

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, November 3, 2014 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

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

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

At 7:00 p.m. Chair Stewart told the audience “it is 7:00 p.m. but we are going to wait just a couple of minutes so that we have a full five-member Board.”

Chair Stewart called the meeting to order at 7:03 p.m. “Good evening” he said “this is the November stated meeting of the Zoning Board of Adjustment. I am Jim Stewart and I am the Chair.” Chair Stewart went on to introduce the members and staff and read the Rules of Procedure for the meeting. He 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); rebuttal and closure of the hearing followed by deliberation and decision. He concluded by noting anyone interested in speaking about the case please state their name, address, and relationship (abutter, agent, concerned citizen) for the record and read the case.

Case No. 1209 Brenda Berry and George Thomson request a Variance to allow on-street parking for a home-based business for a physician office accessory to a dwelling, as regulated by the zoning ordinance, Article IV, Section 245-24 C, Professional Uses. The property is located at 3 River Street, Parcel No. U017-057-000, in the General Residence District.

Chair Stewart looked up and asked if there were any corrections or concerns with the notice. Ms. Monahan noted she did have a question about the notice. “I was not here last time” she said and asked “is this a Variance for 245-24 A?” adding “because off-street parking does not come under 245-24 C. Can we amend it to the right section?” Chair Stewart interjected “under new or old zoning?” then agreeing with Ms. Monahan he noted “we will change it to 245-24 A.” He then looked to the audience and noted “with that being said I will invite the applicant to proceed.” Mr. Lambert recused himself and left the table.

Brenda Berry introduced herself and gave a brief history of a ZBA approval for a Special Exception in 1999 to enlarge a parking area that did not meet setback requirements and was in the Conservation Protection Zone. She noted that during the course of that case and approval “no one was there to represent the house other than Ken (King, the applicant).” She went on to say that there was never a discussion about the parking. “The only person aware was Marilee Leedham and she was in the midst of losing her husband and was not present.” She also noted a letter written by Mrs. Leedham citing her concern about the parking “written on the same day Ken’s request was approved.” Ms. Berry told the members “When you look across the street you think the parking goes with the house, everyone thinks it is my parking” adding “I am here for Dr. Thomson tonight but I should have been here a long time ago.” Ms. Berry went on to explain the three deeded parking spaces had been compromised by the 1999 ZBA Decision and asked them “who do I need to see to contest that?” She noted her deed specifically states exclusive use of three parking spaces “but the problem has not been resolved.” A brief discussion about the parking and the potentiality of a survey to determine the 16 feet of road that belongs to the town followed. Mr. Berry noted she had measured the width of the road noting “parking is tight but it is possible.” She proposed that rather than a survey “the applicant and abutters come to an agreement where 16 feet is.” She reiterated parking in front of her house had been an effective traffic calmer. She also pointed out the spaces on a projected map and said “it has been working beautifully. There was a problem with identifying parking and the location of the office when Dr. Thomson first moved in but now he sends out information about it when appointments are made. People have been parking in front of the house. It seems to work for him and his patients” adding “and I need some help here, this house was left in a bad predicament.” She concluded by telling the Board she would like to buy parking spaces across the street. “They really seems more conjoined with my house than Marilee’s but it is not for sale.”

Chair Stewart asked Ms. Leedham “Isn’t your house on the market?” Ms. Leedham replied “no, it has not been on the market for quite some time now.”

Ms. Laurentis asked for clarification on the two nonexclusive parking spaces mentioned in the deed. “What does that refer to?” she asked adding “what does nonexclusive mean? Do they share?” Chair Stewart reviewed the parking spaces with Ms. King pointing them out on the map. Ms. Berry interjected “so I am asking that my deed be honored for the use of the exclusive spaces to be used by Dr. Thomson and the space in front of my house for my house guests.” She noted all

guests would respect the parking hours with no overnight parking through the winter or storm warning bans. A brief discussion about the parking spaces and the privacy issue of abutter Ellie King followed. Ms. Berry noted that because Ms. King wanted her privacy “the spaces were taken away and I was told Dr. Thomson could not use them for patient parking” she added “qualifying as to who can and cannot use the spaces devalues the parking.” Mr. Berry pointed out how the patients had been parking in a parallel fashion to her house “which had been working.”

A brief discussion about the winter months, the town overnight parking ban and snow accumulation and removal followed. Mr. Carrara confirmed that there was no street parking from 11:00 p.m. to 6:00 a.m., November 1st to April 1st He noted the right-of-way was 16.25 feet adding “you need about ten feet for the travel lane and the rest is used for snow storage.” He went on to say that the snow must be removed and “not pushed off the road on to private property.” He also noted that if Police and Highway deemed it appropriate they could invoke a ban on parking at any time. Mr. Carrara concluded “in this case zoning for the professional use requires off-street parking and we do not have that right now.” Chair Stewart asked about the screening from abutters and the public way noting “she does not meet that requirement as well.” Ms. Berry told the members that Ms. King was going to be away this winter and that she was negotiating to use her parking spaces while she was gone as a temporary solution.

Ms. Monahan interjected that under 245-24 C 1. “No more than four people, including the resident(s) may be employed on the premises” and asked “how many spaces are we talking about?” Ms. Berry replied “I am a bit confused as to what is allowed” adding she would like the deeded spaces for tenants and the four spaces in front of her house for clients. Chair Stewart re-read the *Professional Uses and General Provisions* of section of 245-24 Home-Based Businesses followed by a brief discussion about a bench mark for a medical office. Ms. Berry reiterated “this house has been left in a terrible position since 1999.” Chair Stewart replied “it has been used for 13 years as a private residence. What is before us are the conditions for a professional use and it seems you are unable to meet the specific criteria.” Ms. Laurenitis noted the application was ambiguous and asked for clarification on the amount of parking that was indeed going to be necessary. “How many spaces are actually for the patients and how many for personal vehicles?” she asked. Chair Stewart interjected “that is not before us tonight” adding “this is a request for a variance, not an appeal which is what should have happened.” Ms. Berry replied “appeal?” with Chair Stewart answering “yes the submission of an appeal within

30 days.” Ms. Berry replied “I did not know about it.” Mr. Carrara interjected “regardless of what happens tonight should this happen again in the future how am I supposed to treat it?” A brief discussion about the original Special Exception and off-street parking followed. Chair Stewart reviewed the personal and patient parking areas noting “the facts of the case have already been adjudicated.” Ms. Monahan interjected “so what is the Variance for?” Chair Stewart asked Ms. Berry if she would like to review the Variance criteria. Ms. Berry replied “people have been parking there for years but last year a doctor’s office moved in the Variance is for that.” The members reviewed the street parking would encompass Monday through Friday, 9:00 a.m. to 5:00 p.m. with no overnight parking. Mr. Carrara noted “the problem is the approved Special Exception for off-street parking across the street went away so Ms. Berry came back to the Board to modify the approval and then withdrew pending a meeting about street parking with the Board of Selectmen.” Mr. Carrara concluded “in order to have that she will need a Variance.” A brief discussion about the approval for Ms. Berry’s Special Exception followed with questions as to its validity with her request to switch from off-street to on-street parking. They also briefly discussed if Ms. Berry and Dr. Thomson were in compliance as well as enforcement measures that may be used. Mr. Carrara noted “this had been an issue since June or July but (Ms. Berry) has a lot of irons in the fire” adding “it depends on the town allowing street parking and even if you grant a Variance that doesn’t mean street parking exists.” He also noted the potential of other off-street parking opportunities that may be available to Ms. Berry.

The members then reviewed the information on the town’s right-of-way and snow plowing and removal. “The problem is” said Mr. Carrara “the town is not sure exactly where the road is.” He also noted that the town was not inclined to pay for a survey of the road. “Which may be upwards of \$10,000 to \$20,000 to find out where it is.”

Chair Stewart again asked Ms. Berry if she would like to go over the Variance criteria. He referred to the five criteria on the application noting “all five criteria must be met for an approval.” Ms. Berry replied “I don’t understand.” Chair Stewart said “it is part of the application you filled out” with Ms. Berry noting “I am sorry. I had the attorney fill it out” adding “I wanted to observe Elli’s request for privacy. It is about privacy for Ellie and Marilee Leedham” she said.

Mr. Leishman asked “how is on-street parking going to protect the abutter’s privacy? Can you explain that?” Ms. Berry explained that Ms. Leedham must keep her parking area barricaded “because it looks like it goes with my house. It looks like *my* parking” adding “and Ellie doesn’t want patients parking in my deeded spaces because it affects her privacy. I would like the ZBA to help me with this, I thought the parking across the street was mine when I bought the house.” She went on to note that her deeded parking was imperiled: “the value of it is not there if clients cannot use it.”

Mr. LaRoche asked about the Fire Chief’s report and Mr. Carrara reviewed the available on-street parking on River Street. “Legally you can park there” he said “it is allowed.” Ms. Laurenitis noted “the minutes reflected the Chief’s concern about emergency vehicle access” and asked “do we have anything from him about that?” Mr. Carrara replied “no” and reiterated “it is legal to park there, the town cannot ticket or tow a vehicle unless it is an immediate hazard.”

Chair Stewart then opened the hearing to the public. “Is there anyone who would like to speak in favor of this application?” he said. Posy Bass introduced herself as an abutter. She pointed to the image of the street on the projected screen and said “town maps are notoriously inaccurate” adding “I don’t know exactly where the road is but there is more space there than there appears to be.” Ms. Bass asked how the Zoning Board of Adjustment could have ever approved the 1999 Special Exception without any parking and reiterated the huge confusion of what zoning requires for practice versus what the agreement for rented spaces (which is now off the table) provided. She asked about other off-street parking was not considered. Chair Stewart replied “the applicant came before us with a modification but then withdrew, we did not have an opportunity to explore it.”

Ms. Bass re-visited the 16.25 foot wide right-of-way and argued “parking could be a traffic calming measure.” Chair Stewart reminded the members “before us is a request for a Variance that runs with the land” adding “a Special Exception was granted provided the doctor lives there. If he were to leave and another doctor’s office came in, the use could be continued but otherwise it dies.” Mr. Carrara interjected “Ms. Berry is seeking a Variance to give relief to the condition of off-street parking” adding “but be careful, approving a Variance would allow on – street parking.” He went on to describe the two types of formal parking in the downtown, those which are painted and maintained and those that are generic,

located along a street where you may park as long as you comply with town ordinances. So granting relief does not mean you have to have marked spaces.”

Ms. Berry noted “parallel parking has worked for years and protected people” adding “I am not living there now but I do care about the long term.” Agreeing with Ms. Berry, Ms. Bass interjected “the parking has been fine, it is not an issue (adding) I am not as impacted as Marilee and Ellie.” She went on to say “I think at the beginning it was an issue of people not knowing where to go, not the parking spaces in front of the house.” Ms. Berry added “any new business has problems while getting established” noting “the lack of signage was an issue and it took a bit of time to figure it out. He now informs people in his appointment confirmations. It was rough in the beginning but I think it is resolved.”

Chair Stewart asked Ms. Berry if she would like to review the Variance Criteria with Ms. Berry replied she was not sure of what the Chairman meant. “I have asked several times” said Chair Stewart who then read the criteria responses from her application. When he got to *unnecessary hardship* he looked up and asked Ms. Berry “for the record can you tell me how your property is unique to the other homes in your neighborhood? Ms. Berry replied she had driven all around the neighborhood and there is not another property like mine.” She then got up and pointed out garages and parking spaces for the house in her neighborhood.

Chair Stewart then asked “would any one like to speak against the request or have something in general to say?” Marilee Leedham introduced herself as an abutter and stated “you granted a Special Exception to use the house as a medical office on the condition of off-street parking. He does not have that now.” She asked “does that invalidate the Special Exception you granted?” Chair Stewart replied “at the time we granted a Special Exception for the property the applicant had an agreement for parking with you but that is no longer the case.” He went on to note “the applicant then reapplied to this Board for a waiver but withdrew her application. So yes, with no off-street parking she is out of compliance with the Special Exception. I see this as an enforcement issue.”

Ms. Leedham briefly explained her tenant parking and how in the winter as the snowbanks build up it becomes increasingly difficult and dangerous to back in and out of the spaces. She also pointed out the narrowing of the one-way street as it approached Main Street to the east. “Patients come and park where they can” she

said adding “it is a potentially very dangerous situation and I ask you keep that in mind as you decide” she said.

Ellie King introduced herself and said “the issue is you have a business in a residential area” adding “as an abutter I agreed to the doctor’s office with the provision that two off-street parking spaces were available. She went on to say “that is what I based my decision on but now they are *not* available.” She also noted that there were three exclusive parking spaces for the Berry house and pointed them out on a projected map. She also noted her stipulation at the time was that none of Dr. Thomson’s patients were permitted to park there. She looked to the Board and said “as a matter of fact, right now I wish I had never agreed to it.” She told the members her privacy was important to her. “I thought I was clear about it. The spaces were there but *not* for patients” she said. She did acknowledge that the street parking was a traffic calmer and that the neighborhood benefitted from that.

Ms. Berry outlined her snow removal plan pointing out a small plot of land (with a drain) for snow storage. She told the Board “it depends on whether or not Dr. Thomson can keep it plowed, but it will work out.”

Chair Stewart noted his concern about approving the request. “Even without appeals I think this goes beyond our scope” he said. He then noted the 1999 ZBA Decision Ms. Berry spoke of earlier noting “I don’t want people looking back on this and saying *oh those guys did a lousy job.*”

Ms. Leedham interjected that by the end of winter “I have about eight feet of snow back there” adding “let’s face it we all know it doesn’t start to melt until April, it is a huge problem.” Mr. Sobe again mentioned the narrowing of the road as it approaches Main Street.

Susan Howard introduced herself and her husband David Berstein who own 85 Main Street. She asked for clarification on what the original Special Exception was for. Chair Stewart explained the area was not zoned commercial but Dr. Thomson had been approved for limited (signage etc.) professional use of a physician’s office. He also noted that at that time “the three deeded parking spaces were not available for patient parking so the parking was limited to the rented spaces across the street.”

Ms. Leedham asked if a condition of approval was that the Doctor live on the property. Chair Stewart replied “yes.” Ms. Leedham asked “would you ask the doctor if he lives there full time?” Chair Stewart asked Dr. Thomson if he lived at the property with Dr. Thomson replying “I have my things there, I do have another house I go to but that is where my home is.” Chair Stewart asked “is it your formal mailing address?” Dr. Thomson replied “yes, everything is there.” Chair Stewart concluded “Ok, there is your answer.”

Ms. Laurenitis noted she was still confused and asked for clarification on the parking. It was noted the original application was for four spaces, two for the doctor and two for patients (in the rented space area). Ms. Monahan noted the statute called for a minimum of three, maximum of four spaces for a professional use “including employees” she said. Dr. Thomson noted his employees all work off site.

Ms. Bass asked about the parking area owned by the Scott Farrar Home across from her house on Elm Street and a discussion of right-of-ways, road widths and the definition of exclusive parking followed. Ms. Berry concluded that she was aware that the space was limited adding “but this is working. I know winter is the big problem but I am very responsive to problems. I take responsibility when I know what is going on, I have a history of being very responsible.”

Mr. Leishman pointed out the discolored pavement in front of Ms. Berry’s house. Ms. Berry replied “I have maintained that space for the last thirteen years.” A brief discussion about what part of the street is actually the town road followed. Code Enforcement Officer Dario Carrara noted “the thing is the town doesn’t know where the 16 feet is.” He noted the existence of an iron pin on the north side of the north corner of the river and a drill hole and post on the southern corner of the river “but I don’t know of anyone who has found either one of them” he said. Ms. Laurenitis asked how the spirit of the ordinance would be served if public parking on the street was earmarked for Dr. Thomson’s patients. Ms. Berry replied “I don’t know of anyone else who parks there.”

Chair Stewart asked if the Board had any other questions. With none he asked “do you feel we have enough information to go into deliberation?” the members agreed they did and a motion was made/seconded (Stewart/Leishman) to enter deliberation.

As Chair Stewart read the deliberative statement Ms. Laurenitis left the table to sit in the audience. When done he noted “as Chair I will ask for a straw poll and unfortunately I will go first.” He looked at the audience and said “this Board tries hard to accommodate the applicant and the abutters and it pains me in this case that I don’t think that accommodations can be made here.” He noted that one or two of the criteria may have been met “but I cannot support the application, I would vote no.”

He looked to his left and said “Sharon do you want to go next?” Ms. Monahan replied “I am voting no for similar reasons of not meeting all the criteria.” She went on to note “and it sounds like this has to be resolved more from modifying the Special Exception.” She acknowledged that that decision was not before the Board “it seems like that is where she needs to go.” Ms. Monahan looked up and said “we cannot take a public road and designate it as private. That is a whole other legal thing.” Chair Stewart cautioned Ms. Monahan that the case was about the off-street parking. “That is what you need to be thinking about when you vote.” Mr. Leishman said he would second the concerns of those before him adding “the applicant has not met any of the requirements. If we did anything but deny it we would create more problems than we would solve.” Mr. Sobe told the members he was not at the last meeting “but I read the minutes extensively and it is fuzzy, it does not clearly meet the criteria.” Mr. LaRoche agreed noting “it is not clear to me that the five criteria have been met.”

With a Decision created a motion was made/seconded (Stewart/Leishman) to deny the request for a Variance with all in favor.

Ms. Berry asked “may I say something?” adding “he did indeed blow it with the parking.” She went on to say “this has been extremely difficult for me. I have done what everyone has told me to do, I am not in a grand scheme of mind and I am asking for help now” she then asked “what do I do?” Chair Stewart replied “there are 100 things I could tell you but we are not allowed to advise you; it is beyond our scope.” He went on to say “we are a quasi-judicial Board that reacts to facts, that is all, I am sorry.” Ms. Berry noted “I respect the neighborhood but it is really my house and El (King’s) house that are involved, and it is Ellie that I am most concerned with. It feels like it has been working.”

Ms. Monahan suggested to Ms. Berry that she contact a land use attorney who was familiar with planning and ZBA ordinances. “This is huge for me” replied Ms. Berry. Mr. LaRoche asked about a parking compliance question with Chair Stewart interjecting “I think we should stop talking about it. We made a decision on the facts of the first case with no *ifs, ands or buts* before us. There is nothing to talk about.”

Minutes:

A motion was made/seconded (LaRoche/Stewart) to approve the Minutes of September 3, 2014 as written with correction of typos with all in favor.

Respectfully submitted,

Laura Norton

Administrative Assistant

ZONING BOARD OF ADJUSTMENT

NOTICE OF DECISION

Case Number 1209

November 3, 2014

You are hereby notified that the request of Brenda Berry and Doctor George Thomson, for a **Variance** to Article IV, Section 245-24 (Professional Uses) of the Zoning Ordinance, to allow on-street parking instead of the required off-street parking, on property located at 3 River Street, parcel number U017-057-000, in the General Residence District, is hereby **DENIED**.

In reaching the variance decision, the Board finds that:

1. The variance **WILL** be contrary to the public interest because:
The street is a one-way street and the right-of-way is only 16.25' wide. The professional use has further altered the character of the neighborhood and the proposed application would create a safety issue on River Street.
2. The spirit of the ordinance **IS NOT** observed because:
The ordinance is to provide for off-street parking. The width of the right-of-way does not support parallel on-street parking and could pose a significant safety concern during the winter season.

3. Substantial justice **IS** done because:
The applicant already has three deeded parking spaces to be used exclusively for the use of the property as a residence, as well as two “non-exclusive” parking spaces as stated in the deed.
4. The values of surrounding properties **ARE/ARE NOT** diminished because:
The impact was not clear, but testimony has indicated that the professional use has impacted the neighborhood.
5. Unnecessary hardship
Although the property is unique it does not exhibit special conditions that distinguishes it from other properties in the area.
 - a. Denial of the variance **WOULD NOT** result in an unnecessary hardship because:
 - i. There **IS** a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:

The applicant already has three to five deeded parking spaces for the residence.
 - ii. The proposed use **IS NOT** a reasonable one because:
River Street is narrow. No survey has been performed. The Town does not know where the exact location (layout) of River Street is. The creation of off-street parking on River Street would create unsafe conditions related to winter plowing, emergency services, and abutters backing out of their own parking spaces.

Signed,

James Stewart, 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.

Minutes Approved as written with typo corrections 12-01-2014