

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, August 3, 2015 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

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

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” he said “this is the August stated meeting of the Zoning Board of Adjustment. I am Jim Stewart and I am the Chair.” Chair Stewart went on to introduce the members and staff and read the Rules of Procedure. He then read the first case.

Case No. 1218 The Roman Catholic Church of Manchester (Divine Mercy Church) is requesting a Variance to reduce the side building setback to zero feet for a garage, as regulated by Chapter 245, Article II, Section 7C (3) of the zoning ordinance. The property is located at 18 Vine Street, Parcel No. U017-099-000 in the General Residence District.

When done, Chair Stewart looked up and asked “are there any corrections or changes to this notice?” With no response he asked the applicant to begin their presentation. At this time Mr. LaRoche interjected that while he did not feel he had any conflict of interest he wanted the members to know he was involved in another project with the church. “It has nothing to do with this” he said. The members agreed there was no conflict, Mr. LaRoche remained on the case and Chair Stewart appointed Ms. Laurenitis to sit.

Paul Harrington stood and introduced himself as the Director Secretary for Real Estate for the Catholic Diocese of Manchester. “I represent the Bishop in real estate and property management” he said adding “and I would like to hand this over to Dennis McKenney.” Mr. McKenney stood and introduced himself as well. “I am the land surveyor for the church and I am also a parishioner.”

Mr. McKenney briefly reviewed the request to reduce the side setback for a garage located on the property. “The plan is to subdivide the rectory and garage to create a new lot to sell for residential use.” He went on to point out the proposed lot with

178 feet of frontage on Vine street “it is just about 33,000 square feet or 8/10 of an acre so it is conforming in that respect” he said. He went on to say the rectory currently encroached the setback and with the proposal “so would the garage.” He pointed out a grave marker monument on the north side of the garage that was approximately four feet from the building noting “that is as close as we get.” He also pointed out the steep slope to the east, the septic system area and several above and underground drainage structures. “These factors inherent in the land make the relocation of any outbuilding problematic” he said.

Mr. McKenney then reviewed the five criteria for a Variance. He reviewed the negligible impact on the neighborhood and the abutters, how the use was permitted, consistent and comparable with the former rectory as a dwelling. Mr. McKenney also reiterated the topographical restraints (steep slope and presence of a cemetery being unique to the site) and the limitation as to where any building could be located elsewhere. He asked for a relaxed interpretation of the ordinance as he introduced a graphic that showed no less than six other properties in the neighborhood that had boundary lines going through walkways and even houses. “It is not all that unusual” he said adding “in fact it is quite common in the area.”

Chair Stewart asked about parking with Mr. McKenney pointing out the parking lot for parishioners and noting “parking at the rectory is limited to the priest and staff.” Ms. Laurenitis asked “I assume the church will maintain the cemetery?” Mr. McKenney replied “yes, the church will own it in perpetuity and be responsible for its maintenance.” Ms. Monahan asked “does the proposed lot meet all Peterborough’s boundary division regulations?” Mr. McKenney replied “it is my understanding that it will in terms of frontage and area.” She then asked if he had applied for a state subdivision permit with Mr. McKenney replying “no, it is not needed, it has an existing septic system onsite and the church is served by town water.” Mr. Leishman piped in with “Sharon got me thinking” and asked “what about town sewer?” Mr. McKenney said “no” as he pointed out the nearest manhole on Vine Street. Ms. Laurenitis asked if the septic system would serve both properties with Mr. McKenney replying “no.” Monsignor Belanger interjected “another point of information, the church is tied to the town, the house is on the septic system.”

With no other questions from the Board Chair Stewart asked if there was anyone in the audience who would like to speak for or against or just have a comment about the request.

Pat Lange introduced herself as an abutter and said “I support it and I am a neighbor.” Judith Garabrant introduced herself as a Vine Street resident and said “I am in favor and I would like that I think it would be a wonderful use to be sold as a residence.” Elena Torrey introduced herself as the owner of 20 Vine Street and noted the subdivision would not affect or interfere with the sewer system in the neighborhood.

Chair Stewart asked the members “do we have enough?” Ms. Monahan noted her concern with the notice stating a *zero* setback. “Can’t we change it to one or two feet? she asked. Mr. McKenney pointed out the cemetery marker once again and said “the marker is the boundary line, it is about four feet away.” Ms. Monahan replied “the notice says up to zero feet” and a brief discussion followed about the setback for the boundary line. Looking to Ms. Monahan Ms. Laurenitis asked “would you be happy with one foot? Two feet?” Mr. McKenney suggested they split the difference and call it two feet. Monsignor Belanger noted for the record “the plot is owned by Wilfred Brassard and he is fully aware of our request, just a point of information.”

Ms. Monahan also brought up the question of applying for subdivision approval with the state. Mr. McKenney replied he did not see the necessity and a brief discussion followed. Ms. Monahan noted if they did not have a state-approved septic plan on file “you have to go to the state.” She further explained “a new lot is being created and it is under 5 acres.” Mr. Harrington interjected “I understand, you are right, if you make this a condition of approval we do not have a problem with that.”

Monsignor Belanger interjected that the church and the potential new owner for the rectory (they do have a P&S Agreement) have had lengthy discussions about the septic system and “I have the impression they are looking to hook into town sewer.”

A motion was made/seconded (Leishman/Monahan) to close the case and move to deliberation with all in favor.

Deliberation

Chair Stewart read the deliberative statement and suggested a straw poll. “I will go first” he said adding “I don’t see an issue with it. It meets the criteria, I have no problem with it.” Ms. Monahan said she had noted her concerns adding “I am in favor of it, they have proved hardship.” Mr. LaRoche said “I am in favor of it.”

Noting his agreement with the other members Mr. Leishman said “I am in favor.” Lastly Chair Stewart asked “Loretta?” with Ms. Laurenitis replying “I am in favor of it.”

Before they got to their decision Mr. Laurenitis asked about the actual posting stating zero setback. Chair Stewart replied “it was listed as zero, we changed it is to two feet. I think we have that right.”

A motion was made/seconded (Stewart/Laurenitis) to approve a Variance to reduce the side building setback to two feet for a garage, as regulated by Chapter 245, Article II, Section 7C (3) of the zoning ordinance. The property is located at 18 Vine Street, Parcel No. U017-099-000 in the General Residence District with all in favor.

NOTICE OF DECISION

Case Number 1218

August 3, 2015

You are hereby notified that the request of The Roman Catholic Bishop of Manchester to reduce the side building setback to 2 feet for a garage, on property located at 18 Vine Street, parcel number U017-099-000, in the General Residence District, is hereby **GRANTED**.

In **granting** the variances, the Board finds that:

1. The variance **WILL NOT** be contrary to the public interest because:
The property is currently being used as residence, therefore there will be no change or impact to the neighborhood.
2. The spirit of the ordinance **IS** observed because:
The proposed use is a permitted use and meets the zoning regulations in all other respects.
3. Substantial justice **IS** done because:
The garage already exists and is located in the most logical place on the property. The use is consistent with the Town’s long term planning goals for in-fill development in the downtown area.
4. The values of surrounding properties **ARE NOT** diminished because:
The proposed subdivision creates lots that are consistent with surrounding properties in the neighborhood in both lot size and setbacks.

5. Unnecessary hardship

The existing special conditions of the property are:

- Steep topography.
 - Proximity of adjacent cemetery.
 - Pre-existing underground drainage.
- 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.
 - ii. The proposed use **IS** a reasonable one because of the special conditions of the properties and the needs of the community.

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

1. The setback be reduced to no less than 2 feet from the nearest monument.
2. The applicant will seek State subdivision approval for the proposed residential lot.
3. Substantial compliance to the plan submitted, dated August 3, 2015.

Signed,
James Stewart, Chair

Chair Stewart read the next case.

Case No. 1219 Town of Peterborough and Northern New England Ops, LLC is requesting a Variance to allow the creation of a lot with less than 20,000 square feet in area in the General Residence District, as regulated by Chapter 245, Article II, Section 7C of the zoning ordinance. The property is located at 18 Concord Street, Parcel No. U017-142-000 in the General Residence District.

He again asked if there were any changes or corrections to the notice. With none he asked the applicant to present their case.

Peterborough's Department of Public Works, Rodney Bartlett introduced himself. He began with a review of the three Variances requested and granted for the purpose of creating additional parking spaces for the spaces lost when enlarging the Library building. He went on to note the minimum lot size in the General Residence District

was 20,000 square feet “and since the lot size is 14,394 square feet it fails to meet that requirement.”

Mr. Bartlett then reviewed the five criteria for a Variance. He noted the parking spaces supported the growth of the Library of the Future adding “and we will see increased stormwater treatment and green areas.” He went on to note Fairpoint Communications would continue to use the remaining lot in the same manner with the same use, the lot would only be visible to the Blodgett, Makechnie and Lawrence Law Office “with no change in the view from that property and not visible from the street.” Mr. Bartlett also pointed out the gain for the Town. “The inability of the Town to obtain this property would be an injustice to the whole community as the expansion of the Library would be greatly limited” he said. He reviewed the physical restraints of the current lot (Concord Street, Main Street and the Contoocook River). “The only possible expansion for parking is the relatively under-used rear portion of the Fairpoint property” he said.

With no questions from the members Chair Stewart open the hearing to the public asking for anyone who wished to speak for or against or just have a comment about the request.

Ron McIntire introduced himself as the Chairman of the 1833 Society. “I encourage you to approve this request” he said adding “as Rodney stated we are very interested in acquiring this parcel of land and giving it to the Town. Acquisition of the land is essential for the Library’s growth.”

Ms. Monahan asked “is Norman (Makechnie) the only abutter affected?” Mr. Makechnie was present and replied “the Christian Science Church is the actual abutter” and pointed out the property line for her on a graphic.

Chair Stewart asked “enough information?” Ms. Laurenitis replied “I think we discussed this considerably with the other three Variances, so yes, enough.”

A motion was made/seconded (Stewart/Leishman) to close the case and move to deliberation with all in favor.

Deliberation

Chair Stewart read the deliberative statement and suggested a straw poll. “I see no reason not to approve this. Sharon?” Ms. Monahan replied “yes.” As did Mr. Leishman, Mr. LaRoche and Ms. Laurenitis. Chair Stewart suggested the criteria

prepared by Mr. Bartlett be emailed to Mr. Carrara and used word for word for the Decision.

A motion was made/seconded (Stewart/Laurenitis) to approve a Variance to allow the creation of a lot with less than 20,000 square feet in area in the General Residence District, as regulated by Chapter 245, Article II, Section 7C of the zoning ordinance. The property is located at 18 Concord Street, Parcel No. U017-142-000 in the General Residence District with all in favor.

NOTICE OF DECISION

Case Number 1219

August 3, 2015

You are hereby notified that the request of Northern NE Telephone Ops, LLC (Fairpoint) and the Town of Peterborough, NH, for a variance to Chapter 245, Article II, Section 7 C of the Zoning Ordinance, to create a lot with less than 20,000 square feet in the General Residence District, on property located at 18 Concord Street, parcel number U017-142-000, in the General Residence District, are hereby **GRANTED**.

In **granting** the variances, the Board finds that:

6. The variances **WILL NOT** be contrary to the public interest because:
The variance affirmatively serves the public interest as it makes available additional parking spaces for the library, which in turn makes possible expansion of the library building

Fairpoint will use the remaining space in the same manner as the current use. The smaller lot will accommodate all of its needs with the exception of a storage facility. The Board has previously granted a variance for a storage building.

7. The spirit of the ordinance **IS** observed because:
The land use will have no impact upon the area as it will remain the same as the current use. The only neighboring property from which it will be visible is the Blodgett, Makechnie & Lawrence law office. There will be no change in the view from that property. It will not be visible from a public street.
8. Substantial justice **IS** done because:
This requirement has been interpreted to mean that any loss to the Town and to FairPoint by denying the application that is not outweighed by a gain to the general public is an injustice. There is no gain to the public by denying the variance as nothing will change. The inability of the Town to obtain this property would be an injustice to the whole community as the proposed expansion of the library facility would be greatly limited.
9. The values of surrounding properties **ARE NOT** diminished because:

The only abutter (Christian Science Church) to the property does not have a direct view of the site from its building. The site is visible from the office of Blodgett, Makechnie & Lawrence. The owner identifies no diminution in valuation that would occur to the property.

10. Literal enforcement of the provisions of the ordinances would result in an unnecessary hardship.

(a)

(i) Special Conditions:

The only land available to the library, given its location, bounded by the Contoocook River, Main Street, Concord Street, and the FairPoint property, for possible expansion of parking facilities is the relatively underused rear portion of the FairPoint property. The remaining FairPoint land is needed to maintain telephone operations. The land is adequate for such purpose.

(ii) As there is no change in the use of the property and the total building area will be substantially reduced by the installation of a storage unit (250 square feet) in place of the large garage (3,100 square feet) to be demolished, the general purposes of the zoning ordinance are advanced.

Review of the Purpose: The enacting Clause of the Zoning Ordinance (Section 245-1) reveals purposes for which the minimum lot size requirements were adopted including the following:

Lessen damages from fire and natural disasters, provide adequate air and light, and prevent overcrowding of land, preserve value of land and buildings.

The application of the minimum lot size requirements to this project and this property does not bear a fair and substantial relation to the above-cited and other public purposes enumerated in Section 245-1.

Signed,
James Stewart, Chair

Other Business:

“I have two items” said Chair Stewart. “The first is that I have contacted Town Council for direction on how to act on Mr. Sobe’s status.” He noted RSA 673:13, II provides the Board of Selectmen to remove an elected committee member or alternate member on written finding of inefficiency, neglect of duty or malfeasance in office. Chair Stewart noted “this is a case of unintentional neglect due to

personal circumstances.” After a brief discussion a motion was made/seconded (Stewart/Leishman) to reach out to the Board of Selectmen to start this process so that they could appoint a new alternate to serve out Mr. Sobe’s term (May, 2017) with all in favor.

Chair Stewart continued “the second thing is I got an email from Peter Throop (Director of Community Development and liaison for the Planning Board) asking us to be a part of a discussion on RSA 245:12 *Shoreland Conservation Zone*. He read the email which noted the roles each Board plays in administering the ordinance as well as the importance of both bodies having an opportunity to contribute to and be a part of the amendment process. He also noted the Town Attorney had been invited to attend to assist with any questions or concerns about the legal and practical implications of alternative approaches for addressing the town’s regulatory goals.

As Chair Stewart finished reading Mr. Leishman interjected “sounds like the Planning Board has something up their sleeve.” Chair Stewart asked “they just voted on the Shoreland Conservation Zone about 5 years ago and they want to change it already?” He went on to say “I personally do not want to attend, I have no time, no desire.” He encouraged those who wished to attend to do so and contribute individually as citizens but cautioned the members on contributing as a Board. He added “the Planning Board has the authority to propose changes, we do not.”

Ms. Monahan suggested one member attend and report back to the group. Chair Stewart agreed that was a good idea adding “I have to say that my pet peeve is Conditional Use Permits, I just hate them” he said. Ms. Monahan interjected “well I am certainly willing to be a representative for the ZBA and then come back to the Board for discussion” adding “it allows the power of the Board to have an impact.” The members agreed to have Ms. Monahan attend the August 17th workshop. Chair Stewart noted he would request any information on changes the Planning Board may have be sent to the members. “I think they *do* have something up their sleeve” he said. Mr. Carrara replied “I don’t think they want to change any of the ordinance, I think they just want to make it a Conditional Use Permit process.” “Oh, Bingo, I was right” replied Chair Stewart. Mr. Carrara briefly reminded the members of the goal to convert both the wetland and shoreland ordinances to Conditional Use Permits. “This has been in the works for years now. It is not a new thing” he said adding “and they are just genuinely interested in your input.” Remaining unconvinced Chair Stewart replied “we have all been there before - we

give our input and that is the end of it.” Mr. Carrara said “I only ask you give them a chance.”

At this time a potential ZBA alternate came to the front row to address the Board. It was noted that Ms. Monahan had suggested she attend a meeting to see if being an alternate may be something she was interested in. A brief discussion with Margaret “Peggy” Leedberg followed. Ms. Leedberg has been in town for about 3½ years and told the members she had found the public hearing very interesting. “I have always had an interest in how property gets used and how it effects people” she said. Chair Stewart advised her of the meeting schedule and training opportunities (both in-house and through agencies like the Office of Energy and Planning as well as their handbook and the New Hampshire Planning and Land Use Ordinance book).

After a brief discussion on procedure the members agreed to vote on the appointment of Ms. Leedberg as an Alternate for the Board. A motion was made/seconded (Monahan/Leishman) to appoint Margaret “Peggy” Leedberg as an Alternate member of the Zoning Board of Adjustment with all in favor.

Minutes:

A motion was made/seconded (Stewart/Laurenitis) to approve the Minutes of June 6, 2015 as written with all in favor.

The meeting adjourned at 9:20 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant