

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
April 3, 2019

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Coty Donahue,
Brad Fredette, Glenn Garvin, Christien DuBois
MEMBERS ABESENT: Donald Routhier
STAFF PRESENT: Shanna B. Saunders, Director of Planning and
Community Development

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

Keiser welcomed two new alternate members to the Board; DuBois and Garvin.
Keiser appointed DuBois as full voting member for the meeting in place of Routhier.

1) Approval of the minutes of the meeting of February 6, 2019.

Donohue stated there was a minor edit which needed to be made on the second to last page, changing the word “developed” to “undeveloped.”

Donohue **MOVED** to accept the minutes as amended. Brooks seconded the motion. The **MOTION CARRIED** 5-0.

2) OLD BUSINESS

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

No Discussion

3) NEW BUSINESS

A) Krishnan, Ramesh is seeking a variance from Table 5.A.1 of the Zoning Ordinance to place a structure in the front setback on property located at 61 West High Street, in the Residential Duplex (R2) District, Assessor’s Map 13, Lot 36, ZBA# 04-2019 - PUBLIC HEARING.

Saunders gave a summary of the request. The property in questions has two front setbacks. In the R2 zone where this property is located, setbacks are required to be 25 feet. The proposed garage is 12 feet from the front property line.

Keiser opened the public hearing at 7:07 PM.

Krishnan, applicant, stated that he intended to build a 2- car garage next to his residence. He said that he had submitted two separate proposals. The first would place the garage directly next to the house, and this proposal would place the structure closer to the street. The second proposal placed the structure further to the right and would leave more space between the garage and the street.

Krishnan explained that the residence is a corner lot on a cul de sac. The area where the garage is to be built is not on the main road. The applicant stated that many of the other residences in this neighborhood have similar garages and this addition to his property would make his residence better conform to the surrounding properties. He clarified that this garage was being built for residential use only and he felt it would increase the property value.

Krishnan clarified that his property is a corner lot with two frontages. His address is on West High Street, but the proposed garage is on Ron Wyn Drive, which he would like to consider a "side" road. He has discovered that much of the property is ledge with steep gradients, and digging or blasting may cause damage to the foundation of his residence.

Krishnan stated that he felt the request was reasonable. The proposal is within zoning regulations for this district. There will still be 15 feet between the garage and the street.

Krishnan stated that he intended to use the existing entry to the property and would not be adding an entryway.

Krishnan said he is not asking for special preference, but rather to have the same conformity as other properties in the area which already have 2-car garages.

Keiser invited abutters to stand and address the Board.

Keiser read two letters from two abutting residence of the property, James Skladany and Carolyn Curran;

Ms. Curran, resident of neighboring property, stated in her letter that he had no objections to the garage being built and felt it would be a nice addition to the neighborhood.

James Skladany, resident of a neighboring property, stated in his letter that he approved the addition of the garage and fully supports Krishnan.

Skladany, West High Street, addressed the Board and stated that he felt that his property values will increase as well as those of the neighborhood. He said that his understanding is the current carport on the applicant's property will be removed and the proposed garage will go in that space.

Fredette inquired if the applicant had spoken to reputable contractors and if they had suggested that this is the best option. Fredette said that regardless of which option the applicant prefers for the garage, a variance will be needed. Fredette also inquired if the applicant intended to expand his driveway.

Krishnan confirmed that if the garage is built where the carport currently sits, he will need to expand the driveway

Keiser asked if the garage would be connected to house or off to the side.

Krishnan said there would be less of a variance if they built the garage next to existing carport as opposed to lining the structure up with house. It would be 10- feet from property line. Krishnan said he would prefer option 2, in which the garage would be offset slightly from the house. He said there would likely be some digging involved

Dubois asked if the room over the existing carport would be removed.

Krishnan said that the room above the carport would remain and the garage would be built under room.

Brooks stated that upon looking at the property, it appears there may have been an under-the-house garage at some point. He asked the applicant if he would consider having a garage under the property again.

Krishnan said there is now a finished basement and putting a garage under the house would take away from his living area.

