

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, October 2, 2017

6:30 PM

Council Chambers

Members Present:

Jeffrey Stevens, Vice Chair
John Rab, Alternate
Louise Zerba, Alternate
Josh Gorman

Staff Present:

Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

Stephanie Gaiser, Alternate
Nathaniel Stout, Chair
Thomas Plenda

I. Introduction of Board Members

Chair Stout was not in attendance of the meeting and Vice Chair Stevens assumed the role as Chair Pro-Tem. He called the meeting to order at 6:34 PM, introduced members of the Board and welcomed everyone to the meeting.

Chair Pro-Tem Stevens stated that the Board would move forward with approving the minutes of the previous meeting and other items on the agenda before hearing the applications. In delaying the meeting, Chair Pro-Tem Stevens stated that he had hoped a fifth member of the Board, Mr. Plenda would be present for the hearing.

Chair Pro-Tem Stevens stated that there were two hearings on the agenda that were related to each other and would be heard at the same time. He noted the applications were ZBA 17-15 and ZBA 17-17.

Chair Pro-Tem Stevens said that Mr. Rab would be recusing himself from the hearing of ZBA 17-16. He explained to the applicant that in order to have the application approved, there would need to be a total of three approved votes, regardless of the Board being a four member Board or a five member Board. Chair Pro-Tem Stevens noted that the decision to move forward with a four member Board was a decision made by the applicant.

After a brief delay, the ZBA reconvened with a four member Board. The fifth member of the Board was not present.

II. Minutes of the Previous Meeting

Ms. Zerba made a motion to accept the minutes from September 5, 2017. The motion was seconded by Mr. Gorman, which carried unanimously.

IV. Hearings

Continued ZBA 14-12: Petitioner, Leah LaRock requests an extension to decision of approval with conditions dated July 6, 2015 for property located at 0 Daniels Hill Rd., which is in the Rural Zone. This approval was to permit the building of a single family dwelling on a lot with 1.76 acres where a five acre minimum lot size is required per Table 102-791, Basic Zone Dimensional Requirements of the Zoning Code.

Chair Pro-Tem Stevens recognized Ms. LaRock and explained to her that there were currently four Board members present. He asked Ms. LaRock if she wanted to wait until after the delay in chance of a five member Board. Ms. LaRock replied in the affirmative.

After the delay, Chair Pro-Tem Stevens asked Ms. LaRock if she wanted to move forward with the hearing with a four member Board or have the opportunity to request the hearing be postponed until the next ZBA meeting. Ms. LaRock requested that the hearing be postponed until the next ZBA meeting in order to have a five member Board. Chair Pro-Tem Stevens stated that the next ZBA meeting would be held on November 6, 2017.

Ms. Zerba made a motion to continue ZBA 14-12 to the next scheduled ZBA meeting. The motion was seconded by Mr. Gorman, which carried unanimously.

Mr. Rogers clarified that the ZBA would try their best to have a five member Board for the next ZBA meeting.

Continued ZBA 17-15/ Petitioners, Michael Lynch and Jeanette Wright of 150 Meetinghouse Rd., Hinsdale, requests a Variance for property located at Grove and Water St., Tax Map Parcel #028-03-011. Represented by Wendy Pelletier of Cardinal Surveying and Land Planning; the Petitioners requests a Variance to permit the current open lot to be converted to a commercial parking lot per Section 102-422 of the Zoning Ordinance.

Chair Pro-Tem Stevens extended the offer to the applicant to wait for a five member Board. He recognized Ms. Pelletier, the applicant, and she replied that she would wait until after the delay for a five member Board.

After the delay, Chair Pro-Tem Stevens asked the applicant if they wished to move forward with a four member Board or postpone the hearing until the next schedule ZBA meeting. Ms. Pelletier replied that they would move forward with a four member Board.

Mr. Schneider explained that this piece of property has been before the ZBA on one or more occasions and are before the Board again because of a few glitches in their last notice. Mr. Rogers stated that the applicant was requesting a use Variance in their original application. He explained that the original application included a plan proposing a commercial parking lot and there were issues raised from lot coverage and paving setbacks. Mr. Rogers stated that the applicant has now applied for three Variances that included one for the use, the setback and lot coverage.

Ms. Zerba asked Mr. Rogers to clarify why the Board was hearing ZBA 17-15 again. Mr. Rogers explained that there was a discrepancy with the notification process. He explained that the Board would need to start from square one with the application.

Chair Pro-Tem Stevens recognized Wendy Pelletier, of Cardinal Surveying and Land Planning, Keene, NH. Ms. Pelletier explained that the property was over a 4,000 square foot lot, located on the corner of Water Street and Grove Street. She noted that this property has always been a parking lot. She explained that the factory the parking lot was associated with was sold off and now needs a Variance because it is no longer associated with that building plan. Ms. Pelletier said that the owners are requesting to continue to use the property as a parking lot that would have 11 parking spaces. She stated the parking spaces would be rented out to the neighboring apartment buildings. Ms. Pelletier referred to the plan provided in the application, indicating that there would be planters placed on the Water Street and Grove Street side. She explained that there are currently two entrances to the property and the plan is to block off the Water Street side entrance, with pedestrian access to the sidewalk.

Ms. Pelletier stated that there would be a total of 11 parking spaces, a place for snow storage on the southerly edge and a post and chain barrier to divide the property. She referenced the post and chain barrier that Athens Pizza uses to border their property on Emerald Street. Ms. Pelletier explained that the lot is undersized and there is a need for a use Variance so that the owners can continue to use the property as a parking area. She stated in regards to the setbacks it was brought to their attention that the property is no longer in the High Density Zone and now is located in the proposed Residential Preservation District. She explained that the regulations in the proposed Residential Preservation District would make this a tight lot that is almost unusable. Ms. Pelletier said that with the proposed Residential Preservation District, the lot would need to meet from 55% of the lot occupied by a structure down to 35%, 75% for paving down to 45% and would need 55% for green open space. She noted that this almost makes the lot totally unusable at its size and configuration.

Ms. Pelletier said that if they were to adhere to those standards the lot would be of use to only 5 parking spaces. Ms. Zerba asked the size of the parking spaces. Ms. Pelletier replied that the spaces were 8 x 18. She noted that the spaces can be smaller because it is not an associated use with a retail space. Mr. Rogers explained that within the zoning code, the code reads that if it is not a use associated with retail, the 8 x 18 space would be the standard parking space size. He noted that if the space was tied to retail, the size would have to be a 9 x 18 space.

Ms. Zerba asked Mr. Rogers or Mr. Schneider for further details on the Residential Preservation District in reference to this property. Mr. Rogers stated that the main thing that affected the lot and the proposal is that the lot coverage does change. He noted that the Residential Preservation District was in the process of getting Council approval for a zoning change. Ms. Zerba asked if the landscaping standards would be more intense in this zone. Mr. Rogers replied that it was not necessarily the landscaping but the coverage itself would need to be more of a permeable surface.

Mr. Gorman asked Mr. Rogers to clarify if the property is currently located in the High Density Zone and if the property would be located in the proposed Residential District. In addition, he asked Mr. Rogers to clarify if the Variance was a request for the High Density Zone. Mr. Rogers replied that at this point the Variance request is for the High Density Zone. He explained that the Planning Board would have to address the change of use and then they would have to apply the new zoning code to the property.

Chair Pro-Tem Stevens welcomed public comment.

Chair Pro-Tem Stevens read a letter from Medard and Dawn Kopczynski, dated September 27, 2017 that was in opposition of the application.

Chair Pro-Tem Stevens stated that the letter referenced that there was no storm water runoff. He asked Ms. Pelletier if that was something that was addressed. Ms. Pelletier replied that they have not addressed a storm water runoff. She explained that there was no plan to change the property from what is there currently. Mr. Gorman asked how long the property has been a fully paved lot. Ms. Pelletier replied approximately 30 years.

Mr. Gorman said that it was mentioned that the property was connected to another property. He asked what business owned the parking lot. Ms. Jeannette Wright, of 150 Meetinghouse Road, Keene, NH, replied that it was MS Perkins, a machine company. In addition, Mr. Schneider said that the connected property used to be shoe and boot factory called Robert Harts.

Chair Pro-Tem Stevens asked if there was any consideration for additional greenery. Ms. Pelletier stated that the owners were trying to keep expenses down. She noted that she understood that money was not supposed to be considered a hardship. Ms. Pelletier explained that the owners have been using the parking lot for a long time and all of a sudden the City came in and said that the owners cannot do this anymore. She said that the owners were trying to meet as many standards as possible and that by striping the parking lot and adding planter boxes was the most cost effective measure. She noted that the planter boxes would act as curbing as well as reduce impermeable space. In addition, Ms. Pelletier noted that by adding green space would mean that they would lose parking.

Ms. Zerba stated that she was not opposed to the parking lot but explained that by looking at the parking and the proposal she does not see it being very attractive. She expressed her concern with the lack of setbacks and the planter boxes. Ms. Zerba stated that she has seen planter boxes throughout the City and noticed that these tend to not be well maintained. She reiterated her concern with the appearance of the lot.

In addition, Ms. Zerba expressed her concern about the chain link barrier. Ms. Pelletier stated that it was not a chain link fence and that it was a chain in between posts. She said that Athens Pizza has these chain link barriers along their property that acts as a barrier to the sidewalk. Ms. Zerba asked if the applicant could add some sort of greenery along the property line. Ms. Pelletier explained that if any green space was added the owners would not have the 24 foot aisle space that is needed for the parking spaces. Ms. Zerba asked if the owners could remove one parking space and then reconfigure the lot to have green space. Ms. Pelletier replied that it was almost impossible due to the location of the entrances and just the reconfiguration of the lot would need 18 foot long spaces long and 22 feet in between the spaces.

Chair Pro-Tem Stevens stated that he understood the concern with the appearance due to the location of the property being located at a busy intersection. Ms. Pelletier explained that any improvements the owners are requesting to do would improve the appearance of the property.

Chair Pro-Tem Stevens asked if there were landscaping conditions applied with the property when it was previously approved. Mr. Schneider replied that the only condition was that the owners had to go before the Planning Board and get their approval for landscaping. Chair Pro-Tem Stevens stated that at this point it would not meet that approval. Mr. Schneider explained that is due to the fact that there is a set back problem and a coverage problem. He further explained that the Planning Board cannot waive those requirements, which is why the applicant had to come back before the ZBA. He noted that this would be a commercial lot and that the applicant would have to go back before the Planning Department.

Ms. Zerba asked if the waivers for the setbacks were approved, how that would figure with what the Planning Board would be deciding. Mr. Rogers replied that what the ZBA saw before them was for a plan that does not give the Planning Board a lot to work with. He said the fact that if 100% coverage and no setbacks are granted as a Variance, the Planning Board would refer to the section of code that speaks to this for landscaping within parking lots. Mr. Rogers noted that this section of the code has different criteria that the developer can choose from and the final sentence in the criteria does list approval from the Planning Board. Mr. Rogers stated that the Planning Board would have to go based on what was approved for setbacks and lot coverage.

Mr. Gorman referred to the map that referenced the hash marked areas that the Board questioned as potential green space. He asked if that was a place where the owners were intent on putting snow. Ms. Pelletier replied that they did show snow storage on the southerly boundary and that if needed, they would use a non-parking space for snow storage. Mr. Gorman explained that he was asking about snow storage because there was no sense in putting a lot of green space, if the area would get dug up and destroyed, turning the area into mud or dead grass. He noted that the property may even end up looking worse.

Ms. Zerba asked if the applicant would consider a berm similar to what PC Connection installed on Marlboro Street. She noted that PC Connection added greenery to make it

look more attractive. She said that she was willing to support the use as a commercial property lot but could not support the setbacks as requested. Ms. Pelletier asked the Board if she could take a few minutes to converse with the owners of the property. The Board agreed.

Ms. Pelletier reported that after speaking with the owners, they were willing to work with the recommendations of the Board if they can get the Variances approved. Mr. Rab asked where a berm could be placed. Ms. Zerba said that what she would like to see is the flexibility that if it went before the Planning Board in granting the waiver for no setbacks, it would give the Planning Board the ability to try to create something that would be acceptable so that the lot would look nicer compared to what it looks like at the present time. She noted that the Planning Board would have no ability to offer suggestions with zero setbacks.

Chair Pro-Tem Stevens asked Ms. Zerba what she would like to see happen instead of zero setbacks. Ms. Zerba replied that she would like someone with more expertise make that decision. Mr. Rogers referred to Section 102-1229 of the Zoning Code that was specific to parking lots that abut right-of-ways. He explained that within the criteria there are five different criteria that need to be met for landscaping with any commercial lots in any zone. Mr. Rogers said that this Board could determine a certain amount of green space for the lot. He noted that this would give the Planning Board some leeway to create some landscaping within those zones.

Chair Pro-Tem Stevens asked how the ZBA would word that condition. Mr. Schneider said that the Board would refer to the plan that was submitted and make alterations or condition specific numbers. Ms. Zerba stated that she did not feel comfortable putting out numbers and wanted to know if the applicant could work with the Planning Department and try to come up with something that was acceptable. Mr. Rogers said that the Planning Board needs some sort of number or area that this Board puts forth for a Variance for the setback and lot coverage. Mr. Rab asked if the Board could grant the waiver and condition that the Planning Board review the areas where there is parking striping and also where the planting boxes would be located for approved landscaping. Mr. Rogers said that the Zoning Board would want to be clear on what is landscaping and open space. Mr. Rab asked if this Board could leave that decision up to the Planning Board. He noted that the Planning Board has better expertise than the ZBA. Mr. Rogers said that when it comes to landscaping, the Zoning Board was looking at a setback Variance, a use Variance and a lot coverage Variance. He said that if the Variances were approved, the Zoning Board could put a condition to the Planning Board.

Mr. Rogers said that his recommendation to the ZBA, if they want to see some sort of greenspace on the property that the approval be based on those conditions. Ms. Zerba asked if the ZBA could approve one Variance and work on the waiver request for the setbacks. Ms. Pelletier stated that they have been working on this project since June and with change in zone, the owners wanted to get this ready to go before winter. Mr. Gorman said that he thought it was the Board's duty to make a decision and if the green space is a requirement the Board should condition this in the approval.

Chair Pro-Tem Stevens stated that he was in support of the application and that the property has been parking lot for a long time. He noted that this was an area that needs parking. Chair Pro-Tem Stevens did agree that greenery would be nice but that he was not qualified to say how much. Mr. Rab asked if there was any flexibility with the snow storage yard for a rain garden for runoff. Mr. Pelletier said that this could be an option but with the salted snow any greenery placed in that area would not survive. However, she did state that was something they could work on.

Ms. Zerba asked the applicant if they were talking about a 3 foot wide planter that would be in the setback. Ms. Pelletier replied in the affirmative, stating that it would go right to the edge of the property line. Mr. Rab said that he has seen areas near parking lots that had a side rain garden with a deep impression that had a runoff that drains into ground, with high ornamental grasses. He noted that this looked nice and that it looked better than asphalt. In addition, he said that he did not know if that was the call of the ZBA.

Ms. Pelletier said that with all of the department reviews, one of the things that came up was that the Keene police were concerned that the pots and fence would be vandalized. She said that the owners have had several cars towed and that the parking lot was empty. In addition, she said that the parking lot was being used for U-turns to cut across to the intersection. She said even though the improvements they are making may not be perfect, the improvements do increase the safety given the busy corner. Ms. Pelletier said that the plans submitted to the ZBA would improve the situation from what it is today.

With no further comment, Chair Pro-Tem Stevens closed the public meeting.

The Board reviewed the criteria for ZBA 17-15.

Mr. Gorman said that the parking lot has been there forever and that it would be tough to take it away. All members of the Board agreed. Mr. Rab said that the hardship is that the lot cannot be feasibly used for anything else.

Granting the Variance would not be contrary to the public interest:

Chair Pro-Tem Stevens said that it would be unfair to take the Variance away.

If the Variance were granted, the spirit of the Ordinance would be observed:

Chair Pro-Tem Stevens stated that the Board had already discussed in depth how the spirit of the Ordinance would be observed.

Granting the Variance would do substantial justice:

All members of the Board agreed that the Variance would do substantial justice.

If the Variance were granted, the values of the surrounding properties would not be diminished:

Mr. Gorman stated that the values of the surrounding properties would stay the same. All members of the Board agreed.

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

Chair Pro-Tem Stevens stated that it was clear that no fair and substantial relationship existed between the public purpose and application.

x. The proposed use is a reasonable one

Chair Pro-Tem Stevens stated the lot has been used as a parking lot for quite some time.

Mr. Rab made motion to approve ZBA 17-15. The motion was seconded by Ms. Zerba, which carried unanimously.

Chair Pro-Tem Stevens reviewed the Findings of Fact:

Granting the Variance would not be contrary to public interest: Granted, 4-0

If the Variance were granted, the spirit of the Ordinance would be observed: Granted 4-0

Granting the Variance would do substantial justice: Granted, 4-0

If the Variance were granted, the values of the surrounding properties would not be diminished: Granted, 4-0

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: Granted, 4-0

x. The proposed use is a reasonable one: Granted, 4-0

With a vote of 4-0, the Zoning Board of Adjustment approved ZBA 17-15.

ZBA 17-17/ Petitioners, Michael Lynch and Jeanette Wright of 150 Meetinghouse Rd., Hinsdale, requests a Variance for property located at Grove and Water St., Tax Map Parcel #028-03-011. Represented by Wendy Pelletier of Cardinal Surveying and Land Planning; the Petitioners requests a Variance to permit parking lot setbacks and lot coverage per Sections 102-1226 and 102-791.

Chair Pro-Tem Stevens opened the public meeting.

With no further comment, Chair Pro-Tem Stevens closed the public hearing.

Chair Pro-Tem Stevens said that in his personal opinion, he was satisfied with the proposed plan. Mr. Gorman stated that he thought the proposed changes to the property are quite beneficial to situation. He explained that by blocking off one of the entrances would prohibit short cuts and benefit the neighborhood. In addition, he said that the other benefit was that the parking lot would be used properly, adequately and possibly not be a source of vandalism. He also recommended the applicant look into the suggestion made by Mr. Rab for a rain garden for runoff.

Ms. Zerba asked if there would be a recommendation to have the planters reviewed by the Planning Board. Mr. Rogers that condition could be placed on the approval. He noted that this condition would already have to be met based on the Zoning Code 102-1229. Ms. Zerba reiterated that she could not support something with zero setbacks and understood the intent of the planter boxes. Mr. Rab said that the lot cannot be used as anything but a parking lot. He noted that this was a hardship and the small amount of parking space available was also a hardship. Mr. Rab stated that he was in support of the application.

The Board reviewed the criteria for ZBA 17-17.

Granting the Variance would not be contrary to the public interest:

Chair Pro-Tem Stevens stated that the lot was used as a parking lot for as long as anyone can remember and that the only thing changing is that it would be official. Mr. Rab said that the lot would now decrease the access point which is beneficial.

If the Variance were granted, the spirit of the Ordinance would be observed:

Chair Pro-Tem Stevens said that spirit of the Ordinance has been met. Mr. Rab said that it was a continuance of use.

Granting the Variance would do substantial justice:

Chair Pro-Tem Stevens stated that the lot has been parking lot for a long time and that it would do more injustice to deny. Mr. Rab stated that he agreed.

If the Variance were granted, the values of the surrounding properties would not be diminished:

Mr. Gorman, Mr. Rab and Chair Pro-Tem Stevens stated that the value of the surrounding of the properties would stay the same.

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:

Mr. Rab stated that if the Variance was denied it would be a greater hardship.

Mr. Gorman stated that it was an equitable solution given the situation.

x. The proposed use is a reasonable one:

Chair Pro-Tem Stevens said that he agreed that the use was a reasonable one.

Chair Pro-Tem Stevens reviewed the Findings of Fact:

Granting the Variance would not be contrary to the public interest: Granted, 4-0

If the Variance were granted, the spirit of the Ordinance would be observed: 3-1, Ms. Zerba opposed

Granting the Variance would do substantial justice: Granted, 4-0

If the Variance were granted, the values of the surrounding properties would not be diminished: Granted, 4-0

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property: Granted, 3-1, Ms. Zerba opposed

x. The proposed use is a reasonable one: Granted, 4-0

With a vote of 3-1, The Zoning Board of Adjustment approved ZBA 17-17. Ms. Zerba opposed.

ZBA 17-16/ Petitioners, Suzanne and David Boisvert of 35 Keene Rd., Winchester, requests a Variance for property located at 361 Court St., Tax Map Parcel #008-02-001, owned by Prospect Hill Home of 361 Court St. the Petitioners requests an Enlargement of a Nonconforming Use to allow double occupancy in rooms that meet state licensing requirements HeP807 Chapter, from 17 to 26 beds.

Chair Pro-Tem Stevens explained to the applicant that Mr. Rab would recuse himself from the hearing and there would be a three member Board. He stated that all three members would need to vote in favor in order for the application to be approved. Ms. Boisvert requested the hearing be postponed to next scheduled Board meeting.

Mr. Rab made a motion to continue ZBA 17-16 to the next scheduled Board meeting. The motion was seconded by Mr. Gorman, which carried unanimously. The vote was approved by Chair Pro Tem Stevens, Mr. Gorman and Ms. Zerba. Mr. Rab abstained from voting due to his recusal.

Chair Pro-Tem Stevens welcomed public comment.

Loretta Symonds, 79 Woodburn Street, Keene, NH stated that she did not receive a 10 day notice but instead received a 9 day notice. She said that she thought the rule stated a 10 day notice. Ms. Symonds explained that the notice was listed under Patricia Lord, who is deceased. She stated that the property has since gone to her and that it has not been recorded at the Registry of Deeds. Ms. Symonds noted that all of the residents on Woodburn Street received a 9 day notice. Mr. Schneider stated that he would make a note of this and would speak with the City Attorney. Ms. Symonds asked if someone from the City would get back to her. Mr. Schneider asked Ms. Symonds for her contact information to reach out to her once he spoke with the City Attorney. Ms. Symonds provided Mr. Schneider with her contact information.

With no further comment, Chair Pro-Tem Stevens closed public hearing

V. New Business:

None

VI. Communications and Miscellaneous

None

VII. Adjournment

Hearing no further business, Chair Pro-Tem Stevens adjourned the meeting at 7:44 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker