

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MAY 4, 2016

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Roland Dumont, Donald Routhier and Bill Griffith, Alternate.
MEMBERS ABSENT: John Kennedy.
STAFF PRESENT: Shanna B. Saunders, Director of Planning and Community Development and Tracy Gora, Planning Secretary.

The meeting was called to order at 6:30 pm.

1) APPROVAL OF THE MINUTES OF THE SITE WALK OF APRIL 6, 2016.

Motion: Dumont moved to approve the minutes of the site walk of April 6, 2016.

Seconded by Keiser. Motion carried with a 4-0-1 vote with Routhier abstained.

Maskwa appointed Bill Griffith as voting member of tonight's meeting.

Maskwa welcomed Shanna Saunders, the new Director of Planning and Community Development to the City and to the Zoning Board.

2) OLD BUSINESS

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

None.

3) NEW BUSINESS

A) Edwin Aviles is seeking a variance from Section 6.B.1.a of the Zoning Ordinance to increase a nonconforming use and a variance from Table 5.A.1 of the Zoning Ordinance to build within setbacks on property located at 3 Woodside Commons, in the Commercial Industrial (CI) District, Assessor's Map 84, Lot 3M, ZBA #05-2016.

Saunders reviewed her memo (see attached) and stated that this is an after the fact application. Stated that the tenet of the mobile home constructed a porch and was cited by the Building Inspector. Stated that when the building permit application came in it was denied by Tim Metivier the Code Enforcement Officer because the new structure was within setbacks and they are increasing a nonconforming use.

Public hearing opened 7:04 pm.

Edwin Aviles owner of the mobile home and the mobile home park addressed the Board and stated that he has owned the park for about 10 years. Stated that the tenet started with an existing 8'x10' deck and called me and asked if he can enclose it for a smoking room. Stated that he didn't see any problem with it and told him to go ahead but then got notice that a building permit was needed. Stated that he immediately came in to City Hall and filled out a building permit, which was denied. Stated that he is asking

the Board for permission to expand the nonconforming use and for the structure within setbacks.

Routhier stated that there are two different issues at play here; one for the nonconformity and one for the setbacks. Stated that at the last meeting he submitted a letter from Attorney Laughlin out of Portsmouth and stated that the law says that the City has to explore the nonconformity. Asked how old the mobile home park is.

Aviles stated that he believes it to be over 50 years old.

Routhier stated that it is nonconforming and asked if they are expanding it.

Aviles replied no and stated that they are not enlarging the land. Stated that this is for an existing home that has been in the park since for at least as long as he has owned it. Stated that he owns the mobile home as well and has been renting it out to a long-term tenet. Stated that the tenet has become his friend and has done a lot of work for him.

Routhier confirmed that the home was already there when Aviles purchased the property.

Aviles confirmed and stated that it came with the park. Stated that he owns six of the nine homes that are in the park.

Routhier asked if the home has been moved.

Aviles replied no.

Routhier asked if the deck was existing.

Aviles replied yes.

Routhier asked for clarification on what he means by enclosing the deck.

Aviles stated that it was enclosed for a smoking room and that three walls were added with windows and a roof. Stated that it is totally detachable and there is no heat in it.

Routhier asked if the existing deck was used as the floor for this room.

Mark Sparks, the tenet of 3 Woodside Commons addressed the Board and stated that he used the same decking and put plywood over it. Stated that the footprint is exactly the same. Stated that three walls, two windows, a door and a set of stairs were built.

Keiser stated that the plan shows the deck being 5'x6' but then we heard 8'x10'.

Sparks stated that the deck was 8'x8'.

Keiser confirmed that the deck has been there.

Sparks stated that it was there when he moved in during 2010. Stated that he has done a lot of work for Eddie on a lot of these units.

Keiser asked how close the deck it to the front and side property lines.

Sparks stated that it is about five feet from the outside wall to the dentist office and about 29 feet from the front line.

Keiser stated that he thought the request is for the front and side setbacks.

Aviles stated that the front is within the 30 foot area.

Keiser stated that the application is asking for a variance from the front setbacks, which has a 25 foot requirement.

Aviles stated that there is parking in the front by Route 108 that would allow for three vehicles. Stated that the mobile home is parallel to Route 108 and the deck is on the road side.

Sparks explained the design and layout of the house.

Saunders stated that according to the building inspector, the letter says the deck is within setbacks. Stated that the property line isn't the edge of pavement.

Sparks showed a picture of the property from his cell phone.

Saunders asked Sparks to email those photographs to Secretary Gora.

Griffith stated that the deck is already there and is already nonconforming, asked if this is just building up.

Saunders replied yes and stated that they are expanding a nonconforming use and structure.

Maskwa stated that the Code Enforcement Officer's letter indicates that electrical work was done without a permit. Stated that the letter is dated 2014 but it is just coming before the Board now, in 2016.

Saunders stated that the letter is correctly dated and that there was a follow up to it.

Maskwa asked if there was a reason there was so much time taken for action.

Aviles stated that he asked with a building permit application as soon as he found out about it. Stated that he was out of the country when the second letter was sent.

Public hearing closed 7:19pm.

Routhier stated that when dealing with a nonconforming use, case law requires that the Board review the nature of the nonconformity and find out if any action is actually needed. Stated that in this case they are dealing with a mobile home in a mobile home park. Stated that NH law requires that every community make reasonable access for mobile homes in their community. Stated that a while ago Somersworth passed two ordinances regarding mobile homes and one of them was that mobile homes are only allowed in a mobile home zoned area. Stated that there are seven mobile home parks in

Somersworth and only three are in a mobile home district. Stated that the other four are nonconforming but are allowed to remain. Stated that the City doesn't want more mobile homes going in. Stated that the Code Enforcement Officer has ruled that the mobile home park is nonconforming as well as the homes inside so they cannot be enlarged. Stated that that is not what the law states and that the law has been misinterpreted. Used a Cumberland Farms example and stated that it is not consistent with the law of nonconformity. Stated that the park is nonconforming but that homes are not. Stated that only leaves the issue of the setbacks. Stated that decks are permitted as a normal part of a mobile home but need a building permit to enclose the deck.

Keiser stated that he needs clarity on where the deck is located off the mobile home.

Maskwa stated that the home is within setbacks to begin with.

Saunders stated that she is assuming that the deck is forward enough on the home that it is within front setbacks.

Keiser stated that the deck and the home could be within the 25 foot setback. Stated that if the existing deck is there then they need a variance for building within the setback.

Saunders stated that by putting the sides and roof on the deck it is expanding the structure. Stated that it is a nonconforming structure and nonconforming use. Stated that she respectively disagrees with Routhier.

Keiser stated that if the new enclosure is on the same footprint as the deck then he doesn't see that as expanding.

Routhier stated that the structure is not nonconforming and that this has already been addressed.

Saunders stated that she understands that the City Attorney disagrees with that.

Routhier stated that that opinion was not presented to the Board. Stated that it is what former Director Sharples thought but that it isn't correct. Stated that he feels that the Code Office would be happy to not have to enforce this. Stated that this would be bad when dealing with older homes. Stated that he disagrees with Saunders and that this needs to be clarified.

Saunders stated that she doesn't have any correspondence from the City Attorney but she can get something more formal for the Board.

Griffith stated that if Routhier's position on the matter is correct then a variance isn't needed.

Saunders stated that she believes that is the case.

Griffith stated that if the City's position is correct then a variance is needed.

Saunders stated that there are two variances; one for this use and one for the setbacks.

Maskwa stated that Keiser mentioned the confusion about the placement of the trailer. Stated that they now have a drawn plan but nothing official and they need something accurate. Stated that they may need something more accurate. Stated that he is hesitant to vote on something so nebulous. Stated that he doesn't know how far it encroaches on setbacks.

