

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Wednesday, September 3, 2014 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Peter LaRoche, Peter Leishman, Bob Lambert 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. “This is the stated September meeting of the ZBA meeting. I am Jim Stewart and I am the Chair.” Chair Stewart went on to introduce the members and staff.

Chair Stewart 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. He then read the case.

Case No. 1207 Brenda Berry and George Thomson request a modification to the parking plans associated with a granted Special Exception for a physician office accessory to a dwelling, as regulated by the zoning ordinance, Article IV, Section 245-24 D, Professional Uses. The property is located at 3 River Street, Parcel No. U017-057-000, in the General Residence District.

Looking up Chair Stewart asked “are there any corrections or revisions to this notice?” With none he then asked “does anyone need to recuse themselves?” Mr. Lambert replied he was recusing himself in this case as the applicant was his physician. He got up and left the table to sit in the audience.

Brenda Berry introduced herself as the owner of 3 River Street. She noted she bought the house on September 11, 2001 and that she had been ignorant and naïve about the purchase in that she had no idea there was no parking. She told the Board “it *looks* like it is my parking across the street but it is not.” She added that once she moved in she experienced cars traveling way too fast on the street and one

vehicle sideswiping her house. She explained a Special Exception had been granted to Kenneth King on March 6, 2000 to enlarge a parking area that did not meet setback requirements and was in the Conservation Zone on River Street.

Ms. Berry pointed out three lots on River Street (numbers 56, 57 and 58) giving a brief history of the constrained lots and noting "I am afraid it has taken 13 years to have this meeting." Chair Stewart interjected "this in regards to the Special Exception for Dr. Thomson. We are here for parking. That being said, this is a modification of that Special Exception." He went on to say "the parking (which was a condition of approval) did not work out so the Code Officer advised you to either discontinue the use that was granted or apply to this Board to have the approval modified with a new patient parking agreement. That is why we are here today, you need an alternative parking solution."

Chair Stewart then pointed out the two assigned parking spaces for Ms. Berry's residence. Ms. Berry replied "well actually my deed gives me three spaces" adding "and my problem is not just for Dr. Thomson." She noted she rented the house to Dr. Thomson "but I could be renting to a family with teenagers who would need more space. It would be beneficial to me all the way around to have parallel parking in front of my house." Chair Stewart noted the Board had approved Dr. Thomson's request to have his medical practice in the house he rented with a condition of having off-street parking "so we should evaluate your proposal." Ms. Berry projected a graphic showing her street and the area she where she would like to see the parking. "Isn't that the street?" asked Chair Stewart with Ms. Berry replying "some of it is the towns and some of it is mine." Chair Stewart asked "so you are asking us to grant you space on town property?" "Yes" replied Ms. Berry. "OK" replied Chair Stewart who then asked about the hours of operation. Dr. Thomson noted his hours were four days a week (Monday through Thursday) with two days of 9:00 a.m. to 5:00 p.m. and 1:00 p.m. to 5:00 p.m. depending on the day.

Ms. Berry projected a graphic of the street with cars parallel parked and explained how she would have the snow removed in the winter. She stated "this is the plan regardless of who is in the house, this is an excellent plan." Chair Stewart interjected "what about the parking ban in the winter? That is why we are here." Ms. Berry replied the town should try her idea. "Give him a year to try this" she said.

Chair looked to Mr. Carrara and asked "Dario do you have an opinion?" Mr. Carrara replied "well I think you should talk to the Fire and Police Departments as

well as Rodney (Bartlett, Public Works Director). He noted he had contacted all three about the constraints of the one-way street and he had heard back from the Fire Chief. Chief Walker agreed the road was narrow and that if the Doctor wanted to have patients park on the street (since a condition of approval was off-street parking) he would have to come before the ZBA again to have the condition modified. He wrote "at that time I would be happy to speak regarding my concerns around emergency vehicle access." Mr. Carrara noted "if the approval is for parking across the street he cannot allow his patients to park on the street."

Mr. Leishman was first to question whether or not the Board actually had jurisdiction in this case. "The officials of the town may have a problem with allowing any parking on the street" he said adding "and the letter from Marilee Leedham state the good doctor was derelict in paying her."

Ms. Laurenitis asked for clarification on the number of lots involved with Ms. Berry noting "I own two lots" adding "one has the house and the other has the garden." Ms. Laurenitis asked if parking could be developed in the garden space with Ms. Berry replying "it is a sunken garden" Ms. Laurenitis replied "no room?" with Ms. Berry replying "not really." Mr. LaRoche noted his concern over the authority question as well.

With no other questions Chair Stewart opened the hearing to the public. Ellie King introduce herself and said "this would have worked fine, Marilee was willing to give the parking space." She went on tell the Board "he said he needed two spaces and there were two right across the street so there was no problem." Ms. King went on to say "the problem is that he did not keep his word, he needed six spaces not two *and* he did not pay the rent. Imagine how Marilee felt. That was the problem."

Chair Stewart asked Dr. Thomson how many patients he saw in a day. Dr. Thomson replied "one to two patients an hour" adding "and it was only one or two weeks when the overflow happened." Ms. King interjected "no." Dr. Thomson explained the staff member who was scheduling his appointments was sick but that he was under the impression all was well when in fact some control had been lost. "That is not true" said Ms. King. Dr. Thomson told the Board he had sent a check every three months for his rent "but they must not have been received because they were never cashed" adding "I don't know what happened."

Posy Bass introduced herself and asked if this Board was the right place to be having this conversation. She also noted the access for emergency equipment was very questionable. "I wonder if a fire truck could fit through there when a school

bus had a problem” she said. Ms. King noted she did not have a problem with the home-based business “but the parking has been *absolute* chaos for Marilee and chaos for me.” She went on to say “we have signs out but they (patients) park anywhere they can.” She noted they park across the street and in front of her garden access. “It has been mayhem” she said adding “and he has no definition, no one knows where to park, everyone is completely lost.” She concluded by noting he only had two spaces rented from Marilee “and he blew it.”

Ms. Berry described how parking in a parallel fashion in front of the house would calm speeding traffic. She added “the parking is difficult and I am sure there are moments “but it is not as Ellie describes it.” She also reiterated that she had three parking spots that she is not allowed to use.

Ms. Berry suggested marking the parking lanes and sending out an email to the Doctor’s patient list explaining the parking areas. She reviewed how she would take care of the snow removal noting “it will benefit him and give me some parking.”

Chair Stewart interjected “I don’t believe we have the authority to delineate parking lines on a public street.” Mr. Carrara noted Rodney Bartlett (DPW Director) had gotten slightly involved and that he had been up to see the site. He noted that the discussion about whether or not on-street parking spaces could be made was a gray area” and that “currently there are no plans to do so.” Ms. Laurenitis interjected “but we have no authorization to institute on-street parking.” Mr. Carrara replied “right” adding “I imagine the applicant would have to go through the Board of Selectmen and the Department of Public Works, as well as public hearings.”

Chair Stewart asked “so people can park on the street area as long as there is no parking?” Mr. Carrara conceded “with some signage and directional information, yes. Legally you can park on the street on one side or random back and forth as long as there is no public hazard and no snow ban.” Chair Stewart replied “but we are here tonight for off-street parking per her zoning and she is not requesting a Variance.”

Mr. Leishman asked if anyone had talked to Ms. Leedham who was unable to make the meeting. Ms. Berry interjected “yes” adding she had been in contact and Ms. Leedham who now wanted \$12,000.00 a year for parking rental. Chair Stewart asked about using the garden area for a second time with Ms. Berry replying “no, it is a sunken garden.” Chair Stewart then noted the first approval (a Special

Exception) and said “let’s re-examine that in light of what is happening on the street.” He then read from RSA 245-24 Home-Based Businesses, particularly *Professional Uses* where it states that the professional use shall not generate traffic that is inconsistent with or generates significantly more traffic than is occurring on the road leading to the premises, either in quantity or type. Ms. Laurenitis interjected “and not change the character of the surrounding neighborhood.”

Mr. Leishman questioned the Board’s authority over parking on River Street. “Clearly this is out of our jurisdiction” he said” adding “and if it becomes a safety issue Rodney, Ed and Scott (Bartlett, Walker and Guinard) need to get involved. Ms. Laurenitis noted “the off-street parking was a condition of approval. That has gone away, so he no longer meets the criteria.”

Chair Stewart asked Mr. Carrara to explain the parking dilemma. Mr. Carrara noted the parking agreement that had been place at the time of approval was no longer viable. “At that time I contacted Dr. Thomson and he said his patients were parking on the street and asked him if he had to stop seeing patients. Mr. Carrara told the Board that he advised Dr. Thomson that it was reasonable to park on the street for now, allowing time for the Doctor to prepare to return to the ZBA. He said he told Dr. Thomson “if you do that in a timely manner it is not an issue.”

Henry Taves introduced himself and pointed out the narrow width of the street. He told the Board “I am in favor of both sides trying to solve the problem” adding “they both deserve consideration.” He suggested it would be helpful to delineate the parking “and put up some signs, there is no signage at all.” Mr. Taves also noted vehicles on the street that are waiting for the patients to come out of their appointments. “There are some sensible things that can be done and one of them is informing the patients” he said.

Ms. King agreed noting “my main thing is the definition of his office and parking, I have had people walk into my house and into my garden. It is chaos” she said. Ms. King went to the projected graphic and pointed out where the Doctor’s patients should be parking. Chair Stewart interjected “so you don’t want people parking on your property. I am just trying to be as clear as I can.” Ms. King replied “I made it clear in the last meeting. I pay \$5800.00 in taxes, it was clear that no patients were to park on my property” adding “the privacy of my garden is the only privacy that I have.” Ms. Berry interjected “but the deed says I have parking.” Chair Stewart replied “you can say it six different ways but we do not have the authority to do anything on the street.”

When Ms. King pointed out the business was in a residential district Chair Stewart replied it was in a residential property and the “Special Exception Criteria is very important. With a home occupation business a change in the use may be allowed if the criteria is met.” A brief discussion about residential to business uses and what constituted changing the character of the neighborhood followed. Ms. Berry noted “this has been going on for 13 years.” Chair Stewart suggested she approach the town to put in the street parking but reiterated the real problem was going to be snow clearance and removal.

Ms. Berry reiterated back that she would be responsible for the snow plowing and removal. “It behooves me and we would make sure it is removed” she said adding “it will provide a protective buffer and become a traffic calmer.” Referring to the approval of the Special Exception granted Mr. King she said “the Board put me in this position in 1999 so I am asking for some help here.”

Posy Bass introduced herself and told the Board she had watched her neighbor Brenda Berry cheerfully put up with the High Street and Union Street runoff drain into her (Ms. Berry’s) basement. “A lesser person would have been dialing their lawyer in a New York minute” she said.

Ms. Bass went on to say that Ms. Berry’s house was a big investment “and I am happy to see her rent it and make a go of it.” She also noted a “monumental breakdown” with no signage and no communication forthcoming. “It was a complicated winter for everyone” she said. Ms. King noted that Ms. Leedham had been “gung ho” about the parking agreement “but he was not up to par on his response to her.” She noted a portion of damaged fence that she had asked the doctor to repair fence “but he has done nothing to fix it” she said. Dr. Thomson replied he believed the snowplow driver had damaged the fence “but I am happy to repair it” adding he had contacted a carpenter to assess the damage. Dr. Thomson also told the Board he may have been late with his payments “but we have discussed it” he said.

With no additional comments or questions a motion was made/seconded (Stewart/LaRoche) to close the hearing and go into deliberative session with all in favor. Chair Stewart appointed Alternate Loretta Laurenitis to sit.

Deliberation:

Chair Stewart read the Rules of Procedure for deliberation (the Board was moving into a deliberative session and that no additional information or testimony would

be heard, but the Board reserved the right to ask for additional information at their discretion if necessary).

Chair Stewart then noted “we only have four members” and said he just realized that while there was a quorum it was not a full Board and he had not offered the applicant a choice to be heard *without* a full Board or continue to a date and time certain *with* a full Board.

A brief discussion about the consequences of the outcome followed with Chair Stewart describing the process of appeal, decision by the Board whether or not to re-hear and automatic referral to Superior Court should the Board deny the applicant’s request.

Ms. Berry interjected “it sounds like I should be going to the Board of Selectmen for what I am asking.” Chair Stewart agreed and reiterated “this is about secure parking and in this case I believe you are asking us to grant something we do not have the authority to grant.” Chair Stewart then suggested Ms. Berry begin by speaking with the Public Works Director, Rodney Bartlett. Ms. Berry replied “I spoke to Mr. Bartlett” adding “his problem is snow removal.”

Mr. Carrara took a moment to explain what he saw to be two distinctly different points of view on parking. He first talked about parking on the street. “We can park on the street without designated parking spaces outside the snow parking ban of November first to April first, when no parking at all is allowed” he said adding “people may not like it but it is allowed.” Mr. Carrara then noted “once the ban is in effect there is no guarantee of parking, and that is one of the reasons why off-street parking is a requirement in the zoning regulations for a Special Exception.” He looked around and said “there is a big difference here and it is important that it is clear and you understand it.”

Mr. Leishman interjected “I move to table this application so that the applicant has time to meet with the appropriate town officials.” Chair Stewart replied “I see what you are trying to do and I appreciate it” adding “the Rules of Procedure state that in the event there are not enough full members to make a full Board, the applicant will be given the option of continuing the hearing until such time as a full Board can be present.” He looked up and told the members he should have offered at the beginning of the meeting. He looked to Ms. Berry and said “I can ask you now, would you like to withdraw or continue to a new stated meeting?” adding “the issue at hand is beyond our control.” Mr. Carrara noted that “one way or the other” Dr. Thomson had to come back” adding “it needs to be dealt with before the snow

ban November 1st.” He went on to say “we have been working with Dr. Thomson, I certainly do not want to shut anyone down.”

Ms. Laurenitis summarized “so right now off-street parking is required for the use.” She went on to say “and if he does not have off-street parking he needs to request a Variance.” “Yes” replied Mr. Carrara adding “he got the Special Exception for the home business and he will need a Variance from the condition of off-street parking.” Mr. Leishman interjected “so she should not withdraw” with Mr. Carrara replying “they are in violation of an approval, I suggest they table it to give them time to go town officials to discuss it and then come back with a resolution or an application for a Variance.”

Mr. Leishman agreed continuing the application would allow Ms. Berry to meet with town officials and determine what their parking may be. Chair Stewart suggested they ask town counsel on a course of action (suggesting withdrawal or modification).

A motion was made/seconded (Stewart/Leishman) to continue the application to the next stated Zoning Board meeting with all in favor.

Mr. Lambert re-joined the Board as Chair Stewart read the next case.

Case No. 1208 Ilya Petrov requests a Variance to reduce the front building setback for a garage to sixteen (16) feet, as regulated by the zoning ordinance, Article II, Section 245-7 C 3. The property is located at 24 Granite Street, Parcel No. U018-045-000, in the General Residence District.

He again looked up and asked “are there any corrections or revisions to this notice?” With none he asked Mr. Petrov to proceed.

Mr. Petrov noted he was requesting a Variance to permit a reduction of the setback for a garage to be 16 feet from the road. (The setback in his zoning district is 30 feet). He told the Board there was an existing concrete slab that he would use and that his hardship was that that was the only flat are to put the structure. “We are surrounded by mountain” he said. He noted any other location would require major excavation “to move the mountain and then build a retaining system.” When asked, Mr. Petrov noted the garage/shed structure would be 16 by 20 feet. Mr. Laurenitis asked if there would be any kind of an apartment in the structure with Mr. Petrov replying “no, just lawn equipment and storage.”

A graphic projected did indeed show Mr. Petrov's house embedded into a steep slope. Ms. Laurenitis noted the front setback of the house was not conforming with Mr. Petrov noting "you are right, we got a Variance to build the house."

Mr. Leishman asked what type of material would be used and asked "will it be a wood frame?" Mr. Petrov replied he would like to have a wood frame but it would depend on what he could afford. Mr. Leishman asked "would you put a tent object there?" Mr. Petrov replied "no, I do not want to do that, I want to maintain the look of the neighborhood." Chair Stewart asked "one story or two?" Mr. Petrov replied "one story." Chair Stewart asked "with a roof?" Mr. Petrov replied "with a roof." Mr. Petrov noted the slab measured 16 by 20 feet but he would not use the entire space.

With no additional questions a motion was made/seconded (Stewart/Leishman) to close the public hearing and go into deliberation with all in favor.

Deliberation

Chair Stewart appointed Mr. Lambert and Ms. Laurenitis. He read the deliberative statement and began deliberation with a straw poll. "I will go first" he said adding "I say yes." Ms. Laurenitis agreed noting "if this isn't an example of needing a Variance I don't know what is." She also noted "he did a good job on the criteria." Mr. Lambert, Mr. Leishman and Mr. LaRoche all agreed.

A motion was made/seconded (Stewart/Leishman) to approve the request for a Variance with all in favor.

Minutes:

A motion was made/seconded (Stewart/Laurenitis) to approve the Minutes of June 2, 2014 with all in favor.

A motion was made/second (Stewart/Laurenitis) to approve the Minutes of July 7, 2014 with all in favor.

A motion was made/seconded (LaRoche/Stewart) to approve the Minutes of July 12, 2014 with all in favor.

A motion was made/seconded (LaRoche/Stewart) to approve the Minutes of July 16, 2014 with all in favor.

ZONING BOARD OF ADJUSTMENT
NOTICE OF DECISION

Case Number 1208

September 3, 2014

You are hereby notified that the request of Ilya Petrov, for a **Variance** to reduce the front building setback for a garage to sixteen (16) feet, as regulated by the zoning ordinance, Article II, Section 245-7 C (3), on property located at 24 Granite Street, parcel number U018-045-000, in the General Residence District, is hereby **GRANTED**.

In reaching this variance decision, the Board finds that:

1. Granting the variance will **NOT** be contrary to the public interest because:

The proposed garage/shed would be built on the existing concrete slab, be consistent with the existing footprint and not alter the character of the neighborhood.

2. The spirit of the ordinance **IS** observed because:

The proposed garage will conform to the footprint of the existing concrete slab.

3. Substantial justice **IS** done because:

There are several limitations to the lot and the existing house is also nonconforming.

4. The values of surrounding properties are **NOT** diminished because:

The proposed garage will increase the value of the existing property as it will be more aesthetically pleasing than a carport or the existing unfinished foundation.

5. The Board finds that there are Special Conditions of the property including: severe sloping/mountainous terrain, oblong shape of the lot, no other buildable area without substantial excavation, non-conforming front set back by existing house that was previously granted a variance, there is an already existing, non-conforming foundation and the adjacent properties in neighborhood are also non-conforming to the front setback.

(a). Literal enforcement of the ordinance would result in an unnecessary hardship because of the special conditions of the property.

- 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:

The lot is located on a hill with severe sloping such that a prior variance had been granted in order to build the primary house.

- ii. The proposed use is a reasonable one because the garage would be built on an already existing concrete slab and would not alter the essential character of the neighborhood.

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

1. Garage to be built will be no taller than 1-1/2 stories, be 16' x 20' in size and to be built on existing foundation no closer to road.

Signed,

James Stewart, Chair