Keiser stated that a hardship exists that there is no other reasonable place on the lot to place a garage. The best access to the house is through that end of the building. Keiser suggested that another option would be to put the garage on top of the ledge in the backyard.

Krishnan said that there is not enough room in back of the house and if they were to build the garage there, there would be much more work involved and they would lose some backyard space.

Keiser said that the applicant need to be aware that the sidewalk can't be blocked with parked cars.

Donohue inquired about the setback from the current carport? Krishnan was not certain of the current setback. Donohue stated that it doesn't look much different. Krishnan surmised that it extends another 5 feet. He said that they intend to build a small garage to stay within the variance.

Keiser closed the public hearing at 7:20 pm.

Garvin stated that in Table 5.A.1 of the Zoning Ordinance, it was indicated that there was a setback with water and sewer in front. He said there must be reason for this particular setback distance with the road there. Garvin inquired if the setback is changed to 10 feet if it would affect water and sewer.

Saunders stated that there are no road or utility issues on Ron Wyn Drive. She said that in more rural settings, there are sometimes larger front setbacks to give the appearance of space and openness.

Garvin stated that he had driven by the property and felt this proposed garage would work well.

Brooks asked if there could be any safety concerns with the proximity of the garage to the street as well as the way the driveway is situated. He said that if the resident is pulling out of the garage, they need to be able to see oncoming traffic.

Saunders said there may be a minor safety aspects in general when a community determines setback values The street line is not as well defined, there are no striped parking stalls. She said,

however in this case, the larger setbacks usually accompany larger lot sizes so there is not much of a safety issue here.

Dubois stated that if the lot in question was vacant, it would not conform to the minimum lot area. The spirit of the ordinance is to regulate density. Dubois expressed concerns regarding increasing density. He said that the applicant had mentioned the other houses in the neighborhood having garages, but many do not.

Dubois questioned the uniqueness of this property. Other houses in this neighborhood have ledges in their yards as well; it runs up the entire street. The prevalence of the ledge throughout the street indicates it is not a hardship for this one residence. He questioned if other properties would be able to have this exception to the rules as well.

Donohue concurred with Dubois in regards to getting closer to the road and increasing density. Dubois said that after hearing Saunders' description of utilities and reasons for particular setback distances he has changed his mind.

Dubois inquired about the definition of uniqueness and whether it applies to one property or can apply to a "unique situation" which may affect multiple properties in the same area. Dubois asked if the ledge rock on this street would make all the properties unique and if the board would need to grant variances to all properties in the area if they applied. Dubois inquired if a variance could be granted for a whole neighborhood as opposed to one residence.

Dubois stated that he felt the proposed garage would not diminish property values and it does seem to be a reasonable request.

Brooks said that all the garages in this area are beside the houses and not encroaching on the street. The proposed garage would be a structure closer to the street, making it unique. He stated that he felt the variance wouldn't diminish property values at all.

Brooks addressed the proximity of the garage to the street. Due to the length of the average car, if the garage is full then visitors would have to park on the street or block the sidewalk which would be an issue. Brooks said that the ledge makes construction difficult, but not impossible.

Fredette inquired if the garage doors would face Ron Wyn Drive. The applicant confirmed they would face Ron Wyn Drive.

Fredette stated that what makes this situation unique is that this property predates Ron Wyn Drive; the residence was built prior to Ron Wyn being built. When the property was constructed, there was no side yard setback issue. He stated that this puts the house in a unique situation.

Fredette said it would be a hardship for the applicant if he had to reconfigure the inside of his house (for an under the house garage). Essentially what he is asking for is one more parking space.

Dubois said that the hardship cited by the owner was land related, specifically the ledge on his property. Dubois stated that this ledge runs all the way up the hill, not just on the applicant's lot.

Keiser agreed that the ledge does run up the entire street, but the hardship could be that other applicants in this area may have more buildable space on their property. The applicant's house is in the center of the lot, which was not originally a corner lot. Keiser stated there is no other reasonable place on the applicant's property to build a garage.

There was a discussion regarding the size of the proposed garage. It was proposed to be 22 x 24 feet.

Keiser suggested it would be a better option to have an entrance on the Ron Wyn Drive side. There could be an issue of safety as far as response time from oncoming traffic when someone is pulling out of the driveway onto West High Street, and trees blocking the view of traffic could be an equal safety issue.

Keiser felt that granting the variance would not affect other homeowners in area, but understood that some of the members of the board didn't agree. Keiser stated that substantial justice is when there is a hardship and the variance would alleviate the hardship.

Dubois spoke about the goods gained by applicant versus the goods gained by the public if the board granted the variance. He felt that if this variance is granted on the grounds of the ledge being present and making building difficult, then there is more gained by the applicant than the public because many people are affected by the ledge.

Donohue stated that when the placement of the house in the lot is considered along with the presence of the ledge, this property is different than others in the area. The buildable area is different and there are setbacks on two sides.

Dubois inquired if the fact that the property is on a corner lot can be considered by the Board in its decision.

Keiser answered that this can be considered. The zoning requires both sides to meet a 25-foot setback. He reminded the board of a similar case which had come before the Board a while back regarding a front fence.

Dubois reiterated that the hardship is proportionally shared by other neighbors, not just the applicant.

Fredette said that what was being proposed is an expansion of an existing structure. The applicant would be making what is already there, larger. There is already an attached structure (carport) on this end of the house.

Keiser said that there is approximately a 15-foot distance between the property line to the street.

Fredette said that he felt the applicant had done his due diligence to obtain the variance and build the garage in the least impactful way possible.

Keiser asked for a sense of the Board for the application at this point in the discussion.

Fredette MOVED to approve the variance for the reasons discussed tonight and the fact that all 5 criteria have been met. Donohue seconded the motion.

Saunders suggested that the variance can be phrased to read “based on proposal submitted to the ZBA” or “in keeping with proposal submitted to the ZBA.”

Fredette stated that when the aforementioned fence variance had come before the Board, the Department of Public Works had done a review. He inquired if the Board felt that this should be a condition on this application.

Dubois said he felt that a review by DPW was unnecessary. The previous fence application was on a busy street where this property is not. He said a DPW review would create more hurdles.

Fredette **AMENDED** his motion to include Saunderson's phrasing. Donohue seconded the motion.

Dubois and Brooks opposed. The **MOTION CARRIED** by 3 – 2 vote.

The Chairman let the Board know that he would be opening both of the next agenda items together for discussion but that 2 separate votes would; need to be taken.

B) Berndston, Bill is seeking a variance from 19.20.D.4.h of the Zoning Ordinance to have a Changeable Copy Sign on the property located at 49 Market Street, in the Business Historic (BH) District, Assessor's Map 11, Lot 78, ZBA# 05-2019 - PUBLIC HEARING.

C) Berndston, Bill is seeking a variance from 19.20.D.4.h.vii of the Zoning Ordinance to have a larger Changeable Copy Sign than is allowed on the property located at 49 Market Street, in the Business Historic (BH) District, Assessor's Map 11, Lot 78, ZBA# 05-2019 - PUBLIC HEARING.

Keiser opened the Public Hearing at 7:47 pm.

Saunders gave a brief overview of the variances being requested. The first variance would allow changeable copy sign. Changeable copy is defined as a changeable electronic/digital sign or one with manual letters. These changeable copy signs are not allowed in this district.

Bill Berndston, Owner of the Hall at Great Falls, first thanked City Staff for all the help and guidance he has been given through this process. He stated that the property is a function hall and event center. He explained that the proposed sign is 5-feet wide and would be just under 4-feet tall which would fall into freestanding sign requirements.

Berndston stated that they are requesting variance to erect a freestanding sign which also contains a changeable copy component. They are currently allowed a freestanding sign intended to display permanent information such as business name and hours, etc.

Berndston said they have options to display event signs as well, but there are restrictions on how long they can be displayed and when they can be placed.

Berndston said the proposed sign would have the changeable component on the lower half, which will look like a cabinet with a door which opens to allow the letters to be changed.

Berndston detailed the issues his business faces with other types of signs: Most of the businesses in the area offer products or services which are constant and do not change. The Hall, on the other hand, is an event facility with services which change frequently. In order to advertise the services, signage would need to change frequently. With special event signs that he is allowed to have, they need to withstand weather. Berndston said that a 2 x 3 foot sign runs around \$43.50 each. Those signs would be for one-time events and could not be reused.

Berndston said that in his proposal, he listed a hypothetical situation with 3 events occurring within 14 days. Current zoning would prevent them from advertising all of these the events and if they were to use special event signs, it would become expensive. He stated that it would be nice if the Hall could advertise more than 14-days in advance.

A summary was given of the second requested variance regarding sign size. The ordinance says that a sign can be 1/3 of the free-standing size. The proposal for this sign is much bigger.

Fredette inquired what the maximum allowable sign size is for this area. It was stated that the maximum is 50 sqf.

Brooks said that in the file, it mentions the property is in the Historic District. He stated this sign will have to go before the Historic District Commission as well.

Berndston said it would be cost prohibitive to get multiple event signs. He stated that in their proposal, they have tried to build an attractive sign fitting of the Historic District. He said that using special event signs, which are currently allowed, is not aesthetically pleasing and does not fit well with the district.

Berndston said that he felt the proposed sign would be reasonable because it is more compatible with the goal of preserving the historic character of the area than the other types of allowable signs. He stated it would not be contrary to public interest. He felt the business contributes to strengthening the economy and bringing money into the City, but they need to better promote and advertise events at the facility.

Berndston stated that the expense and inconvenience of purchasing event signs for each event constitute a hardship. The proposed sign would allow the Hall to use the same letters and just change the wording. The Hall would also be able to advertise earlier than 14-days prior to an event. He felt that substantial justice would be done by saving the business time and money and making the advertising process more convenient.

The applicant spoke about a similar changeable copy sign in Lee outside a church. The copy is changed to reflect special services and dates. Berndston stated that he did not think changing copy would be objectionable and in fact some might not even notice the sign.

Keiser read a letter from abutters David Burgess and Travis Parent of 5 Prospect Street. Mr. Burgess and Mr. Parent stated their opposition to the sign and stated that LED signage should not be allowed and would not fit in with this district.

Berndston clarified that the proposed sign will not have any internal lighting. There will be black letters on an unlit background. The size complies with regulations for a freestanding sign, they are just requesting a space on the sign for changeable copy.

Fredette said the applicant had spoken about other types of signs for special events and inquired if a business would be able to put these types of signs out continually and if there was a time limit on A-frame signs.

Saunders stated that continual use of A-frame signs is allowed with back to back events.

Brooks said that with special event signs, they can be placed 14-days prior to an event and no sooner. He inquired if the changeable copy aspect is similar and if the city regulates how far in advance the sign can be changed.

Saunders read from the current ordinance which states the message could promote 14 days in advance.

Dubois inquired if it would be possible to put restriction on the use of LEDs. Saunders responded yes.

Fredette asked what makes this property unique. The VFW has a similar organization which is also in the historic district. He said the application states it is the only facility like this in the area.

Berndston said that when hosting events that change constantly, you need to be able to advertise. The VFW has permanent signs, it may possibly have some A-Frame signs as well. Berndston said that this style of sign being proposed is appropriate for the historic district and would be more preferable to other types of signs.

Fredette inquired what makes this property different.

Berndston referenced a section on the application for variance which reads "alternatively, applicant can meet hardship requirement because of special conditions." He states that there is no other reasonable use for the property permitted under the ordinance. The property has been approved as a function hall and it differs from other businesses due to the frequently changing events which would require frequent change in signage. Mr. Berndston said that the business can't attract people if the people do not know what events are being held there. The Hall will not function as an event center without event signage. Berndston mentioned the possibility of placing a wall sign directly on the building, but felt that it was not a good option.

Donohue inquired if the building's function can be applied to determine hardship criteria. It was stated that the building's function can be considered.

Dubois asked Berndston what he felt was the most reasonable use for this facility and whether clientele are familiar with the facility.

Berndston said that concerts, plays, weddings, and parties are amongst the events hosted. He stated that it is a relatively new facility and they are trying to generate business. Some business is through word of mouth. While much of the clientele is local, some people are coming from out of town to utilize the facility.

Dubois inquired if the facility is on a busy road and if the proposed size of sign is necessary for the street.

Berndston stated that the current sign is too small and doesn't stand out to those driving by the property. He has had members of the community mention they did not know the facility was even there. He said he felt that the proposed sign will be tasteful and appealing in the historic district, but also needs to be big enough to be seen. Berndston stated it would be no bigger than size allowable for freestanding signs by the ordinance.

Brooks asked the applicant if he was proposing any lighting for the sign.

Berndston stated there is currently an external light for the existing sign, but they are not proposing any lighting which would be flashing or bright.

Brooks clarified that his understanding is that sign lighting in this area was required to be direct, not internally lit.

Keiser asked the applicant why he wanted to have the changeable portion of the sign larger than is currently allowed by code.

Berndston stated that they want the sign to be readable and allow room for all the necessary information; if the changeable portion size is reduced they will not be able to fit as much information. He stated that some events might need more space, and a smaller sign would leave them less space to advertise.

Saunders read from the ordinance that a changeable copy sign can be no larger than 1/3 the size of the overall freestanding sign.

Saunders said that the ordinance does not differentiate between types of lighting and the Board may want to add that as a condition.

Berndston said that that changeable copy display area measures 29 inches x 50 inches, or 10.07 sf.

Fredette asked if the Board could make a condition of approval that this signage can only be used as long as the facility is being used as a function hall.

Saunders answered that the Board can tie the condition to use of the property, but not ownership of the property.

Keiser closed the Public Hearing at 8:27 PM.

Donohue stated that he felt the proposal was a reasonable request and agreed that a larger sign might be more eye catching; there are many roadside signs which are not even noticed. Dubois stated that he felt the proposed sign is tasteful.

Dubois said that allowing this type of business which hosts events is what makes it unique. He said that he would like to approve the proposal because it will help make the business successful. He said he feels the sign will not diminish property values; the sign proposal will go before HDC and will be in line with the historic nature of the area.

Dubois stated that the condition of having external lighting makes sense. He said that he felt the variance would do substantial justice by helping the business owner. He said he does not see any harm or safety issues with the type of sign proposed and it does not go against the spirit of ordinance.

Dubois inquired why these types of signs are not currently allowed.

Brooks detailed the five criteria for variance. He stated that he felt this sign would not diminish property values.

Brooks said that although the proposal does not mention LEDs, the Board would have to specify no electronic signs or LEDs.

Brooks said that the applicant is not asking for a bigger sign than allowed, he is just asking for different content on the allowable signs. He stated that the ordinance is very restrictive and it is preventing the applicant from advertising his business.

Brooks stated that the business is unique in size with the building being very large with a large front setback which is unique. There is also retaining wall out front. The use of the property is unique as well.

Brooks felt that substantial justice would be served. The applicant is not asking for a huge sign. The size of the sign proposed is allowed. He said that the proposal is not contrary to the spirit of the ordinance. He indicated he was leaning towards approval of the variance.

Dubois suggested that the Board could look at other provisions of City Ordinances and see if the proposal meets with those. He said the proposal meets with the vision and spirit of the City Master Plan, is in spirit of that.

Dubois stated he had no issues with the proposal other than specifying that no LEDs can be used.

Donohue said that the business having the large setback stresses the uniqueness of the property. There are other businesses in the area which are directly up against the sidewalk and those businesses can easily use window signs. He stated that the proposed sign is a reasonable way for the Hall to advertise in a tasteful way.

Keiser agreed with other Board members that the uniqueness of the property is within its function. He stated that the motion should include the wording that the sign is not backlit and should state that this type of sign can be used as long as the property is being used as an event facility.

Dubois asked the Board if there were any other uses that they would consider for the use of this type of sign on this property.

Keiser answered that the Board should only allow the usage for the property's current use, although if there are changes in the future there could be new applications for variance at that time.

Saunders suggested using the wording "per the use the planning board has approved."

Garvin said that he would have to understand reason for ordinance to make decision and inquired why changeable copy signs are not allowed in the Historic District.

Saunders stated she was not certain why these signs were originally not allowed in the district and would have to research previous year's minutes to determine the reasoning.

Dubois said that he felt this proposal is in keeping with the direction of City Council.

Fredette asked if the Board could vote on both motions together. It was clarified that there needed to be two separate motions and two separate votes.

Garvin inquired about criteria for adding conditions to the variance and asked what the Board should consider, knowing that the HDC will also add conditions.

Saunders answered that the ZBA looks specifically at 5 criteria, none of which are under the purview of the HDC. She reiterated that the hardship criteria is based on a function hall, so a condition needs to be added to specify property use.

Saunders stated that other factors in considering the variance come from case law. The variance cannot be tied to a specific property owner but rather the property's use.

Donohue **MOVED** to approve the application based on the discussion and the 5 criteria having been met, with following conditions:

- That the sign not be backlit or internally lit
- That it not be electronic
- That this approval motion will be tied to the use approved by the Planning Board.

Brooks seconded the motion.

The **MOTION CARRIED 5-0.**

The Board held a discussion on the variance for the sign size:

Donohue stated that where the building is located on the lot, it would make sense to use a larger size sign. He questioned the reasoning behind the ordinance.

Saunders clarified that the changeable copy aspect is not allowed in this district. In the Historic District the maximum allowable sign is 12 sf.

Donohue stated that even if this sign was in a zone where this type of sign is allowed, the size of the sign wouldn't be allowed to be larger.

Fredette said that he is satisfied with the uniqueness of the property; this is a large building, with frequently changing events, not located close to the road. He stated that he is more compelled to vote in favor because the proposed sign will also appear before the HDC.

Brooks said that limiting the changeable copy portion to 1/3 of the size of the sign prevents the applicant from promoting his business.

Keiser inquired if the need for a variance to allow this type of sign makes the property unique

Saunders answered that the need for a variance may make the property unique because they are now one of the only properties to have one.

Keiser said that because the size is limited in the Business District, it does make it unique. This sign would be placed at least 6-feet above the road, and the placement of the building on the property makes it unique.

Fredette stated that following the Ordinance exactly as written would make it impossible to make a successful changeable copy sign in this district.

Keiser suggested that if the Board approved the variance, they can limit the size of the changeable copy portion and potentially limit it by a specific number.

There was a discussion amongst the Board members regarding the size they should allow for the changeable copy portion.

Brooks suggested they go with the 12-square feet that signs are limited to in other zones.

Fredette suggested the Board limit the changeable portion to 50% of the total size of the sign.

Keiser stated that he thought they Board should allow more than 50%.

Brooks **MOVED** to include a condition that the changeable copy be limited to 12 sf. Dubois seconded the motion.

Donohue asked for clarification on whether this would be an additional 12 sf or approximately 50% of sign.

Fredette stated that the applicant is asking for 10.01 sf and the Board would not benefit from giving the applicant more than he is requesting.

Donohue answered that they may approve more than is requested if they are considering future use and the potential of the sign ever being redone.

Brooks AMENDED his motion to approve the application with the condition that a maximum of 60% of the sign be changeable copy. Dubois SECONDED the motion.

Fredette reiterated that the applicant asked for 10.07 sf which would meet the requirements. He felt that it is getting dangerous giving the applicant more than is asked.

Dubois inquired if there could be a potential code enforcement issue down the line.

Saunders stated that when applications come before City staff, the amounts would be rounded. In this case the 10.07%, although greater than 50% of the size of the sign, would be rounded down and would meet the requirements.

Keiser suggested that applicant could modify the design just slightly to meet the requirements of the Board.

Brooks opted to leave his motion as it stands at 60%.

A sense of the Board indicated that they would not approve the variance at 60%, but would approve the variance at 50%.

Motion was withdrawn.

Donohue **MOVED** to grant the variance with the condition that the changeable copy portion of the sign is no more than 50% of the entire sign. Fredette seconded the motion.

The **MOTION CARRIED** by a 5-0 vote.

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

No Discussion.

Dubois **MOVED** to **ADJOURN** the meeting. Fredette seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 9:03 PM.

Respectfully Submitted, Cassie Givara