

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

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

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. “Good evening and welcome” he said adding “this is the July stated ZBA meeting. I am Jim Stewart and I am the Chair.” Chair Stewart went on to introduce the members and staff.

Chair Stewart told the members they had two cases scheduled for the evening 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.

Case No. 1205 The Temple Mountain Buddhist Meditation Center requests a Variance and Special Exception. The special exception is requested to allow the use of a Religious Institution or Facility, as regulated by the zoning ordinance in Article II, Section 245-8 B (4); the variance is requested to construct a temple and parking lot, with appurtenant grading and storm water management within the fifty (50) foot Wetland Protection Overlay Zone, as regulated by the zoning ordinance in Article III, Section 245-15. The property is located at 729 Wilton Road, Parcel No. R001-014-000, in the Rural District.

Looking up Chair Stewart asked “are there any corrections or comments regarding the posting?” Mr. Sobe interjected “is this a religious institution? Is it for meditation?” Chair Stewart suggested they hear the applicant’s presentation before asking questions. Mr. Leishman recused himself for the hearing and went to sit in the audience.

Dawn Tuomala of Monadnock Survey introduced herself as well as Attorney Tom Quinn, Architect Len Pagano and Friends Jim Hassinger and Christine Mann. “We

are the team for the Buddhist Temple” she said adding “and I will begin the presentation tonight.”

Ms. Tuomala distributed a handout depicting the existing conditions of the Temple parcel. She noted Temple Mountain to the east with Pack Monadnock across the street. She pointed out the 3-bedroom house (which received a Special Exception for the Temple), the garage and gravel area to the north of it as well as the entrance and circular roundabout that heads toward the house. Ms. Tuomala then showed photographs of the Bell Tower, patio and back of the garage noting “we would like to take that down and put up a Temple.”

Ms. Tuomala went on to point out the topography of the site, the wetlands and a drainage ditch at the back of the garage leading down to a pond. She pointed out the proposed 40 by 80 foot structure and the walkway that surrounded it. She also noted the encroachment to the drainage ditch in the handicapped parking area which lies in the town’s Wetland Protection Overlay Zone.

Ms. Tuomala then reviewed the changes in the plan that had been made after meeting with the Conservation Commission. “They really wanted the building pushed back further to preserve the 50-foot buffer” she said. She noted the changes of re-siting the building so that the foundation is located on the Wetland Overlay boundary with less encroachment and repositioning both handicapped and regular parking spots out of the Overlay Zone.

She went on to point out the current septic system as well as the location for the new shared (house/Temple) system. She reviewed the plan to create a raingarden (and perhaps two) to serpentine the storm water though “so that it will be treated before it is released to the wetlands.” Ms. Monahan asked about the parking noting “I don’t see any grading.” Ms. Tuomala replied that while the initial plan was to grade at 4% of the slope she had not yet incorporated that into the amended plan. “Engineering costs thousands of dollars, our first mission is to get the Special Exception and Variance” she said. When asked if a retaining wall would be necessary Ms. Tuomala replied “no, we shouldn’t need one. There will be cutting and filling but that will work.”

Chair Stewart noted the Buddhists had received permission in 2012 to be a Temple and asked about the activity that has gone there since. He noted “you are now

asking for something five times the size of what you have” and asked “can you tell us what the necessity is? Are you having to turn people away?” Attorney Tom Quinn replied “simply put it has been very successful.” He noted the 3- bedroom house was being used as the Temple “but the Temple has grown” he said. He noted the Sunday services had expanded to approximately 75 attendees and that the monks housed a retreat for up to approximately 20 attendees a few times a year. Christine Mann introduced the senior Buddhist monk living at the Temple. “He is a United States citizen and has been here quite a while and we are privileged to have him in our community” she said. Ms. Mann went on to briefly describe a large Temple following from the Nashua and Boston areas and concluded by noting “no one is ever turned away.”

Loretta Lauenitis noted her concern about parking. She stated she had come over Temple Mountain one day and noticed cars parked all along the one-lane driveway to the Temple. “That drive is not wide enough to accommodate two-way traffic” she said. “I agree” said Mr. Quinn with Ms. Tuomala interjecting “I have some answers” adding “you may have gone by on one of those special events days but we do have some plans for the driveway.”

When asked, Code Enforcement Officer Dario Carrara noted the parking requirement was one parking space for every four seats. Ms. Tuomala interjected “we are proposing 75 people so 75 seats.” Mr. Carrara noted he had spoken with NH DOT “and they are going to require two lanes for the driveway access.” Ms. Laurenitis asked “just the entrance or the whole driveway?” Mr. Carrara replied “they are more concerned with the *access* off (Route) 101 - the line of sight and cuing to go in and out than they are the driveway.” Ms. Tuomala also pointed out an area for overflow parking at the Temple if necessary.

Before going through the Special Exception criteria Mr. Quinn asked for clarification on the criteria in §245 41(D) and §245 8(B). Once clarified Mr. Quinn proceeded with the criteria review of *location, activity type and mix, visual consequences, access* and *process*. Mr. Sobe asked for clarification on what a rain garden was with Mr. Quinn replying “in simple words it is a storm water management system.” Ms. Tuomala interjected “that is exactly what it is.” Mr. Quinn also briefly spoke about pedestrian circulation, having met the parking requirements, signs and lighting.

A member asked if there had been a report from the Fire Chief, which sparked a brief discussion of when in the process that review was a necessity. Mr. Carrara told the Board that report was addressed at Site Plan Review with the Planning Board. Noting life safety issues Chair Stewart said “we can ask the Fire Department to take a look at it.”

The members briefly reviewed the septic system demands, with Chair Stewart also noting light, noise and odors were also considerations and Ms. Laurenitis reiterated her concerns about sufficient off-street parking. She asked about the number of people that attend a special event (up to 100) and the frequency of special events (about two a year). She asked “in addition to the 75?” (mentioned earlier) with Ms. Mann replying “no it would be the same crowd.” Ms. Laurenitis then asked “will there be people permanently in the residence and are there living quarters in the Temple?” Ms. Tuomala replied “yes and yes” adding “it is a 3-bedroom house and according to DES the formula is two people in each bedroom for a total of six.” She noted the Temple would have dormitory type rooms with a small kitchen in the basement. Ms. Mann told the Board “currently there are two full-time monks on staff at the Temple.”

As Mr. Pagano distributed preliminary architectural design sketches to the members for review Chair Stewart noted noise and asked “is there any chanting or bells?” Mr. Quinn replied “no more than any other Christian church in town.” Ms. Mann interjected “they are there to meditate, sometimes they chant and ring the large bell (a gong-type sound) on Sundays. That is all, no music or dancing or anything like that.” Ms. Monahan mentioned the definition of religious institution “and retreats are not a part of it” she said.

As Chair Stewart asked if there were any other questions on the Special Exception criteria before they went onto the Variance criteria Ms. Monahan interjected “I would like to hear from any abutters for the Special Exception first.” Chair Stewart asked if there was anyone in the audience who would like to speak. Jon Hampson stood and introduced himself as the closest abutter (to the west) to the Temple. He told the Board the Temple was his parents’ home. “I am the closest and most potentially affected abutter” he said. He went on to say he had had the opportunity to work with the Temple and then were receptive to working with the abutters in offering adjustments and screening. He noted his wife could not be present “but we are both in favor of this” he said.

Chair Stewart thanked Mr. Hampson and asked “any other questions or comments for the record?” Jim Hassinger stood and introduced himself. He told the Board the Temple was unlike other typical religions in that “there are no church bazaars, holiday walks or hall rentals. It has a very limited use, and they use it for meditation on Sundays and Retreats.” Chris Mann stood and introduced herself noting “I would just like to say I think this property is really nice and is a really nice contribution to our community.”

