

MINUTES  
ZONING BOARD OF ADJUSTMENT  
TOWN OF PETERBOROUGH  
Monday, June 3, 2013 – 7:00 pm  
1 Grove Street, Peterborough, New Hampshire

**Board Present:** Jim Stewart, Sharon Monahan, Loretta Laurenitis, David Sobe, Peter LaRoche and Matt Waitkins

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

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Chair Stewart called the meeting to order at 7:00 p.m. He began with “good evening everyone, I would like to call the meeting to order. This is the regularly scheduled June meeting of the ZBA, I am Jim Stewart and I am the Chairman.” Chair Stewart introduced the members and staff.

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 noted if a decision was not reached this evening the case would be continued to a date and time certain. He concluded by noting that everyone interested would have an opportunity to speak and to please be sure to state their name and affiliation (abutter, agent, concerned citizen) for the record. Chair Stewart concluded by noting “and any rebuttal or comments should be made through the board, please limit your conversation with each other.”

First on the agenda was Case No. 1193 MacDowell Colony. With no representative in the audience Chair Stewart moved on to Case No. 1194 Patricia Walker. “A request for a Variance, as regulated by Article II, Section 245-6 A and Section 245-7 A of the zoning ordinance, to add a seasonal restaurant use. The property is located at 133 Wilton Road, Parcel ID #019-004-000, in the Family, General Residence and Rural Districts.” Chair Stewart looked up and asked “are there any corrections, additions or changes to this notice?” There were none and Chair Stewart asked the applicant to proceed.

As an abutter Mr. LaRoche recused himself from this case. Chair Stewart noted Ms. Walker had two requests before the Board and that they would be heard individually.

Tricia Walker introduced herself as the owner of the Twin Elm Farm. “I own the property, Louise York is the proprietor of the business” she said. Ms. Walker went on to note “we have had some interest in putting in a seasonal food truck to be used spring into fall.” She told the members she was not sure how to achieve her goal “so I spoke with Dario. He told me to apply for a Variance and that is why we are here.”

Chair Stewart asked for clarification of why a Variance would be necessary. Mr. Carrara explained that his interpretation was that the request was for a restaurant use that would be located at the property full time. “It will not go in and out on a daily basis” he said. Mr. Carrara added “and a restaurant use is not a permitted use in any of the three districts this lot is located

in.” A brief discussion about the types of wagons towed by a vehicle and food carts followed with Chair Stewart interjecting “what about an ice cream truck?” Mr. Carrara replied it was very difficult as “the fifty shades of gray of a hot dog stand versus a restaurant are not well defined.” He noted “in our zoning what is proposed meets the definition of a restaurant.” He added “it will be there 24/7 for months” adding “and the use is not permitted in any of the three districts this lot is located in.”

Ms. Monahan asked about the health laws associated with his type of business with Dan Thibault replying “the units are inspected and licensed by the State” adding “the trailer would be unhitched and parked but not on a permanent foundation.” Chair Stewart asked Mr. Thibault what his relationship was to the case with Mr. Thibault replying “I am interested in providing the food service” adding “there is something really unique about this property that sets it apart from others in the neighborhood.”

A brief discussion about the type of food vending cart or trailer or window stand followed. Ms. Walker noted there many varieties and they were researching which one would best fit their place. David Labnon introduced himself noting “I own Twin Elm Farm with Trish.” He added “it will be a mobile unit with the ability to move on a daily basis if necessary, but if we found a good location on the lot it would stay right there.”

Chair Stewart interjected “let’s talk about the criteria” and asked “what makes you unique?” Ms. Walker replied ‘we are open seven days a week. We have a large lot with an enhanced store front. As it is now, people tend to wander around and we thought it would be nice to have food available. We also thought it would be nice to have a food truck for our weekend events.”

