

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, June 4, 2012 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

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

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

The meeting was called to order at 7:05 p.m. Chair Laurenitis introduced the Board and Staff. She 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 or opposed) and closure of the hearing followed by deliberation and decision. She also asked anyone speaking from the audience to please state their name for the record.

Case No. 1181 Shatos Realty Trust. A request for a Variance to increase the number of dwelling units from nine (9) to ten (10), regulated by Chapter 245, Article II, Section 7 A (2) of the zoning ordinance. The property is located at 80 Pine Street, Parcel No. U019-023-000 in the General Residence District.

Chair Laurenitis read the notice. She asked the applicants to introduce themselves and their relationship to the property.

Howard Shafman stood and introduced himself as a co-owner of the property. Mr. Shafman spoke briefly about the nine existing units located in the building. He added “and we would like to take the top floor and make it a two bedroom apartment. That would be our tenth unit.”

Mr. Carrara briefly reviewed the history of the building and what had been approved in previous applications to the Zoning Board. He reaffirmed the conversion of two business offices in the building to residential units and the application for the ninth unit to be used as a congregate living facility (which was not approved). Mr. Carrara concluded by noting “it (the building) has had scattered uses over the years.”

Mr. Stewart asked for clarification on the building and the proposed new unit. Mr. Shafman replied that a kitchen and a bathroom were to be added to the tenth unit. “We will be taking the empty rooms previously used for boarding rooms and turn it into one unit, it is a very large two bedroom” he said.

Mr. Stewart asked about access with Mr. Shafman explaining the location of two separate stairways. Mr. Stewart asked if any of the bedrooms were being applied to other units in the building with Mr. Shafman replying “no.”

Mr. Carrara put a graphic on the projector and reviewed all four sides of the building and parking areas. "It is a lot of space" he said. Mr. Shafman pointed out the three stories of the house and transitional section between the house and barn and the two stories of the barn. He noted the approved nine units "take up all of the first two stories, the third floor will be unit 10." Mr. Carrara noted "it is a massive building." Chair Laurenitis asked for clarification on the boarding house portion of the building with Mr. Carrara replying "that (a boarding house) was never approved, what they have is nine designated living units." Mr. Carrara went on to note the office spaces that existed in the past were no longer being used in that capacity. Mr. Stewart asked "but the applicant is paying taxes on the whole thing right?" Mr. Carrara replied "yes, and it is in a residential zone, the non-residential use (Office) has ceased for some time now. It is *all* residential now and they would like to use up the space."

Mr. Carrara reviewed the dimensional requirements for the General Residence District and a brief discussion about density followed. Ms. Monahan asked for clarification on what constitutes a living unit and asked "do they all have kitchens?" Mr. Shafman quickly replied "yes, every unit is sprinkled and has its own kitchen, washer and dryer, and bathroom." Photographs of the building were projected on the screen and Mr. Carrara briefly reviewed the building from the north, south east and west. Mr. Shafman pointed out new siding, painting, window and door replacements, the sprinkler and fire alarm system and a new furnace. "We have put a lot of money into this" he said adding "and those pictures really do not do it justice." Mr. Shafman also gave the members a brief review of the new wiring, insulation and hot water tanks and meters.

Mr. Sobe asked where the tenth unit would be located with Mr. Shafman replying "on the top floor" adding "it is really big enough for two units but we did not want to do that with tenants living below." Mr. Stewart asked about ownership of the property. Mr. Shafman noted he and his partner had purchased the building from the bank. Ms. Monahan asked about the parking with Mr. Shafman replying "oh I think we could fit 50 cars." The parking areas were pointed out with the members in agreement that the average unit is a two-bedroom and there would be an average of 20 drivers overall.

Chair Laurenitis asked if any of the units were occupied with Mr. Shafman immediately replying "two are, thank God." He went on to note the entire building consisted of three (3) one-bedroom, one (1) three-bedroom and six (6) two-bedroom apartment (Mr. Shafman included the *potential* tenth 2-bedroom apartment in this total).

The members noted the multiple numbers of single bedrooms that existed prior to the applicant's purchase and a brief discussion about the re-allocation of sleeping spaces to living spaces followed. "There were rooms everywhere. It was not set up to be a home for people, just a lot of rooms" confirmed Mr. Shafman.

Mr. Shafman also noted that the income from the tenth unit would be appreciated. "It would help us financially" he said. He briefly noted expenses they had incurred during the renovation process. Chair Laurenitis asked if Mr. Shafman would introduce his associate. Randy Santos stood and introduced himself as being the other co-owner of the property. One member asked the gentlemen if they planned to live on the premises with Mr. Shafman replying he lived in Bedford

but *would* enjoy living in the historic building. He briefly described some of the intricate and historic features of the building. "It has a lot of character" he said.

Mr. Leishman asked about fire codes and whether or not the Fire Department approved of the living units. Mr. Carrara noted the Fire Inspector had been through the building and it was in compliance with NFPA Codes. The fire escapes and points of egress were pointed out for the members. Mr. Carrara explained the one-hour fire rating of the walls of the stairwells. He also reminded the members of the fire alarm system and sprinkler system that had been installed.

There were no other questions from the Board. Chair Laurenitis noted a gentleman sitting in the audience and thanked him for patiently waiting to speak. Lloyd "Butch" Walker introduced himself. He pointed out his property, the church to the east and Governor Square development to the west on the graphic noting "I am the only true residential abutter. In the winter I see this house and what an improvement this has been to us, *especially* my wife." He went to note "the junk cars are gone, the new siding, painting, landscaping, and windows and doors really compliment the neighborhood." He stood looking at the members. "I just want to tell you if it takes ten units to make something good like this happen in the neighborhood it is worth it. It just is one hell of an improvement to the neighborhood. We are very happy to have this happen to this property."

Mr. Leishman noted "when an abutter responds positively it weighs heavily on any decision I make." Mr. Walker reiterated "I cannot tell you how happy my wife and I are. If they can fit ten units comfortably in there then *why not?*"

When asked about the total square footage of the building Mr. Carrara ventured to guess it to be between 15,000 and 20,000 square feet. When he looked it up in the assessing data base it was noted the total square footage was about 17,000.

Ms. Monahan cited the five criteria for a Variance noting "I was not sure about them meeting the criteria, I feel they do now but that is from what I have been hearing in testimony, not so much from the application."

As the Public Hearing closed at 7:40 p.m. Mr. Stewart noted "just for the record I have to say what a substantial difference this is from before" adding "this is an incredible thing they have done here." Chair Laurenitis agreed noting "it is an incredible investment in the property and the neighborhood."

Chair Laurenitis asked "any other thoughts?" Mr. Sobe, a real estate agent, noted he had been involved with listing the residence "8 or 9 years ago" adding "and I spent more time in there than I care to remember and what they have done is nothing short of a miracle." He concluded by noting "save the apple trees." Mr. Shatos replied "we are keeping them." Chair Laurenitis looked at Mr. Sobe and said "so I take it you are for it." "Yes" replied Mr. Sobe. Mr. Stewart noted "I don't see how we can deny them; they have vacant rooms they are paying taxes on." Mr. Stewart also noted that the applicant had in fact changed the numerous makeshift bedrooms back into living units.

Chair Laurenitis noted “they are not expanding the footprint and have made substantial improvements.” Ms. Monahan noted that a financial hardship also existed in this case. Mr. Leishman cautioned the members about introducing financial aspects into a decision. “I would be careful about that” he said. Ms. Monahan replied “you can use financial hardship though” with Chair Laurenitis interjecting “yes but I don’t think we need to.”

Mr. Stewart noted the owners were being taxed on something they are unable to use. Mr. Carrara interjected “also just so you know the building is on town water and town sewer” (in addressing the density issue).

The Board members drafted a Decision and a motion was made/seconded (Stewart/Monahan) to approve the application as presented with all in favor.

NOTICE OF DECISION

Board of Adjustment

June 4, 2012

Case No. 1181

You are notified that the request of **Shatos Realty Trust** for a variance to Chapter 245, Article II, section 7 A (2) of the Peterborough Zoning Ordinance is hereby **GRANTED**. The applicant requested the Board’s approval to increase the number of dwelling units from nine (9) to ten (10). The property is located at 80 Pine Street, Parcel Number U019-023-000 in the General Residence District.

The Board finds that:

1. The granting of this variance would not be contrary to the public interest because the use is permitted in the District and the District changed from Office to General Residence reflecting the public’s desire for residential use of this building.
2. The spirit of the ordinance is observed because it is not new construction and the building can easily accommodate the proposed additional dwelling unit. The building is connected to Town water and sewer.
3. Substantial justice is done because the density zoning restriction as applied to this property interferes with the reasonable use of the property, considering the building is a circa 1792 to 1850 structure with 17,000 +/- square feet in size and is more than sufficient to accommodate this additional unit for a total of ten (10) dwelling units.
4. There would not be a diminution in value of surrounding properties as a result of the granting of this variance because the previously allowed ninth dwelling unit is being converted into two separate units which will continue the residential use. There is no expansion of the building and the existing parking areas are more than adequate to accommodate the additional unit.
5. Literal enforcement of the ordinance would result in an unnecessary hardship because of special conditions of the property that distinguish it from other properties in the area:

- a. There is no fair and substantial relationship between the general purpose of the zoning ordinance and the specific restriction on the property because the property cannot be reasonably used in strict conformance of the ordinance and a variance is therefore necessary to enable a reasonable use of it. The purpose of the ordinance is to avoid overcrowding and over-density. This building is an existing building and no additional effect on the neighborhood will occur. This building is unique in its size, character, historical nature, and location.
- b. The proposed density is a reasonable one because granting the variance will not injure the public or private rights of others since it is a permitted use in the District and the size of the building is sufficient for the proposed use.

The Board imposes the following conditions:

1. There will be no change in the footprint of the building.
2. A minimum of 20 parking spaces will be provided for the 10 dwelling units.

Signed,

Loretta Laurenitis
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

After a brief discussion a motion was made/seconded (Stewart/Monahan) to approve the Minutes of May 7, 2012 as written with minor changes.

Election of New Officers

Chair Laurenitis nominated Mr. Stewart for the position of Chairman. Mr. Stewart responded by noting “the senior executive with more legislative experience by far is Peter (Leishman).” Mr. Leishman countered “I have only been a full member for a month – I feel I should be on longer than that!” After a brief debate it should be noted that no one felt comfortable accepting the nomination for Chairman. Mr. Sobe and Mr. Leishman felt they were too new, Mr. Stewart noted he did not feel comfortable and current Chair Laurenitis was clear she did not wish to serve another year. Ms. Monahan volunteered to be Vice Chairman if Mr. Stewart would accept the nomination for Chairman. Mr. Stewart remained reluctant.

As a possible solution Mr. Stewart suggested a rotating Chairmanship with Chair Laurenitis replying "I nominated you." Mr. Stewart replied "I am not running." Mr. Leishman interjected "Jim has a great grasp of what is going on, and Sharon will be Vice Chairman. You will be fine, we will all help you." "I don't think so" replied Mr. Stewart.

ZBA Alternate Appointment

Chair Laurenitis told the members she had been approached by an individual interested in becoming an alternate for the Board. "That person is Tom Weeks" she said. The members discussed several factors; the most obvious being that Mr. Weeks is the former Code Enforcement Officer for the town and in his retirement assists with inspections for the Fire Department. A member asked Mr. Carrara "how do you feel about that?" Mr. Carrara replied "no problem."

It was also noted Mr. Weeks is an active Planning Board member. Ms. Ogilvie had noted there was no conflict of interest being a member of both Boards. Several of the members saw an advantage to having a member serving on both Boards. The members then briefly discussed Mr. Weeks' expertise and dedicated service to the town. Mr. Leishman noted "with no disrespect to Mr. Weeks, I believe whoever we appoint as an alternate needs to have a separation, an independence." Ms. Monahan agreed adding "Tom would know the history of most things in town." Mr. Leishman added "I just feel having the senior (zoning administrator) guy coming in may put Dario on the spot, it would make me feel uncomfortable. That is how I would feel if I were sitting in his spot." Mr. Stewart interjected "maybe I agree and maybe not" adding "the code enforcement job needs the allowance of flexibility. Some things are black and white and other things have room for interpretation." He added "Dario, I believe is much different than Tom was. I think what Peter said about Tom's presence not allowing Dario to perform his job the way he should (might) have an impact."

Chair Laurenitis replied "I disagree, I think just the opposite and that Dario will make his own decision no matter who is on the Board."

A motion was made/second (Laurenitis/Lieshman) to appoint Mr. Weeks an alternate to the Zoning Board of Adjustment. Chair Laurenitis was for the motion with Ms. Monahan, Mr. Leishman, Mr. Stewart and Mr. Sobe opposed.

Mr. Leishman reiterated "we have no problem with Tom personally" with Mr. Stewart adding "it is just too close." Another member noted the fact Mr. Weeks could run for the position next year "and would probably win."

Ms. Monahan asked about the status of the gentleman who had run in the election in May (Kenneth Clark) and the members briefly discussed their option to re-appoint alternate Joanna Eldredge-Morrissey.

Mr. Stewart suggested the Board could do a better job at soliciting (potential) new members. He promised the other members he would think of one person he thought would be a good member

and speak to them about it. He encouraged the other members to do the same and be ready to report back at the next meeting.

A motion was made/seconded (Leishman/Laurenitis) to appoint Mr. Stewart Chairman and Ms. Monahan Vice Chairman of the ZBA with Chair Laurenitis, Mr. Sobe, Mr. Leishman and Ms. Monahan in favor. Mr. Stewart replied "I am not interested in being the Chair."

The meeting adjourned at 9:10 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant

Approved as written July 2, 2012