

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, July 5, 2016

6:30 PM

City Hall Committee Room

Members Present:

Louise Zerba, Chair
Joseph Hoppock, Vice Chair (Arrived at
6:33 PM)
David Curran
Jeffrey Stevens
Stephen Bragdon, Alternate (Departed at
7:12 PM)
John Rab, Alternate

Staff Present:

Gary L. Schneider, Plans Examiner

Members Not Present:

Nathaniel Stout
Joshua Gorman, Alternate

I. Introduction of the Board Members

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

II. Minutes of Previous Meeting- June 6, 2016

Mr. Curran gave a correction to the minutes of June 6, 2016: on Pg. 1 of the minutes in the last paragraph, Mr. Gorman's first name should be spelled "Joshua" not "Joshus."

Mr. Curran made a motion to accept the minutes of June 6, 2016 as amended. The motion was seconded by Mr. Stevens and carried unanimously.

Although not in the agenda, Chair Zerba indicated the need to address a motion for re-hearing of ZBA 16-14, application for Variance at 141 Winchester Street, Keene. Mr. Stevens recused himself.

Chair Zerba indicated because she was not at the last meeting, she would not vote on this matter. Mr. Hoppock indicated the Variance regarded conforming to onsite parking requirements. He said he does not see any good reason to re-hear. Mr. Curran and Mr. Rab agreed.

Mr. Hoppock moved to deny the motion to re-hear ZBA 16-14, which was seconded by Mr. Curran.

On a vote of 3-0, the Zoning Board of Adjustment denied the motion to re-hearing ZBA 16-14.

Mr. Stevens returned to the Board.

III. Unfinished Business

None at this time.

IV. Hearings

ZBA 16-34:/ Petitioner, Elm City Properties, LLC of 16 North Shore Road, Spofford, NH, requests a Variance for property located at 0 Grove Street, Keene, owned by Jeannette Wright and Michael Lynch of 150 Meetinghouse Road, Hinsdale, NH which is in the High Density District. The Petitioner 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.

Mr. Schneider explained that across the street from the property in question is an apartment complex which used to be a factory. When it was a factory, the parking lot in question was used as parking for employees and considered accessory to the factory property. The lot is no longer accessory to a primary use. The property is in the High Density Zone near the Central Business District. The petitioners seek to have the property converted to a commercial parking lot.

Chair Zerba recognized Judy Kalich, President and Owner of Elm City Properties, LLC, Keene. Ms. Kalich indicated she was there to represent herself as well as the property owners, Jeannette Wright and Michael Lynch. The petitioners request a Variance to alleviate overcrowded parking in the neighborhood, to provide alternative parking for abutters, and to improve the aesthetics of the property. Ms. Kalich indicated the commercial lot would increase parking for tenants and in general.

Mr. Hoppock questioned how many cars would fit in the lot (65' x 85') at capacity. Mr. Schneider replied that each parking space is required to be 8' x 18'. Chair Zerba asked if any improvements will be made to the lot. Ms. Kalich replied there are landscaping and curb issues to rectify and there will be City guidance on its updating. Mr. Schneider added the application will be heard by the Planning Board if approved by the ZBA. Ms. Kalich indicated there are currently curbs and two designated entrances to the lot.

Chair Zerba asked if all improvements, including lighting and curbs, will be addressed by the Planning Board. Mr. Schneider said yes, and the ZBA can indicate conditions as well. Mr. Hoppock asked if there are any other commercial lots in the High Density Zone. Mr. Schneider replied there are none that stand alone that he is aware of.

Chair Zerba asked Ms. Kalich if they have considered building a small structure on the property. Ms. Kalich indicated the property is too small. Ms. Kalich continued that this property was approved as a commercial lot by the ZBA 10 years ago as petitioned by another landlord who ultimately abandoned the improvements. Mr. Schneider indicated he had the details of that 2006 application.

With no public comment in support or opposition, Chair Zerba asked the Board to deliberate.

Mr. Stevens indicated he is in support of this Variance as increased parking is necessary in these neighborhoods. Mr. Curran agreed indicating improvements to the current condition of the lot are welcome. Mr. Rab added that based on the uses allowed in that district, there is no other logical use of that property.

Mr. Rab made a motion to approve ZBA 16-34, which was seconded by Mr. Curran.

Chair Zerba suggested amending the motion to include site review by the Planning Department.

Mr. Rab made the following amendment to the main motion with the condition that the commercial parking lot includes site screening, lighting, curb cuts, and landscaping at the direction of the Planning Department. The amendment was seconded by Mr. Hoppock and carried unanimously.

Chair Zerba 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: 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

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 5-0.

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

On a vote of 5-0, the Zoning Board of Adjustment approved the application for ZBA 16-34 with the condition that the commercial parking lot includes site screening, lighting, curb cuts, and landscaping at the direction of the Planning Department.

ZBA 16-36:/ Petitioner, Metro Sign & Awning of 170 Lorum St., Tewksbury, MA, requests a Variance for property located at 43 Emerald St., Keene, owned by Barry J. Fox, of 50 Eastwood Road, Keene, which is in the Central Business District. The Petitioner requests a Variance to being required to obtain a sign permit and comply with the Sign Code per Section 102-1283 of the Zoning Ordinance.

Mr. Stevens and Mr. Rab recused themselves and Mr. Bragdon took their place.

Mr. Schneider indicated the property in question is in the Central Business Zone. The property used to be the site of Napa Auto Parts and more recently the Youth Dance Club. The petitioners request a Variance for an internally illuminated sign which is not allowed in the Central Business

Zone. Mr. Schneider indicated the petitioners believe that because the building is used by a religious institution, they are exempt. Mr. Bragdon asked if the petition is for Variance or based on religious exemption. Mr. Schneider stated they believe they can have a sign because they are exempt.

Chair Zerba recognized Adam Brodeur of Metro Sign and Awning, Tewksbury MA, and Mr. Justin Barney, 33 Evans Circle, Keene. Mr. Brodeur explained the petitioners seek relief from the Zoning Ordinance and should be exempt because they are a religious establishment. Mr. Bragdon asked if the petitioners are arguing they are exempt from the Ordinance or applying for Variance. Mr. Hoppock replied that the application is for Variance. He indicated it is confusing because they are speaking to Variance issues but arguing they are exempt. Mr. Bragdon stated the petitioners do not want to be subject to the Code. Mr. Schneider replied that not being subject to the Code requires a Variance.

Mr. Hoppock asked if there is a case that supports a religious organization being exempt from the Ordinance. Mr. Brodeur indicated the reason was listed on the application and cited from the Code of Ordinances Section 102-1. Chair Zerba indicated she could not find anything referring to a religious establishment. Mr. Brodeur read the passage he was citing, "The term 'sign' does not include the flag, pennant or insignia of any nation, state, city, or other political unit, or other political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event." The Board found the passage in the Zoning Code Section 102-2, definition of "Sign."

Chair Zerba asked if the sign met with all of the specifications of the Code. Mr. Brodeur replied yes, with the exception of internal illumination. Mr. Hoppock inquired about the hours of illumination. Mr. Brodeur indicated the petitioners would take the discretion of the Board under advisement regarding hours of illumination. Mr. Barney stated the sign would be illuminated no later than 10 or 11:00 PM for evening services. Mr. Brodeur stated the petitioners would comply with the hours of operation decided by the Board.

Mr. Bragdon indicated he did not believe the Code passage cited was referring to permanent signs, but to short-term advertising signs. Mr. Brodeur replied there is no reference to the longevity of the sign in the Code.

Chair Zerba questioned if a Variance would be more appropriate than appealing for exemption as a religious institution. Mr. Bragdon indicated, based on his review, that cities and municipalities can have codes that affect religious organizations as long as they are not unduly burdensome. Mr. Schneider added that while he does not recall any other internally illuminated signs in the Central Business Zone, he imagines there must be other illuminated signs in the Emerald Street area.

Mr. Schneider continued that he is confused because the request is for exemption as a religious organization. Mr. Hoppock indicated the question is if they should vote on the issue of exemption or tell the petitioners to return and request a Variance. Mr. Schneider stated insufficient notice for the petitioners to amend their application during the meeting. Mr. Hoppock and Mr. Bragdon agreed their current application would be denied if voted upon because they are not exempt as a religious organization. However, they believe if the petitioners

return with a request for Variance, they will have the basis for such a request. Mr. Brodeur agreed to withdraw ZBA application 16-36.

Vice Chair Hoppock made the following motion which was seconded by Mr. Bragdon.

On a vote of 4-0, the Zoning Board of Adjustment approved the petitioners request to withdraw the application ZBA 16-36 without prejudice and noted their right to bring forward a Variance application when they deem fit.

Mr. Bragdon departed the meeting. Mr. Rab and Mr. Stevens returned to the Board.

ZBA 16-37:/ Petitioner, Barlo Signs/Jenn Robichaud, of 158 Greeley St., Hudson, NH requests a Variance for property located at 109-147 Key Road, Keene, owned by Robert Raymond/Key Rd. Associates of 432 Grassy Brook Road, Brookline VT, which is in the Commerce District. The Petitioner requests a Variance to permit an electronically activated sign per Section 102-1292(6) of the Zoning Ordinance.

Chair Zerba recognized Paul Martin of Barlow Signs. Mr. Barlow indicated one of the main reasons their application was denied the first time it was before the Board was due to the rate of change on the sign board. He indicated they seek a seven second rate of change for visibility based on how far the property is from the road. He also indicated that due to the size of the board (4' x 8'), 10" copy is necessary for the sign to be legible.

Mr. Martin demonstrated to the Board the minimum distance (250') and readability of the sign from the road. He demonstrated exactly how the sign will look, the copy size, and the rate of change. Mr. Martin agreed to email a copy of that presentation to Mr. Schneider.

Mr. Hoppock indicated that a greater than seven second rate of change would require an onlooker to observe the sign for more than a minute to see all movie showings. Mr. Martin agreed and stated that is why they are requesting the seven second rate of change which he believes is reasonable. Mr. Martin indicated there was mention at the last hearing of setting precedents. He stated he disagrees because the Board is there for a reason and each case should be heard on an individual basis.

Mr. Martin indicated the property owner is willing to sign an affidavit and \$5,000 bond. Chair Zerba stated that was a matter for another time and would be up to the Zoning Administrator.

Chair Zerba questioned if the sign will remain four feet x eight feet. Mr. Martin confirmed they are not requesting to increase the size of the sign at all. Mr. Curran asked the size of the letters on the sign. Mr. Martin replied the letters are currently six-inch copy and they are requesting 10" copy to be visible from the road. Mr. Hoppock indicated it is not a residential area and he does not see a problem as long as the lights go out when the business closes. Mr. Martin indicated the owner would comply with reasonable hours of operation for the sign, such as 7:00 AM to 12:00 AM.

Mr. Hoppock motioned to approve ZBA 16-37 with the conditions outlined in the application as well as the condition of sign hours of operation being 7:00 AM to 12:00 AM. The motion was seconded by Mr. Rab.

Chair Zerba indicated, due to the current regulations on electronically changeable copy signs, she will oppose this motion.

Mr. Hoppock indicated this type of sign makes sense for a movie theater, he believes the request meets the criteria of a Variance, and that harm to the public is minimal compared to the harm to the owner if denied.

Mr. Stevens stated he is conflicted as there are key differences when discussing a scrolling electronic sign as opposed to a static electronic sign on a gas station, for example. He believes the alternative of a long string of signs would be more offensive. In a neighborhood with only businesses, he does not think this sign would be a disturbance.

Mr. Curran indicated he would vote in favor of the motion. He said this technology will keep the business thriving. He added that in that neighborhood, operating hours of 7:00 AM to 12:00 AM are fair.

Mr. Rab indicated he was unsure. He said he believes the unique quality of the property warrants approval. The building is far from the road making the current sign difficult to read. For those reasons, he indicated he would vote in favor as he thinks the criteria for Variance are met based on the special circumstances of the property.

Chair Zerba went over the Findings of Fact.

Granting the Variance would not be contrary to the public interest: Granted 4-1, Chair Zerba opposed.

If the Variance were granted, the spirit of the Ordinance would be observed: Granted 4-1, Chair Zerba opposed.

Granting the Variance would do substantial justice: Granted 4-1, Chair Zerba opposed.

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

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 4-1, Chair Zerba opposed.

x. The proposed use is a reasonable one: Granted 4-1, Chair Zerba opposed.

On a vote of 4-1, the Zoning Board of Adjustment approved ZBA 13-37 with the following conditions: the sign board may change messages every seven seconds; each message will remain uniformly on the board for seven seconds; at no time will any message on the sign board be flashing, scrolling, animated, exploding, etc.; the electronic message come onto and off of the board uniformly and the sign lighting output will be constant; the electronic sign message will fade off of and onto the sign board all at once, at duration equal to 1.5 seconds between

messages; the sign text will be no larger than 10 inch copy; and the hours of operation of the sign board will be from 7:00 AM to 12:00 AM. Chair Zerba Opposed.

ZBA 16-38:/ Petitioner, Madan Rathore of 12 West St., Apt. 28, Keene, requests a Variance for property located at 8 Winter Street owned by Dorrie O’Meara of Keene, which is in the Central Business Zone District. The Petitioner requests a Variance to allow signage on a building that is not considered to be business frontage per Section 102-1282 of the Zoning Ordinance.

Mr. Schneider showed the location of the Spice Chambers property. He indicated that currently, the applicant’s front door is on Winter Street, where there is minimal foot traffic. The applicant would like to have a sign on Central Square where there is a back entrance to the establishment but the Sign Code only allows signs on property frontage. Mr. Hoppock asked if a previous tenant had a sign in that proposed location. Mr. Schneider replied signage is allowed on the inside of the glass door/window as well as the directory board but neither is visible from the street.

Chair Zerba recognized Madan Rathore, 12 West Street, Apt. 28, Keene. Mr. Rathore indicated his only concern is the handicapped access at the front of his establishment. It is difficult for handicapped clientele to enter the front door. He would like them to use the back door, but there is no sign directing customers there. He finds it is a loss to his business.

Chair Zerba asked Mr. Rathore if he would consider putting a handicapped symbol on the proposed sign. Mr. Rathore agreed and indicated the current approved signage at the business front would remain. Mr. Rab questioned if having a handicapped symbol on the sign would make them exempt, as the ADA preempts many Zoning Ordinances. Mr. Rab suggested conditioning approval on including the handicapped symbol on the sign. Mr. Rathore agreed it will be a handicapped entrance. The Board agreed the handicapped symbol is sufficient to include on the sign.

Mr. Hoppock motioned to approve ZBA 16-38 with the condition that a handicapped symbol must be included on the sign proposed in the application indicating the entrance is intended for handicapped patrons. The motion was seconded by Mr. Rab.

Mr. Stevens indicated that is a perfectly reasonable use as it is a unique building. Chair Zerba and Mr. Hoppock agreed it will serve the public interest.

Chair Zerba 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: 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

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 5-0.

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

On a vote of 5-0, the Zoning Board of Adjustment approved ZBA 16-38 with the condition that a handicapped symbol must be included on the sign proposed in the application indicating the entrance is intended for handicapped patrons.

V. New Business

VI. Communications and Miscellaneous

VII. Non-Public Session (if required)

VIII. Adjournment

Hearing no further business, Chair Zerba adjourned the meeting at 7:49 PM.

Respectfully submitted by,
Katie Kibler, Minute Taker