Ms. Laurenitis noted that the approval for their antique business called for the second floor of the building to be maintained as a residence. Ms. Walker noted the second floor was in fact rented to Ms. York’s daughter. Ms. Laurenitis also asked Ms. Walker what made her property unique. Ms. Walker replied she was told she would need a Variance to be able to have a food truck on her property. “A Variance will give me permission to get the vendor, then they would get their license and that would be it” adding “I guess I am here to find out what we need to know.” Mr. Waitkins noted proving hardship was often quite difficult when seeking a Variance.

Chair Stewart noted that Ms. Walker’s property was located in three different districts (Rural, General Residence and Family) “and not one of them allows food” he said.

The members briefly reviewed the districts looking specifically at the ratio of businesses to residence on the stretch of Route 101 heading into town. Ms. Walker noted there are more businesses than homes.” Chair Stewart asked “how many restaurants?” Mr. Walker replied “none, darn it.”

Ms. Laurenitis asked about the traffic with Ms. Walker noting the straight stretch of road where her property is located made access on and off the highway easy. Ms. Laurenitis noted Mr. Carrara’s interpretation that the food service would be considered a restaurant and asked if there were specific parking requirements for that use. Mr. Carrara explained the classes and subcategories of classes provided by the state statutes. “On the state level it is not a simple thing” he said.

With no other questions Chair Stewart opened the hearing up to the audience. David Macy introduced himself and noted “as a disinterested party I think the owner is trying to make good commercial use of a lot that exists rather than putting it somewhere else.” He noted Charlie’s food/ice cream business on Route 202 by SDE “providing food for people passing through.” Ms. Walker agreed and noted the hot dog vendor who sets up by Belletetes on Route 202 each summer. Ms. Laurenitis interjected “that is in a Commercial District” with Chair Stewart adding “so is Charlie’s.”

When the topic of signage came up it was noted any sign would have to be in keeping with the sign regulations. Ms. York briefly spoke about the special events the Farm sponsors for the store along with weekend garden events. “It would be great to have food” she said.

A motion was made/seconded (Monahan/Sobe) to go into deliberation. Chair Stewart read the deliberative statement and appointed Mr. Waitkins to sit for Mr. Leishman.

Chair Stewart began with asking for a straw poll noting he would start. “I really appreciate all you have done in the area but we are not the Planning Board and for us to re-zone to allow a restaurant flies in the face of what we are about.” He added “you do not meet the criteria, I am against it.”

With that Chair Stewart looked down the table to Ms. Monahan and asked “Vice Chair?” Ms. Monahan replied “I am in agreement for the same reasons” adding “it is not in the spirit of the ordinance, it is in the Family District.” She noted the granting of a previous Variance noting it was based on the non-conforming expansion of a residential district.

Mr. Sobe noted he was in agreement “because it is not in the Commercial District.” Mr. Waitkins began by noting what a wonderful job they applicant had done with her property “it is amazing and beautiful” he said, but I agree that you do not meet the criteria.” Ms. Laurenitis noted “I am not in favor, the criteria are not met and it is not in the spirit of the ordinance.”

A motion was made/seconded (Stewart/Laurenitis) to deny the application with all in favor.

## ZONING BOARD OF ADJUSTMENT

### NOTICE OF DECISION

Case Number 1194

June 3, 2013

You are hereby notified that the request of Patricia Walker, for a **Variance** to Article II, Section 245-6 A and Section 245-7 A of the Zoning Ordinance, to add a seasonal restaurant use, on property located at 133 Wilton Road, parcel number U019-004-000, in the Family, General Residence and Rural districts, is hereby **DENIED**.

In reaching the variance decision, the Board finds that:

1. The variance will be contrary to the public interest because:  
A restaurant is not a permitted use in any of the three districts that this property is in.

2. The spirit of the ordinance is not observed because:  
The proposed use would change the character of the neighborhood.
3. Substantial justice is not done because:  
There would be an addition of a non-conforming commercial use.
4. The values of surrounding properties may or may not be diminished as the Board has not received sufficient information to make this determination.
5. Unnecessary hardship:  
The Board feels that there are no special conditions of this property that distinguish it from the surrounding properties.
  - a. Denial of the variance would not result in an unnecessary hardship.
  - b. The criteria in subparagraph (a) having not been established, an unnecessary hardship is not deemed to exist, and the property is already being reasonably used, making a variance unnecessary to enable a reasonable use.

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.

Chair Stewart continued by reading the second application request by Ms. Walker. "Case No. 1195. A request for a Variance, as regulated by Article II, Section 245-6 A of the zoning ordinance, for an antiques and retail consignment shop. The property is located at 139 Wilton Road, Parcel ID #U019-003-000, in the Family District. Chair Stewart asked "are there any corrections, additions or changes to this notice?" There were none and Chair Stewart asked the applicant to proceed.

Ms. Walker noted the property directly east of Twin Elm Farm (139 Wilton Road, owned by Mr. Stanley Davis) was for sale. She gave the Board a brief explanation of her plan to expand her business opportunity by purchasing it and creating the Cottage at Twin Elm which would also incorporate the sale of antiques. She noted no significant changes other than the appearance of the house and landscaping. She noted the purchase would add to the existing property so there would be no residence there. Chair Stewart asked about parking with Ms. Walker pointing ample space on a diagram. "There is actually a lot of parking" she said. Chair Stewart asked about access to the property with Ms. Walker replying "I am not sure yet, but you can see all the way down (Route) 101, it would all be open."

Ms. Monahan asked "would you expand the antiques?" with Mr. Sobe asking "like an annex?" Ms. York explained she was a dealer and that she had a significant waiting list of vendors waiting to come in. Ms. Laurenitis asked "is it consignment?" with Ms. York replying "it is a

group shop; I rent out the rooms to other dealers.” Ms. Laurenitis then asked whether or not the property was inside the Rural Gateway Zone. A brief discussion followed Ms. Laurenitis noted “I would like to see a better map, RSA 245-15.2 talks about the extension of the district.” She then read the Route 101 Rural Gateway Overlay Zone paragraph to the members. After further discussion it was agreed the property in question was *not* in the confines of that zone.

“Any other questions?” asked Chair Stewart. Ms. Monahan asked if there would be any residence in the building Ms. Walker talked about acquiring. “Will all of the building be converted? Will there be some residence?” she asked. Ms. Laurenitis interjected “it is not a permitted use in the Family District.” Another member asked if Ms. Walker purchased the property beside Twin Elm Farm and then got a lot line adjustment would the use be allowed. Mr. Carrara noted the Variance Ms. Walker got for her current business would not include the purchased building.

The Board then read through the criteria with Ms. Walker. Ms. Walker specifically noted the values of the abutting properties have improved because of their renovations to Twin Elm Farm. Ms. Laurenitis asked “is there anything to show they have increased in value?” Ms. Walker replied “anything that increases mixed use is valuable, (Route) 101 is not a residential road.”

Chair Stewart asked if anyone else would like to speak. A woman named Debbie introduced herself as Mr. Davis’s daughter spoke briefly about the location of her father’s home. She told it had evolved into an awkward location for a home with the traffic on Route 101. She also noted the stone wall and trees were an issue in seeing oncoming traffic. She concluded that she felt an extension of the antique business to the house as an annex or cottage would be a better use for the property.

Peter LaRoche introduced himself as an abutter and noted he had no issue with Ms. Walker’s request. Francie Von Mertens introduced herself and noted how main roads go commercial but she supported residential component. “It is on the road, but it is affordable” she said. She noted she was leery of the future predicting “soon all of (Route) 101 could be commercial” adding “it is your job to decide if this is what the town wants and is it good for the town.”

Ms. Walker reiterated “the ordinance does not reflect the current character of the road.” Chair Stewart asked her what the hardship was with Ms. Walker replying “we cannot expand the existing business without an approval, we are a great asset to the town, when people stop in to browse they find out about all sorts of other activities in town.” The members briefly reviewed an aerial picture of the area to identify other businesses and residences. Ms. Laurenitis asked about the stone wall between the two properties and Chair Stewart asked about how the driveways would be managed with Ms. Walker noting they would follow all state regulations concerning access to the property. Ms. Monahan asked “are you just changing the outside appearance?” Ms. Walker replied “yes.” Ms. Monahan asked “the footprint will remain the same?” with Ms. Walker replying “yes. No changes.”

Chair Stewart interjected “site visit?” Mr. Waitkins replied “I would like to do that.” Mr. Sobe agreed noting “I would like to take a closer look.” He noted the two driveways as well as the access. Chair Stewart concluded “a request for a residential use being changed into retail is not to be considered lightly, it minimally deserves a site visit.”

A motion was made/seconded (Stewart/Waitkins) to continue the Public Hearing for a site visit with all in favor. The members agreed the date and time certain is Monday, June 10, 2013 at 4:30 p.m. then back to the Town House for continued testimony, deliberation and decision. Chair Stewart asked Mr. Davis if the Board had permission to walk his property with Mr. Davis replying they did. It was also noted that a letter of authorization from Mr. Stanley should and would be obtained for the record.

John Minter stood and introduced himself as the abutter on the west side of Twin Elm Farm. "First" he said, "let me tell you what a fabulous job you have done there." Dr. Minter went on to briefly note the current flavor of the mixed residential/business neighborhood. He cautioned the Board "at some time the town needs to decide where you draw the line on commercial entities, even though I have a commercial business on that road." Dr. Minter also spoke briefly about the issue of having multiple driveways off (Route) 101 and the traffic impacts to the area. Chair Stewart concluded by thanking all who participated and confirming the Site Visit day and time.

Chair Stewart read the next case. "Case No. 1193 MacDowell Colony . The MacDowell Colony requests a Variance, as regulated by Article III, Section 245-15 J of the zoning ordinance, to expand an existing residential building in the Wetland Protection Overlay Zone. The property is located at 100 High Street, Parcel ID #R009-001-000, in the Rural District." When done he looked up and asked "are there any questions with this posting?" With no response he went on to say "I have just a couple of questions before we get started. First, why is this a request for a Variance? Aren't they required to go to the Planning Board under the Conditional Use Permit for uses in the Wetland Protection Overlay Zone?" He went on to read the regulation "accessory structures associated with and/or additions to legally, pre-existing multi-family or non-residential structures provided there is no encroachment closer to the wetland than what exists."

Mr. Carrara noted the application did not conform to the regulations of a Conditional Use Permit. After a brief discussion it was noted that the request was not for a multi-family or commercial building use and not a non-residential structure. "This is a residential structure" noted Mr. Carrara adding "it is a building that has no kitchen with a residential use." Chair Stewart replied "oh, OK it is a residential structure, OK." Mr. Carrara also noted the construction of accessory structures associated with and/or additions to legally pre-existing one and two-family structures were allowed, "provided there is no additional encroachment to the wetlands than what already exists."

Ms. Monahan asked about wetlands delineation with Mr. Macy replying "we had that done in 2006 when we were granted a variance for the same thing" adding "we did not have the money to do it and it expired." Mr. Carrara interjected "the entire building is located in the wetland setback not in the wetlands, but in the setback." He also confirmed the Colony's original request was Case No. 1067 granted in January of 2006.

Mr. Waitkins asked "are the parameters the same as the approval granted in the past?" Mr. Macy replied "yes, we had to take the time to raise the money and that approval expired."

Satisfied, Chair Stewart asked Mr. Macy to continue with his presentation to the Board. Mr. Macy gave a brief history of the studio (Baetz Studio, built in 1926 for writers and composers) “that is in serious need of renovation.”

Mr. Macy noted the only thing that had been done to the studio was the installation of a heating system “to make it useable for the 21st Century.” He noted the renovation would take back the space currently occupied by the forced hot water boiler and an LP heating system would be installed. He noted the addition of a screened porch and a covered entrance as well. He concluded with “perhaps we will add a bit of fill, other than that the area is exactly as Mother Nature left it.”

Mr. Macy noted the studio needed to be modified to continue to provide ideal working conditions for writers and other artists who come to MacDowell. He also noted the old septic system would be re-routed to another septic line “to take the 1920’s line out of the wetland district” adding “everything else is the same.”

Mr. Sobe asked how the studio’s name was pronounced with Mr. Macy replying “it sounds like *Bates*” adding “it is named after Nurse Baetz who cared for Edward MacDowell.

Ms. Laurenitis asked about any concerns from having Liquid Propane (instead of Oil) in the wetlands with Mr. Macy replying “no” and went on to describe the simple heating system that was planned.

The members then reviewed the Variance criteria with Mr. Macy. “You did a good job with that” noted Chair Stewart. Mr. Macy reiterated the removal of an oil tank and a poorly executed septic line outweighs the digging of eight piers in the Wetland Protection Zone. “And then we leave it alone for the next hundred and something years” he said.

There were no other questions from the Board so Chair Stewart opened the discussion to the audience. Francie Von Mertens introduced herself and noted she, John Patterson and Robert Wood had gone to take a look at the site. She described the area as forested hemlock with no open water. “Typical of that area” she said adding “if you do grant this Variance I think a very logical condition would be no additional fill be brought in.” Chair Stewart noted the plan for crushed gravel under the porch. Mr. Macy replied “that is what the architect drew to go on top of fill already there to prevent erosion and prevent the piers from moving.”

Ms. Monahan requested that the Conservation Commission put something in writing for the record. “I would like them to submit a report so we actually have something” she said. Chair Stewart noted that information was not required for a Variance and that her testimony is captured in the meeting minutes. Ms. Monahan replied she would like to have the information for the record “that is my opinion” she said. Ms. Monahan also noted she would like to see the Minutes and the Notice of Decision from the 2006 request as well as a delineation of the wetlands for the record. Chair Stewart asked Mr. Macy about the status of the project with Mr. Macy replying “we are in the midst of construction. “We are waiting on windows and this decision” he said. Chair Stewart reiterated what the Board members felt was necessary (specifically a letter from the Conservation Commission, the Minutes and Decision for the 2006 Variance request and the

wetlands delineation). He looked at Mr. Macy and said “I feel fairly confident we can decide this by next Monday.”

At this time Ms. Von Mertens advised the Board that she and the other members of the Conservation Commission were not a quorum for that Committee. “We went anticipating finding a problem. *If* we did we were going to call a meeting, review it and take a vote.” Chair Stewart asked “isn’t three a quorum?” Ms. Von Mertens replied “no, five is. We have seven members.” Mr. Waitkins noted “I would be comfortable with the testimony from Francie, there is no major issue with this.” Chair Stewart noted the Conservation Commission could not post a meeting, meet and vote before next Monday “you do not have that kind of time” he said. Ms. Von Mertens replied “John, Woody and I will come up with a statement for Monday.” “Or before” interjected Ms. Laurenitis.

A motion was made/seconded (Stewart/Monahan) to continue the hearing to Monday June 10, 2013 at 5:30 p.m. (following the Site Visit and Deliberation for Case No. 1195) with all in favor.

#### Minutes

Chair Stewart noted he had not had a chance to review the Minutes, “we’ll do them another time” he said.

#### Other Business

Chair Stewart noted the Rules of Procedure dictate they elect a Chairman and Vice Chairman each June. He told the members he had enjoyed being the Chairman this past year and “I would like to do it again.” A motion was made/seconded (Monahan/Sobe) to re-elect Jim Stewart as the Chairman of the Zoning Board of Adjustment with all in favor.

When asked if she would be interested in remaining the Vice Chairman, Ms. Monahan replied “I am very happy being the Assistant. A motion was made/seconded (Laurenitis/Stewart) to re-elect Sharon Monahan as the Vice Chairman of the Zoning Board of Adjustment with all in favor.

The hearing adjourned at 9:30 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant