

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, October 3, 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.

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 stated 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.

DRAFT MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Wednesday, September 8, 2011 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

DELIBERATION

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.

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 resumed her position as Chairman for this session. Ms. Briggs began with “I have a problem with this one” adding “I see a fundamental change to the character of the neighborhood with this one.’ Ms. Laurenitis referred to an e-mail that had been received and distributed to the members earlier in the day. This e-mail was from Jim Callahan, the applicant in this case. The members had a brief discussion as to what to do with the e-mail. Chair Laurenitis noted “it changes things” with Ms. Morrissey interjecting “we should ignore it.” Ms. Monahan asked “did he amend his application form last night?” adding “it is unclear.” Ms. Salinger pointed out what she considered new information in the e-mail and suggested if the case be continued that the abutters be re-noticed. The members agreed that the testimony given the night before was in conflict with the e-mail sent by Mr. Callahan. Ms. Briggs interjected “my feeling is that we deny this, it doesn’t matter if it is one floor or two, it changes the character of the neighborhood.” “I disagree” replied Ms. Morrissey. A brief discussion about the mixed use of the neighborhood followed. Ms. Briggs mentioned the concerns of Mr. Christensen and Ms. Morrissey referred to the spirit of the Master Plan. Ms. Salinger noted the number and types of home occupations on the street but added “in many cases it is still their primary residence.” The

members also discussed conditions of approval that may calm the neighbors concerns. After a bit more discussion the members agreed to stop any deliberation and continue the case to the next regularly scheduled meeting. The members noted for the record that the abutters must be re-noticed as one member put it “when they left last night they thought the case was going to be deliberated” adding “and since then we have received additional information. The request is now different.” The members then briefly discussed the re-application process. Ms. Briggs made a motion to continue the case. She noted “he should come back without having to re-apply. It is more money to re-apply, why make him do that?”

A motion was made/seconded (Briggs/Morrissey) to continue the case and require the applicant to re-notice his abutters with all in favor (Briggs, Morrissey, Laurenitis, Salinger and Monahan).

Chair Laurenitis noted “this will allow him to clarify his intent through the public record at the next regular Board meeting.”

DRAFT MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, October 3, 2011 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Loretta Laurenitis, David Sobe, Maude Salinger, Joanna Morrissey, Sharon Monahan and Jim Stewart.

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.

Chair Laurenitis noted that the purpose of the meeting was to re-open the public hearing of Case No. 1173 originally presented of September 7, 2011. Because of the volume of cases on the 7th the Board voted to meet the following night (Thursday, September 8, 2011) for deliberation. It was noted that the Board had taken additional testimony in the form of an e-mail received early on the 8th and that they should continue the case to the October meeting.

Continuation of 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.

Mr. Callahan noted one of his neighbors had told him he would be here and asked the Board if they minded waiting just a few moments for him. With the applicant the only person in the audience Chair Laurenitis replied “we don’t mind waiting at all.” “I appreciate that” replied Mr.

Callahan just as the neighbor arrived. Chair Laurenitis proceeded with introductions of the members and staff. Chair Laurenitis re-read the case.

Chair Laurenitis noted that Mr. Sobe had recused himself at the last meeting and would do the same this evening. She also stated Ms. Briggs was not present but Mr. Stewart was present and would take her place. She concluded by noting herself and members Monahan and Salinger heard the case last month and were also present.

Chair Laurenitis reported that all abutters had been re-noticed for this hearing.

Mr. Callahan began by thanking the Board for continuing his case. "I am sorry you had to come back" he said adding "that was not the intent of the e-mail." Mr. Callahan went on to note he had left the meeting in September and realized "I had not thought about the issue of the whole building." He went on to explain "my goal is not to be a landlord." He noted the tenant on the first floor is a young couple who have bought a house and will be moving out. He added the tenant on the upper floor is a friend that stays there while working in town. Mr. Callahan noted "I would like some parameters of flexibility."

Mr. Callahan went on to note how he ended up before the Board in the first place. He noted he had intended to seek permission for a home-based business but found early on he did not meet the criteria because he did not live in the house "so variance it was" he said. Mr. Callahan went on to note that once he got home he started to think about the discussion that had taken place about the location of the business on the upper or lower floor. "I did not want to be constrained" he said and asked if the variance approval would allow a "flip-flop" for the business and recognize that in the future there may not be a tenant at all. "I don't want to be a residential landlord" he said.

The members briefly discussed the criteria for a home-based office and the differences between special exceptions and variances.

Mr. Callahan noted he had spoken to all of his neighbors "and basically everyone is fine with it." He went on to note "if you see fit to approve this application and want conditions or constraints I would ask you limit the scope of the **use** rather than the physical proximity of the house."

Chair Laurenitis asked if any members had a question. Ms. Salinger asked "so to clarify, the entire property would be re-zoned?" Mr. Callahan replied "I have asked for a variance and that would cover the whole property." He went on to note "if you grant this request and want to place conditions, based on what I was hearing I do not want an upstairs/downstairs limitation. I would ask you limit the scope of use versus limiting it to one part of the property or another." He also noted "looking at the home based limitations as a base, this is a pretty reasonable restraint."

Ms. Monahan asked about mixed use with Mr. Callahan replied "it was not the intent but the application is for the entire property, that is the way it went in." Ms. Monahan replied "my question is, is this now a mixed residential office use?" Mr. Callahan replied "no, no the intent of the application is for the entire property, that is the way it went in. I did not think beyond that."

Chair Laurenitis asked “is it your preference not to have residential included?” Mr. Callahan repeated that he did *not* want to be a residential landlord and reiterated the downstairs tenants were moving out and the upstairs tenant was a friend. “I don’t want to rent to anybody that is not one degree of separation away from me.”

Mr. Stewart asked Mr. Callahan why we wanted to move. Mr. Callahan reviewed the reasons he had mentioned at the first meeting specifically noting they were “busting at the seams” at the Main Street office. Mr. Stewart replied “if we grant this it is conceivable that in a few years that building (Grove Street Building) could be busting at the seams as well?” Mr. Callahan replied “yes that is possible” but added “the house is about 2700 square feet and with four employees and plenty of parking I don’t see that (happening). Mr. Stewart asked about the “comings and goings” in the current office with Mr. Callahan reviewing the type of work he does (mostly via the computer and the phone) and the minimal number of client visits he has in an average week.

Ms. Salinger noted “so when a variance is applied for typically the applicant must show special conditions of the property that distinguish it from other properties in the neighborhood” and asked Mr. Callahan “so how is your property different from the Perry’s or the Christensen’s?”

Mr. Callahan reviewed some evolution in the variance laws in New Hampshire specifically noting the Boccia (Boccia v. City of Portsmouth) and Simplex (Simplex Technologies v. Town of Newington) cases and adding “this is not an area variance it is a use variance.”

Mr. Callahan continued by noting the strict application of the ordinance “is not necessarily noted” and the street being a mixed use of neighborhood residential and commercial, pointing out many of the past and present businesses and professional offices. “There is a history” he said.

Ms. Monahan asked about hardship quoting the applications “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.” Ms. Monahan noted Farrar v. City of Keene and asked “does the hardship result from the setting of the property?” adding “if so I am OK with that part of the criteria.” Mr. Stewart interjected “that is a good point, the location is a mixed use area and we would not want to do anything to disrespect that.” A brief discussion about Mr. Callahan’s failure to prove hardship is related to the any unique characteristic of the property followed.

Referring to Mr. Callahan’s e-mail Mr. Stewart noted he had a problem with the application. “This variance is for a professional use. You are asking us to grant the variance for a professional use but want us to take all the special exception conditions for a home business and apply them to you.” Mr. Callahan acknowledged his request was not a special exception under the home business provision of the ordinance but that he had outlined several limitations from that section of the regulation for the purpose of limiting the scope of the approval. “Just as an example” he concluded.

A brief discussion about the differences between a variance and a special exception followed with the application once again being identified as not being a customary home occupation. Chair Laurenitis opened the floor for questions from the audience.

Roy Christensen introduced himself and noted “like the last time I had no problem with an office in the house but the nature of the world today is so geared to the internet and computers, the residential street is getting closer and closer to a business community rather than a neighborhood.” Mr. Christensen went onto note “I do have a problem if the house is not lived in and is only a business property.” He added “a number of us on the street are a residential community and to turn it into a business property, I can’t see it at all. It is reaching a tipping point.” Mr. Christensen concluded by noting it was sort of analogous “when you think about it and ask *do you have an office in your home or are you living in your office?*”

The members reviewed a map of the neighborhood pointing out several businesses and professional offices. Mr. Stewart noted Mr. Christensen’s concerns must be addressed and agreed “I cannot image the whole thing (building) an office, we should keep someone there.” Mr. Callahan replied “I don’t want to have a condition that I have to have someone living there.” He reiterated his current tenant status adding “as far as I can foresee in the future there will be someone living there and some office use.” Mr. Callahan also reiterated “I don’t want to have to be compelled to have a residential tenant in there for no other reason than for the sake of it.”

Mr. Christensen asked about business definitions and noted “my concern is for the street as a whole. It is a neighborhood; we get together and socialize Friday nights. You start with one small business then another and another. Where does this stop?” he asked and added “it ends up being another office building rather than another house with an office in it.”

Heather Peterson spoke briefly about the mixed use of the neighborhood from a real estate point of view. She noted that having an office in the neighborhood during the day also tends to find the homes well maintained and landscaped. She noted “a variance runs with the land but you can put restrictions on it.” She went down the street pointing out past and present businesses and professional offices in the neighborhood. She concluded by noting that in granting the variance “you can put in safeguards you think are necessary to protect the public interest.”

Ms. Salinger asked “why not expand at your current location?” with Mr. Callahan citing both the cost involved as well a lack of appropriate proximal space. Mr. Callahan also noted “on a personal level, I want to keep this property” adding he had the thought of someday downsizing and moving back into the house. “I do not want to go through the tenant/landlord thing for the next five to fifteen years” he said.

Mr. Callahan once again briefly reviewed the history of the house and how Isabelle Miller lived there “through three centuries.” Mr. Peterson interjected “the house has a history of being more than a single family house.”

In reference to granting the variance Chair Laurenitis said “I struggle with it” adding “the application is asking for a variance but in some ways you are asking us to rezone.” Mr. Callahan replied “I am asking for a variance and effectively that does rezone.”

The continuation closed at 7:45 p.m.

The members agreed the Minutes from the initial meeting September 7, 2011 be included in these Minutes.

Deliberation

Ms. Morrissey read about Grove Street from the Master Plan and when done she noted “change of character should be retained and enhanced but mixed uses are appropriate for this area.” Ms. Morrissey concluded by noting “there used to be *even more* business on the street than there is now. What is being asked for is a totally appropriate use with restrictions.”

Mr. Stewart interjected “the whole problem with it is that it is zoned General Residence.” Ms. Morrissey replied “what I am saying is that there has been a lot of back and forth.” A brief discussion about the history of the street and businesses that have come and gone followed.

Mr. Stewart reiterated the street was zoned General Residence. “It is not the Village Commercial District. It is not the Downtown District. They are truly mixed use.” Ms. Salinger agreed and in reference to what Ms. Morrissey had read from the Master Plan, she noted “I read it and I interpreted it totally differently. To maintain the character of the street is clearly what that means.” Ms. Morrissey replied “well let me clearly tell you that I don’t think so.” Another member noted “we have to interpret the zoning ordinance as it is, not what it can be” and a discussion about mixed use neighborhoods followed.

Ms. Salinger concluded by asking “would anyone like to propose a motion?” After a brief silence Chair Laurenitis asked “anybody?” Ms. Morrissey replied “I believe I have been pretty clear.” Ms. Monahan interjected “I proposed the variance be denied.” A formal motion was made/seconded (Monahan/Salinger) with Monahan, Salinger, Laurenitis, and Stewart for the motion. Ms. Morrissey voted against it and Mr. Sobe was recused.

The members worked through a Notice of Decision. At one point the applicant responded to their conversation by noting “I was not saying the entire house would be an office. I would just like the flexibility to go up (stairs) or down with it and I don’t want to be compelled to have a tenant.”

Ms. Salinger replied “it seems clear in what you sent in that you don’t want any conditions.” Mr. Callahan replied “you are free to do anything you want, I just wanted some flexibility.” Ms. Salinger asked “so one floor or the other?” with Mr. Callahan replying “how about either/or?”

At this time Chair Laurenitis noted “let’s keep this going so we can vote and then he can ask for re-hearing if he wants.” Ms. Salinger noted “the application is for the professional use of the building and he seems to want no conditions without specifying where the use is and where the residential is. That is my feeling.”

Once again a brief discussion about the businesses and professional services that have come and gone (and still exist) on Grove Street were discussed with Heather Peterson pointing out a marketing firm, gift shops, real estate companies, clock repair shop, hair salon and ceramic shop as examples. Chair Laurenitis replied “we are in deliberation and we do not want to get off

track.” Mr. Stewart noted “all that happened way before it was zoned General Residence” with Ms. Peterson replying “no, no, no. That is not true. You don’t want to have this put in your minutes and have it be incorrect.”

Chair Laurenitis called for a vote to accept the Decision. A motion was made/seconded (Monahan/Salinger) to accept the Decision as written with Monahan, Salinger, Laurenitis, and Stewart for the motion. Ms. Morrissey voted against it and Mr. Sobe was recused.

Mr. Callahan asked the Board about their thoughts on him coming back to them for a reconsideration to limit the professional use to the first floor. “Would your inclination be the same?” he asked.

Chair Laurenitis noted the Board could not speak to that question. Mr. Stewart noted “it will be your job to prove (the hardship criteria) to us. Make a case for it.” Mr. Callahan concluded by reviewing his status with the home he does not live in. “I regret sending the email” he said.

Minutes

The members agreed not to review and approve the Minutes that evening.

A motion was made/seconded (Morrissey/Monahan) to adjourn at 9:10 p.m.

Respectfully Submitted,

Laura Norton
Administrative Assistant

Approved 11-07-11