.

There was no second to the motion.

Routhier stated that he doesn't feel like he can vote on the motion because he doesn't know what it would look like now that the density is denied. Stated that he doesn't want to just blatantly say yes to multi-unit dwellings.

Saunders stated that the Board can table this for an amendment or can deny it without prejudice so that they can come back to the Board.

Bruton stated that another motion to deny is not appropriate because one was already made and it failed.

Routhier stated that he would be willing to table the application so that the applicant can come back with an amendment.

Saunders stated that you have to give a reason to table an application.

Routhier stated that he would like more information from the applicant on what would be proposed following the density.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I move that the request of Kenneth Faucher for a variance from Table 4.A.1 of the Zoning Ordinance for multi-unit dwellings be **TABLED** for an updated plan.

Second by Brooks. Motion carried with a 4-1 vote with Keiser opposed.

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

None.

3) NEW BUSINESS

A) Pamela & Alan DeVito are seeking a variance from Table 5.A.1 of the Zoning Ordinance to build a garage within setbacks on property located at 7 Hawthorne Circle, in the Residential Single Family (R1) District, Assessor's Map 48, Lot 24-1A, ZBA #06-2017.

Maskwa stated that he would like to change the order of tonight's agenda and discuss item D first. The Board discussed the Flatley extension request.

Public hearing opened 8:21 pm.

Pamela DeVito, property owner of 7 Hawthorne Circle addressed the Board and stated that they would like to build a new garage partially within their setback. Stated that the subdivision was approved as a cluster community and that she went to the City in advance to inquire about setbacks. Stated that she was told by the City that they can build in the setback. Stated that other homes in the community don't have a setback but that they are the first house in the community so they still have a setback. Stated that they want to build the garage three feet from the property line. Stated that this property is the largest of the subdivision but that it is oddly shaped.

Alan DeVito, property owner of 7 Hawthorne Circle addressed the Board and stated that was probably why the garage was put on to begin with. Stated that all the other lots have a garage.

P. DeVito stated that they can't attach the garage to the house because the only window for their bedroom is on that side.

Keiser stated that looking at the proposal, the garage is going to be within three feet of the property line and asked about alternate locations.

A. DeVito stated that there is no other place to put it.

P. DeVito stated that there are wetlands in the backyard and that it is too steep. Stated that they are trying to move it forward already and that they would like six feet between the house and the garage.

Keiser stated that they would like six feet between the house and the garage and want the garage to be 24'x24' in size. Stated that the backyard is too steep and there are wetlands. Asked about the front yard.

P. DeVito stated that she wouldn't want to put it in the front of the house.

A. DeVito stated that this was a standard subdivision where garages are to the right of the house. Stated that putting it in the front would be an eyesore to the neighborhood. Stated that most of their property is in the backyard where the wetlands are.

Keiser asked why they want the garage that size.

A. DeVito stated that is the size of a typical two-car garage with room for yard stuff.

Keiser asked how far the neighbor's house is from the property line.

A. DeVito stated that it is about 75 yards. Stated that the neighbor has a big parcel of land.

Brooks asked about putting the garage against the house but set back half the depth.

P. DeVito stated that she thought about that too but the cost was astronomical for the fill to be brought in.

A. DeVito stated that they couldn't do that and still have a window out of their bedroom.

Brooks stated that there aren't pictures of the house.

A. DeVito stated that it is a 1700 square foot cape with a dormer in the back.

Maskwa stated that this is the first house and that it is a cluster subdivision so there are no setbacks. Stated that there is a perimeter buffer though and the applicant needs to use seven feet of that. Stated that is the only setback that is affected. Stated that the back of the home is steep and wet so the garage can't be moved back farther.

Brooks stated that he would like to see a sketch.

Public hearing closed 8:32 pm.

Keiser stated that he feels that three feet near the property line is too close but that he would be okay with five feet. Stated that he feels it could be closer to the house.

Dumont stated that he feels that three feet or five feet doesn't make much of a difference. Stated that the abutting house is far away.

Saunders stated that the garage would be within three feet of the property line.

Brooks stated that he feels that there could be more investigation on other options before committing to the plan. Stated that he is having a hard time with it having to be so far from the house.

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 Pamela & Alan DeVito for a variance from Table 5.A.1 of the Zoning Ordinance to build a garage within setbacks be **GRANTED**.

Seconded by Dumont.

Routhier stated that he thinks this property is unique because its odd shape and the wetlands. Stated that all the neighbors have garages. Stated that the only person that

would be affected is far away. Stated that this won't diminish property values, it meets all the criteria and is a reasonable use.

Maskwa stated that he agrees.

Motion carried with a 3-2 vote with Keiser and Brooks opposed.

- B) Angela Stebbins f/k/a Angela Skinner is seeking a variance from Table 5.A.1 of the Zoning Ordinance to allow a third unit on a lot that doesn't meet minimum lot area on property located at 45-47 South Street, in the Residential Multi Family (R3) District, Assessor's Map 09, Lot 68, ZBA #07-2017.

Public hearing opened 8:36 pm.

Angela Stebbins, property owner addressed the Board and stated that one of her tenets and some abutters are present. Stated that her property is unique and that she purchased it in 2002 and passed out a packet of information (see attached). Stated that the house was built in 1902 before the ordinances were in place. Stated that when she purchased it in 2002 the building where the third unit is was already there. Stated that the footprint was already there and that there has been no change. Stated that the third unit would be in the back, which was used for storage except for one existing bedroom. Stated that she purchased the house to live in and the back piece wasn't being used. Stated that going with the nature of the ordinance having it empty wasn't doing anyone any good and was useless space. Stated that she is looking at the best use of the property and using what was there when she purchased the property. Stated that the middle unit had five bedrooms. Stated that she understands that every City needs R3 zoning and that there are concerns with rental property. Stated that she reduced one of the units to three bedrooms with an office space so an eight bedroom property is now a six bedroom property. Stated that this won't diminish surrounding property values but will increase values and this is a better property overall. Stated that it is already zoned R3 and that she worked with the City and the Somersworth Housing Authority (SHA) back when she bought it. Stated that, looking at the purpose of the Zoning Ordinance, it encourages the most appropriate use of the land. Stated that this is reducing the number of bedrooms, prevents overcrowding and lessens congestion on the streets. Stated that the Ordinance requires two parking spaces per unit, which she has, so there won't be parking on the street. Stated that she had the Fire Department go through the property. Stated that the building was condemned when she bought it and that she revamped it. Stated that this is not contrary to the spirit of the ordinance because it is already in an R3 zone and she is not changing the footprint. Stated that this was already in existence and she didn't change the exterior. Stated that this was just 700 square feet sitting there not being used. Stated that the lot is existing and she can't change the size of it. Stated that if this is denied it would create a hardship for the people that have lived there for 12 years.

Russell Lachance of 37 South Street addressed the Board and stated that he abuts the property. Stated that he has no problem with this and that he is glad she owns the property and that it is being run like it should be. Stated that the property just gets better and better.

Keiser asked how many apartments there are currently.

Stebbins stated that there are three apartments and there has been for 14 years.

Keiser confirmed that she already has three apartments.

Stebbins stated that it was done by the City and the SHA to better the community.

Keiser asked if it was just two apartments when she purchased it.

Stebbins stated that there was an in-law apartment because of the other bedroom.

Keiser confirmed that she put the third unit in.

Routhier stated that he is confused on what the Board is voting on because it is an existing building that already has three units.

Saunders stated that the request is for the third unit because it was never approved.

Routhier asked about parking.

Stebbins stated that there is no on-street parking.

Routhier asked if this would need to go to the Planning Board.

Saunders stated that she doesn't think so.

Routhier asked Stebbins if she was led to believe that the third unit would be allowed.

Stebbins stated that she was informed by the Code Enforcement Officer that it could be and referred her to the SHA.

Routhier stated that she must have appropriate building permits.

Stebbins replied yes and stated that she only needed to get three quotes and that the SHA and the City would handle the rest.

Dumont stated that he remembers the case from before and that there were two apartments and she wanted to make a full, third apartment. Stated that the Building Inspector told her that she couldn't and would have to get a variance. Stated that she was denied a permit. Stated that he remembers that what she told the Board at the time was that the SHA said no permits were needed.

Stebbins stated that she wasn't involved in permitting.

Dumont stated that the variance was denied back then but that he felt she was misled. Asked how she put in the third apartment without having the variance.

Stebbins stated that she was told that it was okay as is but that it isn't "legal".

Maskwa read from an email from the Code Officer that was included in the packet saying that the building can stay as status quo. Stated that there is no record of it being R3 so he is confused. Asked if that takes the responsibility off the applicant.

Public hearing closed 8:57 pm.

Keiser stated that he is looking at lot size requirements from the Table of Uses and asked what is required.

Saunders referred to the footnote.

Keiser stated that he is confused as to what the variance is for. Asked if something is grandfathered. Stated that the property is nonconforming regardless of the number of units.

Motion made by Brooks: 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 Angela Stebbins for a variance from Table 5.A.1 of the Zoning Ordinance to allow a third unit on a lot that doesn't meet minimum lot area be **GRANTED**.

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

- C) Roland & Donna Turcotte are seeking a variance from Section 10.G of the Zoning Ordinance for a residential development with no City sewer on property located at 138 Rocky Hill Road, in the Residential Single Family (R1) District, Assessor's Map 54, Lot 01, ZBA #08-2017.

Public hearing opened 9:00 pm.

James Ball with Ball Real Estate represented the applicant and addressed the Board. Stated that the Turcottes are lifetime residents and that they purchased this property in 1986 to build a home and run a business and maintain the property in a manner to develop it in the future. Stated that in early 2000 there was a new map covering the Lily Pond Watershed area that was instituted along with special conditions that prohibit development with septic. Stated that City sewer is a mile and a half away. Stated that everyone else has moved forward with single family homes with septic systems and that the Turcottes want to move forward with a 15-lot residential subdivision. Stated that they have preliminary plans and that from an engineering standpoint the property could have 20+ lots but they choose to only have 15. Stated that the property conforms in all manners except for this variance. Stated that they want to reasonably develop the property as everyone else has in this same mapping area. Stated that City sewer is a mile and a half away and having to connect to that would make their property undevelopable. Stated that the groundwater district is to make sure the area is protected. Stated that the Turcottes left a cover of soil on their property which will allow for an efficient septic design. Stated that discharge will create no negative impact on soils and everything is so clean with this new septic standard. Stated that this will be cleaner than the Somersworth Water Treatment Plant. Stated that he is going to review the five variance criteria. Stated that this won't diminish property values because the design of the project compliments the area. Stated that these will be larger lot and they are not overdeveloping the area. Stated that they will meet the public interest because they will meet all development standards using the latest technologies and won't overdevelop the land. Stated that regarding hardship, this use is identical to other development in the area and the Turcottes don't want to be treated different. Stated that granting the variance isn't unreasonable as City sewer is a mile and a half away. Stated

that not allowing the variance would be a hardship and the use is reasonable. Stated that this fits with the neighborhood and conforms in all other aspects. Stated that regarding criteria 3B, the mapping area changed and a lot of people were not aware of it. Stated that others don't have this kind of technology. Stated that justice will be done as this would allow reasonable development that others already use. Stated that regarding the spirit of the ordinance it won't create a negative impact. Passed out a packet of information (see attached).

Geoff Aleva with Civil Consultants represented the applicant and addressed the Board and showed the Groundwater Protection District on maps. Showed the Lily Pond aquifer. Stated that there was a map that was changed in 2000 and the area was expanded and now includes the Turcotte's property. Stated that bringing down City sewer here would be cost prohibited. Stated that they are working with Highland Soil is Somersworth. Stated that they are looking at a way to protect the environment and add additional pretreatment before it goes into the leach field.

Steve Fermanis represented his sister who is abutter at 93 Cole's Pond Road and addressed the Board. Stated that under this situation he certainly recognizes the distance and the hardship. Stated that they totally support this variance.

Pam Sawyer of 130 Rocky Hill Road addressed the Board. Asked if granting the variance will mean that all 15 units are approved.

Maskwa replied no and stated that the Board is only voting on if they have to connect to City sewer as the ordinance says they have to. They are voting on the request that the applicant use septic systems for the lots.

Saunders stated that they would still need to go to the Planning Board for further review.

Routhier stated that this is new and that it is a variance for the Groundwater Protection District that prohibits septic systems. Stated that the ordinance says they have to connect to City sewer and water. Stated that the ordinance mentions a hydro study and asked if that would be useful for the Board.

Saunders stated that it would supply more information.

Aleva stated that the study is usually used by the SRTC or the Planning Board if there is one leach field. Stated that single family development doesn't need one but the Planning Board can request it.

Routhier stated that it would supply more information.

Aleva stated that it would give more information on how the effluent would affect the groundwater.

Routhier stated that the applicant said that other properties in this area already use septic systems.

Aleva stated that they are here to see if they would be allowed to use septic systems and the next step would be to go to the Planning Board to review for appropriate design and location.

Routhier stated that he is not in a position to make a decision if septic systems are appropriate for this. Stated that he doesn't feel that he has enough information to make that decision. Asked who rules on if this kind of septic system is appropriate.

Saunders stated that the Planning Board and Conservation Commission will review this as well.

Routhier stated that those Boards can't say no to the use of septic.

Aleva stated that all septic systems are also reviewed by the State. Stated that they are proposing, which is not required, to have additional pretreatment before going into the leach field. Stated that there are active and passive systems and explained the two. Stated that both systems have been tested.

Routhier stated that he has no information that these systems will be appropriate for this area.

Aleva stated that this was prepared by a Soil Scientist and his opinion is that this is better and won't have a negative impact to the Groundwater Protection District. Stated that the purpose is to protect the Groundwater Protection District.

Routhier stated that the District was enacted in 1984 and expanded in 2000.

Aleva stated that he has been unable to find out why it was expanded. Stated that other septic systems have gone in since 2000 and that the State looks at conventional systems. Stated that they are proposing larger lot areas than are required for conventional septic systems. Stated that they don't want to do anything negative to the environment. Stated that what they are proposing has more pretreatment than a conventional system.

Routhier asked why Mariano (the Soil Scientist) isn't here tonight.

Aleva stated that he couldn't be here tonight. Stated that all of them will have independent testing and that the sewer is just too far away. Stated that they are looking at what they can do and that they are using best management practices for these lots. Stated that what they are proposing exceeds City and State standards for treatment. Stated that there were other major developments that were approved and didn't have to go through this.

Maskwa stated that if the Board approves this the applicant could go before the Conservation Commission and Planning Board with any kind of conventional system.

Saunders stated that the Board could have a condition of approval.

Aleva stated that they will have a design that is above standards.

Routhier asked if someone else is going to look at the design because he doesn't feel qualified.

Maskwa stated that they just usually deal with the five criteria but that this hinges on whether these systems are successful.

Routhier stated that they are asking the Board to give permission to use septic systems without knowing how they will work.

Brooks asked if there is any chance that the sewer runs down Salmon Falls Road.

Aleva stated that it doesn't.

Maskwa stated that he feels that options are to build this proposal, not do anything at all or bring sewer down the street. Asked what that cost would be.

Aleva stated that in his opinion it would be over 10 million dollars.

Brooks stated he thinks that Rocky Hill Road is getting made over and asked if that would bring the sewer closer to this property.

Saunders stated that she doesn't think so.

Public hearing closed 9:36 pm.

Keiser stated that they have to consider that they are not technical at this subject. Stated that the Conservation Commission and Planning Board will look at the technical details of it.

Routhier stated that water is a growing issue in the future and the wells may need to be used again. Asked if other Boards can overturn the ZBA's decision.

Maskwa stated that before the Oaks Golf facility was built there was supposed to be a mobile home park with septic systems, which became an important issue. Stated that the mobile home park was never built.

Routhier stated that the ordinance is written to allow the property to be developed if connected to City sewer but that the Board would be granting the right to use septic systems and he doesn't know if that can be overturned. Asked what would happen to the ZBA's decision if other Boards feel it is a terrible idea.

Saunders stated that the Board has the right to request additional studies and the Planning Board may be in the same situation. Stated that it will need third party review also at the Planning Board level. Stated that the Board can also have a professional come in to help answer questions.

Routhier stated that there was more information just presented tonight and that he would like more time to read this before voting on it. Stated that he feels that the Turcottes meet the criteria for a variance and that they have the right to use their land but that he is just not sure if he has enough knowledge.

Keiser stated that it is the ZBA's responsibility is to determine if they meet criteria and the other Boards look at the technical review.

Maskwa asked if they can have conditions of approval for what type of system is used.

Dumont stated that he doesn't think that is in this Board's purview.

Saunders stated that the language would have to be carefully worded.

Routhier stated that the Conservation Commission and the Planning Board will review this also and have to protect the Groundwater Protection District.

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 Roland & Donna Turcotte for a variance from Section 10.G of the Zoning Ordinance for a residential development with no City sewer be **GRANTED WITH THE FOLLOWING CONDITION:**

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

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

D) John J. Flatley is requesting a two-year extension of the approved variance to allow a new residential use on street level for property located on Tri City Road, in the Business (B) District, Assessor's Map 39, Lot 02, ZBA #23-2013.

Kevin Walker with the John J. Flatley Company addressed the Board and thanked them for changing the order of the agenda. Stated that he was here six months ago for an extension. Stated that they are requesting another extension because Flatley likes to go full throttle into a project and put all his focus on it. Stated that they are working on a job in Massachusetts that is taking longer than expected and they want to finish that project first. Stated that they needed the extension last time because they were working on getting permits but they have all approvals in place now.

Maskwa stated that one-year extensions are the norm and asked why they are requesting two years.

Walker stated that they are expecting the other project to take about 18 months to complete and that they added a few extra months for surety.

Keiser asked if there is an extension request going to the Planning Board.

Walker stated that they are going to the Planning Board in two weeks.

Dumont stated that the Board hasn't granted an extension for this long before.

Keiser asked what the concern is with granting this.

Saunders stated that the concern is that there is a lot of development going on in this area.

Keiser asked what the variance was granted for.

Maskwa stated that the variance was to allow residential use on the first floor, which is not allowed in the Business District.

Walker stated that this is the only area of Business zoning outside of the downtown.

Motion: Routhier moved that the request of John J. Flatley for an extension of the approved variance to allow a new residential use on street level be **APPROVED** but only for a period of one year.

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

The Board returned to agenda item A under New Business

E) Election of Officers.

Motion: Keiser nominated Maskwa to continue as Chair of the Board.

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

Motion: Routhier nominated Keiser to continue as Vice Chair of the Board.

Seconded by Brooks. Motion carried.

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

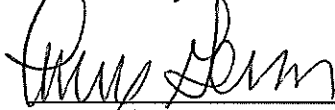
None.

Motion: Dumont moved to adjourn the meeting.

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

Meeting adjourned at 9:45 pm.

Respectfully submitted:



Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment