

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MAY 3, 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.

Maskwa welcomed new member Richard Brooks to the Board.

1) APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 5, 2017.

Motion: Keiser moved to approve the minutes of the meeting of April 5, 2017.

Seconded by Dumont. Motion carried with a 3-0-2 vote with Routhier and Brooks abstained.

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.

Saunders stated that the applicant submitted an email requesting to remain on the table until the June ZBA meeting.

Motion: Dumont moved that the request of The DesMarais Family Revocable Trust for a variance to allow a food sales use and an office space be **TABLED** until the June 7, 2017 meeting.

Seconded by Keiser. Motion 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.

Public hearing opened 7:02 pm.

FX Bruton with Bruton & Berube, PLLC represented the applicant and addressed the Board. Showed an overhead view of the plan and stated that this would merge two lots and have a total area of 11.24 acres. Stated that the intent is to create an array of housing that is affordable, compared to the Sunningdale development for example. Stated that they are proposing six townhouse style buildings with four residential units in each and one garden style building with 12 apartments. Stated that there would also be

two single family homes along Green Street. Stated that all of the units, including the two single family homes will be part of a condo association, which will be a benefit to the City because the roadway, water and sewer would be private and maintained by the residents. Stated that the intent of the two single family homes is to have a consistent streetscape with single family dwellings. Stated that this property is unique and has special conditions such as the shape of the lot, its size in this area and the narrow road frontage it has. Stated that this property is across the street from an R3 zone, which permits multi-family dwellings. Stated that they are requesting a total of 38 residential units and that if this was across the street in the R3 zone, they would be allowed to put 70 residential units by right for a parcel this size. Stated that there is an existing commercial use and a six-unit multi-family structure that abut this property. Stated that there are also a lot of duplexes and triplexes in this area. Stated that this is unique because there is a significant existing buffer. Stated that the hardship piece of the criteria starts with if there are special conditions of the property. Stated that case law speaks to special conditions of a lot being that it is a large lot surrounded by small lots, having little frontage and getting bigger in the rear and having a natural buffer. Stated that this lot has all of those. Stated that they feel that denying this would be unnecessary and a hardship. Stated that there are some slope issues along the perimeter of the property which promotes the use as a multi-family versus a single family. Stated that zoning allows for 2.5 dwelling units per acre and that they are requesting 3.39 units per acre. Reviewed the five criteria of a variance. Referred to criteria one regarding the diminution of surrounding property values. Stated that in addition to the natural buffer, this project will go before the Planning Board for site plan approval and will have additional buffering. Stated that the additional buffering will be maintained by the condo association, which isn't typical. Stated that with the proposed configuration they will be able to maintain the landscaping more uniformly. Stated that there would be more of an effect on the abutters if they put in single family lots. Stated that with the proposal there will be no diminution of surrounding property values. Reviewed criteria two and stated that it is not contrary to the public interest and that the test for this is if granting it would alter the character of the locality. Stated that they are looking to have a residential use that is not inconsistent with the zone. Stated that want to provide the opportunity for young professionals or retirees to housing that is reasonably priced and in a good location in the City. Stated that they feel that they are not altering the character of the locality as it is in the neighborhood of other multi-unit dwellings and is across the street from a zone that would allow twice as many units as a matter of right. Referred to the third criteria regarding hardship and that one of the tests for this criteria is if there are special conditions of the lot. Stated that the NH Supreme Court indicates what some special conditions are and that this property has three of them-large lot size, the configuration of the lot and the existing natural buffer. Stated that the existence of a six-unit structure makes this unique and that it is near a business zone. Stated that the parcel abuts a commercial use and contains slopes and wetlands. Stated that this is more conducive for clustering housing in a multi-unit fashion. Stated that they could develop this lot with up to 24 single family homes, which would yield about 100 residences but that with the way they want to develop it, there would only be about 75 residences so they are not overcrowding. Stated that this proposal preserves more open space than single family homes by having common ownership. Stated that there will be more than eight acres of common area. Stated that the proposal represents less density than what would be allowed across the street in the other zone that could allow up to 70 units. Stated that this style of development will have less impact on the environment with less impervious surface. Stated that there will be less development near the lot lines. Stated that individual single family homes are not much smaller than a

four-unit townhouse style building. Stated that they had submitted a report with fiscal analysis. Stated that they will reduce the impact on the schools by 33%. Stated that the intent is to provide housing for young professionals and retirees. Stated that there will be less impact on City services and on the neighborhood. Stated that the plan protects the general purposes of the Zoning Ordinance. Stated that it would be unnecessary to deny this request because the use is reasonable. Reviewed the fourth criteria regarding substantial justice and stated that it is a balancing test of the loss to the applicant versus the gain to the public. Stated that there is no negative aspect of this project. Reviewed the fifth criteria regarding the use being contrary to the spirit of the ordinance. Stated that the project protects the ordinance and provides a plan that is well-buffered and will have a significant amount of open space. Stated that there is a smaller impact with this project compared to have 24 single family houses. Stated that he requests that the Board grant the variance and sent the application to the Planning Board for site plan review.

Erika Auclair of 212 Green Street addressed the Board. Stated that she would prefer to see this kind of development behind her instead of single family homes. Stated that she has a lot of friends that struggle with affordable housing and that this will be great for young professionals.

Laura Barry of 211 Green Street addressed the Board and stated that she is happy to see two single family homes in the front to maintain the single family street scape and that the development won't be right on the street. Stated that there will be a lot of green space left and that she is happy to see so much remain. Stated that she is in favor of the proposal.

Stephen Theoret of 14 Fremont Street addressed the Board and stated that he came here for the open land and would rather this development than several single family homes.

Mary Ann Davis of 242 Green Street addressed the Board and stated that she is not a direct abutter but owns a property down the street. Stated that when zoning was set up there was a reason for the regulations. Stated that this area is not zoned for what they want and she is concerned. Stated that she too would like to see young professionals but asked how much growth can be sustained. Asked if this Board is willing to change zoning for everyone. Stated that she is not sure where this R3 district is that the applicant speaks of. Asked what the intent was when the land was zoned the way it is. Stated that this needs to be fully thought through.

Holly Atwood of 212 Green Street addressed the Board and stated that this development is a nice idea and is in favor of the plan.

Routhier stated that there are two parcels involved and asked if they are both owned by Faucher.

Bruton replied yes.

Routhier asked if title has passed to the developer and if the applicant is Faucher or River Valley.

Bruton stated that the title hasn't passed and the River Valley is the applicant.

Routhier asked if the single family dwellings will be condos.

Bruton stated that they will be part of the condo association.

Routhier confirmed that the merger hasn't been approved yet.

Bruton confirmed and stated that it will be brought to the Planning Board. Stated that the land will be in common ownership.

Routhier asked if it will be on City water and sewer.

Bruton replied yes and stated that it will be maintained by the condo association.

Routhier asked where the R3 district is that was spoken of.

Bruton stated that it is at the corner of Indigo Hill Road on the opposite side. Described where the district is.

Routhier confirmed that everything else is R1. Referred to the wooded buffer on the plans and asked if it is part of the site plan application. Stated that it will be a requirement that it be maintained.

Bruton replied yes and stated that site plans can be revoked if landscaping is not followed.

Routhier stated that single family homes can be put here and asked why that is not appropriate in this case.

Bruton stated that the test here is if something is reasonable and that they are creating a lot of open space that will be maintained by the condo association. Stated that it will create an affordable housing option for young professionals and retirees. Stated that this gives the opportunity to have open space close to downtown without a lot of impact. Stated that this use is desirable and is a good concept.

Routhier stated that single family homes can go there.

Bruton stated that feasibility is not a criteria of a variance. Stated that there is a market for this and that every developer wants to do something that is good for the market.

Brooks asked how many bedrooms the units will have.

Mike Patenode with River Valley Construction addressed the Board and stated that the townhouses will have two to three bedrooms and the garden style apartments will have one to two bedrooms. Stated that he did a development similar to this in another community and found that it was usually occupied by a couple or single person and there were no children. Stated that this location is unique and is making a transition from the downtown to R3 then to R1. Stated that there are a lot of people from Somersworth that go to college and find it hard to return here because of prices of homes. Stated that these are brand new units that are efficient and give people the chance to come back to their hometown. Stated that it is expensive to live here. Stated

this gives a retired person the chance for brand new, affordable housing in an accessible area.

Routhier stated that the project looks nice, has a solid concept and is a good use of land but the issue is that the area is zoned R1 and they are asking the Board to legislate the use of the land. Asked if they have looked at putting single family homes in there.

Patenode stated that there are wetlands and that they are completely staying out of the buffer area. Stated that this property has uniqueness which is good for the transition. Stated that there is a property on Turgeon Lane that has a six-unit dwelling.

Routhier asked about steepness out there.

Patenode stated that he found no ledge with the first two houses he built but that it is steep. Stated that they are not going to fill in any wetlands.

Maskwa asked about the two houses that are already out there.

Patenode stated that those are off site and are not a part of this proposal.

Maskwa asked what the thought process was with not putting in another four-unit townhouse style building but instead having the 12-unit apartment.

Patenode stated that the apartments would be the most affordable housing of the project. Stated that this is in no way a slam dunk-stated that they are creating a market in this community that doesn't already exist. Stated that this isn't present in this market right now. Stated that it will be good for the community.

Christopher Berry with Berry Surveying and Engineering addressed the Board and stated that he wants to go over some of the design elements. Stated that when you look at a property you look to see where access is and how many units there can be. Stated that you manipulate it as much as you can to make it work. Stated that when they first looked at this they felt they would really have to manipulate the land. Showed a rendering with contours and wetlands and stated that this proposal was designed around those natural features. Stated that the key is that from Green Street you won't see a three story building because of the slope and design on the land. Stated that there is approximately less than one acre of wetlands and they have hired a wetland scientist.

Routhier confirmed that the middle area of the lot is a little flat.

Berry confirmed.

Routhier stated that the contour of the land doesn't stop them from putting single family homes in here.

Berry stated that there are other areas with steep slopes. Showed the wetland buffer on the plans stated that they are allowed a certain percentage of impervious surface within the buffer but that they are staying completely out of it. Stated that they are creating the project around the natural features that are out there.

Public hearing closed 8:00 pm.

Routhier stated that he is having a hard time with this. Stated that he likes the project and concept and that it is green. Stated that he feels that Patenode is correct that there is an increased need for housing in this area; especial in this price range. Stated that he is brought back to what Mr. Davis said during the public hearing and that he is not sure if they can make this an R3 district. Stated that he is not sure on all the criteria and that he doesn't even know if the Board has the authority to vote on this.

Keiser stated that he feels it is a great project but that he agrees with Routhier. Stated that this is the R1 district and asked where the line goes. Stated that the districts are created for a reason. Stated that this isn't just a lot line adjustment but rezoning an area. Stated that the proposal is great but that he feels this is parallel to the Hilltop School. Stated that he isn't sure the Board has the authority or right to rezone this to R3. Stated that it is not directly adjacent to another R3 district. Stated that the burden is the same for the Davis property so it is not unique and wouldn't be a hardship.

Saunders stated that this Board has the authority to act on this variance request. Stated that she doesn't see this as a rezoning since there are other factors that would need to be discussed for that. Regarding setting a precedence, stated that the Board should make sure the language fits.

Brooks stated that this seems well thought-out with the open space and the price range but that, although an R3 area is close, the R3 area has the highest crime in the City. Stated that Somersworth is the fourth most dense City in New Hampshire and that crowding doesn't seem to be the best answer.

Dumont stated that they wouldn't be rezoning but that the applicant is just requesting a variance. Stated that it doesn't set a precedence because each one stands on its own merit. Stated that he likes this project and supports it in Somersworth.

Maskwa stated that they are requesting two variances-one for density to have more than 2.5 units per acre and the other to allow multi-unit dwellings in an R1 district. Stated that he agrees with Dumont that this Board has the authority to act on this request. Stated that he agrees with the other Board members specifically with criteria three. Stated that he does like the project except for the apartment building because he doesn't feel that it fits with the concept. Stated that the spirit of the ordinance is to have single family dwellings here. Stated that at some point people decided that this area should be R3 and that he doesn't think it is a good idea to change it.

Routhier stated that he would like to table this application until the next meeting because Attorney Bruton cited case law and he would like to read that first. Stated that he would like to think about this more.

Bruton stated that the applicant doesn't object to that.

Motion: Routhier moved to reopen the public hearing.

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

Public hearing opened 8:09 pm.

Bruton stated that regarding the comments about crime, many of those come from rentals but that this will be home ownership. Stated that this Board has the authority to act on this request as it is a variance for density. Stated that regarding setting a precedence, he is not concerned with that because of the unique aspects of this property. Stated that there are many different requirements for a zone and that they are not asking the zone to change. Stated that they welcome the opportunity to continue the application to another meeting. Stated that they have outlined special conditions of the land and that they will protect the general ordinance.

Public hearing closed 8:14 pm.

Motion: Routhier moved that the request of Kenneth Faucher for a variance from Table 5.A.2 to allow more than 2.5 dwelling units per acre and Table 4.A.1 for multi-unit dwellings be **TABLED** until the June 7, 2017 meeting. Stated that he would like to table the proposal so that he can look into the case law that Attorney mentioned during the public hearing.

Seconded by Brooks.

Maskwa stated that he feels that is a good idea. Stated that he likes the townhouse aspect of the proposal but that he doesn't like the apartment building and that he feels it doesn't have a place in the R1 district. Stated that he feels that doesn't meet the spirit of the ordinance.

Motion carried with a 5-0 vote.

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

None.

3) NEW BUSINESS

A) Breitling Holdings, LLC is seeking a variance from Table 4.A.1 of the Zoning Ordinance for a new residential use on the first floor on property located at 67 Elm Street, in the Business Historic (BH) District, Assessor's Map 10, Lot 174, ZBA #05-2017.

Public hearing opened 8:18 pm.

Mark Batchelder with Seaport Engineering, PLLC represented the applicant and addressed the Committee. Stated that this is an existing five-story building that has been vacant for years and the owner wants to renovate it and the parcel to include 12 one or two bedroom apartments. Stated that the property is in the Business (B) district which requires a business on the first floor but that they would like to have a residential unit on the first floor. Stated that their plan is to have a commercial use in the front part of the building and residential units in the rear on the first floor. Stated that they are looking for a variance because they feel this is unique as the building is setback from the road. Stated that there is an elevation change from the front of the building to the rear. Stated that the building is unique as the front of the building appears to have been constructed earlier than the rear. Stated that the separation is shown with brick in the front and wood in the rear which creates separate space within the building. Stated that

on Elm Street there are no other commercial buildings and all the homes have residential use on the first floor. Stated that having the proper egresses from the building creates more of a separation from the front to the rear. Stated that because of the depth of the building, the commercial portion does have a visual aspect from Elm Street but there is no visibility for the rear. Stated that they are proposing two, one-bedroom apartments on the first floor. Reviewed criteria one regarding property values and stated that this will be a complete renovation of the building and will only improve property values. Reviewed criteria two regarding the public interest and stated that there are all residential uses around this property yet are in the B district. Stated that by allowing this residential use on the first floor they are not going outside of the character of the neighborhood. Stated that there won't be a conflict of the basic objectives of the Zoning Ordinance. Reviewed criteria three and stated that the property is unique because of the topography and the separation of the building for the egress. Stated that it is reasonable for a commercial use on the road side where there is exposure and to have a residential use in the rear. Reviewed criteria four regarding substantial justice and stated that he feels that due to the lack of exposure in the rear it would not allow the property to get its full use as commercial in the entire first floor. Stated that granting the variance would allow full use of the structure and still maintain the character of the neighborhood. Reviewed criteria five regarding the spirit of the ordinance and stated that the property will visually remain intact. Stated that this will keep in the spirit of the ordinance by having commercial use on the first floor and residential use in the back.

Laura Barry of 211 Green Street addressed the Committee and stated that he is on the Somersworth Historic District Commission. Stated that she feels this should be approved because they are not changing the physical characteristic of the building.

Maskwa stated that this property went through the approval process before.

Batchelder stated that this is a completely different project with a different owner.

Maskwa stated that because of the ten apartments, at least 20 parking spaces will be needed. Asked if the building will be retail.

Batchelder stated that they don't know what kind of business it will be yet.

Maskwa asked if commercial use parking will be in front on the street.

Batchelder replied yes and stated that they have submitted a site plan application and they have altered the parking and put in 24 spaces to allow the commercial space to have four spaces.

Maskwa asked how snow will be removed.

Batchelder stated that there are two parking areas and that the one of the south side has limited room for snow but there is a large open area on the north side that would be used for snow storage. Stated that if there is a lot of snow it will be removed.

Maskwa asked about access into the building.

Batchelder showed on the plans and stated that there are two entrances to the commercial unit and that it will be fully ADA accessible.

Maskwa confirmed that they are looking to have two, one-bedroom apartments on the first floor.

Batchelder stated that the existing building has a brick wall and showed on the plans. Stated that there is an existing staircase but it doesn't meet code so will be replaced.

Routhier asked if the brick walls are supporting walls.

Batchelder stated that they are but only go up to the third floor, where they become wood.

Routhier stated that the property is off the beaten path and asked what kind of business would be suitable there.

Batchelder stated that his client hasn't talked to him about that but he has been looking for someone to fill the space. Stated that it will be difficult to find someone with such little street exposure.

Public hearing closed 8:35 pm.

Dumont stated that this property was before the Board in the past but they were proposing a second building.

Keiser asked for clarification on what section they are requesting a variance from.

Saunders stated that it is Table 4.A.1 of the Zoning Ordinance and reviewed it.

Keiser stated that he supports the request.

General agreement from the Board.

Brooks stated that he stated that it will be difficult to use the building for commercial use because it is so far set back.

Maskwa stated that it would be a hardship for a commercial use to be in the back.

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 Breitling Holdings, LLC for a variance from Table 4.A.1 of the Zoning Ordinance for a new residential use on the first floor be **APPROVED**. This is to be approved in accordance with the plans dated 4/12/2017.

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

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

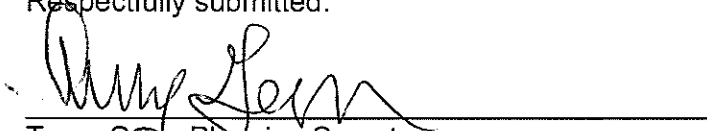
Maskwa stated that former Zoning Board member Bo Beaudet recently passed away and thanked him for service on the Board and to the community. Stated that he will be missed.

Motion: Keiser moved to adjourn the meeting.

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

Meeting adjourned at 8:41 pm.

Respectfully submitted:



Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment