MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, August 6, 2012 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Board Present: Loretta Laurenitis, Jim Stewart, Sharon Monahan, David Sobe, and Peter Leishman

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

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The meeting was called to order at 7:00 p.m. Chair Stewart began with "good evening and welcome to the August ZBA Public Hearing. I am Chairman Jim Stewart." He then introduced the Board and staff. He noted that, while they were awaiting the arrival of another member, they did have a quorum.

Chair Stewart 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 then opposed) and closure of the hearing followed by deliberation and decision. He also asked anyone speaking from the audience to please state their name and affiliation (abutter, concerned citizen) for the record "and please address any questions directly to the Chair" he said.

Case No. 1183 Janice LaRoche. A request for a Variance to create a non-conforming parking facility, with a side and rear perimeter setback of two (2) feet, as regulated by Chapter 245, Article VII, Section 32 B (1) of the zoning ordinance. The property is located at 75 Main Street, Parcel No. U017-112-000, in the General Residence District.

Chair Stewart read the application and asked if there were any corrections or additions to the posting. There were none. Chair Stewart then read the Rules of Procedure.

Kevin Chapman went to a graphic projected on the screen and pointed out the two lots in question. He asked "are you all set with the location of this? Adding "it is the first large house above ground level along with the small house set back and to the west of it."

Ms. Laurenitis asked Mr. Chapman to identify himself to the Board which he did.

Mr. Chapman pointed out the building to be razed and noted how it takes up most of the 0.7 acre lot. "It is unusable really, it is wasted space" he said. He noted the front of the lot had already been converted to parking and pointed out a twelve-foot right of way that would be maintained. He also pointed out the retaining wall at the back of the lot. He noted that while the integrity of whatever is behind the smaller house is unknown so a portion of the back wall of the house will be removed so that it may be examined and inspected. "Regardless" he said "that house is not holding up the hill."

Mr. Sobe asked if the steps in the rear of the building to be razed would be removed. Mr. Chapman explained the steps were actually poured concrete with some decorative stone in the front and added "we would like to get rid of them." He went on to note "we will gain more space if we go back to the original retaining wall and while the steps served as an egress from the second floor "with the house gone they are really steps to nowhere."

Ms. Laurenitis asked for clarification on the lots with Mr. Chapman pointing out parcels U017-112-000 and U017-113-000.

Ms. Laurenitis asked if the two lots would be merged with Mr. Chapman replying "that is the plan." Ms. Laurenitis asked about the status of the larger house with Mr. Chapman clarifying the current larger building has three units with the top floor being storage. He also noted the plan would be to divide the large first floor apartment in half making a total of four apartments.

Ms. Monahan asked if the applicant would need a separate variance for their plans with Mr. Carrara interjecting "that is not the issue before the Board." Ms. Laurenitis asked for clarification on the two-foot setback and Mr. Chapman reviewed the graphic and the position and current setback of the smaller house once again. Mr. Carrara noted "not much up there meets any setback, it is pretty tight." Mr. Chapman also reviewed a second graphic that depicted the parking plan. He noted the spaces were required to be at a 60-degree angle to meet code "but they are all 90-degrees, it just looks better" he said.

Mr. Chapman also noted a letter to the abutters had been sent "giving them an idea of what we plan to do." He noted one abutter was in the audience. Ms. Laurenitis asked what Mr. Chapman's role was in the presentation. Janice LaRoche introduced herself and noted "I am the owner; he (Mr. Chapman) is doing the work, which is why he is presenting. He knows all the ins and outs."

Chair Stewart asked if there were any comments from the audience. Mose Olenik introduced herself and said "as a member of the Heritage Commission we feel very sad that the house will be torn down but we did not feel we had a standing." Ms. Monahan asked what in particular was of interest in the house. "You said you were sad, why is that?" she asked. Ms. Olenik replied "we are losing another old house" adding "it is in the characteristic of a row house" and likened it to having a tooth missing from the front of your mouth. "We would have hoped to have kept it" she said.

Scott MacDonald introduced himself as an abutter and said "I concur with her (Ms. Olenik). This is a wonderful town with great historic value." He went on to note "I am not against the plan and the work up there has been good so far. I just see her point." Mr. MacDonald concluded by noting "it is changing the historic footprint of the original town. With that being said, again I am not against it."

Ms. Monahan asked about any concern with the property line (there were none) as well as screening between the buildings. Chair Stewart asked Mr. Chapman if he felt the parking situation as it currently stands affected his ability to rent the apartments. Mr. Chapman replied that it was. He gave several examples of assigned spaces being blocked or occupied by visitors. He noted that one of the first questions a potential renter asks is "how many parking spots do we

get?" Ms. LaRoche added "we want to be compliant with the parking regulations for each tenant, and we cannot do that now" adding "it will also assist us in attracting the clientele we want."

Ms. Laurenitis clarified that once the house was razed there would be ten parking spaces for three apartments. Mr. Chapman replied there would be and reiterated the plan to create a fourth apartment on the first floor. He noted "but why create another unit and increase the living space without the proper parking spaces?" adding "if this (request) is granted we know the parking is there, it will no longer be a wish or a hope."

Ms. Laurenitis asked if Mr. Chapman could speak to the uniqueness of the property. Mr. Chapman gave a brief history of the lot noting "the larger house was originally the barn." He pointed out that the house to be razed was the family residence adding "in 1835 they did not care how close they were to the barn."

Mr. Leishman asked about any potential drainage problems with Mr. Chapman noting the pitch of the parking area would be forward, toward the front retaining wall. He added "and actually there will be less impact with no snow dumping off the roof." Ms. Monahan asked if there would be an increase in the impervious surface with Mr. Chapman replying "no."

The Public Hearing closed at 6:32 p.m.

Deliberation

Chair Stewart read a statement regarding the deliberative session that basically defined the hearing as closed with no addition testimony from the public being heard. "But the Board may request additional information at our discretion" he said. Chair Stewart then conducted a straw poll. Mr. Sobe was first to be asked his thoughts and he replied "I hate to see it go but I understand the move" adding "I am basically in favor." Ms. Monahan noted "I know it is a hazardous lot, they are trying to improve it and provide adequate parking. I am for it." Mr. Leishman reaffirmed "my biggest thing is the abutters and no negative impacts to the neighborhood" adding "there seems to be no conflict." Chair Stewart noted he thought the neighborhood would actually be improved noting "not only will it make the lot more conforming; it also improves the safety as the lot is so constricted." Ms. Laurenitis replied "I am ambivalent about it and I have concerns about the 2-foot setback." She cited a 5-foot setback in other areas but added "I *do* understand it is a very small lot."

A motion was made/second (Sobe/Monahan) to approve the Variance with all in favor.

After the vote Mr. (Fran) Chapman said a few words about "highest and best ***use*** of the land versus the highest and best ***interest*** of the land.

ZONING BOARD OF ADJUSTMENT

NOTICE OF DECISION

Case Number 1183 **August 6, 2012**

You are hereby notified that the request of Janice LaRoche, for a variance to Article VII, section 245-32 B (1) of the Zoning Ordinance is hereby **GRANTED**. The applicant requested the Board's approval to create a non-conforming parking facility with a side and rear perimeter setback of two feet, on property located at 75 Main Street, parcel number U017-112-000, in the General Residence District.

In reaching this decision, the Board finds that:

l. The variance will not be contrary to the public interest because:

The proposal will improve safety and create conforming parking spaces, in number and dimensions.

2. The spirit of the ordinance is observed because:

The essential character of the neighborhood will not be altered. The proposal will help reduce the need for on street parking by promoting health, safety and general welfare of the community by lessening congestion in the streets.

3. Substantial justice is done because:

There is no expansion in impervious surface area and setback from the side lot line that already exists with the footprint of the house that it will replace.

4. The values of surrounding properties are not diminished because:

The proposal will improve values of the surrounding properties by providing adequate and orderly parking in a heavily congested area.

5. Unnecessary Hardship

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. There is not a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:

Current parking facilities have made it difficult for the applicant to rent the apartments, and this proposal will alleviate this issue and will be more conforming with parking requirements.

ii. The proposed use is a reasonable one because:

The lot is unique in size, situated on 0.07 acres, on an elevated wall setback 51 feet from the street that shares a right-of-way with three other properties.

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

1. The proposed parking facility will be in substantial compliance with the drawing submitted with the application.

Signed

James Stewart,

Chairman

Case No. 1184 Mariposa Museum. A request for a Variance for an additional wall sign, as regulated by Chapter 245, Article IV, section 18 D (3) (b) of the zoning ordinance. The property is located at 26 Main Street, Parcel No. U017-072-000, in the Downtown Commercial District.

Chair Stewart read the application and asked if there were any corrections or additions to the posting. There were none.

Chair Stewart then told the members "I have a family membership to the Mariposa Museum." Immediately following his statement most of the Board noted they also had a membership but none felt that was a reason to recuse themselves.

Mose Olenik introduced herself as the administrator of the Mariposa. Referring to the application she noted "our request is pretty clear but I would be happy to answer any questions" adding "it is a wonderful building and museum but many of the visitors from the Depot Square area have no idea of what is inside." She went on to note a true loss of potential visitors with no identification on the back of the building. "That is our ugliest side" she said as she pointed out the large brick wall with remnants of solar panels long removed. "As sign would cut up that space" she said.

A brief discussion about the location of the building followed. It was noted that the museum sits on three streets (Main, Depot, and Wall Street) with an alley way on the fourth side. A graphic showed a sign on the front façade of the building (Main Street). It was noted that while the museum was allowed a free-standing sign of up to another 40 square feet there just was no appropriate place to put it. Ms. Olenik asked "what better place other than the front would there be than to identify it from the back?" Ms. Monahan noted the location of the town's public parking facility was located right there as well. A member asked if there had ever been a sign on the back of the building with Ms. Olenik replying "the solar panels were there at one time but never a sign to my knowledge." When asked if the museum's tag line of *World Culture Center* would be on the sign as well Ms. Olenik replied "yes, many people think we are a butterfly museum or anything else."

Chair Stewart confirmed that the museum was allowed an additional 40 square feet of signage in the District and asked if a condition of approval be that if a sign goes on the back wall of the museum that no other free-standing signs would be allowed. Ms. Olenik replied "that is fine, quite frankly I don't think there is room for any sort of free standing sign."

There were no further questions and Chair Stewart closed the hearing at 8:25 p.m.

Deliberation

Chair Stewart then conducted a straw poll beginning with "I am in favor of it" adding "it is not a problem, we are essentially allowing square footage for a free standing sign to go on a wall. The other members unanimously agreed.

A motion was made/seconded (Laurenitis/Sobe) to approve the Variance with all in favor.

ZONING BOARD OF ADJUSTMENT

NOTICE OF DECISION

Case Number 1184 **August 6, 2012**

You are hereby notified that the request of Mariposa Museum (Journeys in Education), for a variance to Chapter 245, Article IV, Section 18 D (3) (b) of the Zoning Ordinance is hereby **GRANTED**. The applicant requested the Board's approval to install a third wall sign, 35 square feet in size, on property located at 26 Main Street, parcel number U017-072-000, in the Downtown Commercial District.

In reaching this decision, the Board finds that:

l. The variance will not be contrary to the public interest because:

The sign will not be obtrusive and would enhance the back of a very large building that is visible to the public parking lot and a high traffic pedestrian area.

2. The spirit of the ordinance is observed because:

The additional sign will not exceed the permissible square footage of signage allowed in the district.

3. Substantial justice is done because:

There is no room for a free-standing sign, which is allowed, and the building has frontage on three streets.

4. The values of surrounding properties are not diminished because:

The sign will improve the façade of the building.

5. Unnecessary Hardship

B. 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. Special conditions of this property are that it is surrounded by three streets, preventing the applicant from taking advantage of the 40 square feet of free standing signage allowed in the district.

i. There is not a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:

With the addition of the proposed 35 square foot wall sign, there will be no more signage dimensionally than allowed in this district.

iii. The proposed use is a reasonable one because:

The third wall sign replaces the free-standing sign which cannot be erected.

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

1. This proposed sign is in lieu of any future free-standing sign.
2. The proposed sign will not be any larger than 40 square feet.

Signed

James Stewart,

Chairman

Minutes:
A motion was made/seconded (Monahan/Sobe) to approve the Minutes of July 2, 2012 as written with all in favor

Appointment of ZBA Alternate:
An application for an alternate position on the ZBA had been received and distributed to the members for review. Chair Stewart noted the application was from Robert Lambert who is a part-time town employee working in the Town Clerk's office. A brief review of his application followed. Ms. Monahan expressed her reservation noting "it concerns me why he is interested." It was noted Mr. Lambert has served on many boards and committees of the town. "I am in favor" said Chair Stewart. A motion was made/seconded (Leishman/Stewart) to approve the application of Robert Lambert as an alternate on the ZBA with it all but Ms. Monahan in favor. Chair Stewart also noted he would contact Joanna Eldridge-Morrissey to confirm her status as an alternate.

Other Business:
Review of Rules and Procedures. Chair Stewart noted he had added several thoughts in red to the current rules and regulations. The members went over several issues including the role of an alternate (participation in discussion, what alternate gets designated to sit and when); how to effectively deal with the appointment process, and member absenteeism.

The members also discussed disqualifications and quorums under the state statute. Ms. Laurenitis noted that while a quorum of three is acceptable, the quorum's decision must be unanimous for approval. They also discussed the fact a split vote with a quorum of three did not necessarily mean an automatic denial for the applicant. Chair Stewart asked Mr. Leishman to see if he could locate that wording in the 2012 Land Use Regulation manual.

Ms. Laurenitis noted she thought the meeting agendas should be posted on the web site. Chair Stewart reviewed the public notification process with a public posting at the Town House and in a local newspaper. He disagreed with a full agenda being posted on the web site. "It is a liability" he said adding "and it is just not possible." He referred to the dynamic nature of an agenda and how it changes often before an actual meeting. Ms. Laurenitis replied "I think it should be posted on the web" adding "I just e-mailed OCD and Pam about that very same thing. We need to make the best use of the technology we have these days." "Not possible" replied Chair Stewart.

Chair Stewart then concluded by noting his intentions of running a more informed meeting. He cited the deliberative statement he had read at the close of the first case. "So that the public knows what is going on and what is and is not expected of them" he said. Ms. Monahan added "and we should accept questions and comments in general, not just for or against a particular case." The members also noted the time table of 30 days to complete a decision.

Mr. Leishman reported he was having a difficult time finding a reference to the unanimity of a minimum quorum vote. Another brief discussion about this issue followed. Noted specifically was the problem of a minimum quorum of three with one member recusing for any reason. Chair Stewart noted "that is not an automatic fail, we have a responsibility as a Board to not let that happen."

Ms. Monahan suggested the members continue their discussion at the next meeting, “it is getting late, we are all tired” she said. The members agreed and the meeting adjourned at 9:47 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant