

**SOMERSWORTH ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF MEETING**  
**FEBRUARY 14, 2018**

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

**MEMBERS ABSENT:** Donald Routhier

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

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

Maskwa noted that the Board was short a member and anyone who would like to postpone the vote on their case could do so.

**1) APPROVAL OF THE MINUTES OF THE MEETING OF JANUARY 3, 2018.**

**Motion:** Brooks moved to approve the minutes of the meeting of January 3, 2018

Seconded by Keiser.

The vote passed 3-0 with one abstention.

**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 stated that this item was a continuance from last month due to not having a full board. Maskwa re-opened the public hearing at 7:03pm.

Upon seeing that the applicant was not yet in attendance from the meeting Maskwa closed the public hearing at 7:04pm and moved on to the next agenda item.

Maskwa Re-opened the public hearing at 7:40pm as the applicant arrived at the meeting.

Maskwa asked the applicant if they wished to postpone the vote on this item due to the Board being short a member, the applicant stated that they did.

Maskwa closed the public hearing at 7:41pm.

Roland motioned to continue the item to the next regularly scheduled meeting, seconded by Brooks

Motion passed 4-0.

- B) Upland, LLC is seeking a variance from Section 10.G of the Zoning Ordinance for the development of single family homes within the Groundwater Protection District without hooking up to the municipal sewage disposal system on property located at 138 Rocky Hill Road, in the Residential Single Family (R1) District, Assessor's Map 54, Lot 01, ZBA #17-2017.

Maskwa reopened the public hearing at 7:02pm.

Saunders stated that a 3<sup>rd</sup> party review had been received on February 2<sup>nd</sup> and that if the Board had questions, she would be happy to answer them.

Maskwa asked for clarification about a piece of the third party review's statement about whether the word "exceeded" in regards the requirements was a good thing or a bad thing, Maskwa also asked whether the Board should go through the whole process again or pick up where they left off.

Keiser stated the board should pick up where left at the last meeting.

David Francoeur, the applicant, stated that when he was originally looking to purchase the property he was under the impression there had been already been a variance granted to the property. Francoeur highlighted several items on the 3<sup>rd</sup> party review that indicated that his proposal adheres to, and exceeds the minimum requirements of the groundwater protection district, meets the Zoning Board's, five criteria and the guidelines set forth by the Department of Environmental Services.

Francoeur stated that the passive systems that he is utilizing are superior to the active septic systems and will run for far longer, and are safer than the minimum requirements. Francoeur stated that City sewer is 1.5 miles away from the proposed development and it is not reasonable to have him connect to City sewer. In addition, the cost for him to re-pave the road if he were to have to connect to City sewer would be beyond his capacity to pay.

Francoeur highlighted from the report that the applicants septic systems met or exceed all of the requirements. Francoeur stated that his project is only using 1/6<sup>th</sup> of the capacity for each lot and that the systems being proposed area reasonable alternative.

Francoeur stated that septic systems would not diminish property values because septic systems already exist within the neighborhood. Francoeur stated that a conservation subdivision increases property values because a portion of land is guaranteed to not be developed. Francoeur stated that the application is not contrary to the public interest because his proposal meets or exceeds State requirements. Francoeur stated that connecting to the sewer system would pose an unnecessary hardship because of the distance from the existing sewer line, in addition, other developments and lots in the area were exempted from having to connect. The use is reasonable because he has taken steps to ensure he is using a quality septic system. Francoeur continued that other property owners have been able to place septic systems without specific limitations on the number. Granting the variance would do substantial justice because it would allow the applicant to develop the property to a similar standard other developers

have been approved for. His proposal is not contrary to the spirit of the ordinance because the project meets or exceeds the requirements set forth by the State.

Brian Croteau of 136 Rocky Hill Road stated that he supported the development. He stated that he has no problem with the development.

Steve McHugh of 6 Shawns Way stated that he supported the development and stated that he has never had any water issues.

Maskwa read a letter that he had received from William L Connor of Pinewood Drive at applauded the Board's decision to require a third party review.

Brooks asked the applicant about the passive systems and how they worked and maintenance they required.

Francoeur explained that the maintenance required for passive systems was less than the active system.

Keiser asked if the passive system has a name.

Bob Stowell from Tri-Tech Engineering stated that the name is Eljen system and the Advanced Enviro septic system.

Keiser asked if to use the phrase alternative passive system is commonly associated with a certain name for a system.

Stowell answered that only certain systems can be referred to alternative system.

Maskwa closed the Public hearing at 7:35.

Brooks asked if the plan from the previous applicant is irrelevant that was submitted.

Saunders stated that it was.

Maskwa stated that the board's initial concern was the public interest piece of the criteria, which is why they had the applicant receive a third party review. The report, to him indicates that the septic systems are well designed and meet the standards of the Groundwater Protection District. Maskwa continued that there is certainly a hardship to require the applicant to obtain City sewer. Maskwa stated that he supports the application.

Keiser stated that he agreed with Maskwa, but stated he would like to be sure that the alternative passive systems are used.

Brooks stated that he leans towards supporting the application, but his reservation is the quantity of the lots and wonders how the Planning review would play off this variance.

Maskwa stated that when determining lot sizes, there are rules the Planning Board considers regarding lot sizes and how many units you can put in a certain area and different types of subdivisions.

Saunders stated that the City usually recommends the applicants go before the ZBA before the Planning Board so they do not fully engineer their plans.

Keiser stated that the previous applicant was not the same property owner as this one nor the same proposal, in fact, this proposal has 28 homes instead of 15.

Keiser moved to approve the variance for the applicant with the condition that the sewer system to be used is the alternative passive design similar to the Eljen or the Advanced Enviro septic system.

Seconded by Dumont

Motion passed 4-0.

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

None

3) **NEW BUSINESS**

A) Motion for Rehearing: A rehearing has been requested of the Zoning Board's decision to deny 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.

Saunders stated that there does not need to be a public hearing and the information in the packet is to be considered. The Board has to decide if the information is compelling enough to reschedule a public hearing.

Dumont stated that an abutter had raised a concern about a traffic obstruction. Dumont stated that he had visited the property and did not find an obstruction with the current sign, and that if a new sign was installed there is no reason to move it back.

Brooks stated that the area the church is in is a very level area and has no vegetation and states there is no reason to have a rehearing.

Saunders stated that a reason for a rehearing would be if the Board erred or new information has been submitted. She also stated when in doubt, reschedule a rehearing.

Dumont stated that he believed one of the no-votes was because of an obstruction that was believed to have existed, there is no obstruction, therefore the Board made an error and ought to have a rehearing.

Maskwa stated that he did not remember some of the information in the packet being raised and believed; new information has been submitted and believes a rehearing is necessary.

Keiser asked Saunders if the Board should reschedule the vote because of the fact the Board is missing a member. Keiser also asked that if the Board decides to rehear

it if the Board can get a copy of the Zoning Board decision from Portsmouth the applicant cites.

Saunders stated that the Board should ask the applicant if they want to move forward with the vote.

FX Bruton, the applicant's attorney stated that they wish to have the Board proceed with a vote.

Motion made by Dumont to rehear the variance request seconded by Keiser, vote passed 3-1.

- B) Hispano Suizo, LLC is seeking an administrative appeal of the December 12, 2017 decision that the nonconforming use has ceased for greater than twelve months and the use can only resume if a variance is issued for property located at 20 Green Street, in the Business (B) District, Assessor's Map 10, Lot 176, ZBA #002-2018.

Maskwa opened the public hearing at 7:51pm.

Brian Barrington from the Coolidge Law Firm representing the applicant stated that several people have agreed to testify as to the nature of the building. The City Council decided that an automotive garage is not an acceptable use in the business district.

David Francoeur stated that he owns the property across the street from the building and stated that he remembers cars being repaired some time ago, but stated he has not observed any repairs being made recently and stated he does not see an issue with cars being repaired in the neighborhood.

Donald Dodier, who worked at 20 Green Street, states he does contracting work, specifically a wood shop, but keeps a bay open to repair his vehicles. He also stores a vehicle in the building during the winter time. He also maintains the property. He stated that the building's best use is for the use as a garage. He has stated he's used the garage for 5 years.

Jamie Tour, stated that he has been using the garage for 2-3 years. The intended use of the building is an automotive garage. He stated that he works on his vehicle in the garage. He stated that he has seen several cars for sale on the lot in the past. He stated that there is a concrete floor and the ceiling is designed to occupy a lift. It is and has been a repair shop. It has never abandoned the use of being a garage.

Dr. Bennett, the applicant stated that he has been trying to obtain a buyer for some time. He purchased the property on a foreclosure sale. Initially the building was used as an auto repair shop, the property became vacant and has never filled the space since, but has sold cars on and off from the property. He stated that the intended use of the building is a garage. He stated that the property has never been abandoned for an extended period of time.

Barrington summarized the application. He stated that the property assessing card stated that the property is a garage. Barrington stated that dealerships and franchises have taken over the car repair business and not sole proprietors and that makes the property unique. He stated that the property has always been in use for the last 12 months. He continued that the property owner has a constitutional right to the grandfathering of the property.

Keiser asked for comments by Director Saunders and how the City determined the use had been abandoned.

Saunders stated that in her entire tenure the building was never used for commercial use. She stated that there is a difference between someone borrowing the building for personal use and commercial use. The building has never been used as an income generating property. She stated she was asked for that opinion in December of 2017.

Keiser asked what the status of the property when the City owned it.

Saunders stated that the building was vacant.

Maskwa clarified the time in which the City owned the property.

Brooks asked that when the City took possession of the property, were there cars in the garage.

Saunders stated that there was not and the tenant was a woodworking tenant.

Saunders stated that when she wrote her letter, she quoted the Zoning Ordinance, which establishes commercial uses and that the use of the building does not meet the definition of a commercial use.

Brooks asked what constitutes a home occupation versus commercial use from a building that is used to repair personal property.

Saunders read the home occupation ordinance and explained the difference between working on your car in your driveway for income generating purposes versus using a business space for personal use.

Barrington stated that there was a business being run out of the property and Green Street was one of many buildings being used. He stated that there isn't a No Trespassing sign on the property.

Maskwa closed the public hearing at 8:27pm.

Brooks stated that he has more questions about specific dates of when events occurred such as the eviction versus the time of acquiring the property.

Saunders stated that it takes several months from the time of tax deed to when eviction occurs.

Dumont stated that there were no advertisements for commercial repair on the property.

Saunders stated that there had been no sign permits for the property.

Roland stated that he did not believe the property is being used from commercial use.

Keiser stated that based on the evidence presented tonight the letter should still stand.

Maskwa stated that the fact the building was owned by the City for 9 days short of a year, would indicate it was certainly not used during that time as a commercial garage. However, the building itself is a garage. He believes that a variance would be required if the Board finds the use has been abandoned.

Keiser motioned to affirm the administrative decision and deny the request for an administrative appeal of the December 12, 2017 decision that the nonconforming use has ceased for greater than twelve months and the use can only resume if a variance is issued, seconded by Dumont.

Brooks stated that he is having trouble with the use of the property.

Saunders stated that Board has to consider the definition of commercial use.

Motion carried 3-1.

- C) Hispano Suizo, LLC is seeking a variance from Table 4.A.5 of the Zoning Ordinance to allow auto repair and sales on property located at 20 Green Street, in the Business (B) District, Assessor's Map 10, Lot 176, ZBA #002-2018.

Maskwa opened the public hearing at 8:36pm.

Barrington asked that all evidence previously submitted be entered into the record

Maskwa stated that it would.

Dodier testified that he repaired all 5 of his cars at the garage and that he does woodworking out of the garage. The property is not feasible for a commercial woodworking facility due to the quantity of electricity the use would require. He stated that he did not sell any of the cars out of the garage. Several neighbors use the lot to sell their cars.

Barrington stated that people who foreclose on their house can continue to live there until they are served with an eviction, and this case ought to be no different.

Barrington stated that it is not reasonable to alter the exterior of the building due to the restrictions of the Historical District. He continued that the upstairs of the building is not conducive to a residential unit. The entire lot is paved, and the property is being assessed as a garage. Barrington stated that the neighbors have stated that they believe the use would be a benefit to the downtown and therefore will not diminish property values. Barrington stated that the public interest is reflected in a continuation of the historical use of the downtown. The property owner has

maintained the exterior of the property. The property cannot be expanded, it will continue being used as a small commercial establishment and the public interest supports having an option of small garages in the area. Barrington stated that he is unsure of why the City prohibited garages in the business district, but preserving the historic downtown is in the public interest. The proposed use is a reasonable one because it's a continuation of what has been there. It would be an unnecessary hardship because the property was built for a unique purpose, and disallowing that use would make reoccupying the property incredibly difficult. Granting the variance would not be contrary to the spirit of the ordinance because the use has never been discontinued, and the ordinance was written to allow existing use of the property.

Keiser asked how large the lot is.

Barrington answered that the lot 2/3 of an acre. Barrington stated that this application would now have to go before site review, and denying the variance would leave the applicant with a building with no purpose.

Maskwa closed the public hearing at 8:48pm

Dumont asked if the variance was granted, and the property sold, would the variance stay.

Saunders stated that it would.

Brooks asked if the Board were to approve the variance, could the Planning Board put a limitation on the number of cars.

Saunders stated yes, and that so could the Zoning Board.

Brooks stated that it is incorrect to say the building cannot be altered, but stated that the intended use is a garage.

Maskwa stated that he agreed with Brooks, it's always been used as a garage. The property could be most easily used as a garage. Maskwa stated that there would have to be two motions, one for auto repair, and one for auto sales.

Saunders stated that there is a whole series of permitted uses in the district that the building could be used for.

Brooks asked if it would be worthwhile to receive the HDC's opinion on the use.

Saunders stated it would not be appropriate as they just look at the building.

Keiser moved to approve the variance for auto repair, seconded by Dumont.

Keiser added that using the building as a repair garage would not diminish property value, using the garage as it is intended is appropriate, and meets substantial justice, and is not contrary to the spirit of the ordinance.

Maskwa stated he agrees.

Motion carried 4-0.

Keiser moved to approve the variance for auto sales, seconded by Brooks.

Saunders asked if the Board wanted to restrict the number of cars.

Brooks and Maskwa stated that they wanted to defer to the Planning Board for judgement on restrictions.

Motion carried 4-0.



- D) Eastport Property Holdings, LLC is seeking a variance from Section 6.C.1.c of the Zoning Ordinance to allow the property to continue the two-family use although it has ceased for greater than twelve months on property located at 284 Main Street, in the Business (B) District, Assessor's Map 09, Lot 284, ZBA #03-2018.

Maskwa opened the public hearing at 9:00pm.

The owner of Eastport Property Holdings stated that the building has appeared to be a 2-family property since the early 1900's. It has never been used for any other purpose.

Keiser asked the applicant to describe the property and how the applicant knows it was a 2-family.

The applicant said there is evidence of a kitchen on the second floor and according to the tax card it is a multi-family.

Keiser asked how the applicant is going to lay out a two family structure.

The applicant said one unit on the first floor, and one unit on the second floor.

Brooks asked how many square feet each unit will be.

The applicant stated it would be more than 1000sqft.

Maskwa asked Saunders if this was previously a two-family and if the property had started to be renovated and stopped.

Saunders stated that was correct.

Maskwa closed the public hearing at 9:07.

Brooks stated that he has no issue with the continuation of the use because the property doesn't look anything like a commercial building.

Keiser stated that the surrounding area looks residential and not commercial, and it would be unjust to not allow them to use the property residentially when the surrounding properties do. It is not contrary to the spirit of the ordinance because the area is primarily residential.

Maskwa stated he believed the applicant met the five criteria and stated he did not believe it would diminish the surrounding property values.

Keiser moved to approve the variance, seconded by Dumont.

Motion carried 4-0.

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

None

**Motion:** Dumont moved to adjourn the meeting.

Seconded by Brooks

Motion passed 4-0

Meeting adjourned at 9:20pm.

Respectfully submitted:

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

Christien DuBois Assessing/Code Clerk  
Somersworth Zoning Board of Adjustment