

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, June 01, 2015

6:30 PM

City Hall, Second Floor Committee Room

Board Members Present

Chair Louise Zerba
Nathaniel Stout
Jeff Stevens
Joseph Hoppock
David Curran

Staff Present

Mr. Gary Schneider, Plans Examiner
Med Kopczynski, Assistant City Manager
Thomas Mullins, City Attorney

Board Members not Present

Others Present

I. Introduction of Board Members

Chair Zerba introduced the Board members. And began the meeting at 6:30 PM. Mr. Schneider stated that there will be a site visit at the next meeting.

II. Minutes of the Previous Meeting: May 4, 2015

Mr. Hoppock made a motion to approve the minutes of May 4, 2015. Mr. Stout seconded the motion which carried unanimously with the following changes. Change Chair Zerba stated that there are two instances where the minutes read Chair Zebra and it should instead read Chair Zerba. She continued, stating that Gunn Road in the previous minutes was referred to as Mr. Gunn.

III. Unfinished business

None at this time

IV. Hearings:

Postponed ZBA 15-06/: Petitioner, Keene Family YMCA, of 200 Summit Road, Keene, represented by Rob Hitchcock of SVE Associates, 47 Marlboro Street, Keene, requests a variance for property located at North of 200 Summit Road, Keene, which is in the

Corporate Park Zone. The Petitioner requests a bus stop shelter in a zone where such a use is not specifically allowed. Because the lot has no primary use, the bus shelter, which is normally an accessory use, becomes the primary use per Section 102-792 of the Zoning Code.

Mr. Stout recused himself of this petition because he is a Board member of the YMCA. The Board supported the decision. Mr. Schneider displayed a map of the YMCA. He stated that the bus stop would be going into an area, better known as Corporate Park, where there is no primary use on the property. Mr. Schneider stated that without a primary use there can be no accessory use as a bus stop.

Mr. Rob Hitchcock of SVE Associates approached the Board. He stated that the City Express Bus does not come very close to the YMCA. He continued, stating that due to the tight bus schedule, there is no time for the bus to go into the YMCA lot and turn around. Chair Zerba asked if other options were discussed with the bus company. Mr. Hitchcock stated that three options including a turnaround were discussed but the bus stop was the best option.

Chair Zerba stated that there a letter from C&S was submitted in reference to the approval of the bus stop. Mr. Hoppock asked what would happen if down the road C&S saw a problem with the bus stop. Mr. Hitchcock stated that C&S can then remove the bus stop. Mr. Stevens asked if it is that simple to take out a bus stop. Mr. Schneider stated that if C&S created a primary use for the property the bus stop would continue as an accessory use or if it hindered the development it would be removed. Mr. Hoppock asked how individuals will get to the YMCA from the bus stop. Mr. Hitchcock stated that there is a walking path that will bring them to the YMCA.

Mr. Hitchcock went over the ZBA criteria. He stated the variance would not be contrary to public interest because it is a small impact on a large lot and there is minimal traffic past the YMCA lot. Mr. Hitchcock stated that the variance is in the spirit of the ordinance because it allows individuals who may not have transportation, access to the facility. Mr. Hitchcock stated that the variance would do substantial justice because of the access to the YMCA for individuals specifically those that may be physically challenged. Mr. Hitchcock continued, stating that the surrounding property values would not diminish. He continued, stating that the variance is an unnecessary hardship because if any structure of use were on the lot then this would not be a problem as an accessory use. Mr. Hitchcock stated that this bus stop would benefit those that truly need the assistance.

Ms. Susan Ashworth of Home Healthcare Hospice and Community Services which runs the City Express Bus approached the Board. She stated that many of the older individuals who want to access the YMCA need to be dropped off at a closer location. She continued, stating that people are walking a quarter mile in the winter. Ms. Ashworth stated that the bus stop will allow a safe place for YMCA members. Ms. Ashworth stated that the bus schedule is very tight and the bus stop would allow for this schedule to be followed. Chair Zerba asked if any other bus company would be able to use the bus stop. Ms. Ashworth replied yes. Mr. Hoppock asked why the bus cannot go into the YMCA parking lot to drop people off. Ms. Ashworth replied that it takes about 10 minutes to get through the parking lot with the traffic and a test run was conducted.

Ms. Helene Mogridge, CEO of the YMCA, approached the Board. She stated that part of the mission of the YMCA is to never deny access due to inability to pay membership fees. She continued, stating that those which take advantage of the financial aid may not have access to transportation. She continued, stating that it is dangerous for seniors and individuals with physical challenges to make the long walk to the YMCA.

Chair Zerba closed the public hearing.

Mr. Hoppock made a motion to approve ZBA 15:06 conditioned that if the property is developed into a primary use the Zoning Board of Adjustment will determine whether the accessory use continues. Mr. Curran seconded the motion.

Mr. Hoppock stated that the proposed use is a reasonable one and there is substantial justice being done.

Chair Zerba read over the Findings of Fact:

1. *Granting the variance would not be contrary to the public interest.*

Mr. Stevens agreed that this application is in the interest of the public. Chair Zerba stated that everyone including individuals in the condo complex can use the bus stop.

2. *If the variance were granted, the spirit of the ordinance would be observed*

Mr. Stevens agreed.

3. *Granting the variance would do substantial justice.*

The Board agreed.

4. *If the variance were granted, the values of the surrounding properties would not be diminished.*

Mr. Stevens stated that if anything the bus stop would help the properties.

4. *Unnecessary Hardship:*

Mr. Stevens stated that if there was a primary use to the property, this would not be a problem.

A. 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:

- i. *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.*

- ii. *The proposed use is a reasonable one.*

On a unanimous vote, the Zoning Board of Adjustment approved ZBA 15-06.

ZBA 14-12/: Leah LaRock requests a variance for property located at 0 Daniels Hill Rd, which is located in the Rural Zone. The Petitioner is requesting to build and occupy a single family dwelling on a lot with 1.76 acres where a five (5) acre minimum lot size is required per Table 102-791 Basic Zone Dimensional Requirements of the Zoning Code

Chair Zerba stated that this petition has been postponed until next month due to the petitioner's request. She continued, stating that the site visit will be on June 29, 2015.

ZBA 15-07/: Petitioner, Gene & Julie Garcia, of 98 Ridge St., Arlington, MA, requests a variance for property located at 0 Nims Rd., Keene, which is in the Rural Zone. The Petitioner requests the construction of a single family home on a 77.9 acre lot with no frontage on a Class IV or Class V road where 50 foot frontage is required per Table 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

Attorney Mullins stated that Mr. Hanna will approach the Board first due to the argument of the jurisdiction of the Board. Mr. Tom Hanna of 41 School Street, Keene, New Hampshire approached the Board. Mr. Hanna stated that he represents Jacob and Nancy Weststrate who are immediate abutters to the north of the property. Mr. Hanna gave the Board a Memorandum re: Jurisdiction. Mr. Hoppock stated that this will be taken under advisement but the Board will not be able to read through the entire document tonight. Mr. Hanna stated this request was discussed 16 years ago on July 6, 1999 and a variance was made: ZBA-99-11. He continued, stating that the owner does not have a second chance to make the same request under law.

Mr. Hanna stated that the variance was conditioned specifically to the owner. He continued, stating that no appeal was requested from the petitioner. Mr. Hanna stated that a statute was created to not allow any building on Class V roads or better. He continued, stating that this statute supersedes any local action. Mr. Hanna stated that if a building is requested on a Class VI road then the statute states that City Council votes with a review from the Planning Board. He continued, stating that this occurred in 1999. Mr. Hanna stated that there was a denial of the building permit due to a bad precedent for future building permits on Class VI roads.

Mr. Hanna stated that this same request is here tonight. He continued, stating that no appeal was taken after the denial of City Council in 1999. Mr. Hanna stated that the condition of the variance was never satisfied. He continued, stating that in July of 2000, the City Council went through a process to determine if buildings could be built on any Class VI road in the City. Mr. Hanna stated that from this a City wide policy, 2000-28 was created. Mr. Hanna stated that due to this information, the applicants are barred from this request. He continued, stating that the Board does not have jurisdiction with this case. Mr. Hoppock asked about the 1999 variance and if the applicants would be able to approach the Board for an appeal. Mr. Hanna stated that this appeal needed to occur 16 years ago. Chair Zerba stated that no decision will be made tonight. Mr. Hanna stated that he objects going into the merits for reasons previously discussed.

Chair Zerba opened the public hearing.

Mr. Gene Garcia of 98 Ridge Street, Arlington, Massachusetts approached the Board and stated that he was unable to look into the merits of this case. He continued, stating that Mr. Kürt. Blomquist advised him that changes were made to the Length of a Dead End Street Law in 2008 and that a new appeal process was created on a case by case basis. Mr. Garcia stated that this was the main objective to the application in 1999. Mr. Garcia stated that they are asking to use the Class VI road as a driveway to access the land and build a home. Mr. Stevens stated that he is confused by the Dead End Street Law. Mr. Garcia stated that there is a regulation length for dead end roads due to safety. He continued, stating that Nims Road is above the standard length. Mr. Hoppock asked when the Class VI road was discontinued. Mr. Schneider stated that the year was

1951. Chair Zerba asked where the location begins. Mr. Garcia stated that there is 300 feet of Class VI road. He continued, stating that the intention is to build as close to the Class V road as possible.

Ms. Jane Shapiro of Nims Road approached the Board to speak in support of the application. She stated that she is on the western side of the land and it is 77 acres. Ms. Shapiro stated that there is no access to the land and the applicants want to build a single family dwelling. She stated that the owners are coming in with preservation in mind.

Nancy Weststrate of 86 Nims Road approached the Board and handed out a Memorandum. She stated that she was also not included on the abutters list that accompanied the application and was not advised about the petition until late in the process. Ms. Weststrate began to read aloud the Memorandum that she handed. She stated that granting the variance would go against the public interest because it is already a substandard dead end street. She continued, stating that snow is currently placed in that area and with this development, flooding may occur. Ms. Weststrate stated that portions of Nims Road have also been designated as the "Highest Ranked Wildlife Habitat in New Hampshire." Ms. Weststrate referred the Board to the map in her Memorandum packet. She continued, stating that this development may open the door for further development down the road. Ms. Weststrate stated that regular vehicle traffic would put both walkers and travelers in the area at risk. She continued, stating that this petition does substantial injustice because it is benefitting a single family instead of the community. Ms. Weststrate stated that if there was a fire it would be difficult to have a safety vehicle get to the designated area. She stated that there have already been two fires in the area. She continued, stating that there are other parcels of land which are also landlocked and they are in the same situation and there is no hardship for this specific applicant.

Paul and Jessica Eby of 85 Nims Road approached the Board. Mr. Eby stated that he bought his property because it is a very private area. He stated that he bought the property because he was under the impression that the parcel in discussion is unbuildable. Mr. Eby stated that he is concerned about a fire which could easily spread to his house. He continued, stating that he does not believe this variance is in the best interest of the public and there are several other properties which cannot have structures built. Mr. Eby stated that the 77 acre parcel was purchased as an unbuildable lot. Mr. Hoppock asked how the applicant is supposed to access the lot. Mr. Eby stated that the applicants can access the property from the dirt road.

Mr. Paul Venezia of 75 Nims Road approached the Board. He stated that Mr. John F. Madden of 229 Concord Road could not attend the meeting but wrote a letter. Mr. Venezia gave the letter to the Board and read aloud the letter in opposition to the variance. Mr. Venezia stated that the road is very tight and there are currently 11 dwellings on the road that have a driveway. He continued, stating that it is challenging in the winter when the snow banks make the road very narrow. Mr. Venezia stated that the road would become very dangerous with additional homes. He continued, stating that there have been two major fires within the last five years. Mr. Venezia stated that the last fire was an all-day event because the water was at the very front of the road. He continued, stating that this lot in discussion is further away from the water source. Mr. Venezia stated that further development will not better the community.

Mr. Gary Tochterman of 74 Nims Road approached the Board. He handed a petition with seven property owners in opposition to the Board. Mr. Tochterman stated that he also bought the property because of the privacy of the area. Mr. Hoppock asked if there are any abutters on the list. Mr. Toktarin replied yes you heard from both.

Mr. Hanna handed out additional material for the Board to review.

Mr. Garcia approached the Board. He stated that it will only be a single family home. Mr. Garcia stated that the excess vegetation on the Class VI road will be cleared and is much wider than other Class VI roads. Mr. Garcia stated that he did not know about additional property being for sale on 86 Nims Road. He continued, stating that Mr. Shanks held the property with the hopes that it will be developed. Mr. Garcia stated that in terms of fire safety, he will be including a fire sprinkler system. He continued, stating that each owner would have to get a separate approval for development of their property and this variance would not set precedence because of this.

Julie Garcia of 98 Ridge Street, Arlington, Massachusetts approached the Board. She stated that she grew up in Keene and is very concerned with this conservation.

Ms. Edy approached the Board and stated that there was previous knowledge by Mr. Shanks of property for sale on Nims Road.

Chair Zerba stated that the matter will be taken under advisement

Mr. Hoppock made a motion to take the information under advisement and continue the public hearing until July 6, 2015. Mr. Curran seconded the motion which carried unanimously.

ZBA 15-08/: Petitioner, David and Dawne Williams, of 391 Old Walpole Rd., Keene request a variance for property located at 391 Old Walpole Rd., Keene, which is in the Rural Zone. The Petitioner requests to be permitted subdivision of a 2.78 acre of land into two lots of 1.29 acres and 1.16 acres of land. It should be noted that .33 acres of land is subtracted from a 1.49 acre lot, in accordance with the Surface Water Protection Ordinance, resulting in a 1.16 acre lot per Table 102-791 Basic Zone Dimensional Requirements of the Zoning Code. Previous approval was for a 1.2 acre lot and a 1.6 acre lot.

Mr. Joe Hoppock is recusing himself from this application due to a conflict of interest. Mr. Schneider stated that approval was given for the subdivision of this land. He continued, stating that the Planning Department reviewed the Surface Water Protection Ordinance and under 102-1494 which states *“For purposes of calculating the minimum lot size for the subdivision of land areas of surface water resources as defined in this ordinance shall be excluded from the area used to calculate the minimum lot size.”* Mr. Schneider stated that this makes the two lot sizes in discussion smaller.

Mr. Williams of 391 Old Walpole Road in Keene, New Hampshire stated that the ordinance was not on the website and Mr. Rhett Lamb was supposed to send a letter explaining this. Chair Zerba asked if the loan from the bank would change. Mr. Williams replied, no. Mr. Williams

stated that the majority of his items have been removed from the structure. Mr. Williams stated that the wetlands are a good distance away from the structure.

Mr. Moses of 361 Walpole Road approached the Board. He stated that he has been a neighbor for some time and was at the last meeting. Mr. Moses stated that the abutters are in favor of this. He continued, stating that the wetland in discussion is very dry. Mr. Moses stated that this division would allow the area to be fully residential. Mr. Stout asked if a new variance should be created. Attorney Mullins stated that the new variance will supersede the previous variance.

Mr. Stout suggested going through the criteria first and then make a motion.

Chair Zerba read over the findings of fact:

1. *Granting the variance would not be contrary to the public interest.*

Mr. Stout stated that this is in the public interest. Mr. Stevens agreed and stated that it would bring the area back to residential.

2. *If the variance were granted, the spirit of the ordinance would be observed*

The Board agreed.

3. *Granting the variance would do substantial justice.*

The Board agreed. Mr. Stout stated that there is nothing uncharacteristic with this change. Chair Zerba stated that the public would be better served with this variance.

4. *If the variance were granted, the values of the surrounding properties would not be diminished.*

4. *Unnecessary Hardship:*

A. 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:

- i. *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.*

- ii. *The proposed use is a reasonable one.*

Mr. Stevens made a motion to approve ZBA 15-08 with the stipulation that both of the lots remain residential in accordance with the Zoning Ordinances. Mr. Curran seconded the motion which carried unanimously.

On a unanimous vote, the Zoning Board of Adjustment approve ZBA 15-08.

V. New Business

None at this time

VI. Communications and Miscellaneous

Mr. Kopczynski stated that the Grandfather Clause is relevant only when the Zoning Code is in place and the structure was established legally. Mr. Kopczynski stated that Grandfathering means legally non-conforming. He continued, stating that a Certificate of Occupancy should be determined and the Grandfather Clause dies if the property is abandoned. Chair Zerba asked if the property is sold, will the Clause go with the new owner. Mr. Kopczynski stated that the Clause goes with the property

VII. Non Public Session (if required)

VIII. Adjournment

Chair Zerba adjourned the meeting at 8:30 PM.

Respectfully submitted by:

Lana C. Bluege, Minute-taker
June 1, 2015