

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH

Monday, April 4, 2011 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Matt Waitkins, Alice Briggs, Loretta Laurenitis, Jim Stewart, Sharon Monahan, Joanna Eldredge-Morrissey, Peter Leishman

Also Present: Dario Carrara, Code Enforcement Officer; Nicole MacStay, Assistant to the Town Administrator

Chair Waitkins called the meeting to order at 7:06pm.

Motion:

Ms. Briggs made a motion to combine Case 1166 and Case 1167; Ms. Laurenitis seconded.

Vote:

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

Motion:

Ms. Briggs made a motion to accept the minutes of March 7, 2011 with minor corrections; Ms. Monahan seconded.

Vote:

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

Chair Waitkins opened the public hearing and read the notice:

Case No. 1167 Jeffrey Crocker for Cynthia Lee Stein in which the applicant requests a Variance to Article II, Sec. 245-8A, or a Special Exception to Article VI Sec. 245-30 of the zoning ordinance; applicant requests the Board's approval to permit short term rentals of two of three dwelling units on property 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.

Mr. Crocker said that he would like to reserve the right to speak to the Special Exception request after the decision on the Variance has been made. Chair Waitkins granted the request. Mr. Crocker said that the applicant has one additional letter from Chief Guinard about the traffic at that portion of Route 101, and a written testimony from Dick and Ann Fitzgerald on the use of the property during the time they lived there. The question had been raised in regards to the issue of whether the request can be raised on the building; some of the findings in the Supreme Court decision in the matter of Farah v. Keene which involved an old residential structure which found itself in an office district; the owner was seeking approval for mixed use as residential and office purposes parallel this case. The Board there had found that it was a historic building, unlike other buildings in the area, it had been used as a residence, but was not usable as a single private family residence because of the way it had been broken up. That board factored in the financial burden to the owner. In the case

before this Board the Steins did testify that they cannot use the property in that way as it would be financially burdensome.

Ms. Peterson supplemented her testimony by producing a sales brochure from the 1980's when the property changed ownership, which described the Carriage House as a garage with a "coachman's bedroom and two small rooms" one of which was an old pantry-style kitchen.

Mr. Crocker said that there is absolutely no controversy in the neighborhood, and in fact there is quite a bit of neighbor and abutter support in the record, as well as business support in the record. The criteria is all met in the case. The only thing he wished to add is to point out that the abutter most directly affected are the Groffs across the street; Mr. Groff is a retired superior court judge who sat on many cases that reviewed appeals of decisions of various land use cases, and he said in his letter that in his opinion this case qualifies for a variance, which to Mr. Crocker, is a powerful statement.

Chair Waitkins asked if the Board has any questions. Ms. Briggs asked if the Board grants the variance, the residential use of the barn would be abandoned and it would only be used for short term rentals; Mr. Crocker said that was correct.

Mr. Peterson said that he would like to reiterate his support for the Steins. He said that he has spoken with Mr. Groff a couple of times since the hearing, and he has reiterated his support. He said that they believe that this is a reasonable use for a property that is certainly unique. This proposal does not go against the spirit of the ordinance; rather it goes towards making Peterborough a better community. Mr. Peterson submitted a section of the Master Plan and the first page of the Zoning Ordinance. Mr. Peterson continued, saying that in this case there is a property that is on the gateway of the town, and is being reasonably kept up. The property use is a residential use; he said that he looked online earlier in the day and found that there are a number of people who are offering their property for rent for weekends or otherwise as short-term rental around the region without getting approval. The Steins are willing to put reasonable limits on the use, and the situation provides a greater level of oversight than a traditional rental would.

Ms. Peterson said that it is important to her family to see that the property is well cared for, and the zoning cannot force a future use. She thinks that this is a great use, it keeps a building well cared for, and is not more intensive than the use that was there before.

Ms. Laurenitis asked if there were any plans to make alterations to the building; Mr. Stein said that there were no such plans at this time. Ms. Laurenitis asked if there were plans for a sign; Mr. Stein said that he did not know. Ms. Monahan asked if the septic plan would be put on file with the town; Mr. Stein said that they would, they were just waiting for a couple more things from the designer.

As there were no further questions or comments, Chair Waitkins closed the public hearing. The Board decided to deliberate the case by working through the variance criteria. Mr. Carrara asked if the Board would be recognizing the three dwelling units; Chair Waitkins said that they were.

Motion:

In a motion made/seconded (Waitkins/Stewart) in **Case No. 1167 Jeffrey Crocker for Cynthia Lee Stein** in which the applicant requests a Variance to Article II, Sec. 245-8A, or a Special Exception to Article VI Sec. 245-30 of the zoning ordinance; applicant requests the Board's approval to permit short term rentals of two of three dwelling units on property located at 530

Wilton Road, parcel number R001-002-000 and R002-018-000 in the Rural District. The Variance request is hereby **GRANTED**.

The Board finds in regard to the Variance request:

The property has three dwelling units; two in the main house were allowed by a 1985 Building Permit, and a third in the Carriage House/Barn is a non-conforming use.

1. The variance will not be contrary to the public interest because this is a unique and historic property that has been used as multiple dwelling units for a long period of time. This variance will not alter the character of the locality since there are no planned alterations to the exterior. The variance will not unduly or markedly conflict with the ordinance's basic zoning objectives because it will not increase density, not significantly increase traffic, and the abutters are located at some distance.
2. The spirit of the ordinance is observed because the character of the surrounding area will remain unchanged. The variance will not unduly or markedly conflict with the ordinance's basic zoning objectives because it will not increase density, not significantly increase traffic, and the abutters are located at some distance.
3. Substantial justice is done because the loss to the individual if the variance is denied is substantial because the size and configuration of the buildings on this property would be difficult to maintain as a single family residence. In addition, the gain to the public if the variance is denied would be minimal, because the variance would not increase the density, traffic or alter the visual aesthetics of the property.
4. The values of surrounding properties are not diminished because there has been testimony that property values would not be diminished. Abutters have expressed only support of the proposal, and there has been no concern about diminished property values in the area. In addition, the variance will not increase the noise, traffic or intensity of the existing use.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - a. The special conditions of this property that distinguish it from other properties in the area are the size, and historic nature and uniqueness of the buildings, and the fact that the buildings have been used for twenty years for short and long term rentals and dwelling units. These buildings contain three dwelling units, and are unlike other buildings on properties in the area. In addition, the property has had a special exception for an antique store in the past. There are factual similarities to the property in *Farrar & a. v. Keene* No. 2008-500. The buildings situated on this property cannot reasonably be used consistent with the zoning ordinance because of their size and cost of maintenance. Therefore, due to the special condition of this property, a variance is necessary for the reasonable use of it.

The Board imposes the following conditions on the rental units:

1. The rentals be operated by the resident of the dwelling unit on the property.
2. There will be no more than two employees who are not family members.
3. There will be a maximum of two short-term rental units each of which shall be rented as an entire unit.
4. The units will be rented for no less than three consecutive days at a time.
5. The units will have no more than two occupants per bedroom.
6. There will be a minimum of six parking places.

7. The unit in the Carriage House will be inspected by the Code Enforcement Officer to establish a baseline and to identify the existing conditions. The Fire Department will do the same.
8. A state-approved septic designed plan will be placed on file in the Office of Community Development.

The Applicant has withdrawn their request for Special Exception without prejudice.

Vote:

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

As there was no further business, the meeting adjourned at 8:39pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator