

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
APRIL 4, 2018

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Richard Brooks
MEMBERS ABSENT: Donald Routhier, Coty Donohue, Sean Kinnevey
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 FEBRUARY 14, 2018.

Maskwa welcomed alternate members Coty Donohue and Sean Kinnevey to the Board and appointed Donohue to sit as a voting member for the meeting.

Brooks moved to approve the minutes of the February 14th meeting, seconded by Dumont. Brooks stated he'd like to amend page 6 of the minutes from the time the City took possession of the property.

Saunders stated that the change can be made.

Dumont stated that his name was omitted from the meeting and moved to be added motion carried 4-0 with Donohue abstaining.

2) OLD BUSINESS

- A) The Patricia Anne Sherwood Trust is seeking a variance from Table 4.A.3 of the Zoning Ordinance for the keeping on livestock on property located at 370 Old Rochester Road, in the Residential Single Family (R1) District, Assessor's Map 68, Lot 01, ZBA #16-2017.

Maskwa opened the public hearing at 7:03pm.

Donald Whittum, a lawyer representing the applicant, Patricia Sherwood prepared and distributed a handout detailing the history of the Zoning Board process that has occurred so far to the Board. Whittum stated that several of Patricia's children receive a therapeutic release from the animals and the animals have been present at the property for over a decade. Whittum proposed that when weather and ground conditions permit, the applicant will relocate the shed and enclosure away from abutter's property lines and positioned in a way that will mitigate sights, smells and sounds from the abutting properties. Whittum continued he believed it meets the City's requirements and meets the applicant's needs.

Keiser asked what type of goat is located on the property.

Whittum stated they were pigmy goats.

Keiser asked the number of animals on the property and asked if it was possible to contain ducks in a similar way to how someone contains chickens.

Whittum answered you are able to use chicken fencing to contain the ducks.

Brooks asked how far they would be able to move the enclosure from the property line.

Whittum answered between 50 and 100 feet.

Maskwa asked if the suggestions offered by the NHMA and Planning Department are within the City's current Zoning Ordinances.

Saunders stated that the conditions were drafted by the New Hampshire Municipal Association's legal counsel. Saunders stated that it proposes that the lot not be subdivided.

Dumont expressed concern about the property being passed from generation to generation.

Dumont stated that if the Board grants a variance because of a disability, would the variance expire if the future owners did not.

Maskwa closed the public hearing at 7:15pm.

Keiser stated that he wants to make stipulations that both the goats and the ducks are contained and that there is at least 20ft distance between the enclosures and any property lines. In addition, Keiser stated he wants to create a condition that the variance is only for pigmy goats.

Maskwa asked if the chickens on the property are allowed by zoning.

Saunders stated that they are provided they receive a permit.

Maskwa stated that he believed there is hardship based on the fact the applicant and their family has disabilities.

Saunders stated that the applicant would need a variance for chickens because she owns 25 and the ordinance only allows for 6.

Brooks stated that he did not believe 20ft would be sufficient distance and an increase on the distance restriction is necessary.

Keiser asked what he would recommend for a distance.

Brooks stated 100ft if possible.

Donohue stated that the chickens could be kept 20ft away but makes sense to have the goats be kept further away than the chickens.

Maskwa asked if the coup has to be completely behind the house.

Keiser stated that the coups did.

Maskawa stated he did not believe surrounding property values would be diminished. Maskwa continued that the hardship criteria has been satisfied due to the family having disabilities and relying on the goats and that substantial justice would be done as long as proper limitations were in place to the variance.

Dumont stated that he agreed with Maskwa.

Keiser asked about the restrictions that would be in place.

Maskwa stated that he believed the best management practices from the Department of Agriculture were sufficient.

Donohue asked if the hardship was the disability.

Brooks stated that he agreed because of the use of the goat's milk.

Donohue asked if the Board was going to accept the restrictions as written.

Keiser stated that he wanted the applicant to comply with best management practices as a condition of approval.

Keiser moved to approve the variance request with the conditions for 6 goats, 6 ducks and 25 chickens, the property remain the same size, the use be behind the principle structure, 3sqft of chickens and 20sqft of ducks (obtain rest of language), seconded by Brooks.

Brooks stated that he wanted the minimum distance be greater than 20ft.

Keiser amended the motion to include a minimum distance requirement to be 50ft, seconded by Brooks, motion passed 5-0.

Donohue asked is it necessary condition to require the applicant to keep the enclosed at all times.

Maskwa stated the current ordinance requires the chicken be enclosed at all times.

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

There was none

3) **NEW BUSINESS**

- A) The Roman Catholic Bishop of Manchester is seeking a variance from Section 20.D.1.d of the Zoning Ordinance for a freestanding sign that exceeds allowable area on property located at 120 Maple Street, in the Residential Duplex (R2) District, Assessor's Map 24, Lot 06, ZBA #18-2017.

Maskwa opened the public hearing at 7:32.

FX Bruton, representing the applicant provided an overview of the scope of the proposed project. Bruton stated that the property is located in the R-2 district. The applicant wants to take the existing small sign and replace it with a larger free standing sign. The sign consists of two components. The larger portion contains the parish information and the smaller sign consists of information regarding the Mass schedule. Bruton stated that the property is unique given its lot size. The lot consists of 8.2 acres

and the amount of road frontage the property has as well as its building size. The property sits at 5 road junctions and lends itself to have a larger sign. Bruton stated that the Church has an interest in advertising its Mass times. Putting the Mass times on a permanent sign disallows the church from changing its service times.

Bruton stated that he forwarded the court case referenced in the previous meeting as the Board requested which proves a hardship. Bruton is asking for the variance for a larger sign in context with the size of the building, lot and frontage and is requesting a 20% increase in the allowable size of the sign. Due to the special conditions and safety conditions it is reasonable to allow the applicant the use of a larger sign. Bruton stated that the spirit of the ordinance is to allow the safe condition and reasonable use of the property and stated he believes the applicant meets that.

Bruton stated that granting the variance would not diminish the surrounding property values as the sign will be aesthetically improved from its current state. The variance would not be contrary to the public interest because it does not change the central character of the locality and the church is willing to move the sign back away from the road. A substantial justice would be done because there would be no negative impact to the public. Granting the ordinance would not be contrary to the spirit of the ordinance because it is not against the public interest and there is no significant conflict between the ordinance and the use of the property. Allowing the church the larger size would allow the church to be identified.

Bruton mentioned there were other safety considerations in the event of an emergency that makes the Church a unique property.

Robert Stowell of Tri-Tech Engineering stated that from traffic and engineering standpoint there is no specific size criteria for road signs. However, he stated that the proposed signage does not contradict any of the guidelines on how to properly site a sign on a roadway. The road is designed for speeds much faster than currently posted, and is travelled at much higher speeds than posted as well. A clearer sign, as proposed would increase safety. A small sign could cause someone unfamiliar with the destination to turn rapidly into the location which would pose a safety concern.

The Pastor of St Ignatius Parish, Andrew Nelson thanked the Board for granting a rehearing. Nelson stated that the Church has been in Somersworth since 1882 and isn't going anywhere. He continued that the Church is growing and the Church has had record number of registrations. Nelson stated that he wants to ensure that the church stays beautiful. The church is host to many funerals and many of the people who attend funerals may not be familiar with the location.

David Witham, representing Mayor Dana Hilliard read a letter from the Mayor in favor of the variance request.

David Witham, representing himself of 10 Rouleau Drive stated that he believed the current sign does not block the view, and is an opportunity to move the sign back even further. He noted that safety can be improved with a larger sign and stated he supported the variance request.

Nancy St. Pierre, a parishioner at St. Martin Church, who is a neighbor to the property, stated that the proposal was a good idea given there are 5 roadways that connect and a clearer sign would help people find the church who don't live in the area.

Dana Chamberlain of 88 West High Street stated that he does not see a safety concern with having a larger sign. Chamberlain stated the church has always been a good neighbor and they should be allowed to put up a sign.

Harold Guptill of 21 Tates Brook Road stated that he supported the proposal and believed the church would address safety concerns.

Brooks stated that the building is unique because it's non-conforming to the zone it is in but it is not the only church on the street, so it is not unique to the area. Brooks asked the applicant if there were any other factors that make the property unique.

Bruton stated that the church is one of the larger buildings in the area, including commercial uses. Bruton stated the Lions Club has a large sign and doesn't have a building at all. In context of the whole neighborhood, the church is unique. The property is unique in the regard that the building is large in comparison to the surrounding area. In addition, there are 5 roadways that run near the property whereas the other churches do not. The lot is 8.2 acres; most of the lots are approximately .25 acres.

Keiser asked how he relates a freestanding sign to the size of the building.

Bruton stated because of the sign denotes a destination, which is the building. People travelling to the location are travelling to the property as a whole, including the building. Brooks asked Saunders if there is language in the ordinance that allows a larger sign. Saunders stated there is based on the size of the building.

Keiser asked if there is a sign on the building.

Bruton stated there was.

Keiser asked what the intention would be with the sign that is mounted on the building.

Bruton stated that the church was going to remove it.

Brooks asked how having the mass hours on a separate sign would help in the case of a mass shooting.

Bruton stated that the main sign could be designated to the just the parish location.

Maskwa closed the public hearing at 8:09pm

Dumont stated that his feelings haven't changed and stated he was surprised the Board has had to have 2 meetings on this request.

Brooks stated he still disagrees on the safety aspect. The road is straight and does not see the necessity on the emergency considerations of the request.

Donohue stated after doing a site visit, moving the sign away from the street alleviates his concern for safety. Donohue stated that he believes all of the criteria have been met.

Keiser stated that a church is allowed in R-2 by special exception so it is unique; however there is a Baptist church behind it, although it is far smaller. Keiser asked

Saunders if being a designated active shooter situation gathering place can make the property unique.

Saunders stated it can make the property unique.

Brooks stated that the Board considering the placement of the sign is irrelevant.

Maskwa stated that he voted for the variance before, and they have addressed more safety concerns than the last hearing and stated that he would vote with it again.

Keiser asked how safety fits into the criteria.

Maskwa stated that drivers looking at the small print on the sign create a hardship and allowing a larger sign meets the substantial justice criteria.

Dumont moved to approve the variance due to all 5 criteria having been met, seconded by Donohue

Motion carried 4-1 with Brooks opposing.

Maskwa recessed the meeting at 8:19pm

- B) David & Pamela Landry are seeking a variance from Table 5.A.1 of the Zoning Ordinance for a proposed lot line adjustment resulting in one lot not having minimum lot area on property located at 12 Down Street, in the Residential Single Family-A (R1A) District, Assessor's Map 03, Lot 55, ZBA #04-2018.

Maskwa called the meeting back to order at 8:24pm.

FX Bruton, representing the applicant stated that the applicant owns two parcels and lives at 14 Down Street. Bruton gave a presentation of where the lot is located in relation to the other lots. The Zoning Ordinance requires 10000sqft of land area and the proposal would only allow 8560sqft. Bruton continued a driveway would need to be added to the second lot and in doing so, would allow the applicant to sell the second property. Bruton stated the property is unique because the properties are at a dead end. The first lot would change from 16000sqft to 28577sqft. The second lot would be 8560 square feet. Bruton stated there would be no change in the use from what is currently existing. The only thing that would change in the property would be the removal of some pavement and the addition of a driveway. The granting of the variance would be consistent with the lack of any change to the neighborhood and providing safe access to the large garage. No surrounding properties are affected at all by this change. The property would continue to function well. Bruton said would be a hardship to not permit the lot to be less than 10000sqft. The amount of pavement for the garage is necessary since the garage is large and it requires more room to turn in. The variance does substantial justice because of the location of the property and nothing about the property is changing other than the pavement. The proposal is not contrary to the spirit of the ordinance because it does not alter the character of the neighborhood and allows the applicant to sell the other parcel.

Daniel O'loné of Berry Engineer stated that the driveway, although seems large is required for the size of the garage that is there. The garage can accommodate two full

size trucks, which the applicant has. The size of the pavement proposed would allow the applicant to turn the truck around to drive out, rather than backing out.

Keiser asked if the portion of the building to the left of the blue part of the lot shown on the chart is a porch.

Bruton stated that it was.

Keiser asked if the porch meets the setback.

Bruton stated that it did.

Dumont asked if they were creating a non-conforming lot.

Bruton stated that they would be.

Dumont asked about expanding a deck for the property and the future need for a variance.

Bruton stated that the future buyer would be buying it knowing that was the case.

Maskwa asked if the house in the blue area was occupied.

Landry stated that it was vacant, but it was occupied 11 months ago.

Maskwa asked where the people in the other house park.

Bruton clarified where the owners and the other house parks.

Maskwa asked what the dimensions were for the proposed driveway.

O'lone stated it was 14 feet wide and 25-35 feet deep.

Keiser asked if the new driveway would meet requirements.

Brooks asked how many cars the new driveway would accommodate.

D'lone stated two.

Brooks asked how many bedrooms the house has.

Bruton stated 3.

Brooks asked if there were considerations about impervious coverage.

Saunders stated that because it is a single family home the subdivision rules do not apply and regulations would fall under the zoning ordinances, which it does not, or by Public Works.

Brooks asked what types of trucks is being used.

Landry said standard pickup trucks.

Maskwa asked about the location of the property and the location of the dead end.

Maskwa closed the public hearing at 8:44.

Keiser stated that there is no room to continue the road.

Keiser stated that it would not affect the surrounding property values because it does not change the visuals and would not affect the public interest. The proposal does not cause cars to be parked in the road. It is unique because of the placement of the garage on the property. It is within the spirit of the ordinances because it does not change the density of the neighborhood. Keiser stated that substantial justice is done because it allows the applicant to maintain the use of the garage and allows the applicant to sell the abutting property. The character of the neighborhood remains unchanged.

Brooks stated he agreed with Keiser.

Maskwa stated he agreed.

Dumont stated he agreed.

Donohue stated that he is unclear about the spirit of the ordinance. While the property is not changing visually, the ordinance set up lot size minimums to maintain a certain level of density.

Maskwa stated that generally he is against making property more non-conforming but this case is unique.

Keiser moved to approve the variance due to all 5 criteria being satisfied, seconded by Dumont. Motion carried 4-1 with Donohue opposing.

- C) Motion for Rehearing: A rehearing has been requested of the Zoning Board's decision to approve a variance from Table 4.A.5 of the Zoning Ordinance to allow automobile sales on property located at 20 Green Street, in the Business (B) District, Assessor's Map 10, Lot 176, ZBA #001-2018.

Maskwa stated that as this is a request for rehearing, no public hearing is required and continued that the Board can rehear a case due to the Board making an error or that new evidence has been submitted.

Keiser stated that he did not find any new information in the packet presented to the Board.

Maskwa stated that he agreed.

Keiser stated that there is an assumption that the applicant made an error because they did not state certain things about the use of the property.

Maskwa stated that the motion to re-hear was in regards to the second variance for car sales. The Board spent most of its time discussing the first variance request for vehicle repair.

Brooks stated that car sales and car repairs go hand in hand, one is ancillary to the other and it is hard to differentiate between them. Many times car repair places sell cars and car sales locations have to repair cars.

Maskwa stated that the Board discussed approving with conditions and did not.

Keiser stated that the ZBA sets the baseline and the Planning Board sets the individual specific criteria.

Maskwa stated that he recalls the conversation about the Planning Board coming up during the Board's deliberations.

Dumont asked Maskwa if he believed that the Board made an error.

Maskwa stated that he is conflicted because the Board may have considered one variance request more than the other.

Brooks stated that industrial use is allowed in the zone so theoretically you could build cars but not sell them.

Maskwa stated that the appeal was only for the sales aspect and the variance goes with the property. The assurances that the City received was one particular type of sales that the Board was comfortable with, and that if the use changed it might not be something that the Board would be comfortable with.

Brooks stated that the City Council compared the property to two auto repair facilities located in the downtown area, which is contradictory as the Council is appealing the auto sales aspect.

Saunders reminded the Board about the objection letter that was sent by the Walter-Mitchell Law Office.

Maskwa stated that he did not believe any new information was submitted in the letter.

Keiser stated he did not believe the Board made an error and the criteria was met in order to grant a variance.

Donohue stated that he would like to re-hear the case and that the Board was giving a large amount of thought to the sales piece. The criteria should be decided separately between the sales variance request and the repair variance request.

Keiser stated that both requests met the 5 criteria.

Saunders stated that the Board should discuss the re-hearing request rather than the criteria.

Brooks motioned to not re-hear the case because no new information was submitted and the Board did not make an error. Seconded by Keiser, motion carried 4-0-1 with Donohue abstaining.

- D) Lucas Stillwagon is seeking a variance from Table 4.A.1 of the Zoning Ordinance to allow residential use on street level on property located at 247 Main Street, in the Business (B) District, Assessor's Map 09, Lot 228, ZBA #05-2018.

Maskwa opened the public hearing at 9:08.

Lucas Stillwagon stated that 247 Main Street is currently a vacant lot. Stillwagon stated that a multi-unit property would not diminish the surrounding property values, but rather increase it and would be beneficial to the City's tax revenue. The application is not contrary to the public interest because it does not change the character of the community. Granting the variance will do substantial justice because the history of the lot has been residential as well as the character of the surrounding area. Stillwagon stated it was not against the spirit of the ordinance as it would promote the welfare of the surrounding area.

Diane Adams of 10 Summer Street, who abuts the property stated that she is concerned with the proposal as the roads are not repaired and children often play in the street.

Saunders stated that 8 parking spaces would be required if office space would be required for the total building.

Keiser asked if 2 apartments are allowed.

Saunders stated she hasn't looked at that piece yet.

Keiser asked the applicant to describe the surrounding neighborhood that the lot sits.

Stillwagon stated that it is mostly residential and it would be difficult to have trucks making deliveries to a commercial venture.

Brooks asked as this is a conceptual plan, granting a variance would allow an office space to fluctuate in size.

Saunders stated there is no density requirement for the business zone and the Board can limit the maximum size of the apartment.

Keiser stated that in theory the applicant can put nothing on the first floor.

Stillwagon stated he would put a business on the first floor if it was required. His proposal he believes is best for that area.

Maskwa asked if it would be a new building.

Saunders stated it would and would have to go before the Planning Board.

Brooks asked if it was only residential, would it still have to go before the Planning Board.

Saunders stated if it was for more than two units.

Maskwa stated that the variance would be required to eliminate the need for commercial on the first floor entirely, but is only asking for an apartment on the back-side of the first floor.

Maskwa closed the public hearing at 9:19pm.

Donohue stated that he does not believe the proposal meets the spirit of the ordinance as the spirit of the ordinance is to make the zone more commercial. He stated he does not believe the structure of the building keeps with the spirit of the ordinance.

Brooks stated that he agreed and that there are many vacant businesses on that street and the section of the street is mostly residential.

Donohue stated that he does not see how that commercial space is usable.

Brooks stated that the one way street creates a unique problem with traffic.

Saunders stated that the business district is in place and whether it seems appropriately zoned or not is irrelevant, but asked if the residential use meets the criteria.

Maskwa stated that he agrees.

Saunders stated that the Board can take the size of the apartment into consideration but not the commercial, and the commercial use is required.

Keiser stated that he did not believe the proposal would not impact the surrounding property values. Granting the variance is not contrary to the public interest because the applicant is willing to put in an office on the first floor. The applicant is keeping with the spirit of the ordinance. It is unique in its setting as it is a residential area. The proposal is efficiently using the space and is doing substantial justice because it allows residential and commercial in the business district efficiently.

Maskwa asked about conditions that could be placed to mandate the size of the commercial and residential units.

Saunders stated that the Board could place conditions, and did with the Somersworth Hotel proposal.

Keiser stated that the Board can but the ordinance already requires commercial on the first floor.

Saunders stated that putting a maximum dimension on the residential dimension as the applicant could minimize the commercial space to obsolescence.

Maskwa stated that the variance is asking for residential on the street level and that without stipulating commercial use be required, the applicant could have the entire building be residential.

Donohue stated that he is still conflicted about the spirit of the ordinance piece and the uniqueness criteria and being an empty lot, there is nothing unique about the property and there is no hardship because the applicant could just create a conforming lot.

Brooks stated that the Board could put a percentage stipulation on the size of the commercial and residential units. Using a percentage would be better as the building is still in a conceptual form.

Donohue asked if this building is constructed similarly to the Somersworth Hotel.

Brooks stated that there were similarities in the proposed construction and the commercial being bigger requires more parking spaces.

Brooks moved to approve the variance due to all 5 criteria being met due to the unique size and placement of the building, with the condition that no more than 75% of the building be limited to residential on the first floor. Seconded by Keiser, motion carried 4-1 with Donohue opposing.

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

Maskwa thanked the City Planner for her help in guiding the Board and thanked the rest of the Board.

Dumont stated he feels the same if this is his last meeting.

Keiser thanked Maskwa and Dumont

Motion: Dumont moved to adjourn the meeting.

Seconded by Brooks.

Motion carried 5-0 and the meeting adjourned at 9:43pm.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Chr DuBois', written over a horizontal line.

Christien DuBois Assessing/Code Clerk
Somersworth Zoning Board of Adjustment