

Zoning Board of Adjustment
Minutes of February 12, 2015
6:30 PM Special Meeting
Board of Selectmen's Room/Municipal Building
15 Sunapee Street/Newport, NH

PRESENT: Ben Nelson, Chairman; Melissa Saccento, Vice Chairman; Jeffrey Kessler, BOS Representative; Elizabeth Cassorla; Scott McCoy, Alternate.

MEMBERS ABSENT: David Lain and Donald Boutin

PRESENT FROM THE COMMUNITY: Mr. J. A. Herbert, Applicant and Mr. David Laurin, Agent.

STAFF PRESENT: Julie M. Magnuson, Planning & Zoning Administrator

CALL TO ORDER & ADMINISTRATION: Chairman Ben Nelson called the meeting to order at 6:30 pm followed by an introduction of the sitting members.

Ms. Magnuson addressed the Board and viewing public and welcomed Mr. Scott McCoy as a newly appointed alternate to the Zoning Board of Adjustment. He was attending the 02.12.15 meeting of the ZBA to sit for Mr. David Lain. She asked that this be duly noted for the record. Chairman Nelson appointed Mr. Scott McCoy to sit for Mr. David Lain.

ADMINISTRATION: Ms. Magnuson addressed the Board and brought their attention to the Notice of Violation (pursuant to NH RSA 676:17-b) in their packets. She stated that the Notice had been delivered and the individual served had taken appropriate actions to correct the violation.

MINUTES: On a motion by Mr. Kessler, seconded by Mrs. Cassorla; *the Board voted to approve the minutes of the October 23, 2014 meeting with the following typographical correction: page two, paragraph four, line five. Devises should be devices. The motion passed 5-0-0.*

Chairman Nelson recused himself for the rest of the meeting due to a conflict of interest (his wife is listed as a legal abutter).

Vice Chairman Saccento conducted the rest of the meeting.

New Business:

Case #1021: J.A. Herbert Holdings, LLC (Owner) and David Laurin, Architect (Agent) request a Special Exception as provided for in Article IV, Section 402 (Mixed Use) specifically to allow two principal buildings on a single lot. The property is identified as Map 236 Lot 016 and is located at 1011 John Stark Highway in the Rural Commercial (RC) Zoning District.

Chairman Saccento opened and read Case #1021 into the record.

She then acknowledged Ms. Magnuson and asked for her Administrative Review. Ms. Magnuson addressed the Board and read her Administrative Review into the record. She explained to the Board that the applicant was requesting two special exceptions and two variances for the building lot. She explained the research that went into her reviews and the available and non-existing zoning ordinances in the TOPAZ office. She explained to the Board that each case would be heard separately, but the same site plans and photos provided would be used in all four cases.

Chairman Saccento asked for the agent for Case #1021. Mr. David Laurin (agent) stated his name for the record. Chairman Saccento asked Mr. Laurin to read his application into the record, adding additional information if needed. Mr. Laurin asked for clarification. Chairman Saccento explained. Mr. Laurin read his application into the record. Mr. Laurin used a site plan to help explain the application and the applicant's request.

Chairman Saccento addressed the Board and asked if they had any questions. There were none. Chairman Saccento addressed the agent and stated she had a question on the parking shown on the site plan. She asked if the parking shown was existing, or part of the proposal. Mr. Laurin stated there was existing parking and explained the additional parking proposed. Chairman Saccento then inquired as to where deliveries would be made and how. Mr. Laurin explained. Chairman Saccento thanked Mr. Laurin. She then acknowledged Ms. Magnuson. Ms. Magnuson stated she had sent the Case #1021 application to NHDOT. She had not heard anything adverse concerning the application. Continuing, she stated there were no changes (ingress/egress) proposed in the case. Mr. Laurin concurred that there would be no changes.

Chairman Saccento addressed the public in attendance and asked if they would like to speak to the case. The Chair acknowledged Mr. Ben Nelson. Mr. Nelson spoke in favor of the Special Exception. He stated that currently delivery trucks had to stop on the road (Rte. 103/11) and backed up traffic. This would be an improvement. There being no other public comment, Chairman Saccento addressed Mr. Laurin and asked if there was anything he would like to add. He stated no, and stated for the Board that his client wanted to clean up the 'paper trail' that had existed since 1984.

Chairman Saccento called for a motion to go into Deliberative Session. On a motion by Mr. Kessler, seconded by Mrs. Cassorla; *the Board voted to go into Deliberative Sessions. The motion passed 4-0-0.*

Zoning Board of Adjustment Special Exception

Chairman Saccento instructed the Board on the use of their worksheets. Mr. McCoy asked the Chair for the correct deliberative procedures. She stated that questions should be asked through the Chair. Mr. McCoy addressed the Chair and asked about the present Case #1021 and its correlation with other cases that would be heard at the 02.12.15 meeting. Chairman Saccento deferred to Ms. Magnuson. Mr. McCoy explained his view of the order of the cases to be heard. There was discussion between the Board and Ms. Magnuson concerning the order of the cases to be heard and their purposes. Ms. Magnuson stated that as a Board they could table Case #1021 and hear the cases in a different order. There was a lengthy discussion among the Board and Ms. Magnuson.

Mr. McCoy then gave hypothetical illustrations and asked what they as a Board would do. Chairman Saccento deferred to Ms. Magnuson. Ms. Magnuson stated the advice she would give to the Board. Ms. Magnuson then explained that ZBA decisions were on a case by case situation. There was another lengthy discussion among the Board and Ms. Magnuson.

Ms. Magnuson then stated that the Board should confine their discussion to the Special Exception in Case #1021. Lot size and other elements would be discussed in the subsequent cases.

Chairman Saccento acknowledged community member Mr. Nelson. Mr. Nelson addressed the Board and stated for historical information that the zoning in the area was rural at the time that the business was built. It changed to rural/commercial later. Zoning was there but it was not Rural/Commercial. The store would therefore be a preexisting condition.

Chairman Saccento read the instructions for the Zoning Board worksheet and asked for individual votes on questions A-C.

She then asked for a motion on Standard A. A motion was made by Mr. Kessler, seconded by Ms. Cassorla that the proposed use will not be detrimental to the overall character of the neighborhood by reason of undue variation from the nature of other uses in the vicinity including design, scale, noise and odor; and that Standard A has been met. There was no discussion. Ms. Magnuson interjected with a point of order. Ms. Magnuson stated that in her notes it stated that Rural/Commercial was established in 1987. The building would therefore be grandfathered and be a conforming lot (for one of the consecutive cases). Chairman Saccento thanked Ms. Magnuson. She then called for a vote on the motion. ***The motion was voted on by a roll call vote and passed 4-0-0.***

Chairman Saccento asked for a motion on Standard B. A motion was made by Mrs. Cassorla, seconded by Mr. Kessler that the proposed use will not be injurious, noxious, or offensive or in any way detrimental to the neighborhood; and that Standard B has been met. There was no discussion. ***The motion was voted on by a roll call vote and passed 4-0-0.***

Chairman Saccento asked for a motion on Standard C. A motion was made by Ms. Saccento, seconded by Mrs. Cassorla that the proposed use will not be contrary to the public health, safety and general welfare by reason of undue traffic congestion or hazards that pose a risk to life and property or be unsanitary or create unhealthful waste disposal or unhealthful conditions; that standard C has been met. There was no discussion. ***The motion was voted on by roll call vote and passed 4-0-0.***

Chairman Saccento addressed the Zoning Board members and asked for a motion on Case #1021.

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted to approve the Special Exception for Case #1021(to approve a special exception as provided for under Article IV, Section 402 of the Zoning Ordinance) as presented. The motion passed by a roll call vote 4-0-0.***

Chairman Saccento addressed the applicant and stated the Special Exception had been granted.

Case #1022: J.A. Herbert Holdings, LLC (Owner) and David Laurin, Architect (Agent) request a Special Exception as provided for in Article II, Section 206A.2, specifically to allow permitted uses in B-1, B-2 and I Zones (retail sales, storage and warehouse uses). The property is identified as Map 236 Lot 016 and is located at 1011 John Stark Highway in the Rural Commercial (RC) Zoning District.

Chairman Saccento read Case #1022 into the record.

She then acknowledged Ms. Magnuson and asked for her Administrative Review. Mrs. Magnuson addressed the Board and read her Administrative Review into the record. She explained to the Board that the applicant was requesting an additional use of a warehouse on the property lot. She explained the applicable zoning ordinance to the Board.

Chairman Saccento addressed Mr. Laurin and asked him to present his case. Mr. Laurin read his application into the record. Using a site plan he explained the case to the Board. He inquired whether the Board would like to see the proposed elevation changes to the building. He posted an additional site plan showing the proposed renovations and warehouse. Chairman Saccento asked if there was any additional information. Mr. Laurin stated no.

Chairman Saccento addressed the Board and asked if they had any questions. She acknowledged Mr. McCoy. Mr. McCoy addressed Mr. Laurin and for clarification stated the site plan he was questioning. He then asked Mr. Laurin about the fire lane on the left hand side of the plan. He stated there was tree cover and inquired if they would be keeping it. Mr. Laurin stated they would be keeping as much as they could. Mr. McCoy addressed Mr. Nelson and asked if he was the abutter on that side of the property. Mr. Nelson stated he was. There was a short discussion on the trees. There were no further questions from the Board.

Mrs. Cassorla asked if Case #1022 would be to grant the use of the warehouse space or to clean up paperwork. Mr. Kessler clarified that they were adding the warehouse; it would be space dedicated to storage. There was a short procedural discussion.

Chairman Saccento asked Mr. Nelson if there was anything additional he would like to add. He stated the proposed plans would help alleviate the traffic congestion that occasionally occurs. He did not have an objection to any of the plans.

The Chair asked for a motion to go into Deliberative Session. On a motion by Mrs. Cassorla, seconded by Mr. McCoy; ***the Board voted to go into Deliberative Session. The motion passed 4-0-0.***

Zoning Board of Adjustment Special Exception

Chairman Saccento asked individual Board members to read motions into the record from the Zoning Board worksheet and asked for individual votes on questions A-C.

She then asked for a motion on Standard A. A motion was made by Chairman Saccento, seconded by Mrs. Cassorla that the proposed use will not be detrimental to the overall character of the neighborhood by reason of undue variation from the nature of other uses in the vicinity including design, scale, noise and odor; and that Standard A has been met. There was no discussion. ***The motion was voted on by a roll call vote and passed 4-0-0.***

Chairman Saccento asked for a motion on Standard B. A motion was made by Mrs. Cassorla, seconded by Mr. Kessler that the proposed use will not be injurious, noxious, or offensive or in any way detrimental to the neighborhood; and that Standard B has been met. There was no discussion. ***The motion was voted on by a roll call vote and passed 4-0-0.***

Chairman Saccento called for a motion on Standard C. A motion was made by Mr. McCoy, seconded by Mrs. Cassorla that the proposed use will not be contrary to the public health, safety and general welfare by reason of undue traffic congestion or hazards that pose a risk to life and property or be unsanitary or create unhealthful waste disposal or unhealthful conditions; that standard C has been met. In discussion, Mr. McCoy stated it would improve the situation. ***The motion was voted on by roll call vote and passed 4-0-0.***

Chairman Saccento addressed the Zoning Board and asked for a motion on Case #1022. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board approved the Special Exception on Case #1022 as presented. The motion passed by roll call vote 4-0-0.***

Chairman Saccento addressed the applicant and stated the Special Exception had been approved.

Case #1023: J.A. Herbert Holdings, LLC (Owner) and David Laurin, Architect (Agent) request a Variance to the terms of Article II, Section 206A.4 specifically to permit the expansion of the existing business structure within the 100' front yard setback. The property is identified as Map 236 Lot 016 and is located at 1011 John Stark Highway in the Rural Commercial (RC) Zoning District.

Chairman Saccento read Case #1023 into the record.

She then acknowledged Ms. Magnuson and asked for her Administrative Review. Ms. Magnuson addressed the Board and explained the confusion due to information available or not available to her or the applicants. She expressed her concerns and stated that if the variance was not granted to the applicant she would encourage that he appeal the decision based on inaccurate information in the TOPAZ office. She explained the historical documentation that her office lacks. There was a short discussion in which Ms. Magnuson stated that the granting of the variance would clear up the paper trail. She applauded the applicant's efforts. Ms. Magnuson stated it was her advice to go forward with Case #1023. The applicants agreed with her advice. Chairman Saccento continued with the case.

Chairman Saccento again asked for the agent of the Case for the record. Mr. Laurin stated his client was requesting a variance to expand their business within the 100' front yard setback. He read the application into the record. Using the site plan he illustrated important markers: the allowable building area on the lot, the street property line and the 100' setback line. Mr. Laurin stated that the existing building was well into the 100' setback line.

Chairman Saccento addressed the Board and asked if they had any questions. Mr. McCoy addressed Mr. Laurin and asked if as noted in question #3 of the application, if substantial justice would be done if the applicant built back outside the 100' setback. Mr. Laurin stated that it would, but that the applicant would not have adequate access from inside the store to the warehouse (with a fork truck, etc.). To further clarify, Mr. Laurin explained the proposed location was situated to minimize the effect of a larger building on the street front (the original building was already within the setbacks). People's eyes would be drawn to the storefront and not the warehouse. To clarify, Mr. McCoy stated that the hardship was that to move it all the way back (to the setback) would decrease functionality. Mr. Laurin agreed.

Chairman Saccento asked about the proposed covered walkway in the front. She asked if the walkway, side entrance and warehouse were all part of the expansion, or variance. Mr. Kessler stated they were all part of the same package. Ms. Magnuson stated, for clarification, that the Chairman's question was whether the applicant would be making the building more non-conforming in the front of the retail building. Mr. Laurin stated yes. He explained their plans. Ms. Saccento asked how wide the walkway and overhang would be. Board members stated approximately four feet. Mr. Laurin stated the proposed vestibule would protrude seven feet. The walkway was five feet.

Chairman Saccento addressed Ms. Magnuson and asked if there were any comments from the NHDOT about extending further into the setback. Ms. Magnuson stated no. Continuing, she stated that they would only comment on the ingress and egress. The change would affect parking and the parking would have to comply with current standards. That is something for the Planning Board to look at (size and number). She stated that the applicant was aware of that. Mr. Laurin concurred.

Chairman Saccento addressed the Board and asked if there were any other questions. There were none. Chairman Saccento addressed Mr. Nelson and asked if he had any questions. Mr. Nelson inquired as to whether the island in the front of the store (with the sign) would need to be smaller. Mr. Laurin stated that it would not. They were not going to touch it-it was state right of way. It has not been changed (in

the proposal) at all. Mr. Nelson inquired as to the ability of getting a trailer truck into the lot with the parking spaces and the island the size that it is. Mr. Laurin stated yes, explaining that if trucks came from the west they would not, but from the east they would. There was discussion among the Board and Mr. Laurin. Ms. Magnuson informed the Zoning Board members that the Planning Board would be looking at the parking and spacing closely at their meeting with the applicants. She further explained that the entrance and exit to the lot would be in her review for the Planning Board. Traffic flow would be looked at by the Planning Board and NHDOT. Question from Mr. McCoy was if there was a problem that the Planning Board found would the applicants have to change things. Ms. Magnuson stated yes; probably in the parking area. She stressed that NHDOT would look over the traffic flow and weigh in on that (if they thought there was a problem).

Chairman Saccento addressed Mr. Laurin and asked if the small expansion on the side and front was for, energy efficiency and aesthetics. Mr. Laurin stated yes. Mrs. Cassorla asked if it was still going to be a steel building with a porch on it. Mr. Laurin clarified that it was a wood framed building with siding. Mrs. Cassorla asked for clarification if the addition would be a steel building. Mr. Laurin stated yes. Ms. Magnuson stated that the Planning Board would look at that as well. Planning Board dealt with aesthetics.

There being no further questions from the Board, Chairman Saccento called for a motion to go into Deliberative Session. On a motion by Mrs. Cassorla, seconded by Mr. Kessler; ***the Board voted by roll call vote to go into Deliberative Session. The motion passed 4-0-0.***

Mrs. Cassorla stated that she liked the changes the applicant would be making. It made it more attractive. In the future it would have more resale value and add value to the adjacent properties as well. Chairman Saccento agreed. Mr. McCoy stated that his concern had been the building area and could its placement have been different. Continuing, he stated, "But to what purpose". It would make a hardship. Mrs. Cassorla agreed. There was lengthy discussion. Mr. Kessler stated that the present building is non-conforming and the addition would be less non-conforming. He had no objections to the variance. There was a discussion on its merits.

Variance Statement of Reasons and Discussion

Each question was read; going through each criterion for discussion and roll call votes.

Chairman Saccento asked for a motion on question number one.

On a motion by Mrs. Cassorla, seconded by Ms. Saccento; that:

Granting the variance would not be contrary to the public interest because: It is keeping in the spirit of the neighborhood, will increase property values on the abutters as well as make the property more attractive. Mr. McCoy asked for point of order the procedure to follow. Chairman Saccento explained that each person state the reasons on their worksheets pertaining to each question. Ms. Magnuson explained to Mr. McCoy that if he felt differently, he would fill out his worksheet differently. It would be his personal opinion about how the applicant met the criteria. Chairman Saccento explained the Board members voted separately on each question. There was no discussion. Chairman Saccento called for a vote. ***All voted yes (4-0-0).***

Number two:

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; that:

The spirit of the ordinance would be observed because: the addition is less non-conforming than the original building. Chairman Saccento stated for discussion that it was less non-conforming than the original structure and creates a usable space for the applicant. Board members stated that was number three and asked her to take the next one. ***Chairman Saccento called for a vote. All voted yes (4-0-0).***

Number three:

On a motion by Chairman Saccento, seconded by Mrs. Cassorla; granting the variance would do substantial justice because: the placing of the existing structure makes it necessary to place the warehouse into part of the front setback to make it useable for the business. There was no discussion. The Chair asked for a vote. ***All voted yes (4-0-0).***

Number four:

On a motion by Mr. McCoy, seconded by Mr. Kessler;

For the following reasons, the values of the surrounding properties would not be diminished: because there is no difference in what is being proposed and the current activity; there will be no impact. There was no discussion. The Chair called for a vote. ***All voted yes (4-0-0).***

Number five A. i.:

Unnecessary hardship

5 A. from the worksheet. For the purposes of this subparagraph, “unnecessary hardship” means that, owing to the special conditions of the property that distinguishes it from other properties in the area denial of the variance would result in unnecessary hardship because:

On a motion by Mrs. Cassorla, seconded by Mr. McCoy;

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The existing building is already non-conforming. For clarification, the Chair asked to amend the answer to *is not* a fair and substantial relationship between the general public Mrs. Cassorla amended her motion to read there *is not* a fair and substantial relationship between the general public purposes...the Chair asked for a second to the amendment. Mr. McCoy seconded. There was no discussion. Chairman Saccento called for a vote. ***All voted yes (4-0-0).***

AND:

On a motion by Mr. Kessler, seconded by Mrs. Cassorla;

- ii. The proposed use is a reasonable one because:

It improves the value of the property and the business. There was no discussion. Chairman Saccento called for a vote. ***All voted yes (4-0-0).***

Chairman Saccento asked for a motion to reaffirm granting the Variance for Case #1023.

On a motion by Mr. Kessler, seconded by Mrs. Cassorla; ***the Board voted to grant a Variance for Case #1023 to the terms of Article II, Section 206A.4 specifically to permit the expansion of the existing business structure within the 100’ front yard setback as presented. The motion passed 4-0-0.***

Chairman Saccento addressed the applicant and stated he had his variance.

Chairman Saccento signed the Notice of Decision and noted “as presented”.

Ms. Magnuson requested a recess to check out zoning ordinances as close to 1984 as possible. New information might pertain to Case #1024. Ms. Magnuson stated she might recommend that the applicant withdraw the second variance. Chairman Saccento called a short recess.

Upon her return Ms. Magnuson addressed the Chairman and stated that due to new information received (at the meeting) and based on the best information available to her the building appears to have been erected when area zoning was rural and was therefore conforming (for THIS variance). The applicant’s

need to request a second variance (case #1024) was not necessary. She stated that it was up to the applicant whether to go ahead with the hearing and explained the consequences to them if the Board did not find in their favor. It was up to the applicant to proceed or withdraw the request for a variance. The Chair addressed the applicant and asked his desire. The applicant and his agent stated they would like to respectfully withdraw their request for a variance.

Chairman Saccento stated that Case #1024 was withdrawn by the applicant.

Ms. Magnuson addressed the viewing public and requested any information on zoning ordinances in the years 1983, 1984, 1985, 1986, 1987, 1993, 1995 and 1999. There was a short discussion on zoning ordinances and the historical records.

Chairman Saccento addressed the applicant, stated the two special exceptions had been approved and the variance case heard had been granted. She explained the next step in the process would be the Planning Board.

Ms. Magnuson discussed the steps with the applicant and told him and the Board that she would include information about historical records.

There being no further business; on a motion by Mrs. Cassorla, seconded by Mr. Kessler; the Board voted to adjourn the meeting at 7:45 pm.

The next regular meeting of the Zoning Board is scheduled for February 26, 2015, at 6:30 pm.

Respectfully submitted,

Maura Stetson
Scribe