Before moving on to the Variance criteria Mr. Quinn acknowledged the Board’s desire to consult with the Fire Department and reassured them the driveway could be widened and made safe but reiterated that the engineering work for it would not be done before the approvals. Ms. Laurenitis asked Mr. Carrara about driveway requirements and the status of the current driveway leading to the Temple. “Is it a driveway or a private road?” she asked. Mr. Carrara replied it was a driveway “and the minimum width is 12 feet per our ordinance but it depends on a lot of factors” he said adding “from the people using it, the length and grade of the drive and whether or not there is parking along it.”

“To create a separate record” Mr. Quinn identified the address, Parcel Number and Zoning District of the lot for the review of the Variance criteria. He then reiterated the recommendations from the Conservation Commission and the changes to the plan as a result. He cited *Malachy Glen v. Town of Chichester* in the consideration of the first two criteria having two different requirements that may be met with the same information presented.

He briefly explained their facts supporting the request for a Variance. He reviewed how granting the variance would not be contrary to the public interest as it abuts a 1700 square foot wetland that has a man-made ditch line and not a natural wetland area; how the spirit of the ordinance was observed as the existing garage is already in the buffer area. He noted substantial justice was done as the variance would allow for the expansion of a use that is not offered anywhere else in town and that the values of the surrounding properties would not be diminished and that in fact, would increase the overall value of the property as the Temple would be much more ornate than the existing garage.

Mr. Quinn concluded by noting the literal enforcement of the provisions of the ordinance would result in an unnecessary hardship and that the proposed use is a reasonable one as the variance would allow the building to be placed on the lot

where it is best suited to be and allow for the placement on the flattest section of the lot with the associated parking nearby.

Ms. Monahan noted she felt there was less impact if the parking and Temple area were switched (placing the parking on the large flat area and tucking the Temple into the slope) and asked for clarification on why the building was situated where it was. Ms. Tuomala explained the importance of the visual of the Temple as one drives in. Chair Stewart asked if there were any religious restrictions that would influence where the building was located or which direction it faced. After consulting with one of the resident Buddhist monks, Ms. Mann replied “no.” Mr. Quinn concluded by noting “this is a permitted use by Special Exception in the zone. It is a natural expansion, they need a larger building and have a reasonable plan that can implemented without negative impact on the town.”

Ms. Laurenitis asked if there was any special significance for *not* moving the Bell Tower with Ms. Tuomala projecting a picture of the Tower noting “it is a design feature and it is supposed to be located in the front of the Temple for both aesthetic and spiritual reasons” adding “and it would not be easy to move.”

After a brief discussion on the merits of a site visit the Board agreed one was in order and set Saturday, July 12, 2014 at 9:00 a.m. for the visit. Chair Stewart then suggested a continuation of the meeting to Wednesday, July 16, 2014 at 7:00 p.m. for additional discussion, input, deliberation and decision. A motion was made/seconded (Stewart/Laurenitis) to continue the public hearing on Case No. 1205 for a site visit and continued public hearing with all in favor.

Case No. 1206 Katrina and Steve Lewers request a Variance to allow a shed to be built with a thirty-eight (38) foot front setback, as regulated by the zoning ordinance in Article II, Section 245-8 D (2). The property is located at 101 Middle Hancock Road, Parcel No. R008-030-000 in the Rural District.

As he looked up Chair Stewart noted “the same rules apply, please go ahead with your presentation.” Katrina Lewers introduced herself, her husband Steve and architect Jay Purcell. She briefly described their purchase of an old summer cottage on Middle Hancock Road about 10 years ago. She noted that their goal was to fix it up but they were forced to tear it down and build a new house. “Our goal was to

have people say *oh, they fixed up the house*, not *oh, they tore down the house and put up something that doesn't belong.*"

Mrs. Lewers explained how they had applied for and were granted a Variance to site the new house where the old house had been "to be more in keeping with the original house." She noted they wanted to build a garden shed to house lawn and snow equipment that would be in line with the house. She noted their purchase of a hoop-shed that they currently used was tucked back into the tree line near the road and stone wall (approximately 10 feet from the setback). She went on to note that granting the Variance would allow them to keep the shed in the line of the house and not have it sited "right out in the middle of the field we tried so hard to preserve ten years ago." Mrs. Lewers concluded by noting if they were adding on to their house they would not be required to apply for a Variance "but there is no way to attach it to our house, no way" she said adding "so we would like to request a Variance to have the outbuilding at the same 38-foot setback as the house." She showed the Board several pictures of the house, the meadow and the hoop-shed structure currently housing their garden equipment.

Jay Purcell introduced himself and briefly reviewed the proposed shed and maintaining the open field. He noted the general purpose of the ordinance and the conditions of how the new house was sited "make it reasonable to have the shed in the same setback." He reminded the members that if the shed were attached to the house it could be attached by right and that those same consideration should "kick-in" for a shed not attached. Mr. Purcell noted a statement in the last case seemed true to form here as well and stated "any loss to the individual (without a gain to the public) is an injustice."

Mrs. Lewers concluded that they had contacted each abutter with none expressing any concern about the setback. Mr. Leishman asked how close the hoop-shed was to the road with Mrs. Lewers replying "ten feet." Ms. Laurentis complimented the Lewers on their home "you have done an incredible job with the house" she said.

A motion was made/seconded (Leishman/Stewart) to move to deliberation

Deliberation

Chair Stewart read the deliberative statement and began deliberation with a straw poll. "I will go first" he said "because I am the Chair." He went to note "I have no problem, Sharon?" Ms. Monahan replied "I like what you have done but I don't

see the hardship of the site. I can't see where it meets the criteria." She went on to say "you would be moving it an additional 12 feet where it would not be blocking any views. I don't see the hardship, sorry." Mr. LaRoche followed by noting "I have no problem" with Mr. Sobe interjecting "I am for it." Mr. Leishman interjected "I second David's comment."

A motion was made/seconded (Leishman/Sobe) to approve the request for a Variance with all in favor. Once the Decision was crafted Chair Stewart read it aloud and with the motion made, all but Ms. Monahan were in favor of granting the Variance.

Minutes:

Continued to July 16, 2014

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant

**ZONING BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Case Number 1207

July 7, 2014

You are hereby notified that the request of Katrina and Steve Lewers, for a **Variance** to Article II, Section 245-8 D (2) of the Zoning Ordinance, to reduce the front building setback to thirty-eight (38) feet to build a garden shed, on property located at 101 Middle Hancock Road, parcel number R008-030-000, in the Rural 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:

An earlier variance was granted for the primary structure to have a front building setback of thirty-eight feet; the proposed garden shed is meeting the same setback. The proposed shed is consistent with the setback of the primary residence and abutting properties.

2. The spirit of the ordinance is observed because:
A wooded buffer is maintained and preserves the rural nature and character of the property.
3. Substantial justice is done because:
The proposed shed is in keeping with the existing primary residential structure.
4. The values of surrounding properties are not diminished because:
The front building setback is consistent with abutting properties and is well screened from the road by the tree line.
5. Unnecessary hardship
Special conditions of the property include:
 1. An existing driveway and parking area in the location of the proposed shed.
 2. The primary residence front building setback is already non-conforming.
 3. The siting of the proposed shed will help to maintain open space and a pastoral view.
 - 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:
 - i. There **IS NOT** a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:
There is no gain to the public by strictly enforcing the 50 foot front building setback.
 - ii. The proposed use **IS** a reasonable one because of the special conditions of the property. The proposed structure will not alter the characteristics of the neighborhood.

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

1. The structure will be in substantial compliance with the plans submitted.

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.