

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH

Monday, April 2, 2012 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Present: Alice Briggs, Loretta Laurenitis, Jim Stewart, Sharon Monahan, and David Sobe

Also Present: Dario Carrara, Code Enforcement Officer; Laura Norton, Office of Community Development

The meeting was called to order at 7:00 p.m. 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/concerns from the audience (in favor or opposed) and closure of the case followed by deliberation and decision. She also asked anyone speaking from the audience to please state their name for the record.

Chair Laurenitis read the first case which was a request for a Special Exception to replace one non-conforming retail use with another non-conforming residential use.

Case No. 1178 Request for a Special Exception

Charles Cobb introduced himself (as Charlie Cobb) and thanked the members for the opportunity to speak. Mr. Cobb began with a brief description of the location of the apartment building he owns with his wife. He went on to describe the general size and configuration of each of the five apartments. He noted that “presently it is a mixed use building of residential and retail.”

Mr. Cobb pointed out the space in the building he would like to convert from retail to residential and create another small apartment that would be accessed from the back of the building. “That is the space we are talking about tonight,” he said. He went on to add “right now it is one big room.” Ms. Briggs asked about the size of the space and the ratio of retail to potential residential. Mr. Cobb replied “the space is about 2200 square feet and the apartment will be about 650 to 700 square feet.” Mr. Cobb went on to note the apartment would have its own entrance, bath and town utilities. “We are not changing the rest of the space,” he said.

Ms. Briggs asked about parking and Mr. Stewart asked about dedicated parking. Mr. Cobb briefly pointed out the “up/down” parking for tenants where one vehicle could be accommodated on the street level and other vehicles per unit would park in the ample open area down the driveway to the side of the property. “It is really pretty straight forward,” concluded Mr. Cobb.

A brief discussion about the General Residence district as well as the numerous retail businesses that have occupied the space in the past followed. Ms. Monahan noted “its last retail use was a consignment store but there is nothing there now.” She went on to ask “how long has the space been vacant?” Mr. Cobb replied, “I am not sure, about a year or so now I guess.”

A brief discussion about the vacant retail space, the definition of abandonment and the intent to use (a “for rent” sign has been up the whole time) followed.

Mr. Stewart noted “for a point of clarification, this is General Residence” and asked “so would not creating an apartment space make it *more* conforming?” Mr. Carrara replied “residence is allowed but the density is not allowed” adding “for a multifamily building in the district you need a lot size of 10,000 square feet per unit; the density is above that now.” He went on to note “the space is already there, it is a question of how they can use it.”

Caroline Grisafi introduced herself as the abutter to the north of the building. She began by noting “I was pretty much OK with this in the beginning but I have a few questions.” She went on to ask about specific parking in the rear of the building for the new apartment. She also pointed out a large deck on the back side of the apartment building and asked if that deck would be available to the new apartment tenant(s). Mr. Cobb initially said no but Mrs. Cobb interjected the deck would be used as a means of egress in an emergency for the new apartment. Ms. Grisafi asked “will it be used as a fire escape or a place to hang out and smoke?” Ms. Grisafi made a reference to tenants that hang out on the deck and that may not be good role models for her children. Mrs. Cobb replied “we are not even going to show the apartment to people who smoke.” Ms. Grisafi replied “*really?* because they are still there.” Mrs. Cobb assured Ms. Grisafi the tenants in question had been removed. Ms. Grisafi asked “Unit 4? the one-bedroom apartment?” Mrs. Cobb replied “they are done.”

Ms. Grisafi noted she may speak with the Cobbs outside this venue about some sort of privacy screening between the deck and her home but she was satisfied with the answers she received. Mr. Sobe had a question about the deck and Mrs. Cobb noted she was going to retain a mixed use of retail and residential. Chair Laurenitis asked for clarification of the units in the building with Mr. Cobb reviewing them and concluding “two 2-bedroom, two 1-bedrom and one 3-bedroom apartment.” Ms. Briggs interjected “and you are proposing another 1-bedroom unit correct?” “Yes” replied Mr. Cobb. Chair Laurenitis asked “how many people are living there?” Mrs. Cobb took a moment and replied “ten.”

There were no other questions and the public hearing closed at 7:30 p.m.

Deliberation

Chair Laurenitis asked “do we want to deliberate now? Ms. Briggs replied “it may be better to hear the next case and kinder to the applicants to let everyone except us go home.” Mr. Stewart noted “I think we can get through this pretty quickly.”

Chair Laurenitis looked around and asked “any thoughts?” Ms. Briggs replied “that is a lot of density for this little lot. There are ten people living there now with the potential of two more. That is a 20% increase. That is huge.” She added “but there is plenty of parking and the neighbor does not object.”

Ms. Monahan noted “it has been abandoned for a year, that bothers me.” She added “I don’t think I am for this.”

The members briefly discussed the status of the legally nonconforming building and the permitted uses for the district. It was noted that an increase in density would make the building even more nonconforming (but) there would be more impact to the neighborhood with the retail use. Mr. Stewart noted "I think residential is a less intensive use and more conforming with the street." Mr. Sobe agreed noting "there is less impact." Chair Laurenitis reminded the members "there is still a commercial use here; we are just adding residential use." Mr. Stewart added "right, it is both residential and retail; they are just changing the percentage." A brief discussion about the advantages and impact of retail followed. Mr. Stewart asked if they were to take a unit in the building to make greater retail space "would that be a less intensive use?" Ms. Briggs replied "with the testimony we have heard here tonight I think so." She added "the neighbor has already said she prefers retail." Ms. Briggs thought for a moment and said "it is the kind of apartment Peterborough needs more of but that is not in our criteria."

The members briefly discussed the notion that the building had been abandoned with Ms. Briggs noting "that provision does not apply." Noting the for rent sign in the yard she added "there has been no intent to discontinue its use." Ms. Monahan held her position noting "the density they have is not permitted. It is an additional unit increasing the nonconforming use of that property." Mr. Carrara interjected "remember this space is there now; it is not being added." In reference to the Location criteria, specifically the statement "the partial change to apartment would reduce the activity on the property and be a lesser intensity use" Ms. Monahan noted, "I disagree with their statement about lesser activity," adding "it will increase the activity because the business is *still* there. It is an increase in activity that will create more impact on the parcel" she said. From the audience Ms. Grisafi asked "may I ask a question?" Ms. Briggs shook her head and replied "no, sorry."

The members then went through the five criteria for a Special Exception. They members began to check the boxes (adequate water and sewer, minimal risk to air and water, not agricultural, serves local housing needs, no visual consequences and good access and parking.) Ms. Briggs concluded "I am feeling better about this." Mr. Stewart reiterated "the use is equally or more appropriate to the district, it is General Residence, not Commercial." "I just worry about the density" replied Ms. Briggs. She also noted "the only criteria that sticks out is that the adjoining premises should not be negatively affected." Chair Laurenitis noted she had researched previous use request cases for the property "I wanted to have a sense of what was going on with this property" she said. Mr. Carrara briefly reviewed a list of previous uses with a broad range of requests noting "I don't think the fish store was approved but most of them were granted."

Mr. Stewart called for a straw vote. "I am against it" said Ms. Monahan. Mr. Stewart noted he was in favor. Chair Laurenitis noted her reservations but was likely to approve the request. "And you Alice?" asked Chair Laurenitis with Ms. Briggs replying "I just don't know" adding "but I am not a swing vote, you have three for it."

Ms. Briggs then asked the members about comfort for the minority by putting in conditions. "I don't think you can condition it" replied Ms. Monahan. Ms. Briggs replied "oh, I think counsel has been pretty clear about us conditioning. I would like to comfort Sharon."

Mr. Stewart asked Ms. Briggs if she was concerned about the use of the deck with Ms. Briggs replying “no, my concern is that it will be turned into ten units in the next few years.” Chair Laurenitis noted the applicant would have to come back for any additional increases and suggested the Board “deal with what is before us today.”

The members then drafted the decision.

A motion was made/seconded (Laurenitis/Stewart) to approve the decision as written with Chair Laurenitis, Mr. Stewart and Mr. Sobe and Ms. Briggs in favor. Ms. Monahan was opposed.

ZONING BOARD OF ADJUSTMENT
NOTICE OF DECISION

Case Number 1178

April 2, 2012

You are hereby notified that the request of Charles Cobb, for a Special Exception to Article VI Section 245-30 of the Zoning Ordinance is hereby **GRANTED**. The applicant requested the Board’s approval to replace one non-conforming use with another, on property located at 76 Grove Street, parcel number U018-127-000, in the General Residence District. The Board finds:

1. The proposed use is equal or more appropriate to the zoning district than the existing nonconforming use because the proposed use will result in more of the building being used for residential purposes, which is the purpose of this zoning district.
2. The nonconforming use has not been discontinued because the property owner has offered evidence that there has been no intent to discontinue the use because the owner has been advertising it consistently for a retail tenant.
3. The proposal’s benefits to the Town, neighborhood, and applicant will outweigh any adverse effects for the Town or the neighborhood because:
 - a. The location has adequate water, sewerage, drainage, and parking to support the additional apartment and will not cause substantial environmental damage.
 - b. Adjoining premises and the general neighborhood will not be negatively affected by the additional apartment because the area is densely settled and contains a mix of single and multi-family dwellings and home businesses and the police station.
 - c. The proposal will serve the housing needs of local residents because the Town does not have enough small rental units.
 - d. There will be no visual consequences because the exterior of the building will not change and there is more than adequate off-street parking.
 - e. Access to the location will not entail congestion or hazard because the additional apartment will not substantially increase traffic on and off the site.

The Board’s approval is conditioned upon:

1. The apartment will have a maximum of one bedroom.
2. The apartment will be no greater in size than 700 square feet.

Signed

Loretta Laurenitis

Chair

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.

Chair Laurenitis read the second case which was a request for a Variance to reduce the side building setback ten (10) feet and to reduce the rear building setback to two (2) feet in order to build a garage.

Case No. 1179 Request for a Variance

Tim McMahan introduced himself and his wife Velka Pacheco as the owners of the 3-family property, "We bought the property in 2003 and there was a garage where the camper is now" he said. He went on to note "the roof of the garage had collapsed and the insurance company required us to take it down. I did not know there was a one-year time limit to be able to replace it" he said. Mr. McMahan used a graphic to show the location of the slab (on which) the garage once stood. He noted "right now we have a tent structure to store our outdoor equipment and tools. We would like to request a variance on those two sides so that we can put the garage back."

A brief discussion about the current size and condition of the current slab followed. Mr. McMahan noted the slab measured 32.25 (length) by 20.5 feet (wide), but it has a crack in it so it would have to be evaluated/inspected. Mr. McMahan also noted he would "ultimately like to widen that by about four feet to be able to park two cars comfortably and get some tools in." He went on to say "the maximum would be 30 by 24 feet." "So you would like to widen it four feet?" asked Mr. Stewart with Mr. McMahan replying "correct." When asked about the integrity of the current slab Mr. Carrara replied "that is questionable; it could go either way." A brief discussion about the height of the new garage and whether any conditions should be placed on height followed.

Mr. Stewart asked how many garage bays with Mr. McMahan replying "two." Ms. Briggs interjected "and you cannot put this garage where it is more conforming?" It was noted that if the current setbacks were adhered to "it would put the structure in the middle of the parking." Mr. McMahan noted that not only would this look awkward, it created an intrinsic safety issue as well. Ms. Briggs asked about the slope and a topographical map was projected showing the extreme

slope down the driveway to the wooded back yard. Ms. Monahan noted the adjacent lot was certainly not buildable. "Have you heard from abutters?" asked Ms. Briggs. Mr. McMahon replied they had received letters of support from their abutters. "Is there a 50/50 shot they can save the slab?" asked Ms. Briggs. Mr. Carrara noted some investigation would be necessary to determine the integrity of the slab.

A brief discussion about the existence of the slab and its potential to be an existing structure followed with Mr. Carrara noting "basically because the building was torn down the slab is not an existing building." Mr. Stewart replied "but if you have *always* been *thinking* about rebuilding the garage, that is the same as the posting of an empty retail space for rent!"

Mr. Stewart also noted temporary structures up for a certain amount of time become permanent structures. Mr. Carrara replied "we do not regulate these membrane structures" adding "and I don't think that this particular structure has a bearing on the application." Mr. Stewart replied "there was a garage there and it was the best place to put a gaudy nonstructural unit." "I think they have grounds for a Variance" interjected Ms. Briggs. Mr. Stewart asked "Sharon how do you feel?" Ms. Monahan replied "it is not impacting others." Ms. Monahan added concerns and opinions are impacted by her (personal) work as one who works with conforming uses and expansion regulations "but that is not relevant here" she said.

There were no other questions from the Board. Chair Laurenitis opened the discussion to the audience.

Ken Christian introduced himself and briefly spoke in favor of the application noting "if you move the garage it would be a mistake" adding "I hope you would allow him to build in the same location, two, three or five feet will not impact anything."

Ms. Monahan asked if the parking requirements were currently met with Mr. McMahon replying "yes, oh yes." Chair Laurenitis asked what the final maximum size of the structure would be. Mr. McMahon noted it depended on whether or not the current slab could/would be used. The members briefly discussed the dimensions with Mr. McMahon noting "but I am requesting 30 X 24 feet if it (the slab) is replaced."

There were no further questions and the public hearing closed at 8:30 p.m.

Deliberation

"I think this is no-brainer" began Ms. Briggs. Mr. Sobe added "I am all in favor of it" adding "he will probably have to replace the fittings but that is good, he will have a better structure." Chair Laurenitis noted "it meets all the criteria" with Ms. Monahan adding (in reference to the topography shown on the map) "and the hardship of nowhere else to go is clear."

The members then drafted the decision.

A motion was made/seconded (Monahan/Sobe) to approve the decision as written with all in favor.

ZONING BOARD OF ADJUSTMENT**NOTICE OF DECISION****Case Number 1179****April 2, 2012**

You are hereby notified that the request of Timothy McMahon and Velka Pacheco, for a variance to Article II Section 245-6 B (2) of the Zoning Ordinance is hereby **GRANTED**. The applicant requested the Board's approval to reduce the right side setback to ten feet and the rear setback to two feet, on property located at 1 Scott Street, parcel number (U017-028-000), in the Family District.

In reaching this decision, the Board finds that:

1. The variance will not be contrary to the public interest because:
The basic objectives of the setback ordinance are to limit the density of use. This variance will not violate those objectives because the lot behind the subject lot falls away very steeply so that nothing will be built near that lot line and the side setback will be consistent with the former garage. Therefore, the proposed use will not alter the essential character of the neighborhood. In addition, the variance will protect public safety by allowing safe access and parking.
2. The spirit of the ordinance is observed because:
The proposed garage will substantially conform to the footprint of the former garage.
3. Substantial justice is done because:
The benefit to the applicant is not outweighed by any harm to the general public because the adjacent neighbors consent to the new garage and it will allow safe access and parking on the lot.
4. The values of surrounding properties are not diminished because:
The proposed garage will increase the value of surrounding properties because it will replace the existing membrane structure with a permanent structure that will conform to building codes.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:
 - a. The following special conditions of the property make the variance necessary in order to enable a reasonable use of it:
The lot is non-conforming, being only one third of an acre, with three living units. In addition, the lot slopes upward from the road such that locating the garage nearer to the road would require substantial grading.
 - b. Owing to those special conditions, No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because the existing footprint is the most reasonable location on the lot for the garage to be built.
 - c. The proposed use is a reasonable one because it will not alter the essential character of the neighborhood. In addition, it will contribute to public safety because it will allow for safe access and adequate off-street parking for all three living units.

In granting this variance, the Board imposes the following conditions:

1. The right side setback will be at least ten feet and the rear setback will be at least two feet.
2. The building will not have a footprint greater than thirty-three by twenty-four feet and the side walls will not exceed fifteen feet in height.
3. The building will be substantially within the footprint of the former garage.

Signed

Loretta Laurenitis

Chair

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.

Other Business:

Chair Laurenitis noted an appeal to the Decision the Board made in Case No. 1176 Robbe Farm Road, LLC, dated March 5, 2012.

Chair Laurenitis noted the request addressed §245-40 of the local land use regulation and RSA 677. She read the request which stated “Robbe Farm Road, LLC wishes to appeal the decision dated March 5, 2012. Specifically item (2) every unit on the property shall comply fully with the requirements of the Americans with Disabilities Act (ADA).”

Chair Laurenitis looked around the room and noted “we can do this tonight or later, we have 30 days to act on it. What is the Board’s preference?” Ms. Briggs replied “there are no grounds given.” Chair Laurenitis agreed adding “there is no new information, so no grounds for a re-hearing.” Ms. Briggs noted “there is no justification to re-hear, I make a motion we deny the request.” Chair Laurenitis replied “I second it.”

The members briefly discussed the lack of information in the request and specifically referred to 677: 2 which states that an applicant may apply for a rehearing “in respect to any matter determined in the actions or proceeding, or covered or included in the order, specifying in the motion for the hearing the grounds therefor and the Board of Adjustment, a Board of Appeals or the local legislative body may grant such rehearing if in its opinion good reason therefor is stated in the motion.”

“It is all in the statute, §245:40 and 677” said Ms. Briggs. It was noted “the appeal does not say anything” and the applicant needed to submit reasons and evidence for a rehearing. Mr. Carrara

noted the specificity of the request with Ms. Monahan noting “he has to give a reason.” Mr. Carrara then noted the applicant still had a couple of days and perhaps he was going to supplement the letter with additional information. A brief discussion about the appeal process and what was to be supplied to the Board for an appeal followed.

Chair Laurenitis reminded the members “there is a motion on the floor” and asked “how do you want to deal with that motion?” Ms. Briggs replied “let’s vote on the motion to deny” adding “(the applicant) says things without giving us the evidence we need. This is typical of what he has given us.”

The motion to deny the appeal was restated with members Laurenitis, Briggs, Monahan and Sobe in favor. Mr. Stewart was recused.

A brief discussion about the receipt of additional information for the appeal received within the 30-day time limit followed. To clarify, Mr. Stewart noted “it does not work that way, this was his chance in accordance with §245-40.” Mr. Carrara asked “you only get one shot?” with Mr. Stewart replying “yes.”

Minutes:

A motion was made/seconded (Briggs/Sobe) to approve the Minutes of March 5, 2012 with minor corrections.

The meeting adjourned at 8:40 p. m.

Respectfully Submitted,

Laura Norton
Administrative Assistant

Approved May 7, 2012