Griffith stated that the expansion is vertical not horizontal and asked why the setback is an issue at all.

Saunders stated that they don't have definite numbers on the deck.

Routhier stated that there are two distinct issues here. Stated that the first is if this is a nonconforming use and then there is the setback issue. Stated that he feels that the first variance is not necessary. Stated that the park is a nonconforming use but the homes inside are conforming. Made a **motion** that Section 6.B.1.a of the Zoning Ordinance is not applicable to the homes in the park.

Maskwa stated that there was no second to the motion so the motion dies.

Griffith asked if there is a conditional motion or if there is a legal question to be settled.

Maskwa stated that if there is confusion then the Board can ask for more clarification and come back to this later. Stated that he would feel comfortable doing that since the issue has been going on since 2014 already.

Motion made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that the request of Edwin Aviles for variances from Section 6.B.1.a and Table 5.A.1 be **TABLED**.

Seconded by Griffith.

Keiser stated that he would like clarification on the nonconforming structure and the specific numbers on the deck.

Motion carried with a 5-0 vote.

- B) Trio Investments, LLC is seeking a variance from Section 4.A of the Zoning Ordinance to operate a function/meeting hall on property located at 49 Market Street, in the Business Historic (BH) District, Assessor's Map 11, Lot 78, ZBA #10-2016.

Saunders reviewed her memo (see attached) and stated that the applicant is seeking a variance for the use of a meeting/function hall. Stated that the property is located in downtown and reviewed the features of the lot. Stated that there are one to two parking spaces on site but that there is on-street parking within 500 square feet of the property. Stated that they are looking to operate a function hall and they define the use in their application.

Public hearing opened 7:41 pm.

Sarah Nadeau, one of the five owners of the property addressed the Board. Stated that her husband was actively involved with the renovations of the property that took place in the 1990s and that when it went up for sale the Pastor asked if we were interested. Stated that the goal is to use it as a function hall for weddings, church services, Boy Scouts, etc. Stated that they would also like to have a daycare center in there. Stated that the intent is to use the property as it was originally used. Stated that there have only really been cosmetic changes to the property since it opened. Stated that it was used as a VFW at one time but that there have always been similar types of uses. Stated that the events would be held between 7 am and 10 pm. Stated that there is not a lot of on-site parking but there is a significant amount of on-street and municipal parking. Stated that the uses will be occurring when the downtown businesses are closed. Stated that they just want to be able to offer an affordable function hall and that there is also a need for a daycare in the area. Stated that the property was previously owned by a church, which is nonprofit but now it will be taxable. Stated that she doesn't think they could have another appropriate use without major renovations to the building. Stated that she feels that the proposed use is not much different than how it was used before.

John Jackman, owner of abutting property on Prospect Street addressed the Board and stated that he lived in that property when the subject property was a VFW. Stated that they used to have quite a few events and there was no parking on Prospect Street because the event at the VFW used it all. Stated that there was no room for residents to park. Stated that during the summer months the windows were open and there was a significant amount of noise. Stated that his main concern is parking and traffic. Stated that Prospect Street is narrow and there is only parking on one side where there used to be parking on both sides. Stated that the applicant mentioned that events will be in the evening when the downtown businesses are closed but more businesses are opened at night now. Stated that he was happy when the property became a church because there was less traffic and activity. Stated that there was a small daycare there and that it didn't seem to impact anything. Stated that Prospect Street gets narrower in the winter and a lot of downtown parking gets used at night by the residences. Stated that he would like to see more of what impact would occur and have a better plan.

Griffith stated that there are a lot of rules regarding the operation of a daycare and asked if this would need State approval before coming to this Board.

Nadeau stated that it would need to be licensed by the State but that they are just leaving that option open.

Saunders stated that a daycare is a permitted use in this zone and it has to be constructed prior to the State issuing a license. Stated that the Planning Board will need to review this as well. Stated that this Board is just looking at the use of the property. Stated that State certification is a separate issue.

Keiser asked what else the structure can be used for.

Nadeau stated that they do not want to have to do structural changes. Stated that if this is denied then they will look at other uses but there would probably be a lot of renovations.

Keiser asked what some other uses would be.

Brian Russell, one of the owners, addressed the Board and stated that the proposed use is the best use in the property's current state. Stated that the building has a lot of historical value like with its tin ceiling, which they wouldn't want to have to take out. Stated that they think that the City would want to keep the building in its current state. Stated that he feels that the other best use is for apartments and that would probably be what a developer would do. Stated that it wouldn't work as a restaurant. Stated that they want to bring diversity to the area. Stated that parking is a concern for every business in the downtown. Stated that whoever is hosting the event at the property would need to arrange for a shuttle service or something. Stated that they want to keep their uses broad and don't want to limit themselves. Stated that they don't want to put a huge demand on the downtown but Somersworth doesn't have a place like this. Stated that there is already a kitchen and businesses could rent out the facility for presentations. Stated that it would mostly be used on Friday and Saturday nights but they don't want to limit themselves. Stated that they want to keep the structure the same as it is and there will be no neon lights. Stated that he doesn't know of another option for it.

Routhier asked how old the building is.

Russell stated that it was built in 1829.

Routhier asked how much of the building is original.

Russell stated that there are many original features in the attic and that the main area has beautiful ceilings. Stated that they want to call it the "Market Street Meeting House" and be a continuation of the downtown. Stated that he has talked with other businesses and they want to see something done with it. Stated that everyone seems excited about it.

Routhier stated that the Table of Uses doesn't show a BH district.

Saunders stated that it is the Business district with a Historic overlay.

Routhier stated that there is a VFW and another building used for functions and asked why those are allowed and this is not.

Russell stated that Mrs. Soutter, the former Economic Development Manager, indicated that those uses are a "civic club", which is different. Stated that they would be a private entity whereas the other ones are clubs.

Routhier stated that he doesn't see the proposed use listed in the Table of Uses.

Russell stated that they don't want to be limited and they want to have a function hall with a daycare. Stated that they most likely won't serve liquor and would just have day to day liquor licenses. Stated that they intent to install air conditioning.

Routhier stated that the use is not in the Table of Uses.

Russell stated that there is a lot of history with the building.

Saunders stated that Section 4 of the Zoning Ordinance says that if a use is not listed in the Table of Uses then it is automatically prohibited.

Maskwa stated that the function hall use is not in the Table of Uses but there are also historical regulations that need to be followed.

Saunders replied yes.

Maskwa asked if the proposal would go to the HDC.

Saunders replied yes and stated that it would be part of the building permit process.

Russell stated that the intent would be that the City would be proud of the structure.

Maskwa stated that the previous use of the property was a church and before that it was a club.

Griffith asked what the handicap issues would be.

Russell stated that they would have to meet all handicap regulations.

Maskwa stated that the Board's issue is simply whether this use should be allowed at this site based on the five criteria.

Public hearing closed 8:07 pm.

Keiser stated that when looking at the five criteria, he doesn't think it will diminish property values, is not contrary to the public interest and a good use of the property. Stated that he feels it will bring more people downtown. Stated that he feels the property is unique and that they meet the hardship criteria. Stated that this will do substantial justice and will benefit the community. Stated that it is not contrary to the spirit of the ordinance since it is not listed in the ordinance. Stated that the proposal will also go to the HDC and to the Planning Board to review traffic.

Griffith stated that he has heard people say that something won't affect property values but they don't have the data to support that. Asked how they are supposed to know and have a professional judgement.

Maskwa stated that sometimes they do get professional statements on property values.

Routhier stated that his understanding is that the Board can use their own experience when considering if something will diminish property values.

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 I move that the request of Trio Investments, LLC for a variance from Section 4.A of the Zoning Ordinance to operate a function/meeting hall be **GRANTED**.

Seconded by Routhier.

Griffith asked if the daycare use should be in the wording of the motion.

Saunders stated that it doesn't have to because it is a permitted use in the zone.

Maskwa stated that everything will be vetted out at the Planning Board stage.

Routhier stated that this use is in keeping with the Business district and that it is compatible with the other uses in the district.

Motion carried with a 5-0 vote.

- C) Granite Realty is seeking an amendment to ZBA #23-90 regarding the hours of operation for an automobile service facility at property located at 497 High Street, in the Residential Commercial (RC) District, Assessor's Map 90 Lots 54C & 54CC, ZBA #11-2016.

Saunders reviewed her memo (see attached) and stated that the applicant is seeking an amendment from the 1990 variance regarding hours of operation. Stated that those hours of operation were suggested by the applicant of that time. Stated that a new automobile related business is looking to move in to this property and they want to expand the hours.

Public hearing opened 8:16 pm.

George Jarrett with Tire Warehouse addressed the Board and stated that they are just looking to modify the hours of operation that were approved in 1990. Stated that this would be similar to the hours for the same type of businesses in this area.

Keiser asked if there are other businesses like this with similar hours.

Jarrett stated that there is a Monroe Muffler with no restrictions.

Keiser asked if there are any residential uses right here.

Jarrett stated that they will use existing service bays and all the work will be done inside of the structure.

Griffith asked about the Midas Muffler use.

Jarrett stated that they would use the former Midas Muffler site. Stated that the AT&T store would remain.

Maskwa asked if this is the same Tire Warehouse that is on Route 108.

Jarrett replied yes and stated that the company owns all the Tire Warehouses.

Jarrett asked if there is a way to eliminate the restrictive hours. Stated that there are no restrictive hours for other businesses in this area.

Saunders stated that the application just states that they will have "normal" business hours but she called one of the applicant and they are flexible on hours.

Routhier asked if they are going to close the other Tire Warehouse in Somersworth.

Jarrett replied no and stated that there is enough need for both. Stated that this location will offer front end alignments as well.

Public hearing closed 8:22 pm.

Keiser stated that he wonders if this Board really needs to limit the hours. Stated that other businesses in the area don't have their hours limited.

Routhier asked if Somersworth has rules about hours of operation for businesses.

Saunders stated that she is unsure of that but knows there are noise and lighting regulations.

Maskwa stated that recently this Board limited a business to 10 pm in this general area.

Keiser stated that they did that because it abutted a residential property.

Routhier asked about what standard to use for approving/disapproving this request.

Saunders stated that they should look at why this decision was made in the first place. Stated that these hours were offered by the original applicant and there was no discussion on it in the minutes.

Routhier confirmed that they do not need to review the criteria.

Saunders confirmed.

Motion: Keiser moved that the request of Granite Realty to amend ZBA #23-90 regarding the hours of operation for an automobile service facility be **GRANTED WITH THE FOLLOWING CONDITION:**

- There are no conditions on the hours of operation.

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

D) Request from Vision 2020 Committee for the Board to review the Growth and Development Strategy Implementation Matrix from the City's Master Plan.

Maskwa stated that this was brought up at the last meeting and decided to wait until this meeting. Stated that there is a new City Planner and suggested holding off on this until the next meeting.

Motion: Dumont moved to table this item until the June 1, 2016 ZBA meeting.

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

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

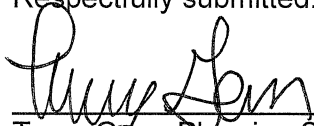
None.

Motion: Keiser moved to adjourn the meeting.

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

Meeting adjourned at 8:29 pm.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Tracy Gora", is written over a horizontal line.

Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment