

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

Present: Loretta Laurenitis, David Sobe, Maude Salinger, Joanna Morrissey, Sharon Monahan and Alice Briggs.

Also Present: Dario Carrara, Code Enforcement Officer; Laura Norton, OCD Administrative Assistant.

The meeting was called to order at 7:02 p.m. (*Acting?*) Chairman (Chair) Laurenitis introduced the Board and Staff. She reviewed the process of reading the application followed by a presentation by the applicant; questions from the Board; questions from the audience; and closure of the case followed by deliberation and decision.

Chair Laurenitis noted there were three cases this evening. She recused herself from the first case; “Alice will chair” she said. She then handed the meeting over to Ms. Briggs and moved to the audience.

Case No. 1172 Jerry and Kelly Kemmet request a variance to Article II §245-6 B (2) of the zoning ordinance. Applicant requests the Board’s approval to reduce the side setback to eleven (11) feet. The property is located at 9 Central Street, Parcel No. U018-105-000, in the Family District.

Appointed Chair Briggs welcomed the audience and applicants. Ms. Salinger interjected “we do not have a full Board.” Chair Briggs explained to the first applicants that while they did not have a full Board their case could be heard by the four members present. Chair Briggs then asked the applicant (Mr. & Mrs. Kemmet) if they would like to proceed. Mrs. Kemmet replied that they would like to continue “we are fine with that” she said. “Alright” replied Chair Briggs adding “I appoint Maude to sit on this case.” Chair Briggs went on to note “we will begin by reading the notice into the record.”

Chair Briggs read the request. When she finished she looked up and asked “is there any objection to the notice?” With no objection Chair Briggs asked the applicant to present their case. Mr. Carrara noted for the record “these notices do not have exact addresses but they do have the correct parcel numbers.”

Mr. Kemmet began by stating that the request for a reduction in the setback was a result of their intent to put an addition on their home. He reviewed the site pointing out the location of the driveway and public utilities lines and reviewed the neighbor-friendly and cost-effective aspects of the location they had chosen for the addition. Mrs. Kemmet gave a brief history of the time they have spent in Peterborough and how much they love their neighborhood but have simply grown out of their home.

When the applicant was finished Chair Briggs asked “why is your property special? What is so different that zoning shouldn’t apply to you?” Mr. Kemmet replied “I am not quite sure how to answer that” with Chair Briggs replying “we have to find something different than the other parcels in the neighborhood and that difference has to justify us in giving you the variance.” Chair Briggs then asked “can you tell us anything?” After a moment of silence Mr. Kemmet replied “no.”

The members reviewed the dimensional requirements for the Family District (side setback of 25 feet) with Ms. Salinger noting the structure is already nonconforming with its frontage. “You need 150 feet for the district and you have 120 feet” she said. It was noted the applicants had ample setback in the rear of their home. Mr. Sobe asked “so construction of an addition would change the side setback?” with Mr. Kemmet replying “yes.” At this time Mr. Carrara pointed out the dimensions for the members on a graphic on the screen noting “from the corner of the house to the right side setback line is 33 feet, making it an eleven foot setback.”

The members went on to discuss the location of the addition with Mr. Carrara noting “it is certainly a good place to add on.” They briefly discussed the location of the driveway and the utility service lines. Chair Briggs noted “you could technically add on to the front of the house but that would just look stupid.” Another member interjected “technically, yes but it *would* look stupid.”

Ms. Morrissey mentioned the neighbor and asked “do they meet their setback?” Mr. Carrara replied “that is a good question. Chair Briggs noted “if it (the diagram) is done to scale they do not meet setback either.” It was noted that the closest abutter was Ann Preston. Mr. Sobe noted a supportive correspondence from Ms. Preston as well as several other neighbors. Mr. Kemmet noted that the addition was set far enough back that “Ann would not see us from her side room, she would still see our front yard.” Mrs. Kemmet noted the option of adding a second story to their home was not only cost prohibitive for them but would disrupt the entire household. “The roof would have to come off, and finding a place to live would be even more disruptive” she said.

Chair Briggs asked about the number of current bedrooms in the home with Mr. Kemmet replying “three.” Chair Briggs replied “so the addition will double your bedrooms, three current and three in the addition.” Chair Briggs then asked about the square footage with Mrs. Kemmet replying “the current size is 25 by 40 and the addition is 22 by 26 feet. “OK” replied the Chairman adding “so you are really doubling your square feet.” Mr. Kemmet replied “we are adding 526 square feet to 990 square feet of living space.”

There were no other questions from the members so Chair Briggs asked if there were any questions from the audience. Derrill Crosby introduced himself as the resident of 11 Central Street. He told the members that he and his wife were living on Central Street when the Kemmits moved to town. He told the members he had known the family and their children for years. He added “if I were living in their house I would have to add space to let my children grow up.” He mentioned the family had been looking in other places “but I would like them to remain in our neighborhood with their children, I would be very upset if they had to leave. We love them and want them to stay next to us.”

Chair Briggs asked Mr. Crosby “so you believe this addition will not diminish the value of your property?” Mr. Crosby replied “absolutely not.”

Ms. Laurenitis questioned the fairness of nonconforming lots meeting the setback. “That is my opinion about it” she said.

Ms. Monahan noted she was familiar with the area as she resides at 5 Central Street “this is my neighborhood” she said. She went on to point out several unique aspects of the lot. This included the closest neighbor being 25 feet away with natural screening separating the lots. She noted she did not feel she would be impacted. She also noted the topography of the location of the house “you have a hill behind the house, and you have a hill in front of the house. Aesthetically it (an addition) would look funny in the front and would actually create more disturbance.” A brief discussion about the screening and the utility service lines followed.

When Chair Briggs asked Ms. Monahan is she felt the addition would have an impact on the value of the houses in the area Ms. Monahan replied “no.” Mr. Sobe observed “as a realtor in these times it would be impossible to say what will happen to values, but a capital improvement in one neighborhood *can* push up or drag down the values on other homes.”

The public hearing closed at 7:30 p.m.

At this time Ms. Laurenitis reassumed her role as Chairman. A brief discussion about the case load for the evening (three cases) followed. The members decided to take the evidence in all three cases, then depending on the time continue the deliberative session. After checking schedules they agreed on the next night (Thursday, September 8, 2011 at 7:00 p.m.) if necessary. Ms. Briggs noted “we may decide to deliberate, we will try to do it tonight, but we’ll have to see. If we decide to continue, the sooner the better.”

It was noted that one case (Case No. 1174) was time sensitive and the next applicant (James Callahan) offered to have his deliberation continued if the members felt up to deliberating at least one case. When ask about their feelings the Mr. & Mrs. Kimmet’s replied they would defer if necessary “but would prefer not to.”

Chair Laurenitis appointed Ms. Morrissey to sit. Mr. Sobe asked to say a few words about the impending case but was asked to wait until it was read.

Case No. 1173 Laurel Kenworthy Revocable Trust requests a variance to Article II §245-7 of the zoning ordinance. Applicant requests the Board’s approval to allow a professional office. The property is located at 62 Grove Street; Parcel Number U018-121-000, in the General Residence District.

Chair Laurenitis read the case. Upon completion she asked “is there any objection to the notice?” There was no objection and Mr. Sobe once again asked if he might say a few words. He went on to note that Andy and Heather Peterson owned property adjacent to the applicant’s (hence were abutters) and that he “hangs his Real Estate license at The Peterson’s on Grove Street”. He assured the members he had no pecuniary interests in the case but would recuse himself if the

members thought it appropriate. After a brief discussion Mr. Sobe recused himself and Chair Laurenitis appointed Maude Salinger to sit.

Jim Callahan introduced himself as the owner of the property. He noted the property was entrusted in his wife's name and was located in the General Residence Zoning District. Mr. Callahan went on to explain his current working conditions "are very crowded" adding "I would like to use the house potentially as an office." He explained the house has a rental unit and is currently lived in "but the couple renting is actively looking to move." He told the members "having an office at the house would be an upgrade and beneficial for me personally." He noted he would work mostly via telephone and the computer. He compared his current office to a dentist office stating "when Phil (Runyan) is working there are people are coming and going" adding "but that is not what I do." He noted he would have an assistant and a Paralegal as employees.

Mr. Callahan reviewed the parking areas at the property and reiterated that one apartment was soon to be vacant and the other was a corporate apartment kept for Millard Group as an alternative to Jack Daniels for clients. "It is fairly benign" he said adding "it is probably more benign than a residential use."

Mr. Callahan then reviewed the five criteria one at a time. He began with noting "the variance would not be contrary to the public interest because Grove Street is a busy thoroughfare and major access road to the downtown." Mr. Callahan noted he had reached out to the neighbors and pointed out the correspondences that had been received in support of his request. He noted the neighborhood was mixed-use already noting many of the businesses interwoven amongst the residences and public buildings.

Mr. Callahan went on to the second criteria of his request being in the spirit of the ordinance by referencing §674:16-20. He again reiterated the benign use and limited traffic surrounding his request.

He moved on to substantial justice being done and stopped "I never knew what that meant" he said looking at the Board. He added "it is not possible to set up rules that can measure or determine justice. That has to be done individually by the Board."

Mr. Callahan moved on the fourth criteria of diminishing value of surrounding properties. He told the Board "I would be hard pressed to say what would happen, but if the variance is granted I would do some upgrades to the exterior and the landscaping" adding "both of which would have a positive effect on the neighborhood." He noted these upgrades would be completed before he occupied the house.

Lastly Mr. Callahan reviewed the fifth criteria of enforcement of the provision creating an unnecessary hardship. "This is the big one" he said. He reiterated the mixed-use of the neighborhood naming many businesses (including a clock repair shop, hair salon, massage studio and art studio) as well as public buildings (including the GAR Hall and the Police Station) intermingled amongst the residences. He argued the provision would interfere with the

reasonable use of his property “given the use is otherwise permitted as a matter or right if I lived on the property.”

Chair Laurenitis asked “would you use the first floor only?” Mr. Callahan replied “just the first floor, I would maintain the upper floor as residential.” Chair Laurenitis then asked “how many employees?” “Me and two others” replied Mr. Callahan. Ms. Briggs asked “what is the square footage?” Mr. Callahan replied “the whole thing is 2200 or so square feet.” Ms. Briggs then asked about parking and Mr. Callahan reviewed the 6-7 spaces available. Ms. Briggs noted the home business limitation on employees is “two.” Mr. Callahan replied “I will need three.” Chair Laurenitis asked about business hours with Mr. Callahan replying “the 8 to 5, 9 to 5 kind of thing.”

Ms. Salinger brought up Mr. Callahan’s reference to have a business by right and a brief discussion of the history of some of the small businesses on the street followed. Ms. Salinger also noted the request creates a change of the property from residential to commercial. They also discussed the request of a Variance versus a Special Exception.

Chair Laurenitis then open the hearing to the public. Roy Christensen introduced himself as the neighbor across the street. He noted “I have no problem with this. I was a strong supporter of Scott’s Clocks a few years ago.” He went on to note “but I do have a concern” and asked “does this set a precedent? To let the street become more business orientated?” He added “it is a residential street, a neighborhood and for me there are already too many rooming houses.”

A brief discussion about the mixed use of the neighborhood, business traffic and parking followed. Mr. Christensen noted “in 15 years the increase in parking and congestion and traffic concerns me. It is the principle of it. I have nothing against home offices.” He went on to add “my main concern is the neighborhood; I do not want to see the street become mostly businesses and squeeze out the residents.”

The Board was in agreement that precedence would not be set and that all cases must stand on their own merit. Mr. Callahan agreed noting “each will rise and fall on their own.” Once again parking was brought up. Mr. Callahan noted “no one has been known to slide into the barn. It is more likely the problem will be getting out on occasion” (slippery in the winter). He noted the traffic would be minimal noting his assistants may go out for lunch occasionally or go out to pick up their children. “Not a lot of in and out” he said.

When asked about the barn in the back it was noted the structure was nice but had no heat. Mr. Callahan spoke briefly about the cost and potential of renovation “but it would make the property too congested anyway” he said.

Ms. Monahan asked about Mr. Callahan’s intent to use the whole building and renting out the other floor as office space. Mr. Callahan replied “no, it is not well suited for office space. It is an old house, lots of stairs.” Ms. Briggs asked “would you be seeking the variance on the downstairs unit only?” Ms. Salinger interjected “can you do that? Really, legally can you do that?” She went on to note “variances come with the property; this is a single property so how can you say the variance is only for the first floor?” Mr. Carrara replied “conditions.”

Mr. Christensen voiced one more concern. He noted “at the moment this is an attorney’s office but in the future if you move what will keep it from becoming a Harley Davidson shop? Again Mr. Carrara interjected “generally conditions will do that.” Mr. Christensen replied “my concern is more noise than anything else.” Mr. Callahan noted he did not have an objection to condition the use to an office. “That is OK by me” he said.

Andy Peterson introduced himself as an abutter. He gave a brief history of the house and its owner noting “it belonged to Irene Miller.” He said he supported Mr. Callahan stating “I don’t think it will create any more traffic on the street than is already there.” He went on to tell the members a bit about the quiet woman who left a great deal of money to the town. He described the layout of the house as being one that could easily accommodate a law office. “It is two units, pretty swish, pretty nice” he said.

Ms. Salinger corrected Mr. Peterson by noting “the property was owned by Isabelle Miller, Irene was the Hurricane!”

Mr. Peterson concluded by noting the history of several other small home businesses on the street and stating “the traffic thing is a fact of life there.” He told the members “Jim has been a good owner of this property but it is not just for Jim Callahan, this is a reasonable use of this property in my view.” He also mentioned the existence of several letters of support written by the neighbors.

Chair Laurenitis asked if there were any other questions and Mr. Christensen replied “one other” asking “we are talking about an office right now but in the future, potentially could it someday be a pediatrician’s office?” Ms. Morrissey replied “we can limit all that with conditions.” Mr. Christensen replied “I would be very happy with that condition.” Mr. Callahan interjected “I have no problem with that.”

A brief discussion about the three levels of custom home occupations followed. The discussion revolved around the fact that although Mr. Callahan owns the property he does not live in it. Mr. Callahan noted he would like to clarify for the record and referenced §245-24 D (2) which states “not more than four people shall be employed in the activity at the site.” He noted “a home business can not have more than two employees, but for a profession you cannot have more than four employees. I would not like to limit myself to just two.”

The hearing closed at 8:20 p.m.

Case No. 1174 Rachael Johnson requests a variance to Article II §245-6 B (1) of the zoning ordinance. Applicant requests the Board’s approval to allow a two family dwelling on a lot that does not meet the minimum land area requirement. The property is located at 483 Old Street Road; Parcel Number U007-002-000, in the Family and Rural Districts.

Chair Laurenitis welcomed Mr. Sobe back and appointed Ms. Morrissey to sit. Chair Laurenitis read the case. Upon completion she asked “is there any objection to the notice?” There was no objection.

Rachael Johnson introduced herself as the applicant. She began by saying “thank you for considering my request.” Ms. Johnson went on to explain she was buying the property listed in the notice and that she was due to close “a week from Friday.”

Ms. Johnson noted that she had 47,916 square feet, just about 2000 square feet short of what is needed for a two-family home, stating, “I would like to convert the house to a two-family house. I would live in the small wing connecting the house to the barn and rent out the house.”

The members reviewed the footprint as Ms. Johnson pointed out the dimensions of the structure. She noted the lot and home were legal nonconforming and that “dividing the house into a two-family would be within the existing footprint and would not increase the nonconformity of the structure.”

Ms. Johnson went on to note that three of the five abutting parcels as well as many others in the vicinity “contain over 50,000 square feet and can create a two-family dwelling by right” (without acquiring a variance).

Ms. Briggs asked “why do the abutters make you unique?” Ms. Johnson replied “I am in a two-family zone but house is currently a single family home.” Ms. Briggs asked about living space in the barn to which Ms. Johnson noted the barn would be used as a garage and would not be lived in.

A brief discussion about accessory apartments (with a minimum of 400 and maximum of 600 square feet) versus a variance for a two-family home followed. Mr. Carrara reminded the members that Ms. Johnson needed 50,000 square feet “but she does not have enough, she has 47,000 and change.” He noted “a variance if granted would allow a little more leeway in what the two residences are.” He also briefly discussed the option of an accessory (detached) structure on the property.

Ms. Monahan suggested they go through the criteria. Referring to the application Ms. Briggs noted “she has done that in writing.”

Donald Sienkiewicz introduced himself and asked “do you want to hear the lawyer read it? “I guess I do” replied a member. Ms. Monahan interjected “I would like to know what the hardship is.” Ms. Briggs asked “what makes you different? Why are you different than any of the properties around?”

Mr. Sienkiewicz reviewed the fact that the applicant could not convert her property to a two-family home by right and in a neighborhood of homes that *could* create a two-family by right “the hardship is self-created for these pre-zoning homes.” He noted that approval of the variance would allow the applicant a couple of hundred extra square feet to live while she rents out the house. A brief discussion about the percentage of the total lot size required (estimated at 4%) to make the 50,000 square feet followed. Mr. Sienkiewicz reiterated the uniqueness of the property and the fact the applicant is “just shy” of the required lot size. Ms. Briggs asked about the size of the house with Ms. Johnson replying “the house is 3650 square feet, the connector area is 350 square feet and the barn shed is pretty close to 300 square feet.” Ms. Morrissey noted “it (the

shed) is not as big as the connector room. Ms. Monahan asked about the number of bedrooms with the applicant replying “four” Ms. Monahan asked “so if you had a two family you would have 4 and 1 bedroom units?” The applicant replied “yes.” A brief discussion of the square footage of the second floor loft area of the connector room followed. It was noted that area had knee ceilings that may reduce the actual square footage to about 600 square feet. The members also briefly discussed the barn and the parking with Mr. Carrara warning the members not to confuse the building and the zoning issues.

Ms. Salinger noted that approving the variance would increase the nonconformity of the structure with Mr. Carrara noting the actual footprint “would not change at all.” Mr. Sienkiewicz reviewed the nonconforming issues, suggesting there would not be an increase in the nonconformity, and the use was allowed by right. Ms. Briggs interjected “it is not allowed by right, if it were you wouldn’t be here.”

Chair Laurenitis opened the hearing to the public. The Chairman recognized a correspondence from Mike Reilly, an abutter not present that listed several concerns with the request. Mr. & Mrs. Hurley introduced themselves as abutters and noted their worry was that another apartment would be put in the barn. Mr. Hurley noted if it were put in writing (two apartments only) “that would be OK.” Ms. Briggs asked “do you feel it would diminish the value of your home if the house was a two-family?” “Yes and no” replied Mr. Hurley. He explained that they have met and liked the applicant (so no) but they had concerns about the house becoming a two-family dwelling (so yes). “We don’t want it to become a rental” he said.

The members briefly discussed what the hardship may be with Mr. Sienkiewicz pointing out financial hardship. “It is real in terms of the money” he said.

Ms. Briggs reviewed the size of the applicant’s potential apartment noting “it is about 350 down and up to 350 up depending on the knee walls which makes it about 700 square feet. It was noted the maximum size for an accessory apartment is 600 square feet. Mr. Sienkiewicz interjected “a condition of the variance to no more than 700 feet would be fine.” The members briefly discussed other examples similar to the applicant’s request as well as whether or not an accessory apartment could be detached from the house. Ms. Salinger was of the belief that the applicant could not while Mr. Carrara believed the opposite was true and that the applicant certainly could have a detached accessory apartment.

The public hearing closed at 8:55 p.m. The members decide to defer deliberations on the cases until the next night. “It will give us some time to process what we have heard” said Ms. Briggs. Ms. Morrissey noted she may be running late but would do her best to be on time.

A motion was made/seconded (Briggs/Monahan) to adjourn at 9:00 p.m.

Respectfully Submitted,

Laura Norton
Administrative Assistant
Approved 11-07-11