

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, March 7, 2011 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Chair Matthew Waitkins, Alice Briggs, Vice Chair Loretta Laurenitis, Jim Stewart, Sharon Monahan
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. 1164 Jaime Rodriguez Request for Variance to Article II, §245-8D(2) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to amend the application in case 1164 to permit a storage shed in the front setback on property located at 112 Greenfield Road, Parcel No. R008-016-100 in the Rural District. There was no objection to the notice.

Mr. Rodriguez said that he wished to respectfully withdraw all of his applications. He explained that when his property was built a lot of earth was moved which may have contributed to finding of clay. He added that his neighbor built a pond, which is smaller than half an acre. He does not believe that the ordinance is applicable to the case, and therefore a variance is not necessary. Chair Waitkins said if Mr. Rodriguez would like to withdraw it is acceptable for him to do so, and the matter is now between the enforcement officer and himself.

Chair Waitkins then read the notice for the next case:

Case No. 1166 Cynthia Lee Stein Request for a variance to Article II, section 245-8 A of the Zoning Ordinance. Applicant requests the Board's approval to permit short term rental of the Porch House and the Carriage House. The property is located at 530 Wilton Road, parcel number R001-002-000 and R002-018-000 in the Rural District. There was no objection to the notice.

Attorney Jeffrey Crocker spoke for the applicant, saying that the purpose of the application is to seek a variance for the use of the property to allow two short term rental units in the property which is the same use that has existed for a number of years. The property is divided into three separate units. Mr. Crocker then reviewed the letters submitted to the Board in support of the application, and noted in particular the Groff's support of the application, limited to the existing operation at the site.

Mr. Crocker said that Ms. Stein purchased the property on July 29th of last year. At the time she believed that the property had three living units, which were listed on the tax card. The three units are known as the Carriage House, the Main House and the Porch House; the Carriage House and the Porch house are the units the Steins are seeking approval to rent short-term. He noted that the Assessing Department has been aware for a number of years that the property has been segregated into three dwelling units.

At this time Ms. and Mr. Stein reviewed how they came to own the property, their interest in operating a short-term rental operation as it had been operated in the past, noted that there had been a variance granted in the 1970s to operate an antique store on the location, and distributed a number

of photographs of the property. Mr. Crocker concluded by saying that besides having adequate parking, the property does have a functioning septic cistern which is pumped yearly.

Mr. Crocker then introduced Heather Peterson to speak about the historic use of the property. Ms. Peterson said that in addition to being the primary residence for her grandparents, her family used the property as a real estate office with customers coming and going during business hours between 1948 and 1962. After it was sold, an antiques shop was operated out of the carriage house. Then it was sold to the Fitzgeralds who had two fulltime tenants in the Main House and Porch House, and they lived in the Carriage House in the summer. The last owner prior to the Steins did rent the Porch House and Carriage House units on a short term basis. Ms. Peterson said that as realtors, they were not aware that there was a difference between renting short term and long term. She added that the use of the property has not negatively affected her family's abutting property.

Mr. Stewart asked how long have there been three living units on the property. Mr. Crocker replied that the building permit was granted in 1985. Mr. Stewart asked if it was a legal non-conforming use. Mr. Crocker said that he would have assumed so, but because the Fitzgeralds rented out the Porch House and Main House on long-term leases and lived in the Carriage House in the summer. Because the Steins are proposing short term leases, the term of the rental is not grandfathered.

Ms. Briggs said that the application states that the Wellingtons, the last owner prior to the Steins, rented out the Porch House and Carriage House on a short-term basis between 2004 and 2010. Mr. Crocker agreed, but said that because that nonconforming use occurred so recently, it cannot be grandfathered.

Ms. Laurenitis asked what triggered the request. Ms. Stein said that they applied for a building permit to change a covered porch into a closet. Mr. Carrara said that she was incorrect, and that his office had been notified that Ms. Stein was advertizing the lodging establishment, which is not a permitted use in the Rural Zoning District. Ms. Stein said that it was a combination of the two.

Mr. Stewart asked if it matters if the intent is short term or long term lodging. Mr. Carrara said that there is a definition; in addition, they are being assessed for three dwellings, and are only allowed two. Ms. Briggs noted the definition in the zoning ordinance for "Lodging" which states that it is housing of a transient population. Mr. Carrara said that they are applying for a single residence and two building areas which they want to rent as transient lodging. It could be that the three units were there before zoning, but the last record that his office has is a building permit from 1983 for a kitchen to make it a two family dwelling; he said that he did not know where the third residence came from.

Ms. Peterson noted that in her affidavit she included an old tax card which notes the barn. She added that when her family purchased the property the barn was finished to the same standards as the main house, and included a half bath and kitchen, heating system, plumbing; it was a dwelling unit. She added that the town gave approval to convert the Main House into a two-family unit; the request was not questioned. The Carriage House unit was grandfathered. Mr. Carrara said that as far as the code office is concerned there is no record of three dwellings, but he is not making a claim either way.

Mr. and Ms. Fitzgerald testified that when they lived on the property they lived in the Carriage House, and said that it was their understanding that previously it was the caretaker's residence.

Mr. Crocker then reviewed the variance criteria and the responses submitted with the application. He said that while he is hesitant to refer the Board to the Sutton decision made in October of 2010, he

noted that the Board made the point that the purpose of the ordinance is to prevent density, and said that that purpose is not related to the application. Ms. Briggs asked if he could adjust the proposition that the purpose of the ordinance is to keep a hotel out of the rural district. Mr. Crocker replied that this is not a hotel. Ms. Stein said that they do not rent rooms, they are not efficiency units, they rent the entire domicile. Ms. Peterson equated it to renting a condominium unit. Mr. Stein gave an example of a physician visiting Monadnock Community Hospital renting one of the houses for three weeks.

Ms. Stein explained that they rent on a three night minimum. The typical person interested in the property will rent it for a three week period, not a person driving through the area. It caters to people interested in spending a summer vacation. Ms. Briggs said that the application before the Board is for transient rental which could be done on a nightly basis. Ms. Stein said that they would be happy to add a restriction that would prevent them from renting it on a nightly basis. Mr. Crocker said that a three night minimum would be an acceptable condition.

Ms. Briggs asked the applicant to address how this would not impact the purpose of the ordinance if the purpose is not to allow transient renting in this zone. Mr. Crocker replied that this is not a transient population in the way that Jack Daniels Motor Inn or a rooming house would be intended to serve. Ms. Monahan said that as a septic designer, this is a different septic design plan for a three dwelling building, a hotel, a bed and breakfast; she asked what has the system been designed for. Ms. Stein replied saying that it was designed for three dwelling units. Ms. Monahan said that three dwelling units is more intensive than for a hotel, and will be better in the long term.

Mr. Crocker returned to reading from the application, emphasizing that any other reasonable use of the property would require that the property be changed from a three dwelling property to one which would accommodate one or two families. Ms. Laurenitis said that three dwellings is a multi-family use; Chair Waitkins added that the applicant would need a variance for that use as well. Ms. Peterson argued that the property was already approved for three dwellings.

Ms. Laurenitis asked how the property is differentiated from a commercial use. Mr. Crocker said the property is being utilized as a residential use, rather than as a gift shop or a business with clientele. He noted that over the last decade or more people have lived at this property, which gives it a residential use. Ms. Laurenitis said that if the property is being used as a lodging establishment there are other requirements, including sprinklers, which would have to be considered. Mr. Crocker said that they have not be informed of any such requirements by the town. Chair Waitkins said that if the request were approved the Board would impose a condition that those requirements be met. Mr. Stein said that their insurance company has inspected the property, and they are fully insured as a lodging establishment.

Andrew Peterson spoke in favor of the application, saying that he feels that this is a special property. He said that there is a real need for this kind of rental in this town. He said that there was a property on Elm Street that used to operate this way as well, which was helpful for the growth of the publishing industry in town. Doctors visiting the hospital rent this property. Mr. Fitzgerald added that the property was never vacant when he owned it. Ms. Monahan asked if the applicant intends to reside within one of the units. Ms. Stein said that she, her husband and two of their children live in the Arbor House.

As there were no further questions or comments, Chair Waitkins closed the public hearing and opened deliberations at 8:28pm. Chair Waitkins then asked the Board if they believed that the

applicant needed a variance, and said that in his opinion they do. Ms. Briggs said that she believes that they do since the non-conforming condition has changed many times. Mr. Waitkins said that there is a definition of lodging establishment in the ordinance, and he believed that this request fits that definition. He added that he would like to make sure that no precedent is set to create a hotel in the rural district. Ms. Briggs added that the definition is “transient housing to the general public” and she didn’t see another way to characterize this use.

Ms. Laurenitis said that her only concern is that if the variance were granted then the property could be used to provide all the other services customarily associated with a hotel or motel. Mr. Carrara said that calling this property a lodging establishment does not mean that the Board has to call it a hotel or a motel. Ms. Briggs said that there have been three dwelling units on the property for twenty-five years, which in her opinion is the only special condition of the property; however she was not certain that was enough to consider putting commercial lodging in the rural district. Chair Waitkins said that he was not sure why this would not be allowed in the rural district. Ms. Laurenitis said that the ordinance says it isn’t allowed.

Ms. Monahan said that she disagrees that “lodging establishment” is the best definition of this use, and said that she would call it short-term rental of dwelling units. She said that a dwelling unit is a very distinct thing in the zoning ordinance, but instead of a six-month lease they rent it out for a minimum of three days. Either way, the units are residential units. Ms. Laurenitis said that Ms. Monahan makes a good point, and “hotels, motels and the like” are explicitly excluded in the definition of a dwelling unit. Ms. Briggs said that it is in the nature of the proposed use. Mr. Waitkins asked how the Board defines “transient.” Ms. Briggs said that three days must qualify. Ms. Laurenitis said that she would like to have a legal opinion on that. Mr. Stewart read the definition of “dwelling” and said that he agrees that this use does not meet the definition of a commercial lodging unit.

The Board then considered the variance criteria. Ms. Briggs said that the Board should seek the advice of counsel regarding whether or not this should be considered a commercial variance. Ms. Laurenitis said that she would like to have counsel present. Ms. Monahan said that she would like to have counsel’s opinion on the definition of “transience.” Mr. Stewart said that he would like counsel’s opinion on the definition of “residential use.”

Mr. Carrara asked how the owner would make productive use of the property if the Board chooses not to grant the request. Mr. Stewart said that the fact it has existed this way for twenty-five years is very complex. Ms. Briggs asked if given the fact that there are three dwelling units is sufficient criteria to grant the variance. Chair Waitkins said that the fact that there was a commercial use on this property that was more intense than what is there now is a good argument, and granting the request would not increase traffic at all. Mr. Stewart said that the town did issue a building permit in 1985 when there was already two dwelling units. Ms. Briggs said that no matter how much he screws up, the Building Inspector cannot change zoning. The Board agreed to continue the meeting to March 15th at 7:00pm. Ms. Stein appointed her husband to represent her as Attorney in Fact for the purposes of this hearing.

As there was no further business, the meeting adjourned at 9:23pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator