

**City of Keene
New Hampshire
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES**

Monday, August 3, 2015

6:30 pm

**City Hall, 2nd Floor, Council
Chambers**

Members Present:

Louise Zerba, Chair
Jeffrey Stevens, Vice Chair
Nathaniel Stout
David Curran
Joseph Hoppock

Staff Present:

Gary Schneider, Plans Examiner
Med Kopczynski, Code Enforcement
Superintendent

I. Introduction of Board Members

Chair Zerba called the meeting to order at 6:30 PM and introduced the Board.

ZBA 15-04/: Motion to Accept Late Filing, and for Rehearing for filing with the Zoning Board of Adjustment relative to ZBA 15-04, 815 Court St., Keene, NH.

Chair Zerba stated this item matter has been postponed until the Board's September 8 meeting.

A motion was made by Joseph Hoppock that ZBA 15-04 be continued to the September 8 meeting. The motion was seconded by David Curran and was unanimously approved.

II. Minutes of the Previous Meeting – July 6, 2015:

Nathaniel Stout offered the following correction:

Page 8, four lines up "it was under" should read as "he was under"

Louise Zerba offered the following corrections:

Page 3, "Louise" not "Lewis"

Page 4, first paragraph the word should be "recused" himself.

Page 4, first paragraph, "alternative" should be "alternate"

Page 9, next to #2, "vegetative" should be "vegetative buffer"

Ms. Zerba cautioned moving between past tense and present tense.

Page 9, third paragraph, should be “Mr. Joseph Hoppock returned to the Board” not “returns”

Page 11, second paragraph, to read as “Mr. Tousley stated that the intent of the ordinance was to prevent animated flashing signs...”

Page 12, last paragraph “alternative” should be “alternate”

A motion was made by Joseph Hoppock that the Zoning Board of Adjustment accept the July 6 meeting minutes as amended. The motion was seconded by David Curran and was unanimously approved.

III. **Unfinished Business**

None

IV. **Hearings:**

ZBA 15-10/: Petitioner, George Achille, of Peterborough, NH, requests a Variance for property located at 80 Martel Court, which is located in the Commerce District. The Petitioner is requesting an electronically activated changeable copy sign per Section 102-1292 (6) of the Zoning Code.

Mr. Schneider referred to a plan and noted to Lower Main Street, Route 12/101 bypass and Martell Court. He indicated the Agway store is circled in yellow and is located in the Commerce Zone. Mr. Schneider stated the Board has heard about electronically activated signs in the past typically for gas stations and they have been approved for fuel price signs only. Code Enforcement Superintendent, Med Kopczynski noted the rear part of this property is not in the Commerce Zone.

Attorney Jim Callahan of Peterborough, NH was the next speaker who was representing George Achille Jr., the owner of this property. Attorney Callahan stated that the Achille family has owned this property since the 1980’s and the sign that existed on the store front which was a conforming sign had manual changeable letters. This sign broke and replacement parts could not be found. The applicant who was unaware of the Sign Code installed a changeable electronic sign and then received notice from the Code Enforcement Department indicating they were in violation of the Sign Code.

Attorney Callahan went on to say that this sign is half the size of the sign it replaced, it does not flash, and the store would like to use it to advertise weekly specials. Attorney Callahan then addressed the five criteria as it pertains to the request for a Variance.

Granting the variance would not be contrary to the public interest. - Attorney Callahan stated they are trying to replace a sign which is functionally obsolete. The sign being proposed has nice curb appeal and there is nothing with this sign that will alter the character of the neighborhood, and doesn’t threaten public, health, safety or welfare. He noted digital is the norm now and felt there is nothing distracting about it.

If the variance were granted, the spirit of the ordinance would be observed – Attorney Callahan felt this does meet the spirit and intent of the Code. He indicated he had looked at the Master Plan which talks about sustainability, economic growth and felt the current Sign Code does not envision technological changes.

Granting the variance would do substantial justice. He felt it is up to the Board to decide whether substantial justice would be achieved by granting this Variance.

If the variance were granted, the values of the surrounding properties would not be diminished. Attorney Callahan did not feel a sign like this would adversely affect surrounding property values.

Unnecessary Hardship:

1. 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. Attorney Callahan noted the signage requirements are intended to facilitate orderly development process and promote health and welfare of the citizens and a blanket prohibition against electronic signs especially in a case like this when all other code requirements are met is not prudent. He noted the sign is being downsized it doesn't seem necessary to prohibit such a sign.

2. The proposed use is a reasonable one. The attorney stated it is a smaller sign, it is sustainable, it won't be over-whelming. He added there are other establishments in the City that have changeable signs such as gas stations, Peoples Bank, Keene Middle School and Kapiloff Insurance.

b. if the criteria in sub-paragraph a. are not established and unnecessary hardship exists because owing to special conditions of the property distinguish it from other properties in the area the property cannot be reasonably used in strict conformance of the ordinance and a variance is therefore necessary to enable reasonable use of that property. Attorney Callahan felt Martell Court is a unique road and feels like its frontage should actually be on Route 101 and good signage is necessary to help the customers of Agway.

This concluded Attorney Callahan's presentation.

Chair Zerba asked for public comment. Mr. Kopczynski asked how often the sign would be changed. The store manager who was present stated it will be weekly at the most.

Mr. Stout noted a changeable copy sign, which this is, is outlined in Section 102-1292, #6 – Prohibited Sign and is stated it is prohibited in every zoning district of the City. Mr. Kopczynski agreed with what Mr. Stout referred to.

Mr. Schneider clarified that the Keene Middle School is exempt from the Zoning Code because they are a governmental entity. The People's United Bank – there was a period in the Sign Code where time and temperature signs were permitted and were exempt from the Sign Code. Kapiloff Insurance obtained a Variance. Mr. Kopczynski added the prohibition on electronic signs has

been around since the 1970's and in trying to keep up with the times, staff has tried to change that but the City Council has not been in favor of such a change.

Mr. Stevens asked about a gas station close to this site who applied for a changeable copy sign. Mr. Schneider explained that applicant did ask for a fuel price sign and wanted to be able to advertise things that were on sale such as milk; bread etc. but this Board denied that request.

Mr. Curran noted that in the downtown the City allows illuminated signs. Mr. Schneider stated those are signs located inside windows but internally illuminated signs are not permitted.

With no further comments, Chair Zerba closed the public hearing.

Mr. Stout stated he doesn't see a compelling argument for hardship to contradict the standard the City Council is trying to impose for changeable copy signs.

Mr. Stevens felt gas stations are narrow focus but when you start opening the door for other sales it is not something the City wants to permit at this time.

Mr. Curran stated he understands the ZBA doesn't work with the Master Plan but input for that document was taken from a lot of citizens in the City of Keene. He added he doesn't understand why gas prices can be flashed but not the price for instance of bark mulch.

Mr. Hoppock agreed the location of the applicant's lot is unique. He felt the sign would give them the opportunity to be seen from Route 101. Mr. Hoppock went on to say that denying this request will provide more harm to the applicant than to the public and will hence vote in favor of the request.

Chair Zerba stated the Board recently approved the Hamshaw Lumber sign which is used manually and hence couldn't see the hardship as being indicated by the applicant. As far as the Middle School sign the City had no say in it and there was much opposition from the neighborhood when it was first erected but nothing could be done about it because it is governmental use. The Chair felt a precedent will be set if this sign was approve and hence will be voting in opposition.

The Chair then went over the Findings of Fact:

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

Mr. Stout stated changeable copy sign are against what the Council has decided and whether they used aesthetic standards or more concrete standards it is not up to the Zoning Board to decide. Mr. Stevens stated there has been an attempt to change the Code but it has been denied by the Council. Chair Zerba added the public has indicated on several occasions they do not want chargeable copy signs in the community and hence felt this would be contrary to the public interest.

The motion failed on a 3-2 vote, with Nathaniel Stout, Jeffrey Stevens and Louise Zerba voting in opposition.

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

The motion failed on a 3-2 vote, with Nathaniel Stout, Jeffrey Stevens and Louise Zerba voting in opposition.

Granting the variance would do substantial justice.

The motion failed on a 3-2 vote, with Nathaniel Stout, Jeffrey Stevens and Louise Zerba voting in opposition.

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

The motion carried on a 4-1 vote, with Nathaniel Stout voting in opposition.

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:

1. 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.

The motion failed on a 3-2 vote, with Nathaniel Stout, Jeffrey Stevens and Louise Zerba voting in opposition.

2. The proposed use is a reasonable one.

The motion carried 4-1 with Louise Zerba voting opposition.

A motion was made by Jeffrey Stevens that the Zoning Board of Adjustment deny ZBA 15-10. The motion was seconded by Joseph Hoppock and carried on a 3-2 vote with Joseph Hoppock and David Curran voting in opposition.

ZBA 15-11/: Petitioner, Kathy A. Theiss, of 6429 Abdella Lane, North Port, FL, represented by Homer S. Bradley, Jr., of Bradley & Falkner, P.C., Keene, NH, requests a Variance for property located at 708 Roxbury Road, Keene, which is in the Rural District. The Petitioner requests to replace a previously existing house, which has been torn down and removed; this is per Section 102-791 of the Basic Zone Dimensional Requirements of the Zoning Code. Due to the merger of lots, the current lot is larger than the lot on which the previously existing house was originally built.

Mr. Schneider noted this application was before the Board in either 2006 or 2008. He explained this property was two lots at one time. There was a small lot that came before this Board prior and was denied. Since then, another lot just to the west of it which also had a house on it, this has since been demolished. Both lots have since been merged and the application is significantly different from what it was in 2006 or 2008. Mr. Schneider added if the house had been built within a year it was demolished it would not have been considered abandoned. What is before the Board today is considerably different to what was before the Board in the past.

Chair Zerba noted there are two homes at the present time shown on the map and they are being shown as part of the lot and asked for clarification. Mr. Schneider stated the two homes are not part of the application before the Board today. He added this property is located in the Rural Zone.

Mr. Stout asked about the size of the lot numbered 667. Mr. Schneider stated it was 3.5 acres. He also went over the acreage for the following properties as well. #719 – 2 acres, 15 Jordan Road -

.55 acres, #672 - .85 acres, 7 Peg Shop Road – 1.2 acres, 15 Peg Shop Road - .7 acres (owned by applicant), the combined lot before the Board today - .66 acres.

Attorney Sam Bradley representing Kathy Theiss was the next speaker. Mr. Bradley stated that Kathy Theiss is the widow of Mark Theiss who was a respected builder in town. 15 Peg Shop Road was purchased by Mark Theiss and at that time the property was in deplorable condition. Mr. Theiss tore down the house at 708 and merged the two lots which results in the .66 acres. His plan was to build a home where 708 existed but perhaps didn't realize he had a year to build the home again.

Mr. Bradley went over the waiver criteria:

Granting the variance would not be contrary to the public interest –

Mr. Bradley noted this request is to replace a house which was previously removed and noted the house was on the westerly lot. The two lots are legally merged. City water is available to the property but not public sewer and they will need to install a septic tank for which NHDES approval will need to be obtained. Mr. Bradley stated as he had indicated in his application this Variance request won't change the character of the neighborhood. He added the lots between Peg Shop Road, Jordan Road and Roxbury Road have relatively small lots (sub-standard) less than five acres in size.

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

Mr. Bradley stated this is a single family neighborhood and this Variance will be in keeping with the neighborhood.

Granting the variance would do substantial justice.

Mr. Bradley noted the question who would be hurt worst if the Variance is granted – is the City really damaged if this Variance is grant and felt the City has no interest in keeping this lot vacant but would create a hardship to Mrs. Thiess if the Variance is not granted. Her plan is to market the lot.

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

Mr. Bradley stated the properties in the area are all very similar properties and felt it is not reasonable to think any other property will be diminished in value if a house is constructed on this property. Mr. Bradley also pointed out the lot the house was located which was demolished was only on .35 acres and what is before the Board is .66 acres.

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:

1. 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.

Mr. Bradley stated the general purpose of the Zoning Ordinance is to provide adequate frontage and prevent over-crowding. There was a house on this property and it was not over crowded then.

2. *The proposed use is a reasonable one.*

Mr. Bradley stated it is a reasonable use because it is consistent with the area and in this case there is no additional land to expand the lot in question. If a house cannot be built on this lot it destroys the value of that lot.

Mr. Hoppock asked when the lots were merged. Mr. Bradley stated the lots were merged in 2012.

Mr. Stevens asked what was on the second lot. Mr. Bradley noted the former owners of that lot are here today but stated his recollection is that it was vacant.

Mr. Stout stated he was questioning the location of a curb cut even though this might be something that would be covered by the Planning Board and asked whether staff could comment on this issue. Mr. Schneider stated it is assumed there was a curb cut at this location at one point because of the house that existed there. Mr. Schneider added if an applicant applies for a building permit, staff will make sure through the Planning Department, a driveway permit/curb cut existed. Mr. Curran noted a curb cut is not the purview of the Zoning Board.

Chair Zerba asked for public comment in support of this application.

Louise Toumie of 719 Roxbury Road, Keene who has lived in this area for 60 years stated she would love to see a house constructed on this lot.

Mr. Schneider added with reference to the Zone Dimensional Requirements, Section 791 has a foot note which says, if a lot had both City water and sewer the lot could be as small as two acres in a rural zone to enable development without a variance.

Chair Zerba asked for public comment against this application.

Sherry Herrick of 15 Jordan Road was the next speaker. Ms. Herrick clarified the late Mr. Theiss purchased this property from her father in 2011 and merged the properties in 2012. The City labeled it as non-buildable in 2014 because it lacks proper acreage for a dwelling unit. Ms. Herrick went on to say the leach field is a concern to her. She added the property does meet frontage for a leach field but it does not meet the requirements for acreage in a Rural Zone and felt it would compromise her property.

Ms. Herrick added that in speaking to Ed Csenge, their leach field consultant, he had indicated there had to be sufficient distance from the leach field to the dwelling, which doesn't exist here and there is no backup should this leach field fail. Ms. Herrick felt the value of her property will increase and her taxes will increase if this Variance was granted.

She went on to say that constructing a house on this lot will make the area more cramped. Mr. Curran pointed out that previously there was a house on .31 acres but now there is going to be house on a larger lot (.66 acres).

Mr. Hoppock asked Ms. Herrick whether she would agree it was not Mr. Theiss' intention to abandon that lot. Ms. Herrick stated she would agree with that.

With no further comment, Chair Zerba closed the public hearing.

Mr. Stout noted the combined lot is not outside the general parameters of other lots in this area and felt the .66 acre lot is larger than the abutting lot and didn't see a terrible divergence to the neighborhood by allowing this Variance.

Mr. Hoppock stated the purpose of the lot size is to prevent density in a particular area. He indicated this Board has granted many Variances not only in this area but also on Jordan Road and on Chapman Road for similar reasons. There is no other reasonable use for these lots other than to build a single-family residence. He indicated he is not ready to vote on someone's land to be of no value as that would equate to "taking" in his view and can be construed as unconstitutional. Mr. Curran stated he agrees with what Mr. Hoppock just stated.

Chair Zerba recalled a recent application from the Symonds who lived on Chapman Road where an existing building was torn down and for one reason or the other, the building was not reconstructed and this Board granted an extension on the Variance.

Mr. Stevens stated it is clear there was a plan in motion to reconstruct a house even though it did not happen within the allotted time. Also, the lot has now doubled which helps make the case and there is no way to expand the property either.

The Chair then went over the Findings of Fact:

Granting the variance would not be contrary to the public interest. Granted 5-0

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

Mr. Hoppock stated there would be no change to the neighborhood if this Variance was approved. Granted 5-0

Granting the variance would do substantial justice.

Mr. Stout stated the application notes the former Mr. Theiss would have qualified for a building permit on this substandard lot if he had removed the house and replaced it immediately. The lot has since doubled. The fact that Mr. Theiss passed away and the lot itself has doubled, is pretty compelling evidence of substantial justice. Mr. Hoppock added when there is harm to the owner when there is no other reasonable use available and supports the idea this is substantial justice. Granted 5-0

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

Mr. Stevens noted he wasn't sure if the property values in the neighborhood will increase but is confident they won't decrease. Granted 5-0

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:

1. 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 5-0

2. The proposed use is a reasonable one.

Granted 5-0

A motion was made by Joseph Hoppock that the Zoning Board of Adjustment approve ZBA 15-11. The motion was seconded by Jeffrey Stevens and carried on a 5-0 vote.

ZBA 15-12/: Petitioner, Cheshire Oil Co., Inc., of Keene, NH, represented by Rob Hitchcock of SVE Associates, 47 Marlboro St., Keene, NH, requests a Variance for property located at 465 West Street, Keene, which is in the Commerce District. The Petitioner requests to be permitted 81% impermeable surface coverage where 80% impermeable is the Ordinance limit per Section 102-791 of the Basic Zone Dimensional Requirements of the Zoning Code.

ZBA 15-13/: Petitioner, Cheshire Oil Co., Inc., of Keene, NH, requests a Variance for property located at 465 West Street, Keene, represented by Rob Hitchcock of SVE Associates, 47 Marlboro St., Keene, NH, which is in the Commerce District. The Petitioner requests to be permitted a seven (7) foot encroachment into the twenty (20) foot side setback per Section 102-791 of the Basic Zone Dimensional Requirements of the Zoning Code.

Mr. Schneider stated this matter was before the Zoning Board a year or so ago for the same request but for a different size building footprint. ZBA 14-18 filed in July 7, 2014 was withdrawn (465 West Street)

Rob Hitchcock of SVE Associates addressed the Board next. Mr. Hitchcock referred to the addition being proposed today which is six feet wide and 30 feet long. The reason the matter is before the Board is because there is a 20-foot setback and the roof hang is into the setback. The 1990 plans for this site indicate there is 80% impermeable coverage which is the maximum allowed. The car wash has been at this site for about 25 years, the mechanics which operate the car wash are in need of replacement. The “guts” of the operation such as the electrical and mechanical equipment are located against the wall and this equipment needs to be serviced multiple times a week. The suggestion is to locate this equipment outside in a dry area.

Mr. Hitchcock stated the plans that accompanied the application which was presented a year ago did not come to fruition. Those prior plans went over the water line but the current plan does not.

Chair Zerba asked whether the tree which will be taken down will be replaced. Mr. Hitchcock stated there are three significant maple trees at the present time, the roots of one of them might be compromised. Mr. Hitchcock felt something of similar size could be planted. He added once this process is complete; this application needs to go through the Planning Department and hoped the issue with the tree could be done through the administrative approval process.

Mr. Hitchcock then went over the second application. He indicated instead of spending \$3,500 on a survey, the applicant assumed 80% impermeable coverage is adequate.

Mr. Hitchcock then went over the waiver criteria.

Granting the variance would not be contrary to the public interest. Mr. Hitchcock stated he could not see how this impacts anyone – it is not visible.

If the variance were granted, the spirit of the ordinance would be observed. Mr. Hitchcock stated this approval would permit Cheshire Oil to continue to operate the car wash in a much more manageable manner.

Granting the variance would do substantial justice. This would simplify their business.

If the variance were granted, the values of the surrounding properties would not be diminished. Mr. Hitchcock stated he cannot see how this addition will possibly diminish surrounding property values.

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:

1. 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. He indicated that no-one is being impacted by this request. There are no adjacent businesses or residences that could be impacted by this addition.

2. The proposed use is a reasonable one. Mr. Hitchcock felt this request is very reasonable.

The Chair asked for comments in support or against this application. With no comment, the Chair closed the public hearing.

The Chair then went over the Findings of Fact for ZBA 15-12:

Granting the variance would not be contrary to the public interest. Granted 5-0

If the variance were granted, the spirit of the ordinance would be observed. Granted 5-0

Granting the variance would do substantial justice. Granted 5-0

If the variance were granted, the values of the surrounding properties would not be diminished. Granted 5-0

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:

1. 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 5-0

2. The proposed use is a reasonable one. Granted 5-0

A motion was made by Joseph Hoppock that the Zoning Board of Adjustment approve ZBA 15-12. The motion was seconded by David Curran and carried on a 5-0 vote.

The Chair then went over the Findings of Fact for ZBA 15-13:

Granting the variance would not be contrary to the public interest. Granted 5-0

If the variance were granted, the spirit of the ordinance would be observed. Granted 5-0

Granting the variance would do substantial justice. Granted 5-0

If the variance were granted, the values of the surrounding properties would not be diminished.
Granted 5-0

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:

1. 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 5-0

2. The proposed use is a reasonable one. Granted 5-0

A motion was made by Joseph Hoppock that the Zoning Board of Adjustment approve ZBA 15-13. The motion was seconded by Jeffrey Stevens and carried on a 5-0 vote.

V. New Business

None

VI. Communications and Miscellaneous

None

VII. Non Public Session (if required)

VIII. Adjournment

The meeting adjourned at 8:02 PM.

Respectfully submitted,

Krishni Pahl

Minute Taker