

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
APRIL 6, 2016

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Roland Dumont, Donald Routhier and Bill Griffith, Alternate.
MEMBERS ABSENT: John Kennedy.
STAFF PRESENT: Bob Belmore, City Manager/Interim Director and Tracy Gora, Planning Secretary.

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

Maskwa appointed Griffith as a voting member for tonight's meeting.

1) APPROVAL OF THE MINUTES OF THE MEETINGS OF MARCH 2, 2016 AND MARCH 24, 2016.

Motion: Keiser moved to approve the minutes of the meeting of March 2, 2016.

Seconded by Griffith. Motion carried with a 4-0-1 vote with Dumont abstained.

Motion: Keiser moved to approve the minutes of the meeting of March 24, 2016.

Seconded by Griffith. Motion carried with a 4-0-1 vote with Dumont abstained.

2) OLD BUSINESS

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

None.

3) NEW BUSINESS

A) Scott Johnson is seeking a variance from Table 5.A.1 of the Zoning Ordinance to build a garage within setbacks on property located at 40 Mt. Auburn Street, in the Residential Multi Family (R3) District, Assessor's Map 09, Lot 173, ZBA #04-2016.

Belmore reviewed his memo (see attached) and stated that the applicant would like to build a garage within setbacks. Stated that there is already a garage on the property but that it will be removed. Stated that the variance request is for the rear setback but that it was discovered that the proposed garage will be a half foot within side setbacks. Reviewed the features of the lot.

Public hearing opened 7:01 pm.

Scott Johnson, applicant and property owner addressed the Board and stated that there was an addition put on the right side of the house that was installed before he bought it. Stated that the addition encroaches on the driveway which pretty much deemed the existing garage useless. Stated that the existing garage doesn't fit a car in it and that they would like parking for the winter and have usable storage. Stated that

the proposed garage will be moved to the right on the lot and brought forward a little. Stated that they can move it a little more forward but that they would like to have a four foot path between the house and the garage.

Mark Richardson of 44 Mt. Auburn Street addressed the Board and stated that he is on the right of the subject property and that he has no issues with this. Stated that they are good neighbors and that this is a good project.

Keiser stated that the Board is required to see if the placement of the garage is reasonable. Asked if the garage they want could be built without encroaching on setbacks.

Johnson stated that it could be done but moving the garage would block the house. Stated that you would be looking out the house windows at the garage.

Keiser stated that is not a good idea and it not reasonable.

Johnson stated that it would destroy the use of the property and there would be a big space on the back side of the property that couldn't be used.

Keiser stated that the plans show a pitched roof on the garage that slants toward the house.

Johnson stated that they want to match the existing structure but that they will have water management to channel the runoff.

Keiser asked if the four foot distance between the house and the garage is critical.

Johnson stated that it could be three feet but that they wanted to keep it open so they are not walking through too small a space.

Keiser asked why they chose this sized garage.

Johnson that he looked at a lot of garages and asked around and that this seemed to be the perfect size to fit a vehicle and have a staircase going upstairs. Stated that there isn't much storage in the house so they would use the second floor of the garage as storage.

Routhier asked if the existing garage is original.

Johnson replied yes and stated that it could only fit a motorcycle now. Stated that the existing garage would be removed and maybe have a patio in that area.

Routhier asked why he is not replacing the garage is the same location.

Johnson replied that it is because of the way it sits and that they would have to have a lot of pavement.

Routhier stated that on the picture that was submitted it looks as though the existing pavement goes right up to the door.

Johnson stated that the addition on the house “covers” the door to the garage and encroaches onto the driveway. Stated that the height will be comparable to what exists and that the second floor is just going to be used for storage.

Public hearing closed 7:12 pm.

Keiser stated that he feels the request meets the five criteria. Stated that it won't diminish property values and won't affect public interest. Stated that based on the lot and the location of existing structures, the garage cannot be pulled forward. Stated that it is not reasonable to move it out of setbacks. Stated that he does not want to grant the variance for the side setback because it can be moved over. Stated that this will improve the property and allow them to have a usable garage.

Griffith stated that he likes the placement of the new garage and that he agrees with Keiser. Stated that moving the garage forward would take green space away.

Routhier stated that he is familiar with this house and property because he was born and lived there. Stated that he understands that where the garage is located isn't practical. Stated that he agrees with Keiser that they have to meet the ten foot side setback.

Maskwa agreed with Keiser and feels they should adhere to the side setbacks but that this will be a nice improvement and supports this.

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 Scott Johnson for a variance from Table 5.A.1 of the Zoning Ordinance to build a garage within rear setbacks be **GRANTED WITH THE FOLLOWING CONDITION:**

1. The proposed garage shall be no closer than twelve feet (12') to the rear property line.

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

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

Maskwa stated that the property owner is also supplying a variance request for the side setback so he wants to be tabled to do all the requests at the same time.

Motion: Keiser moved that the request of Edwin Aviles for a variance from Section 6.B.1.a of the Zoning Ordinance to increase a nonconforming use be **TABLED** until the May 4, 2016 ZBA meeting.

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

- C) 450 High Street, LLC is seeking a variance from Table 4.A.4.1 of the Zoning Ordinance for an industrial/light industrial use for a Nano brewery on property located at 450 High Street, in the Residential Commercial (RC) District, Assessor's Map 38, Lot 37, ZBA #06-2016.

Belmore reviewed his memo (see attached) and stated that they are requesting a variance to have a Nano brewery. Stated that the use is considered industrial, which is not allowed in this district. Reviewed the features of the lot and stated that the building permit application indicates that two of the units will be combined for this use. Stated that the Board approval a special exception for a tasting room at the last meeting.

Public hearing opened 7:20 pm.

Stephen Patterson, general counsel for the owner and applicant addressed the Board and stated that they are requesting a variance for a Nano brewery for the Primary Brewing Company. Stated that they were here before this Board last month for a special exception for a tasting room, which was approved. Stated that this is a pilot brewing system and will be brewing no more than 2000 barrels a year. Stated that David Morrill from Long Trail has been hired as the Master Brewer. Referred to last month's ZBA discussion to tonight's record. Stated that they addressed the five criteria in their application and that they feel that they meet each of them. Stated that currently the use is what is unique because the concept of a Nano brewery is not in the City's Zoning Ordinance. Stated that he feels this is a reasonable use for this zone and that it is more akin to a commercial bakery than a traditional industrial use. Stated that it will not be a burden on municipal services. Stated that they meet the criteria and have letters of support from Goodwill and the Empire Beauty School.

Gora read an email into the record (see attached).

Routhier stated that the applicant for the special exception request was 450 High Street, LLC but the applicant for this is Primary Brewing.

Patterson stated that was how he drafted the application.

Routhier stated that in this case the applicant is different. Stated that hardship issues and variances run with the land so the owner should be making the application.

Patterson stated that the applicant and the owner are the same entity.

Routhier confirmed that Primary Brewing and 450 High Street, LLC are the same owner and stated that there were issues in the past with different parties being involved but he thinks this will be okay. Stated that he doesn't understand the hardship here and asked why they have one.

Patterson stated that the old interpretation of the law was that the property can't really be used for anything else but in this case they can. Stated that Empire Beauty School is there. Stated that what qualifies them for a hardship is that the use is unique and is a reasonable use for this building. Stated that the opportunity to put in a new use in a zone that is suited for it creates the hardship.

Keiser stated that the criteria for a hardship state that there needs to be a special condition of the property that distinguishes it from others in the area.

Patterson stated that this is unique in the sense that this use, which is barely industrial isn't in the Zoning Ordinance and can be placed, with ZBA approval, in a reasonable

district in the City. Used the example of a commercial bakery, which would be allowed and is very similar to this use.

Maskwa asked Patterson if he thinks that a Nano brewery isn't in the Zoning Ordinance because the use wasn't in existence when the Ordinance was created.

Patterson replied yes.

Routhier stated that there is no fair and substantial relationship exists.

Public hearing closed 7:35 pm.

Griffith stated that at the last meeting it was discussed that if there were not making beer they could have a restaurant use there. Stated that this doesn't seem against the ordinance but that the law needs to catch up.

Keiser stated that he is having a hard time with the hardship criteria because there needs to be a special condition of the property that makes it different from others in the area. Stated that the special condition is the fact that the Zoning Ordinance doesn't allow the use but not because conditions of the property. Stated that he is not sure that a variance is the right path but maybe to update the Zoning Ordinance.

Routhier that the first prong of the hardship criteria talks about a fair and substantial relationship and the second prong talks about reasonability. Stated that if the code was written today the use would probably be allowed. Stated that there is no reasonable relationship with the prohibition of the use and the property.

Maskwa stated that the technology of a Nano brewery is new and wasn't in effect with the Table of Use was written. Stated that he supports the request.

Motion made by Griffith: 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 450 High Street, LLC for a variance from Table 4.A.4.1 of the Zoning Ordinance for an industrial/light industrial use for a Nano brewery be **GRANTED**.

Seconded by Dumont. Motion carried with a 4-1 vote with Keiser opposed.

D) Reagan Estates Manufactured Housing Park, LLC is seeking a variance from Section 6.B.4.a and Table 4.A.1.4 of the Zoning Ordinance regarding nonconforming uses on property located at 44 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 63, Lot 01, ZBA #07-2016.

Maskwa stated that he chose the change the order of new business on the agenda and stated that the Board will consider item E, the request for an appeal of an administrative decision, before item D.

See item E below.

E) Reagan Estates Manufactured Housing Park, LLC is appealing the administrative decision to deny building permits for property located at 8, 9 and 10 Jack & Jill, in

the Commercial Industrial (CI) District, Assessor's Map 83, Lots 8M, 9M and 10M, ZBA #08-2016.

Belmore reviewed his memo (see attached) and stated that the applicant is seeking an appeal from Code Enforcement Officer Tim Metivier's decision to deny building permits for the mobile home park. Stated that Metivier based his denial on the ZBA's variance approval from August 2015.

Routhier recused himself from the Board.

Don Routhier, owner and applicant, addressed the Board and stated that there was a site walk of this property just before tonight's meeting. Submitted an electronic audio file of the site walk. Passed out packet of documents (see attached) and explained what was submitted. Stated that the building permits were denied because of the Zoning Board approval from 2015. Stated that he applied for slab permits, which were approved in November and were built to City regulations. Stated that a community septic system has started to be installed, which was approved by the City and referred to the septic plans. Stated that the use is nonconforming because it was created before the Zoning Ordinance was created. Stated that there are 32 sites in the park and that as long as he doesn't expand the number of sites or increase the size of the park, he has the right to upgrade. Stated that the ordinance prohibits mobile homes in any zone other than the Mobile Home District, which was passed in 2001. Referred to a case law example from North Hampton where a take-out restaurant was not given a variance because it was to expand the use. Stated the case went before the Supreme Court. Stated that he submitted with his application a letter from Attorney Laughlin in Portsmouth who has written books on zoning that are widely used. Stated that tonight he is asking the condition number two from the 2015 variance approval be stricken. Stated that it prevents him from the proper use of his property so he cannot move forward, which is a hardship.

Public hearing opened 7:50 pm.

Heidi Morrison of 85 Old Rochester Road addressed the Board and stated that she is concerned with aesthetics. Stated that the work that has already been done has impacted her property. Stated that there used to be trees but now all they see are trailers and bright lights. Stated that the impacts have been tremendous.

Jeff Morrison of 85 Old Rochester Road addressed the Board and stated that he is Heidi's husband. Stated that there are thousands of square feet of woods that have been clear cut. Stated that the buffer has been clear cut and that is unacceptable.

Chris Skovron of 81 Old Rochester Road addressed the Board and stated that the City has ordinances to prohibit additional mobile homes from being brought onto the site. Stated that they are the same zoning laws that were in place prior to him purchasing the property. Stated that the property owner should have known of the restrictions before buying it. Stated that there are laws to have barriers to protect the neighborhood from eyesores.

Elizabeth Simays of 83 Old Rochester Road addressed the Board and stated that she is not really against the project but that her property is very different from a year ago.

Stated that all the woods are gone but there are laws for screening. Stated that this has been really hard for them and that she wants aesthetics to be part of the discussion.

Routhier stated that he understands because it doesn't look good but that he is going to improve the aesthetics of the park. Stated that it will be upgraded and be more attractive. Stated that he has been approached by Code Enforcement for screening.

Dumont stated that as part of the improvements he would like to see the buffer addressed.

Routhier stated that there are some trees that were taken down that were a buffer. Stated that there is a fence and that he has talked with neighbors about screening.

Dumont stated that they did a walk through tonight and that there was no buffer but there was a fence.

Routhier stated that there were not a vast number of trees and could see houses. Stated that most of the trees that were taken down were where the leach fields will go. Stated that he has an agreement for some vegetation.

Keiser asked if the vegetation will go around the property or just by the neighbors you talked to. Asked what approvals are needed to update the park.

Routhier stated that needed and received septic approval from the State and the City and it has to be built according to those plans. Stated that he will need new plans if they deviate from the existing one. Stated that he also needs City permits for the slabs and the houses themselves.

Keiser asked if it will require Planning Board review.

Routhier replied no and stated that he had spoken with Dave Sharples about his plans.

Keiser asked what he is looking for from the prior approval.

Routhier stated that this is a nonconforming use and that as long as he puts no additional homes he has the right to modernize the park. Stated that if he has to move homes for the septic system then he can do that because those are his rights. Stated that he doesn't object to the first condition of approval from the 2015 variance approval but that he wasn't to strike condition of approval number two regarding not encroaching any farther on the property lines. Stated that if there is a home that is not currently in the setback then he can't put it in the setback now. Stated that there are a few homes that are in the setback now and some of those will be moved. Stated that there are some homes that he cannot replace unless he moves them closer to the property line.

Keiser asked if putting a new one in will need approval from the City.

Routhier replied yes and stated that the whole process is reviewed by the City and that everything is inspected along the way.

Griffith asked about the existing road on the property.

Routhier stated that he bought the property in 2011 and that the road has been there a long time. Stated that he talked with the E911 Committee and that is where the name Wolf's Lane comes from. Stated that the mail is based on E911 Committee road names.

Griffith asked where the barriers would be put.

Routhier stated that there is at least five feet between the fence and the road and that is where the trees were.

Maskwa stated that the property was purchased in 2011 and has 32 mobile homes on it.

Routhier stated that the oldest tax care he found is from the 70s and shows 32 homes on it.

Maskwa stated that 32 sites are grandfathered in and that many of the homes are old and have a right to be modernized. Stated that homes that small are not made anymore. Stated that the front of the property has homes that range from 80 to 90 feet from Route 108. Stated that the variance from 2015 says that mobile homes can't be placed any closer to the property line than they are now. Stated that the 2015 variance wants the distance of the mobile homes maintained. Stated that since he got the permit from the State he has guidance on how close they can be. Stated that the only piece he has an issue with is the setback. Stated that the request is to remove condition of approval number two. Read from Attorney Laughlin's letter. Stated that he was a ZBA member when the 2015 variance was approved and that this condition of approval seemed reasonable at the time. Stated that it now seems reasonable to remove it. Stated that they would keep the other condition of approval that the homes can be no farther into the setback than they are now.

Public hearing closed 8:10 pm.

Keiser stated that he agrees that the prior condition of approval can be modified. Stated that if the home doesn't encroach on setbacks then it still can't encroach and the homes that already do encroach shouldn't go any closer than they already do.

Maskwa stated that he is not sure how to amend the prior condition and asked for guidance.

Belmore stated that the request is an appeal and that the Board could reverse the appeal and remove condition of approval number two from 2015.

Maskwa stated that they need to strike condition of approval number two.

Motion: Keiser moved that the request of Reagan Estates Manufactured Housing Park, LLC for an appeal from administrative decision be deny building permits be **APPROVED WITH THE FOLLOWING CONDITION:**

1. Condition of approval #2 from the August 5, 2015 ZBA approval for this property be stricken and replaced with the condition that replacement units can be placed up to the setbacks. Any units already within the setbacks shall not encroach any further than they currently do.

Seconded by Dumont.

Maskwa stated that this only affects four units, which are at the northwest portion of the property.

Motion carried with a 4-0 vote.

Belmore confirmed that based on this discussion, the other application is moot.

Routhier replied yes and stated that he withdraws that application.

- F) Peter Pope is seeking a variance from Section 6.C.1.a of the Zoning Ordinance to expand a nonconforming use on property located at 234 & 240 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 61, Lot 12M & 13, ZBA #09-2016.

Belmore reviewed his memo (see attached) and stated that the variance is to expand the existing self-storage facility. Stated that the property is in the Commercial Industrial (CI) District where this use is not allowed right. Stated that there are three properties involved in the request: the existing self-storage site, a vacant property next to it and a third lot which is the access for Colonial Village MHP. Stated that the proposal is to remove one of the existing storage buildings and replace with a new building. Stated that site plan approval will be needed if this is approved.

Public hearing opened 8:18 pm.

Attorney FX Bruton with Bruton & Berube, PLLC represented the applicant and addressed the Board. Stated that if they get approval they will go to the Planning Board and showed the existing conditions plan. Stated that there are currently six, one level units on one lot with two smaller lots to the side. Stated that one of the smaller lots is the access to Colonial Village. Stated that this was a permitted use at one time and that they want to expand it. Stated that the plan is to remove one of the existing storage structures and build a new, larger, climate controlled, three story storage building. Stated that they will discuss the lot lines with the Planning Board and merge the lots into one. Stated that the two smaller lots are nonconforming because of frontage so merging them will eliminate the nonconformity. Showed the proposed building elevations and stated that they will be fitted with cultured stone treatments and there will be a pitched roof. Stated that the upgrade will be significant. Stated that he met with the Interim Planner and that it seemed to make sense that the two small lots will be combined with the larger one. Stated that one of the benefits of merging the lots is that the current facility only has one access but there will be two with the proposed plan, which will allow for better traffic flow. Stated that the parking and traffic needs are not that intense with only about one to three cars per hour. Stated that they will have one employee on site so there will be parking. Stated that the existing traffic is not that intense and they don't plan on that changing. Stated that these are small lots and are unique regarding their ability to be used for commercial purposes. Stated that he would like to address the five criteria and that the proposal will not diminish surrounding property values. Stated that it will look more aesthetically pleasing and will not be contrary to the public interest. Stated that they will not alter the characteristic of the neighborhood. Stated that there will be better traffic flow. Stated that regarding the hardship criteria, he feels this is very unique. Stated that it is not a permitted use so there won't be other facilities like this in the area. Stated that this is appropriate given the small properties around this one.

Stated that the site functions well as a storage facility and it is the most appropriate use of the land because it is existing and will allow for a general upgrade. Stated that this will allow for the most appropriate use of these small properties. Stated that substantial justice is a balancing test and that he doesn't think there are negative aspects to the project. Stated that it will give an option for climate controlled storage with safe access and will look good. Stated that it is not contrary to the spirit of the ordinance as this is an appropriate use of the land and will enhance the safety features of the existing property. Stated that it is the right fit for the land and asked the Board to grant the variance.

Keiser asked how many units will be in the new storage facility.

Bruton stated that there will be about 400 units over three floors and about 55,000 square feet.

Keiser stated that traffic may be increased because there are more units.

Bruton stated that this facility is almost identical to the one in Goffstown. Stated that the most cars to that facility was five and that was rare. Stated that they will present traffic data to the Planning Board but that peak rate was 0 to 3. Stated that people tend to store their stuff and leave it there.

Griffith stated that he drove by the property today and that there are trees along the side of Second Avenue.

Bruton stated that buffering will be an issue for the Planning Board.

Jeff Merritt with Keach-Nordstrom Associates, Inc. represented the applicant and addressed the Board. Stated that there are some trees on that property but that they will be removed. Stated that they will have a landscape plan when they go to the Planning Board. Stated that there will also be a fence adjacent to Second Avenue.

Griffith asked how high the building will be.

Merritt stated that the maximum height is 35 feet.

Griffith asked if there will be a road off of Second Avenue.

Merritt stated that there will be a driveway off of Second Avenue but that the primary access will be from Route 108.

Maskwa asked if there will be a right of way agreement after the lots are merged.

Bruton stated that there is an existing easement. Stated that Second Avenue is a separate lot from the Colonial Village lot and stated that the easement already exists.

Maskwa stated that the Zoning Ordinance requires a 30 foot side setback but that the plan only shows 28 feet.

Merritt stated that is the encroachment of the existing building but that the new building will meet setbacks.

Routhier stated that this is a nonconforming use and asked if this is a natural expansion.

Bruton referred to a court case and stated that most communities direct the applicant to seek a variance. Stated that there is case law for natural expansion but can be difficult to talk about when the community provides for a variance.

Routhier stated that one of the properties to be merged has only 108 feet of frontage where 200 feet are needed. Stated that the front setback is 50 feet and 30 feet on the sides and rear.

Bruton stated that they can't do anything with the lots in a conforming way.

Routhier stated that this particular lot is unbuildable for practical purposes.

Bruton stated that they want to use the lot to upgrade the facility but there will still be access for Colonial Village. Showed the proposed façade changes.

Griffith asked why the trees have to be removed.

Merritt stated that they have to come down because of grading for stormwater and site design because the root system would be in the way. Stated that they will discuss re-vegetation with the Planning Board. Stated that there will be a solid fence for screening. Stated that it's the stormwater that would affect the trees.

Public hearing closed 8:46 pm.

Routhier stated that he likes the project and feels that the development of Route 108 is next for Somersworth. Stated that they have a parcel that has been dormant for many years and the regulations prevent anything useful from happening with it. Stated that this is a good project to bring the property into use. Stated that he feels that it meets the definition of a hardship and that it will enhance Route 108.

Keiser stated that he feels that it will not diminish property values and that it is not contrary to the spirit of the ordinance. Stated that regarding the hardship criteria there are special conditions because the use is no longer allowed. Stated that this is beneficial to the general public and is a reasonable use. Stated that they are taking land that cannot be used and making it useful. Stated that there is substantial justice and that it is not contrary to the spirit of the ordinance.

Maskwa stated that he agrees with Routhier and Keiser. Stated that they are very difficult lots and other issues will be vetted out with the Planning Board.

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 Peter Pope for a variance from Section 6.C.1.a of the Zoning Ordinance to expand a nonconforming use be **APPROVED**.

Seconded by Routhier. Motion carried with a 4-1 vote with Griffith opposed.

- G) 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 there was a request from Vision 2020 that the Board review the City's Master Plan in an effort to update the matrix. Read the letter from Vision 2020 and stated that some of the goals/questions need to be reviewed and asked that Board members review and then discuss it next month.

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

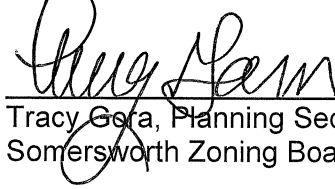
Maskwa welcomed ZBA member Roland Dumont, who has been out, back to the Board.

Motion: Dumont moved to adjourn the meeting.

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

Meeting adjourned at 8:53 pm.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Tracy Gofa", is written over a horizontal line.

Tracy Gofa, Planning Secretary
Somersworth Zoning Board of Adjustment