MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, February 4, 2013 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, Bob Lambert, Loretta Laurenitis, Matt Waitkins, and Peter Leishman.

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

Chair Stewart called the meeting to order at 7:00 p.m. Chair Stewart introduced the members and staff. 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) 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, agent, concerned citizen) for the record adding "please address any questions to the Board and not the applicant." Chair Stewart then read the application.

Case No. 1187 Duerig Revocable Trust requests a Variance to reduce the side building setback to ten (10) feet in order to allow the construction of a garage, as regulated by Chapter 245, Article II, Section 6 B (2) of the Zoning Ordinance. The property is located at 47 High Street, Parcel No. U024-058-000, in the Family District. Ms. Laurenitis asked about a letter of authorization from the applicant noting she had not seen one in her packet. "There is nothing from the homeowner" she said adding "I think we need to address that in some manner." Code Enforcement Officer Dario Carrara testified the homeowner had been in with Mr. Stanek and that approval could be conditioned on receiving a written authorization.

Chair Stewart appointed Mr. Lambert to sit for member David Sobe who was absent. John Stanek introduced himself and began with "thank you for being here" adding "it is freezing outside and I know about your commitment, my wife was on the Board for 9 years and I was on the School Board for 7 years." Mr. Stanek proceeded with a brief presentation of why a Variance for a reduction in the side setback was needed to construct a 24 by 24 foot garage at the High Street property. He pointed out the constraints of the house being on one side of the lot with extensive landscaping as well as the presence of stone walls surrounding the lot. He noted the homeowner wanted the structure to be located on the left side of the house as you look at it from the street. He pointed out a picture which showed what appeared to be a garage door on the left part of the structure. A member asked "was there ever a garage there?" Mr. Stanek replied "I cannot imagine that, I do not believe it was ever a garage." He noted the floor plan with the first 7 feet of the "garage-looking" structure was a recycling area for the residents "behind that is finished living space" he said.

Mr. Stanek reiterated that the desired location was the best fit for the structure on the property. He noted that "locating the garage to the side of the existing building will provide the least visual

impact to the neighborhood" adding "and thus enhance the ambiance and aesthetics of the neighborhood." Mr. Stanek also noted the location was the most practical one for use by the residents "as it gives them direct access to the entrance to their home."

Mr. Waitkins arrived at 7:10 p.m.

A brief discussion about the easement shown on the plan followed. It was determined that it was a utility access easement for property that is owned by Ivy Vann. Mr. Stanek interjected "and we received a letter from her stating she had no objection to a garage encroaching the side setback at that location."

The members then briefly discussed a portion of the Staff Report that noted a question had been raised as to whether the Board has the authority to act on this application when there is such an easement in place on the subject parcel. The Staff Report noted that the Board does have the authority but noted "in this case it is a civil matter between the two property owners" and on the advice of the Town Attorney "this should not be an issue for the Board to take up."

The members discussed several alternative locations for the garage and even the potential for a detached garage. Ms. Laurenitis asked about the dimensions of the structure and asked about incorporating it into the existing recycling area of the home. Mr. Stanek noted the homeowner wanted an attached garage that would not impact the streetscape thus impacting the character of the neighborhood and the value of the home.

Ms. Laurenitis noted she was having a hard time accepting a hardship when there was so much potential for alternative locations and that (in her opinion) the garage could be incorporated into the current recycling area of the house. Mr. Waitkins noted he had been friendly with the family that lived there years ago and interjected "I was over there a lot and I do not remember a vehicle ever being parked in there." Mr. Stanek reviewed the graphic that showed the 7-foot recycling area and the finished living space (kitchen space) directly behind it.

Chair Stewart asked about the frontage in the district with Mr. Carrara replying "150 feet, it meets the minimum frontage." "What is the (minimum) lot size?" asked Chair Stewart with Mr. Carrara noting "one acre, this lot is 1.08 acre." "So it meets that too, this is a conforming lot" said Chair Stewart.

Mr. Stanek noted he had reached out to the abutters and as a result got the correspondence from Ms. Vann but had not heard back from the MacDowell Colony. "I cannot speak for him (David Macy) but I did reach out to him" he said. He also noted that he spoke with Greg and Mary Jean Connolly noting "they would be very glad to see the garage on the side of the house, not protruding toward the street." He once again reiterated the impact to the home (visually) and the diminished values to not only the property but the neighborhood aesthetics should the structure protrude out toward the street.

Ms. Laurenitis asked "is this a typical size for a garage?" Mr. Stanek replied "yes, for a two-car garage it is." Ms. Monahan asked if the home was a single family home with Mr. Stanek replying "yes, it is a single family residence." Ms. Laurenitis reiterated her thoughts of

incorporating the garage into the recycling area. Chair Stewart looked down the table and said "Peter you have been awfully quiet." Mr. Leishman replied "yes, for a change, I wrestle with the hardship and no other location on the lot would be feasible" adding "I am just trying to get my hands around the hardship."

The brief discussion that followed included several options suggested by the members with a justification as to why they would not work supplied by Mr. Stanek. Impacts to windows, finished living space and even the electrical supply system were discussed. "Anywhere else just doesn't work" said Mr. Stanek adding "this is the best plan for the owner and the neighborhood." Chair Stewart replied "I don't know, this is a conforming lot that had a garage at some time" with Mr. Stanek interjecting "I am not sure about that." He went on to note how the fittings and roof line would be dealt with as well as a separate foundation for the garage "one foundation will abut the other" he said.

The members reviewed the graphics provided in the application as well as the tax map for the property. Time and time again Mr. Stanek pointed out the plan to encroach into the side setback and create the garage structure without using a portion of the current home. He reiterated "keeping the garage to the side diminishes the impact of the building and maintains the integrity of the neighborhood." He told the members "I tried to design a plan that would incorporate the recycling area of the home. That area would go away but the whole structure comes forward creating a strong impact to anyone driving up High Street. That is all you will see, you will not see the house, just the garage." Mr. Stanek also reiterated the upheaval to the landscaping and stone wall surrounding the property should the garage be located anywhere else. Mr. Stanek reiterated the dimensions of the lot and the size of the garage. "It comes down to the finished living space" he said. He also pointed out how the two buildings would stand in relation to each other "with a covering to make the watershed." When asked, Mr. Stanek confirmed the garage structure would extend two feet *out* from the current façade of the home. He also noted that the Board seemed to have some pre-conception that there was once a garage located where the recycling area and finished living space was now. "Would the applicant consider a single car garage?" asked Chair Stewart. Mr. Stanek replied "no, I am here as the owners' agent. They want a two car garage."

Ms. Laurenitis asked again about incorporation of the recycling area and the "taking" of the finished living space as it was kitchen storage and closet space. Mr. Leishman asked about the potential of construction to the north with Chair Stewart noting "it is a conforming lot; there are a bunch of other places to build it." Mr. Stanek replied "there may be but there is no value to the owner to have it elsewhere" adding "and this plan does not crowd the Connolly's and create degradation."

A brief discussion about the public benefit outweighing the owners loss followed with Ms. Monahan noting "I see I see no benefit to the public to put it elsewhere." Mr. Leishman interjected "if you want to benefit the public you would not do anything." Mr. Waitkins reminded the members that they needed to consider the benefit to the applicant as well. "Just a point of reference" he said adding "the homeowner has a reasonable expectation to have a garage, it is reasonable."

Chair Stewart asked the members "any other questions? Do we need a site visit?" The members agreed they had all the information they needed and were ready to enter deliberation.

The Public Hearing closed at 7:55 p.m.

Deliberation

Chair Stewart read a statement regarding the deliberative session that defined the hearing as closed with no additional testimony from the applicant or the public being heard. "But the Board may request additional information at its discretion" he said. Chair Stewart then asked Mr. Waitkins, an alternate to step down from the table and join the audience. Mr. Waitkins did so immediately.
Chair Stewart then conducted a straw poll.

Chair Stewart began with ""personally I understand and I would love to give a Variance here but I find it difficult to apply the 5 criteria as it is a conforming lot." He added "I think I *could* be persuaded in an articulated matter, I am still up in the air."

Ms. Monahan interjected "I disagree. I did a drive by and while I feel the applicant could have done a better job in his wording on the application, he has clarified everything tonight during testimony. In my mind his request for a 2-car garage is reasonable." Chair Stewart noted the "unnecessary hardship" and looking at Ms. Monahan noted "I agree this is one and I would agree with you on that."

Chair Stewart asked Mr. Lambert about his thought. Mr. Lambert replied "I agree with Sharon, I have no problem with it." Mr. Lambert also reviewed the hardship that would be created if another location for the garage was favored. He pointed out the necessity to create a new driveway and interrupt the historic stone wall that surround the property.

Ms. Laurenitis reported she was *not* convinced. She went back to the "finished living space" behind the 7-foot recycling area of the house. She noted that area was primarily storage space (closet space and kitchen pantry space) and said "sometimes you just have to make trade-offs."

The members went on to discuss existing access, disturbances caused by creation of new accesses for a different location and the potential to unnecessarily block the house. One member noted "you certainly don't want to have the main architectural view from the street be the garage."

Mr. Leishman reminded the members that approval of a variance *must* show true hardship. He went on to note "you say this is the logical and most practical place (for the garage) but I am not sure I agree with that, I can see alternatives."

The members reviewed the graphics and discussed how moving the structure forward may in fact encroach into the front setback. Ms. Laurenitis noted "24 by 24 feet seems large, my garage is not that large and fits two cars." Ms. Monahan suggested the members go through each criterion

without voting on it for clarity. Chair Stewart agreed and began by reading the first criterion on the application. This criterion dealt with approval not being contrary to the public interest. Ms. Monahan noted the letter of support from the property's main abutter (Ms. Vann). "She is the abutter most affected and she does not object" she said. Ms. Monahan also noted the other main abutter "was a Golf Course." She reminded the members of Mr. Stanek's testimony and how he had reached out to David Macy at the MacDowell Colony and noted" he has not heard back for them and they are not here."

Chair read the second criterion regarding the spirit of the ordinance being observed. Ms. Monahan noted "we should just take the applicant's wording here and read "the immediate abutter (a Golf Course) is wooded and open beyond. Presence of a garage would not look abnormal on the property." Ms. Monahan added "there is no other residence being impacted either aesthetically or with views." Chair Stewart replied "that is compelling."

A brief discussion about the existing screening (thick brush) between the two properties and the flow of golfer traffic (away from the house in that area) followed. It was also noted that a garage in the proposed area would also provide additional buffer to the house itself.

Chair Stewart interjected "OK, so the values of the surrounding properties are not diminished" adding "and I do agree with the hardship. Let's keep going." Ms. Monahan added "and hardship can be associated with the land or the house." Ms. Monahan went on to describe the existing layout of the house and the living space. She also noted "it is not always easy to blend into an architectural style either." Ms. Laurenitis noted she was still having trouble. Chair Stewart agreed with her noting "maybe 3. (substantial justice is done) and maybe 4. (values of surrounding properties not being diminished) but not (2.) the spirit of the ordinance, I just cannot get around that. I am struggling with this whole thing too; it has to do with complying with the zoning and the future use of the Golf Course." A brief discussion followed with Ms. Laurenitis reiterating "I am not convinced there is not an alternative."

Chair Stewart noted "I make a motion that we grant this Variance and then go through the criteria and vote on it." Mr. Leishman replied "I second that to get things going."

The members spend a significant amount of time crafting their decision. Each member contributed to the wording of the document and discussed the request, unnecessary hardship and constraints of the property. Upon completion Chair Stewart read the completed draft (see Notice of Decision following). A motion had been made (Stewart/Leishman) to grant the Variance with **all in favor**.

<u>Review of the Rules of Procedure</u>
Chair Stewart noted the members should put their suggestions in writing and submit them to him "I will compose a list of what you would like to see" he said. Ms. Laurenitis noted she felt strongly that the Board should draft their own decisions. Chair Stewart noted the decision itself could be drafted by someone else "as long as we review it." He added "when it gets late (at night) we are not always thinking clearly." He again advocated a decision could be drafted by an appropriate representative from the Office of Community Development and then presented for review and acceptance by the Board. The members briefly discussed the timing of this process

with Mr. Leishman suggesting communication via e-mails. Ms. Laurenitis immediately interjected “no, no communicating by e-mail.” Mr. Waitkins felt very strongly that the Board should draft their decision but even more so about its review. “No way someone else writes the decision without the Board reviewing it and signing off on it” he said. Chair Stewart noted he would look into it adding “personally I would prefer we do it in the future.”

Ms. Monahan noted she would like to see the appointment of an Alternate of a case assigned at the close of the Public Hearing and just before Deliberation. (Not at the beginning of a meeting as is the current process). “That needs to be changed” she said.

Ms. Laurenitis asked about the procedure of a request for a reconsideration of a Decision by a member of the Board. A brief discussion about her correspondence to the Board in the Scott-Farrar application and the interpretation of the 30-day appeal process followed. Chair Stewart concluded “that is based on case law.”

Application before the Board

Chair Stewart noted an application from Charles (Peter) LaRoche for an alternate position on the Board. Ms. Laurenitis asked “could we ask him to come in and meet him?” After a brief review of Mr. LaRoche’s qualifications and previous service the town Chair Stewart noted he would ask Mr. LaRoche to attend the next meeting for an informal meet and greet.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant

Approved 3-4-13

ZONING BOARD OF ADJUSTMENT

NOTICE OF DECISION

Case Number 1187 February 4, 2013

You are hereby notified that the request of Durerig Revocable Trust, for a **Variance** to Article II, Section 245-6 B (2) of the Zoning Ordinance, to reduce the side building setback to ten (10) feet in order to build a garage, on property located at 47 High Street, parcel number U024-058-000, in the Family district is hereby **GRANTED.**

In reaching the variance decision, the Board finds that:

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

   The Board has received no testimony objecting to the request and has received written support from one abutter. The proposed garage will not alter the character of the neighborhood or threaten public safety.

2. The spirit of the ordinance is observed because:

   The immediate abutter is a golf course and would not be impacted visually in the same manner as a residence.

3. Substantial justice is done because:

   The benefit of a garage placed where the existing driveway and street access are located is the most logical and practical placement on the property. The placement of the garage as proposed by the applicant does not harm the general public or other individuals.

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

   The design plans submitted are in keeping with the architectural character of the neighborhood.

5. Unnecessary hardship

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

      The special conditions of this property are:
      - Existing landscape and stonewalls.
      - Existing driveway and access from High Street.
      - The location of the building on the lot.
      - The layout of the living space as provided by applicant's agent.
      - The location of the property adjacent to a golf course.

      i. There is no fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:

It is the most practical placement to build a garage and the purpose of the side setback is to protect the abutter, which is a golf course.

ii. The proposed use is a reasonable one because:

The construction of the proposed garage minimizes impact to the public and maintains neighborhood aesthetics.

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

1. Written permission from the property owner authorizing John Stanek to represent the property owner.

2. The proposed garage must be in substantial compliance with design plans and location submitted.

3. The garage dimensions must not be larger than 24' x 24'.

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.