

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, June 11, 2018 – 5:30 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Loretta Laurenitis, Peggy Leedberg, Dario Carrara, Sharon Monahan, Peter LaRoche and Seth Chatfield

Staff Present: Laura Norton and Peter Throop, Office of Community Development and Tim Herlihy, Code Officer

Chair Laurenitis Called the meeting to order at 5:35 p.m. “Good evening” she said and introduced the Members and Staff. Chair Laurenitis noted the first item on the agenda was the election of Officers and had a motion relative to that item.

Election of Officers:

Ms. Laurenitis began “I move that, because of an inadvertent oversight by the Board in mistakenly allowing the ZBA alternate member to participate in the voting to elect the Board's officers, that we declare the alternate member's vote invalid and we recognize the results of the 5 lawfully cast votes and declare Dario Carrara the chair by the lawful 3-2 vote.” The motion was seconded by Mr. Chatfield and all were in favor.

It was noted the nomination of the Vice Chair was also invalid as it had come from the same alternate. A motion was made/seconded (Leedberg/Laurenitis) to elect Seth Chatfield as Vice Chair of the Zoning Board of Adjustment with all in favor.

Minutes: Deferred

Chair Carrara assumed the position of Chair, welcomed all to the meeting and gave a short recap of how the Board ended up at this meeting. He noted the applicant had begun with an Administrative Appeal of a Decision rendered by Code Officer Tim Herlihy. “That appeal was upheld by the Board, so the applicant proceeded with a variance request for the proposed use” he said.

Mr. Chatfield informed the Board he was recusing himself from the case. “I recuse and can no longer serve on this particular issue” he said. When asked if there was a reason Mr. Chatfield replied “no, not a discussion matter for this Board.”

Chair Carrara then addressed the applicant citing their right to a 5-member Board and with Ms. Monahan's recusal last week they would be faced with a 4-member Board. Chair Carrara asked Ms. Monahan if she felt she could participate in the case and she replied she could. When asked, the applicant had no reservation with the appointment of Ms. Monahan as an alternate ("not at all" replied Mr. Callahan). A motion was made/seconded (Carrara/Laurenitis) to seat Ms. Monahan with all in favor.

Continuation of Case No. 1245 1810 Realty Group:

A request for a Variance to build and operate a 64-bed, residential substance abuse treatment facility as regulated by the zoning ordinance in Article II, Section 245-9 B (1). The property is located at 25 and 30 Bridge Street, Parcel No. U021-001-000 and U021-002-000, in the Village Commercial District.

Chair Carrara noted the case had been continued from the June 4th meeting with a request for additional information from both the Fire Chief and the Police Chief. He noted several correspondences that staff had received via email and hand delivery throughout the work day. He reviewed each one as he entered them into the file for the record. Mr. Throop interjected that each correspondence had been copied and delivered to the Board Members and the applicant as they were received and prior to this evening's meeting.

Chair Carrara opened the meeting to the public.

John Petrou introduced himself as a Rivermead resident who came to Peterborough for the quality of life. "It is peaceful and quiet here" he said. Mr. Petrou went on to note of the approximately 300 Rivermead residents many are frail and live in outlying cottages around the main building, "and security is not great." Mr. Petrou told the members "I recognize this is a really valid public proposal not available locally" but urged the Board to ease into their decision cautiously, deliberately and with conditions. He acknowledged the program was not court ordered or associated with the criminal justice system noting "that is reassuring, it relaxes the potential pressure of what could potentially be a disruptive element in the community." He concluded by reiterating the Board attach conditions to any approval if they were inclined to grant one. "Conditions of use subsequent to operation" he said adding "as told to you by the applicant in his approach to you. Forestall that in your approval" he said.

Christine Howe introduced herself as a resident, teacher at South Meadow School and a Registered Nurse. "I am in favor of this, it is a desperate need for our

community” she said. Ms. Howe went on to say, “I appreciate the concerns of the people who are worried, but I think the needs of people with substance abuse disorder are paramount.” Ms. Howe concluded by saying “I could tell you about the students I have lost, who died from the lack of access to a treatment facility. Please give this variance.”

Liz Thomas introduced herself as a proud member of Alcoholics Anonymous (and as a result knows hundreds of recovering alcoholics and drug addicts who have jobs, families and are leading responsible lives. “It will be people like this in the facility” she said. She referred to a similar treatment facility in Dublin (Beech Hill Hospital) “that ran for years and I never heard of any problems with them. It is ridiculous to be afraid of this, that is all I have to say, thank you.”

Jamie Hamilton introduced herself as an experienced minister and told the members and audience “no child, friend or family member has not been affected by this addiction crisis.” She urged everyone to come together to support a facility like this. “This would show Peterborough as a beacon of hope and the beautiful community it is to give people that hope. We need to think about how to support these facilities, it is a beautiful thing.”

Mark Orison introduced himself as the manager of the men’s recovery house in Hancock. “Given the opportunity to go through detox followed by long term recovery to get their lives back is the beginning of the process” he said. He told the Board this was an issue near and dear to him. “There are no guarantees” he said adding “but this is like a disease and if someone had cancer we would do all we could for them. You have to understand that people going into a facility like this have an interest in getting their lives back.”

Lisa Ludeke introduced herself and noted “first of all I’d like to mention the almost 70 jobs the facility would bring to the town.” She noted the loss of large employers like EMS and SDE in recent years and that the town really needed some professional opportunities to let people make a decent wage and support their families. “This is a fabulous opportunity” she said. Ms. Ludeke went on to say “secondly, I am not a stranger to substance abuse disorders.” She noted the effect on families and friends how the disorders pass through generations and how the violence and abuse wrecks lives. She noted New Hampshire was ranked 2nd highest in addiction and 49th in treatment opportunities. She concluded by noting “People here suffer from substance abuse, we should not say this belongs in another location, we should not say we do not need it.”

Mary Drew introduced herself as a recovering alcoholic and the founder and CEO of Reality Check, a nonprofit group offering drug and alcohol prevention planning as well as increased access to treatment and recovery support. “New Hampshire is 2nd to last in providing treatment for substance abuse disorder and the 2nd in the nation in fatal overdoses. “It costs three billion dollars a year in health and medical admissions” she said. She noted the applicant does what her program does not “they offer in-patient detoxification and stabilization services, we offer the rest of your life treatment. We would refer them for detox services and they would refer back to us for long term relapse prevention.” She concluded by noting “the stigma is alive and well and we work to reduce that stigma.”

Jim Cleary introduced himself and told the Members he and his wife had struggled for years with his stepson’s addiction. “The good news is he is good, two years clean and productive” he said. Mr. Cleary noted the need for treatment facilities and his support for the variance.

John Adams introduced himself and told the Members “this is a wonderful opportunity, it is a once in a lifetime opportunity. Addiction is a disease and Peterborough can be a beacon of hope and healing, it is a marvelous thing.”

Chair Carrara closed the public input session of the meeting and asked Mr. Callahan to make any final statements for the applicant. In turn Mr. Callahan briefly reviewed the variance criteria (particularly #3 *Substantial Justice is done because*) given the concern at the last meeting in he may not have addressed that criteria specifically. He cited the great track record of the Gavin Foundation, acknowledged the concerns of the Rivermead community (stating he knows and respect many of those residents) and reassured the audience their concerns were understood. “Not warranted but understood” he said.

A Motion was made/seconded (LaRoche/Leedberg) to move to deliberation with all in favor.

Deliberation:

Chair Carrara reviewed the Rules of Procedure for Deliberation noting no public input would be taken but the Board reserved the right to ask additional questions if need be. He then went on to recap the variance request “to frame the serious and big task ahead of us.” In a bit of a different approach he suggested they review and vote on each of the five criteria separately “until there is concrete and legal advice to the contrary.” Ms. Laurenitis replied, “I am uncomfortable with that, it is not like we have done it” adding “the way we have done it in the past has worked

well.” Chair Carrara reiterated it was a good way of getting a strong thumb up or down on each of the criteria. He added while they have not used this approach in the past “there is no concrete legal advice to that effect. Both Ms. Leedberg and Ms. Monahan agreed they should discuss each criteria, come to a consensus on each and then make a motion on the variance as a whole. Chair Carrara concluded “we’ll discuss each criteria, see who is for, against or neutral and then vote on the approval/denial of the variance as a whole.” Ms. Laurenitis interjected the specifics of the decision would have to spelled out in the Minutes.

Chair Carrara reviewed §674:33 Powers of Zoning Board of Adjustment including the five criteria of (1) the variance will not be contrary the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) hardship.

Chair Carrara began with criteria (1) *granting the variance would not be contrary to the public interest*. Ms. Laurenitis noted the true need for a substance abuse facility with Mr. LaRoche interjecting “I concur.” Ms. Leedberg noted the facility would provide opportunities for employment. “I see that as a positive” she said. “I see no negatives here from the Board Members” said Chair Carrara as he moved to (2) *If the variance were granted, the spirit of the ordinance would be observed*. Mr. Carrara read the justification submitted by the applicant with Ms. Monahan noting “in this case I feel the spirit of the ordinance is observed. The Village Commercial District is small (about 35 parcels) and, in my opinion is intended to be mixed use.” While noting a healthcare facility is not a permitted use Ms. Leedberg suggested a more holistic approach of the interpretation of what the facility was offering. “I see it as an extension, a new form of commercial use” she said adding “it is a personal service, just not what we are *used to seeing* when we say personal service.” Mr. LaRoche noted “it would be an economic generator for the town.” Chair Carrara added “healthcare is permitted in the Downtown Commercial and Commercial Districts, so I question why it is not permitted in the Village Commercial District” and asked, “what is the difference?” Ms. Laurenitis noted the purpose of the Village Commercial District is for vibrant use of land uses and encouragement of infill and development “but it is difficult to market because of its location.” Chair Carrara confirmed all were in agreement on the spirit of the ordinance and moved on to (3) *Granting the variance would do substantial justice*. It was noted that the previous meeting Mr. Callahan had noted the concept of substantial justice was nebulous and the it was not possible to set up rules that could measure or determine justice, but the Members agreed dilapidated buildings

would be raised and the area would be cleaned up. “That is a benefit to the community and an impact on the abutting properties” said Mr. LaRoche. Ms. Laurenitis added “and the abutting properties are all commercial, there are no residential abutters.” The Members also agreed a gain to the public would be providing a service to people with substance abuse problems and there was nothing to indicate an overriding concern on the part of the Police Department. Moving on to (4) *If the variance were granted, the values of surrounding properties would not be diminished.* The members briefly discussed correspondences from Wayne Dodds, President of the Peterboro Basket Company who was in favor of the variance and felt the proposed facility would likely serve to increase, but certainly not decrease his property value and Douglas Whitney, a New Hampshire Certified General Appraiser who noted in his final conclusion “in reviewing the information it should be clear that this proposed use is of no negative consequence to the use in the neighborhood, consistent with what is there now” and in his opinion “the proposed use of the property will have no negative affect on the abutting property values (as) it is an improvement to what is currently there now.” It was noted a similar letter regarding property values was presented for the record at the June 4th meeting. With all in agreement the Members moved on to (5) *Unnecessary Hardship:* Chair Carrara began with “I am neutral but if we grant this it makes sense to review the statements and decide if there is a fair and substantial relationship between the purpose of the ordinance and the proposed use.” He again questioned why the use was permitted in the Downtown Commercial and Commercial Districts but not in the Village Commercial District. Ms. Monahan interjected “the argument is that there is nothing else to do with it” adding “the Village Commercial District has compatible uses and if this is compatible with the spirit of the ordinance and there is a fair and substantial relationship between the ordinance and the proposed use exists there is no reason to deny it.” The members specifically reviewed the response to A. i and ii.

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. 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. The purposes and intent of the Village Commercial District is *"to implement the Vision Section of the Peterborough Master Plan, which includes the support of compact settlement patterns, mixed use land development and walkable communities that increase accessibility for people of*

all ages. Specifically, the goals of the section are to:

1. Concentrate development;
2. Allow and encourage a vibrant mix of land uses;
3. Encourage infill development and higher densities; and
4. Provide a pedestrian-friendly environment."

The proposed Facility supports each of these goals. The site is unusual in Peterborough. The property is behind the shopping plaza and is not visible from any public way. The Facility will employ up to 60 people, mostly credentialed personnel (both full and part-time). The development will be concentrated in an out of the way location but will have close proximity to services. Employees will be able to walk to the plaza and do banking and other errands. The Property currently houses several rental houses that have fallen into various states of disrepair.

ii. The proposed use is a reasonable one. The Applicant is proposing to convert/construct a use that in most regards is "commercial" in nature. The Facility will be operated on a for-profit basis (although the Applicant has support from many non-profit organizations).

Minimal traffic will be generated at the Facility. Clients, once admitted, will not leave the Facility. Families won't visit clients while treatment is being provided. No abutters have objected to the proposed use. Once the Facility is up and running, most people will be unaware of its operations.

Chair Carrara noted its importance stating, "I cannot personally get behind the hardship criteria of (5) B because many uses are allowed on that lot." The Members also briefly discussed the limitation of client access to the outside world while in treatment, the fairly isolated location of the proposed facility and the fact that there are no residential neighborhoods in the area. It is out of the view of the general public and tucked away" said Ms. Laurenitis.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The Property is long and narrow. The Property has been marketed for "commercial" use off and on for many, many years. While zoned to permit

commercial uses, the Property's lack of visibility has ruled out retail uses. And, given the proximity to the back of the plaza, housing and personal services uses have been ruled out by potential users. The site is perfect for the Facility, which will be secure.

Ms. Laurenitis suggested they discuss the special conditions, “what they are” she said. The members briefly discussed the location of the proposed facility behind a commercial property, the lack of good public access for retail establishments, the mixed-use nature of the area. They agreed while in theory there were a lot of uses that could occur on the property the reality was that the lot was constrained. “Any time they have tried to sell it they could not find a buyer” said Ms. Laurenitis.

“Are we ready for a motion?” asked Chair Carrara with Ms. Leedberg replying, “I think so.”

A motion was made/seconded (Leedberg/Monahan) to approve a Variance to build and operate a 64-bed, residential substance abuse treatment facility as regulated by the zoning ordinance in Article II, Section 245-9 B (1). The property is located at 25 and 30 Bridge Street, Parcel No. U021-001-000 and U021-002-000, in the Village Commercial District with all in favor.

Other Business:

Ms. Laurenitis began by noting she'd had a discussion with Peter Leishman who had conveyed his willingness to continue to serve the ZBA as an alternate member. A motion was made/seconded (Laurenitis/Chatfield) to appoint Mr. Leishman an alternate to the Zoning Board of Adjustment with all in favor.

Ms. Laurenitis went on to say she'd also had a discussion with former ZBA Chairman Matt Waitkins who would be interested in serving as an alternate. A brief discussion about Mr. Waitkins work schedule and availability followed with Members agreeing Mr. Waitkins would be an excellent candidate if he can make the time commitment.

Mr. Throop told the members he too had a discussion with two individuals who may be interested and that he would invite them to the next meeting. “You can have up to five alternates” he said.

Minutes: Deferred

Next Meeting: July 2, 2018 at 7:00 p.m.

The meeting adjourned at 6:45 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant