

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

**Board Present:** Jim Stewart, Sharon Monahan, Bob Lambert, Loretta Laurenitis, and David Sobe

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

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At 7:00 p.m. Chair Stewart began with “good evening everyone, I would like to call the meeting to order. This is the regularly scheduled April meeting of the ZBA, I am Jim Stewart and I am the Chairman.” Chair Stewart then introduced the members and staff. Chair Stewart then appointed Alternate Lambert to sit for both cases.

Chair Stewart then noted “before I get into the Rules of Procedure I would like to go to Other Business.” Chair Stewart noted Peter LaRoche had filed an application for an Alternate position on the Board and was in the audience. Chair Stewart noted “Peter you have expressed an interest in being on the Board, can you tell us a little bit about yourself?” Mr. LaRoche replied with a brief biography (a native of Peterborough who has lived here all his life) and his wish and intention to give back to his community. Mr. LaRoche noted he was in land use and construction and was familiar with local properties and the town. He noted his 13 years as a member of the Peterborough Planning Board and his involvement with the Master Plan Steering Committee. “I value community service and want to give back to the town” he said. Ms. Laurenitis asked “why would you like to be on the ZBA?” Mr. LaRoche replied “I do have a lot on my plate but would like to give back. I understand this Board meets once maybe twice a month.” Chair Stewart noted some case specific needs for a site visit or additional meetings. He also noted some months where the Board did not meet at all “because there were no cases.”

Ms. Monahan pointed out some of the differences between the ZBA and the Planning Board. She asked him about his perspective of being on “such a different Board.” Mr. LaRoche replied he understood the major differences (ZBA grants relief from an ordinance where the Planning Board cannot do that and is more focused on the future planning needs of the town). Chair Stewart added “we make decisions based on RSAs, case law and past practices, we are all still learning.” He encouraged not only Mr. LaRoche but all members to take advantage of available trainings, especially the OEP annual Conference in May. “It is important to learn as much as you can about what the RSAs say” he said.

Ms. Monahan also mentioned commitment. “We have had a problem with alternates missing meetings” she said adding “so we would need a commitment of attendance even if you are not serving on a particular case.” She went on to cite several reasons why it would be important for an alternate to know the history of a case (especially a continued case) should a sitting member be unable to make a meeting.

A brief discussion about the time requirements for membership followed. It was noted that typically the ZBA met fewer times a month (and year) than the Planning Board as they have no monthly workshop and do not craft or amend zoning ordinances.

A motion was made/seconded (Stewart/Monahan) to accept Mr. LaRoche as an alternate member of the Zoning Board of Adjustment with all in favor.

Chair resumed the meeting by reading the Rules of Procedure for the public hearing. 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 noted if a decision was not reached this evening the case would be continued to a date and time certain. He concluded by asking “and anyone wishing to speak from the audience to please state their name and affiliation (abutter, agent, concerned citizen) for the record.”

Chair Stewart noted the first case on the Agenda was **Case No. 1190 Charles M. Cobb** for a request for a Special Exception as regulated by Article VI, Section 245-30 of the zoning ordinance to replace a commercial use with a residential use. The property is located at 76 Grove Street, Parcel No. U018-127-000 in the General Residential District. He looked up and asked “are there any corrections or revisions to this posting?” With no reply he asked the applicant to proceed.

Charles Cobb introduced himself stating “I am the owner of this building.” He went on to add “I have been before you a number of times, the last time just one year ago when we had a similar request.” He pointed out the commercial space in the building (lower level, south facing portion of the structure). He told the members “we have not been able to rent it commercially.” He noted they did have a party interested in renting it as living space “so this is why we are here, to see if we can use the space that way.”

Mr. Cobb presented a graphic of the building that showed what he had requested via Special Exception last year and what he was requesting now. “The last apartment was 700 square feet; I just wanted you to see what you approved before.” He went on to note how he would like to convert the commercial space left over. “It is about 1700 square feet and would be the 7<sup>th</sup> apartment” he said.

Chair Stewart asked “how many bedrooms?” with Mr. Cobb replying “two or three depending on how you want to look at it.” Ms. Monahan asked if the unit was on the ground floor with Mr. Cobb replying “yes” and added a bit of history to what the commercial space held over the years (including an antique shop, a clock repair shop, a bike shop and a consignment shop). He then pointed out the parking on an aerial graphic. Ms. Monahan noted the building would require 14 parking spaces for 7 units and asked “do they have that?” Code Officer Dario Carrara replied “oh yes, they have probably 15 spaces at least in the back, that is not an issue.” Mr. Cobb also pointed out 5 parking spaces in the front of the building.

Ms. Laurenitis asked if the space had ever been residential with Mr. Cobb replying he did not know “It was commercial before we bought it in the late 80s” he said.

Ms. Laurenitis then asked about the unit itself “it is a fairly big space” she said. Mr. Cobb replied “it is, and we could have made two smaller apartments but we are proposing one.” He also pointed out that the space was commensurate with at least two other apartments in the building.

Ms. Monahan asked about the density with Mr. Carrara noting the zoning requirements for the district. He specifically noted the requirement of 10,000 square feet per unit (on a .64 acre lot) “so there should be three or four units there, something like that.” Chair Stewart interjected “basically 4 units per acre.”

Mr. Cobb noted “we understand we would be over what the District permits but the commercial use would be a higher use, this would reduce the use of the building and be financially beneficial for us. I am not going to change the size of the building, and we would have to come back to you for any other changes.” He concluded by noting “if you do this you will probably never see me again. We want this one use and that would be it.” When asked if he had tried to rent the commercial space Mr. Cobb replied “yes, we absolutely have tried, we have not been able to rent it for three years (and) we do have a potential residential renter.”

Ms. Laurenitis asked for clarification on the number of units and the parking spaces. Mr. Cobb explained the more than ample space for parking.

Chair Stewart Thanked Mr. Cobb and asked if there was anyone in the audience that would like to speak in favor of the request. Andy Peterson introduced himself and noted “this is eminently reasonable in my opinion.” He went on to review the apartments of the building as well the use of space in the front and side for parking. He also noted other areas where zoning allowed more than 4 units per acre.

Chair Stewart thanked Mr. Peterson and asked if there was anyone who would like to speak in opposition to the request “or just have a comment about it.” Carolyn Grisafi introduced herself as a direct abutter at 74 ½ Grove Street “I am not in favor or opposed” she said adding “I have talked to Dudley (Mrs. Cobb) about my concerns.” Ms. Grisafi noted the density questions the Cobbs endured the last time they were before the Board as well as her concerns about the proximity of the properties, including exposure and privacy issues. She noted “we dealt with them privately.” Chair Stewart asked her “if there was a fence there (between the property lines) would you be more supportive?” Ms. Grisafi replied “yes.” A brief discussion about the location and length of that fence followed. Ms. Grisafi noted the cost of the fence would be shared between the two parties. Chair Stewart then asked Mr. Cobb “would you object to a fence being a condition of approval?” Mr. Cobb replied “we would welcome it.” A brief discussion about the type (style) of fence to be installed followed.

Chair Stewart looked to the audience and asked “any other comments?” Ms. Grisafi replied “I do have another concern.” She noted the applicant had noted the apartment would be a *two or three* bedroom unit. “I don’t like the “*or three* bedroom part” she said.

A brief discussion about the unit followed. Mr. Cobb pointed out the area of the third potential bedroom (a small area currently used for storage) and the location of the doors and window in the unit. Ms. Grisafi reiterated her concern about the “comings and goings of tenants from the

unit and her desire for privacy. Mr. Lambert suggested moving the location of a door that (with a fence) seemed to alleviate her concerns. A motion was made/seconded (Stewart/Monahan) to move to deliberation with all in favor.

The Public Hearing closed at 7:45 p.m.

### *Deliberation*

Chair Stewart suggested they use the Decision of a year ago (granting the sixth unit) as a template. "We will just modify that one" he said. The members went on review the criteria for a Special Exception as they crafted the decision and conditions of approval. **A motion was made/seconded (Stewart/Laurenitis) to approve the request for a Special Exception with Conditions with all in favor.**

## ZONING BOARD OF ADJUSTMENT

### NOTICE OF DECISION

**Case Number 1190**

**April 1, 2013**

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 the remaining commercial non-conforming use with a seventh residential dwelling unit, 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 equally or more appropriate to the zoning district than the existing nonconforming use because the proposed use will result in all of the building being used for residential purposes, which is the purpose of this zoning district.
2. 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 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 primary means of egress to the new dwelling unit will be limited to the south side of the building. The existing north door shall be converted to a window.
2. A lattice style fence shall be erected on the north side of the property.

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.

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Chair Stewart noted the second case on the agenda was Case No. 1191 Scott MacKenzie and John Loeb. He read the request for a Special Exception as regulated by Article VI, Section 245-30 of the zoning ordinance to permit warehousing, distribution, retail facilities, and machine, vehicle and equipment repair. The applicant's are also requesting a Variance as regulated by Article II, Section 245-8 (A) of the zoning ordinance to permit warehousing, distribution, retail facilities, and machine, vehicle and equipment repair. The property is located at 420 Hancock Road, Parcel No. R011-043-200 in the Rural District. When done he looked up and asked "are there any corrections or comments about this posting?" He then asked "why are you asking for both (a Special Exception and a Variance)?"

Silas Little introduced himself as Mr. Mackenzie's representative. He noted "Mr. Mackenzie would like to purchase the building from Mr. Loeb noting an equal or more appropriate use for that particular district could be achieved by either a Special Exception or Variance, that they were not sure which would be the more appropriate request for relief so they are asking for either/or "as the Board sees fit."

Mr. Little gave a brief history of the building noting the building was built in the early 1970's and housed the Conelec, a circuit board assembly company. He noted the property was subdivided out of the Lussier land and used for the industrial use at that time. He noted the property subsequently became a bus depot and bus repair facility in 1990. He reviewed several land use decisions that had been handed down over the years regarding the property.

Mr. Little went on to note that the applicant would like to use the property in a manner that is consistent with the uses permitted in the abutting Commerce Park District. This would consist of

repairs on all types of internal combustion engines, including small engine repair, construction equipment and the sale of landscaping equipment/supplies secondary or incidental to the small engine repair business. He went on to note there were no direct residential abutters to the property and that there were two letters of support for the request, one from Real Estate Agent Andy Peterson, the other from Abutter Craig Hicks. He concluded by noting “the proposed use of the property would not be materially different than what was previously conducted at the bus depot, with its storage and repair facility,” He went on to say “in fact the traffic at the site would be far lower than when it was a bus depot” noting not only the busses leaving and returning from their routes twice a day but the bus *drivers* themselves making two trips per day.

Scott MacKenzie introduced himself and gave the members a brief review of his current business (mobile repair for vehicles, small engines etc.) “I repair cars for the public” he said adding “and with two bays I may be able to make one available for a similar type of business or someone who wants to warehouse material or machinery.”

Mr. Little noted a ZBA approval for a Special Exception in 1978 for the purpose of light manufacturing and a Special Exception in 1988 for the bus depot with repair bays, storage and office space. Mr. Little noted “I think this should be viewed as something worthy of town support, it meets all the criteria of a Special Exception.” He also noted Mr. Peterson’s letter to the Board that stated, in his opinion, there would be no adverse effects to the surrounding property values if approved. He also noted Mr. Peterson’s reference for a Special Exception due to its historical uses and breadth of its current approvals. “That is important here” he said.

Ms. Monahan asked “is this based on what is permitted in Commerce Park? A brief review of the permitted uses in Commerce Park that included small engine repair, warehousing and distribution and retail sales incidental to the primary uses followed.

John Loeb introduced himself as the property owner and gave the Board a brief history of the 10,000 gallon above ground tank located on the property. He noted that at the time the tank was installed it was a state-of-the art system with several containment levels including a separate underground layer and an impermeable layer for double environmental protection. He told the members the tank had been closed via state regulations years ago. Mr. MacKenzie interjected he had no intent of re-commissioning it. “I don’t have any use for it” he said.

Mr. Loeb gave a brief history of the several bus companies that have operated at the bus depot, the last being First Student whose lease ran out last July 31<sup>st</sup> “and it has been vacant since.” Andy Peterson introduced himself. “I represent Mr. Loeb” he said. He went on to explain the lot “is a creation of planning and zoning actions over the course of the years.” He touched on the past uses (some being significant and intense) and reiterated the approved uses over the years adding “this is a reasonable use of the property” and noting all the previous Planning Board and Zoning Board Decisions over the years “it is not easily convertible back to what may be allowed in the code.”

Ms. Laurenitis asked about wetlands noting former ZBA cases for the property included a culvert and drainage over the wetlands (1986). Mr. Loeb responded to her questions noting “that expansion never took place, it is something that never materialized.” Chair Stewart asked “is it

all paved?" with Mr. Loeb replying "yes" and adding "and Mr. MacKenzie is not proposing to expand anything on the existing lot."

Ms. Monahan noted the FEMA maps and asked if the lot was outside the flood plain. Mr. MacKenzie responded by pointing out the parameters of the lot and what fell in what plain, overlay and protection zone. Mr. Carrara noted he would follow up on that information. Ms. Monahan also noted the tank with Mr. MacKenzie reiterating "we are not going to use that tank."

Ms. Laurenitis noted the prior decision on the property mentioned a 50-foot setback and a brief discussion followed. Ms. Laurenitis noted "I would need to have more information on that" adding "and also what kind of business that may be using one of the bays. "That is not listed on the application, I would need clarification" she said. Mr. MacKenzie replied with a short description of his business and how he would use the bays for his ramp trucks with his primary business being a travelling mechanic. "I have been to your house" he said with a smile.

Mr. MacKenzie went on to say "I want to expand my business a bit and do small engine repair, maybe some state inspections. I don't want to buy the property and have my hands tied as to what can be associated with a type of repair. I will fix your toaster for you; I want to be able to repair anything." Mr. Mackenzie told the members "the building is a bit too big for me, but I have not ironed out the future. I am in the repair and towing business so you can envision whatever auto repair shops do, I will do. I expect storage of cars, not wrecked cars and tractors to be worked on. I am not in the sales business but perhaps I would have a tractor for sale. The sky is the limit when it comes to the complements of the type of work that I do." He concluded by saying "I also want to be able to divide the building and put another suitable business or storage area in there. It would be nice to think I could find a tenant, but currently I have nothing lined up."

Ms. Laurenitis asked for clarification on the cars that may be parked on the lot. Mr. MacKenzie noted it would not be a salvage yard "that is not what I do and I have no intention for that." A brief discussion about the process and amount of time it takes for an insurance claims adjuster to assess a vehicle involved in a collision or a vehicle that has been impounded by authorities followed. Mr. MacKenzie also noted the occasional acquisition of an abandoned vehicle "I don't have a lot of that" he said adding "but being in this business it does happen."

When Ms. Laurenitis mentioned the potential of antifreeze, brake fluid and oil changes being environmentally unsafe the sealed system installed by Laidlaw "who was extremely cognizant of those issues" was reviewed. It was noted "all those issues have been dealt with and very stringently so. There is no drainage into the septic or ground water. This was addressed in 1988 in great, great detail as well as a great expense."

With no other questions from the Board Chair Stewart said "I would like to open this hearing up to the public and ask first if there is anyone who would like to speak in favor of this application." With a smile Mr. MacKenzie put up his hand and said "I am in favor of it."

Chair Stewart then asked for anyone opposed to the application or who just had general comments to speak. Francie Von Mertens introduced herself as an abutter, "I am the Community Gardens" she said.

Ms. Von Mertens noted she had some general comments about the application. She noted §245-30 A (1) where the Board of Adjustment would have to find the proposed use "equally or more appropriate to the zoning district than the existing nonconforming use." She went on to note the members should get a sense of what is allowed now and what is being applied for (and) "how equal and or more appropriate is that?" She reviewed the permitted uses and how they could accommodate the applicant's components request in terms of warehousing, distribution, retail facilities, and machine, vehicle and equipment repair. She also noted any retail would be secondary or incidental to the business.

Mr. MacKenzie reiterated that his retail would be very similar to Tyler's Small Engine Repair in Antrim or Ronnie's Small Engine Repair in Jaffrey. He noted a store front with saws and lawnmowers, anything that has a small engine in it."

Ms. Von Mertens noted "I just want it to be as black and white as possible" adding "I see the retail there as a major change and not incidental, it is almost like the tail wagging the dog *and* it is in the Gateway." She went on to note "I am not for or against I just think we should take a good look at what we are talking about here."

Mr. Little reviewed the (most recent) previous use, the bus depot and its intense use with not only buses coming and going twice a day but all the bus drivers as well. "It had a very visual impact if you were on Route 202 during those times of the day." He added "we have outlined that initially Scott would use one bay and lease the other two bays out to similar warehouse or distribution uses" adding if he could see into the future he would be able to tell the members what Mr. MacKenzie would be doing in 12 months. "But I cannot" he said.

Mr. Lambert pointed out the other businesses on the highway and in the Gateway. "To me there are businesses all along that road" he said. Ms. Von Mertens spoke briefly about the gateway noting "the town has come a long way in our land use wisdom." Mr. Carrara interjected "it is a difficult property, it is a struggle."

Melissa Stephenson introduced herself and noted she, too was concerned about the "equally or more appropriate use" wording. She noted "the rural zone is pretty much defined" and spoke briefly about the setbacks, the screening and the gateway. "You are the Zoning Board" she said, "it is important you see it and know what you are talking about."

Ms. Monahan noted the time and suggested a site visit. "With respect to the situation we have, and making a silk purse out of a sow's ear, the owner has hardship; there are not a lot of uses. I think we need to see the site."

Mr. Peterson concluded by noting "retail is not a dirty word" and pointed out Gracie's Grain just down the road. "That store has not been awful" he said adding "I think a small engine repair shop would be a benefit"

Chair Stewart noted a site visit would be beneficial in crafting an approval “to see the building and how it will serve the gateway will be helpful” he said. He added “we don’t want to restrict too strongly based on the perceived good in and in doing so find we have an empty shell going into disrepair and falling down.”

Ms. Von Mertens put up her hand and interjected “procedural question.” She went on to ask about Mr. Peterson’s interest in the case. Mr. Peterson replied “I represent Mr. Loeb, I said that in the very beginning.”

Chair Stewart asked for a date and time certain for continuance of the public hearing and site visit. He reminded the audience that they would still have every opportunity to give public input at those times.

A motion was made/seconded (Stewart/Laurenitis) to continue the public hearing to a site visit April 9, 2012 at 4:45 p.m. and reconvene for discussion and a deliberative session on Monday, April 15<sup>th</sup> at 7:00 p.m.

### **Minutes**

A motion was made/seconded (Laurenitis/Sobe) to approve the minutes of March 4, 2013 as written.

The hearing adjourned at 9:30 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant

**Approved as written with typos May 6, 2013**