

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH

Monday, March 1, 2010 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Maude Salinger, Alice Briggs, Vice Chair Loretta Laurenitis, Jim Stewart, Sharon Monahan, Joanna Eldredge-Morrissey

Also Present: Tom Weeks, Code Enforcement Officer; Nicole MacStay, Assistant to the Town Administrator

Chair Waitkins called the meeting to order at 7:00pm and read the notice:

Case No. 1151 Trinity Evangelical Church request for a Variance to Article IV, §245-18G(2) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to place a freestanding sign in the public right-of-way in front of property located at 700 Dublin Road, Parcel ID No. R004-021-000 in the Rural District. There was no objection to the notice.

Gary Sheldon, member of the Board of Elders and Charles Elton, Chair of the Board of Elders, spoke on behalf of the applicant. Trinity Evangelical Church is located on Route 101. When the Church obtained its site plan approval, they were given permission to erect a sign just outside the State's right of way within the 60 foot buffer. The sign is deteriorating, and while it can be repaired, the Board of Elders have also explored other options. Coming from the west drivers can't see the sign; this creates a potential safety hazard. They are proposing to take down the exiting sign and move it to the other side of Trinity Way in the State's right of way. The State has approved of the plan, with a number of conditions, one of which is that the Church must comply with the Town's ordinances. Mr. Sheldon then reviewed the five variance criterion and the Church's responses as included in the application.

Ms. Laurenitis noted that the Department of Transportation's letter said that the State will still erect their own roadside signage. Mr. Sheldon explained that the Church cannot keep the State from erecting the yellow signs; however they have no desire for them to do so. Ms. Laurenitis asked how many members are there in the church. Mr. Elton said there are between 130 and 165. Ms. Salinger asked how far the proposed sign would be from the State's right of way. Mr. Sheldon said that the State has 35 feet of right of way from the white line. There is a berm that the sign will sit on, approximately 35 feet from the white line. Ms. Briggs said one of the purposes of the ordinance is of aesthetics, and asked the applicants to explain why there is not a fair and substantial relationship between the use and the aesthetics. Mr. Sheldon said that they believe the proposal will not harm the aesthetics of Peterborough, rather they believe that they are enhancing it. They could ask the State to put in a blue and white sign, or they could erect this sign which they believe would be more attractive. He added that they have no interest in pursuing a blue and white sign if this sign is approved by the Board.

Chair Waitkins asked if anyone in the audience wished to speak in favor of the proposal. Andy Peterson said that he would not repeat what he had written in his letter of support, but said that in a general way he does support this as a reasonable resolution to a real problem. This is a facility that is busy over the course of a week. The sign will be attractive, and will be a nice addition to the entrance of Peterborough, and it will alert the driver to the facility and the road there. He added that there is a real safety issue there; the DOT will only very rarely grant a sign in their right of way, but this was a situation that they saw as particularly unique.

Duffy Monahan spoke, saying that she would ask for a site visit by the Board. In her opinion, she did not see how the sign could not be seen. She also questioned how it could be considered unique. She said that placing the sign in the public right of way is a precedent, and it may not be a good one to have. In terms of devaluing property, she felt it would devalue every property in town, in terms of a sign in the right of way devalues all of Peterborough's property. As a member of the Heritage Commission, the vegetative buffer begins at the edge of the right of way and goes back 80 feet; it fosters the visual landscape and the visual presentation of the town. As there were no further comments, Chair Waitkins closed the public hearing portion of the meeting at 7:45 and opened deliberations.

Ms. Salinger said that she has attended events at the Church, and she was one of those people crawling along the highway trying to find the entrance. She added that since it is the State's right of way, it is their concern; if they have determined that this is agreeable to them, she did not see how the town can say that there are any issues with having the sign there. Ms. Briggs said that her concerns are aesthetic; the DOT has not said anything about aesthetics. Ms. Monahan said that the uniqueness of the property is that it is heavily wooded except for the one entryway. She added that they are asking to erect the sign along the road in an area that is already cleared, which will maintain the aesthetics and integrity of the rural gateway. Ms. Salinger said that this request is for a variance to the sign ordinance, not the gateway buffer. In any sign issue that has ever come before the Board there has never been a discussion of the appearance of the sign, and she did not see how that would apply to the placing of the sign in the public right of way.

Motion:

In a motion made/seconded (Salinger/Laurenitis) in Case 1151 Trinity Evangelical Church request for a Variance to Article IV, §245-18G(2) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to place a freestanding sign in the public right-of-way in front of property located at 700 Dublin Road, Parcel ID No. R004-021-000 in the Rural District is hereby **GRANTED**.

The Board finds:

1. Granting the variance would not be contrary to the public interest because the new sign will create better visibility, improve safety and will more clearly identify the entrance to the Trinity facility.
2. The proposed use is not contrary to the spirit of the ordinance because it would continue to protect both the public's safety interest and the goal of Peterborough's zoning ordinances.
3. Granting the variance would do substantial justice because the new location meets the general provisions of the sign ordinance, increases visibility and safety, and maintains the existing vegetative buffer.
4. The proposed use would not diminish surrounding property values because no building or residence is visible from the proposed sign location.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - a. 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 because the general purpose of the ordinance is to protect and improve community appearance and aesthetics and to protect the health, safety and welfare of the community without inhibiting the vitality of local businesses and organizations for

whom adequate signage is of high importance. The proposed sign will provide for safer access and greater visibility to the facility, thus meeting the general purpose of the ordinance and meets the aesthetic purpose by maintaining the existing rural gateway vegetative buffer.

- b. The proposed use is a reasonable one since the existing sign is not visible from either 101 East or West, and the new location will remedy the situation.

The Board imposes the following conditions:

1. The existing sign must be removed.
2. The new sign must comply with the provisions of §245:18 D(2), and may not exceed 20 square feet.
3. This sign constitutes the church's permitted 20 square foot sign.
4. The church must comply with the provisions of the DOT agreement, dated 12/16/09.

Vote:

Ms. Salinger, Ms. Laurenitis and Mr. Stewart voted in favor of the motion, Chair Waitkins and Ms. Briggs voted in opposition to the motion; the motion carried.

Chair Waitkins appointed Mr. Leishman and Ms. Monahan to sit in place of Ms. Laurenitis and Ms. Briggs and read the notice: **Case No. 1152 Akhil Garland for Garland Family Realty Trust** Request for a Variance to Article II, §245-8A of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to permit the existing accessory Well School staff cabins, which are on property located at 360 Middle Hancock Road, Parcel ID No. R010-005-000 in the Rural District, to become the principal use on a separate lot (proposed as parcel R010-005-001). There was no objection to the notice.

Attorney Richard Pennington spoke on behalf of the applicant. He explained that the school has operated since 1967 on land that has always been owned by the Garland Family Trust. The goal of the school is to purchase the campus, but they are unable to purchase the entire parcel at this time. He explained that approximately 850 feet from the nearest school building are seven cabins that were built a couple of years ago for faculty housing as accessory use to the school, however they will not be on the same parcel as the campus when the subdivision is completed. These cabins do not meet all the criteria of dwellings; they do not have kitchen, and are not of sufficient size to be dwellings. These cabins are part of an overall concept whereby the faculty can live with their students in a manner that emphasizes harmony with nature. The request before the Board is for a variance to permit the continued use of these cabins as housing for faculty and students of the school, notwithstanding the subdivision of the campus, without a change in use. Mr. Pennington then reviewed the application and addressed the variance criteria. Chris Rice of TF Moran using a map of the lot, described the location of the campus, the cabins, and the proposed property line.

The Board discussed the definition of a dwelling unit and noted the ways in which the cabins do not meet that definition. Mr. Leishman asked about septic service; Mr. Rice replied that the cabins share a septic system that is separate from the school. Mr. Leishman asked if there is a legal document to protect the school so that they can continue to use the buildings until they can acquire the property. Mr. Pennington said that the original documents provide for tenants who happen to be staff at the school. The land is leased by the school. There are provisions that if the school ceases to lease the land the Garland Family will have to abide by the leases. These units have been used, they acquired

building and occupancy permits and they have been used for staff to live in, which is the only allowed use.

Ms. Monahan noted that buildings for educational and cultural facilities are allowed in the Rural District, and said that if these were dwellings, she would still consider these as dwellings for staff of the school, and did not see that it is in conflict with the town's zoning. Mr. Pennington explained that the underlying reason is that these cabins were permitted only as an accessory to the school, and accessory is related to the main use on the same property. A variance is the proper thing to do so that they can continue to be used as an accessory to the school. Chair Salinger added that the Board, by allowing the request, would be creating a non-conforming use. Mr. Pennington replied that he thinks that is what the variance process is for, and while this use is something that does not conform to the ordinance, it is the continuation of an existing use.

Ms. Salinger asked if the access would change, except that it would be crossing the school's property; Mr. Rice responded that they will stay the same, and he assumed that there will be a cross-access easement. Mr. Wells, abutter, asked what would happen to the cabins should the school after subdividing decided that they no longer needed faculty housing. Mr. Pennington said that in that case he thinks that those structures could not be used, since they were created for only one use. Mr. Weeks said that he would assume that if the Board grants the variance, the will impose a condition that they will continue only as an accessory use to the school.

Chair Waitkins asked if any persons in attendance wanted to speak in favor of the proposal. Karen Fitzgerald, staff member of the Well School, said that she was involved in the planning and building of the cottages. She said that the cottages have been a huge benefit for the staff, they and their children walk to school, and it is a great environment. She added that this is a great opportunity for the school to own its campus, and they have worked hard to do so. Coleen Heart, President of the Board of the Well School spoke, saying that the school is a special part of this community, and she thinks that it embodies what Peterborough is all about. The school has been a tremendous asset for her as Director of Human Resources for Eastern Mountain Sports when recruiting people to Peterborough. Gary Ciocci, parent of a Well School student said that ownership is important for the school in regards to capital improvement support. No one spoke against the proposal.

Motion:

In a motion made/seconded (Leishman/Stewart) in case **Case No. 1152 Akhil Garland for Garland Family Realty Trust** Request for a Variance to Article II, §245-8A of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to permit the existing accessory Well School staff cabins, which are on property located at 360 Middle Hancock Road, Parcel ID No. R010-005-000 in the Rural District, to become the principal use on a separate lot (proposed as parcel R010-005-001) is hereby GRANTED.

The Board finds:

1. Granting the variance would not be contrary to the public interest because the current residential use of the existing Well School staff cabins will not change. Granting of the variance would not alter the character of the neighborhood or increase the need for public services.
2. The proposed use is not contrary to the spirit of the ordinance because the residential and agricultural use of the existing buildings will not change.

3. Granting the variance would do substantial justice because it will allow the continued use of the faculty cabins.
4. The proposed use would not diminish surrounding property values because the uses, which are permitted, would not change.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the that provision to the property because the property has been used agriculturally, educationally and as a cultural facility for many years; denying the request would create a hardship as it would deny a use allowed in the zone.
 - b. The proposed use is a reasonable one since no change of use is contemplated.

The Board imposes the following conditions:

1. The cabins can only be used as an accessory to The Well School for faculty or staff housing.
2. The access through the school campus must be protected by an access easement.
3. The approval is conditioned on subdivision approval by the Planning Board.
4. Any additional faculty cabins will require further approval from the Zoning Board of Adjustment, and must take into consideration the density of the existing use.

Vote:

Mr. Leishman, Mr. Stewart, Ms. Monahan and Mr. Waitkins voted in favor of the motion; Ms. Salinger voted in opposition. The motion carried.

As there was no further business, the meeting adjourned at 10:34pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator