

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, March 2, 2015

6:30 PM

City Hall, Council Chambers

Members Present:

Louise Zerba, Chair
Jeffrey Stevens, Vice Chair
Nathaniel Stout
Joseph Hoppock
David Curran

Staff Present:

Gary Schneider, Plans Examiner

Members Absent:

Others Present:

I. Introduction of Board Members:

Chair Zerba called the meeting to order at 6:30 PM, and introduced the Board members.

II. Minutes of Previous Meeting- December 1, 2014-

Mr. Hoppock made a motion to approve the minutes of December 1, 2014. Mr. Stevens seconded the motion which carried unanimously with the following changes.

Chair Zerba questioned who made that statement on pg. 6 that reads, “There was comment from the public in reference to the application.” The Board was not able to recall the individual.

Chair Zerba stated that pg. 9 states, “Mr. Stout made a motion to approve, **ZBA 14-32**, a request for a variance for property located at 391 Old Walpole Rd., Keene, which is in the Rural Zone Mr. Williams ZBA.” This should include Mr. Stevens who seconded the motion.

Chair Zerba stated that pg. 7 states, “Mr. Schneider discussed the property layout and center location on a map.” This should instead read, “Mr. Schneider discussed the property layout and *located the property on the map.*”

Chair Zerba stated that on pg. 7 it states, “Mr. Williams stated that his company, Williams Construction, which has grown substantially in previous years and puts up a diagram of

where the company's building, is presently located." This should instead read, "Mr. Williams stated that his company, Williams Construction, has grown substantially in previous years and *then* puts up a diagram of where the company's building, is presently located."

Chair Zerba stated that pg. 7 states, "He comments that the current structure size is no longer large enough for his company. Mr. Williams then passes around pictures of the barn structure. The property was purchased by Mr. Williams in 2005 from his parents. His father ran a business there before." This should instead read, "He *commented* that the current structure size is no longer large enough for his company. Mr. Williams then *passed* around pictures of the barn structure. The property was purchased by Mr. Williams in 2005 from his parents and *his father previously ran a business there.*"

Chair Zerba stated that pg. 7 states, "Mr. Williams stated that he cannot refinance the property because the barn is bigger than the house and the bank does not want it." Should read, "Mr. Williams stated that he cannot refinance the property because the barn is bigger than the house and the bank does not want *to do so.*"

Chair Zerba stated that pg. 8 states, "Mr. Stout questioned if the committee is planning the use of the driveway or if it is the planning committee. Mr. Schneider replied that it is the planning department." This should instead read, "Mr. Stout questioned if the committee is *approving the layout* of the driveway or if it is the planning committee. Mr. Schneider replied that it is the planning department."

Chair Zerba stated that pg. 8 states, "Chair Zerba opens the hearing to public at 7:34 PM." This should instead read, "Chair Zerba *opened* the hearing to public at 7:34 PM."

Chair Zerba stated that pg. 9 states, "Chair Zerba reopens public hearing at 7:43 PM." This should instead read, "Chair Zerba *reopened* public hearing at 7:43 PM."

Chair Zerba stated that pg. 10 states, "On a vote of 4:1 The Zoning Board of Adjustment approves **ZBA 14-32**, a request for a variance for property located at 391 Old Walpole Rd., Keene, which is in the Rural Zone." This should instead read, "On a vote of 4:1 The Zoning Board of Adjustment *approved* **ZBA 14-32**, a request for a variance for property located at 391 Old Walpole Rd., Keene, which is in the Rural Zone."

Chair Zerba stated that pg. 10 states, "Mr. Norton steps down from the committee and Mr. Hoppock is again present in the committee at 7:50 PM." This should instead read, "Mr. Norton stepped down from the committee and Mr. Hoppock *returned to* the committee at 7:50 PM."

Chair Zerba stated that pg. 11 states, “Chair Zerba questioned if any of the committee had a concern with Mr. Steven’s prior residence.” This should instead read, “Chair Zerba questioned if any of the committee had a concern with Mr. *Stevens*’ prior residence.”

Chair Zerba stated that pg. 12 states, “In reference to the applicant’s letter, Mr. Kinyon questioned how much do you look at the original intent of the drafters of this amendment and what the ordinance actually represent. Mr. Kinyon refers to the statutory construction examples as important guidelines” This should instead read, “In reference to the applicant’s letter, Mr. Kinyon questioned how much do you look at the original intent of the drafters of this amendment and what the ordinance actually *represents*. Mr. Kinyon *referred* to the statutory construction examples as important guidelines.”

Chair Zerba stated that pg. 12 states, “Mr. Kinyon referred the committee to p.3 of packet showing excerpts from the ordinance along with definitions provided by the Zoning Department.” This should instead read, “Mr. Kinyon referred the committee to p.3 of *the* packet showing excerpts from the ordinance along with definitions provided by the Zoning Department.”

Chair Zerba stated that pg. 13 states, “Mr. Kinyon stated that it is for the Board to think of a consistent and logical way to interpret the medium density prevision.” This should instead read, “Mr. Kinyon stated that it is for the Board to think of a consistent and logical way to interpret the medium density *provision*.”

Chair Zerba stated that pg. 13 states, “Mr. Kinyon pointed out that the signer of the decision was Mike Forest who was cited in Mr. Kopczynski as the subject of the ordinance.” This should instead read, “Mr. Kinyon pointed out that the *author* of the decision was Mike *Forrest* who was cited by Mr. Kopczynski as the subject of the ordinance.”

Chair Zerba stated that pg. 14 states, “Mr. Kopczynski reported that Mr. Forest was the Zoning Administrator at the time and wrote the ordinance which is why he was contacted to get an understanding.” Mr. Forest should instead read, Mr. Forrest.

Chair Zerba stated that pg. 14 states, “Mr. and Mrs. Schesser’s letter discussed concern that additional construction may result in changes to the water table resulting in higher water levels within their cellar from rain and potential Beaver Brooke episodes. The letter continued and Mr. and Mrs. Schesser stated that they would like to remain good neighbors, but it is important to be understood that they are not in favor of this appeal.” This should instead read, “Mr. and Mrs. Schesser’s letter discussed concern that additional construction may result in changes to the water table resulting in higher water levels within their cellar from rain and potential Beaver *Brook* episodes. The letter continued *with* Mr. and Mrs. Schesser *stating* that they would like to remain good neighbors, but it is important to be understood that they are not in favor of this appeal.”

Chair Zerba stated that pg. 14 states, “Mr. Richeter stated that he just got the notice and approached the diagram and map in the room.” This should instead read, “Mr. *Richter* stated that he just got the notice and approached the diagram and map in the room.”

Chair Zerba stated that pg. 16 states, “Mr. Schneider stated that it is clear that the petition before the committee was to overrule the administration. That petition was just denied by a vote of two to three and you ruled with the city zoning administrator and not the applicant.” This should instead read, “Mr. Schneider stated that it is clear that the petition before the *Board* was to overrule the administration. That petition was just denied by a vote of two to three and *the Board* ruled with the city zoning administrator and not the applicant.

Chair Zerba stated that pg. 17 states, “Ms. Sara Urso-Profera of 75 Cross Street, Keene, NH approaches the committee.” This should instead read, “Ms. Sara Urso-Profera of 75 Cross Street, Keene, NH *approached* the *Board*.”

Chair Zerba stated that pg. 19 states, “Mr. John Rokeh of Rokeh Consulting, LLC, of 89 King Road, Cinchester, NH approaches the committee.” This should instead read, “Mr. John Rokeh of Rokeh Consulting, LLC, of 89 King Road, Cinchester, NH *approached* the committee.”

Chair Zerba stated that pg. 19 states, “Chair Zerba questioned if they are concerned people may use this as a cross street to get over to another street.” This should instead read, “Chair Zerba questioned, if they are concerned, people may use this as a cross street to get over to another street.”

Chair Zerba stated that pg. 20 states, “Chair Zerba opens the hearing to the public at 9:14 PM.” This should instead read, “Chair Zerba *opened* the hearing to the public at 9:14 PM.”

Chair Zerba stated that pg. 20 states, “Mr. Stout stated that he has taken into account positive comments and what you are doing is good.” This should instead read, “Mr. Stout stated that he has taken into account positive comments and what *is being done* is good.”

III. Unfinished business

None at this time.

IV. Hearings:

Request for Motion for Rehearing: ZBA 14-33, 7, 17, and 27 Kingsbury St., Appeal of Administrative Decision ruling that only three residential units can occupy a site in the Medium Density Zone. ·

Chair Zerba read the request. Mr. Hoppock stated that under 6772, the Standard for Rehearing, there is good reason stated in the motion that the Board, by a vote of 3-2, misinterpreted the Ordinance. He continued, stating that the interpretation by the City is not correct and the interpretation by Mr. Kinyon is correct. Mr. Hoppock stated that in light of the good reason set forth in the Motion for Rehearing, the Board should approve this request.

Mr. Hoppock made the following motion which was seconded by Mr. Stout.

On a vote of 4-1, The Zoning Board of Adjustment approved the **Request for Motion for Rehearing: ZBA 14-33**, 7, 17, and 27 Kingsbury St., Appeal of Administrative Decision ruling that only three residential units can occupy a site in the Medium Density Zone. Mr. Curran voted in opposition.

Mr. Stout stated that a large amount of evidence was presented the night of this application was heard, which is one reason to reconsider. He continued, stating that the Board was asked to absorb a large volume of information. Mr. Hoppock agreed, stating that it is difficult to digest that much information when received at the time of the hearing.

Chair Zerba stated that she is in opposition of material over two pages being presented to the Board the evening of application. She continued, suggesting that if a large amount of information is presented the evening of an application, the Board should consider tabling the application until the following month. Mr. Stout stated that he would limit it to a single page and if there are any questions within this evidence, the Board should postpone the application

Mr. Curran stated that he would not change his vote on this application. He continued, stating that he will not question the research done by the City staff or the City Attorney. Mr. Curran stated that there is an issue with the wording but the passage on pg. 14 of last month's minutes is significant. Mr. Curran read a section from pg. 14: *"Mr. Hoppock stated that dwelling unit means a room or group of rooms within a dwelling forming a single habitable unit with facilities etc. Mr. Kopczynski replied that is true, but he does not recall anything in the Zoning Code that states those three units have to be in the same building. Mr. Hoppock questioned where else they would be. Mr. Kopczynski replied that there could be a two unit structure and a single unit structure on the same lot."*

Chair Zerba stated that she would support this Motion. She continued, stating that this decision does not mean she will support the application. Chair Zerba stated that this rehearing will allow the Petitioner to state why they are correct and the City can do the same. She continued, stating that there is ambiguity with this Ordinance.

Chair Zerba asked Mr. Schneider to notify the applicant. Mr. Schneider stated that it will be presented at the April meeting.

ZBA 15-01:/ Petitioner, Ranger Curran, of 117 West St., Keene, represented by Ralph Randall of NEOPA Signs, Keene, request a Variance for property located at 428 Winchester St., Keene, which is in the Commercial Zone. The Petitioner is requesting to permit signage on a building wall that has no entry to the premises per Section 102-1282 Definition of Building Frontage of the Zoning Code.

Chair Zerba read the petition. Mr. Schneider stated that one correction must be made to the map. He continued, pointing to two structures within a drawn circle and stated that these structures are displayed on the same property. Mr. Schneider stated that the Notice states the properties are in the Commercial Zone but the properties are actually in the Commerce Limited Zone. Mr. Schneider stated that there is a private driveway that goes pass the facility to where Fit Nation once was. He continued, stating that a new fitness center could possibly move into this facility. Mr. Schneider stated that the only entrance to the building is on the southern side. He continued, stating that the Petitioner is asking to put a sign on the western side of the building for better visibility. Mr. Schneider stated that under the Sign Code the primary business frontage, parking frontage, and secondary frontage all discuss entry doors for purposes of ingress and egress into the building. He continued, stating that the western side of the building does not have a door and therefore the Petitioner was denied signage.

Mr. James Vitous, owner of Custom Designs, 80 Krif Road, Unit 14, Keene, New Hampshire 03431, approached the Board.

Mr. Vitous stated that with the expansion of Fairfield's Auto Group there has been an increase in parked vehicles in the back lot. He continued, stating that the sign by the road is confusing and looks like an extension of Fairfield's Auto Group as opposed to a separate entity. Mr. Vitous stated that the lot looks specifically like a parking lot because of Fairfield's Auto Group and one must drive a distance down the road to see other facilities. He continued, stating that the road looks inaccessible. Mr. Vitous stated that a sign would give a line of sight to potential customers.

Mr. Curran asked if the previous fitness facility had a sign. Mr. Vitous replied that the facility had a pylon sign by the street and an additional sign above the door. Mr. Curran asked if Mr. Vitous would be putting a sign out in front as well. Mr. Schneider stated that to his knowledge, there was never a sign on the western side of the building. He continued, stating that the Petitioner is requesting a freestanding sign by Winchester Street but this does not require a permit. Mr. Schneider stated that the Petitioner is requesting a sign on the western side of the building and an additional sign on an awning above the front door on the southern side of the building. He continued, stating that the sign on the awning would not be visible from the private drive.

Chair Zerba asked if parking spaces are available due to large piles of snow in that area. Mr. Vitous stated that parking spaces are available in the front of the building. Mr. Hoppock asked Mr. Schneider if signage for the western side of the building is the only request. He continued, stating that if the Board approves the petition, a total of three signs would be advertised. This would include a sign on the street, on the western side of the building, and above the entrance. Mr. Schneider stated yes, there will be three signs because two have already been approved.

Mr. Curran asked if the size of the sign is out of the ordinary. Mr. Schneider replied that if the Board approved the petition, Code Enforcement could be directed to apply as parking lot frontage, primary frontage or secondary frontage. Chair Zerba asked how this size relates to current regulations on primary frontage. Mr. Schneider stated that the building is in the Commerce Limited Zone. He continued, stating that for primary frontage the building would be allowed two square feet of signage per linear foot of primary building frontage. He continued, stating that based on the size of the requested sign, the building would only have to be twenty feet wide to meet standards. Mr. Schneider stated that the building is much larger than twenty feet. He continued, stating parking lot frontage is allowed half square foot for every linear foot of building.

Mr. Hoppock stated that the denial of this variance would result in a hardship for the Petitioner and asked if the configuration of the building creates this Special Condition. Mr. Vitous stated the difficulty is from the configuration of the building. He continued, stating that a doorway cannot be placed on the western side due to the electrical set up. Mr. Vitous stated that there is no way to see the entrance from the private drive.

Mr. Stout clarified that the main parking lot is on the western side of the building and the entrance is on the southwest. Chair Zerba replied, yes. Mr. Schneider stated that when this building was initially approved for construction the parking was designed on the western side of the building as well as on the southern end of the property line. He continued, stating that one of the car dealerships is likely using the space which could be a code issue.

Mr. Stout asked how old the building is and stated that the planning Board would never allow this layout today because of the parking standard. Mr. Schneider stated that the building has been here for some time.

Chair Zerba closed the public hearing at 6:54 PM.

Mr. Curran made a motion to approve the application as the sign is presented in the packet. Mr. Stevens seconded the motion.

On a unanimous vote, The Zoning Board of Adjustment approved **ZBA 15-01:**/ Petitioner, Ranger Curran, of 117 West St., Keene, represented by Ralph Randall of NEOPA Signs, Keene, request a Variance for property located at 428 Winchester St., Keene, which is in the Commercial Zone. The Petitioner is requesting to permit signage on a building wall that has no entry to the premises per Section 102-1282 Definition of Building Frontage of the Zoning Code.

Mr. Curran stated that the sign is not as big as it could be and it is fair to allow this sign. Mr. Hoppock stated that there are special degrees to a property that allow a variance. He continued, stating that the obstructions are creating hardship and that substantial justice is done with granting the variance. Mr. Hoppock stated that the variance is in the Spirit of the Ordinance.

Chair Zerba stated that she is in support of the variance which is similar to the situation with the physical therapy building on West Street. Mr. Hoppock asked Mr. Schneider if the Board needs to specify the size of the sign. Mr. Schneider stated that the Board can approve as presented or

the Board can instruct as primary frontage or parking frontage. Mr. Hoppock asked if there is any objection to approving the sign as presented. The members of the Board agreed.

Mr. Schneider stated that if the Board approves with the standards of primary frontage for instance, the Petitioner would be then be able to change signage in the future. He continued, stating that if the Board approves the sign as submitted then no further change can occur.

Chair Zerba went over the Findings of Fact:

Granting the variance would not be contrary to the public interest. Granted unanimously.

If the variance were granted, the spirit of the Ordinance would be observed. Granted unanimously.

Granting the variance would do substantial justice. Granted unanimously.

If the variance were granted, the values of the surrounding properties would not be diminished. Granted unanimously.

Unnecessary Hardship

- A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.* Granted unanimously.
 - ii. *The proposed use is a reasonable one.* Granted unanimously.

ZBA 15-02:/ Petitioner, Benjamin Berman of Advanced Cyclist, request a Variance for property located at 466 West St., Keene, which is in the Commerce Zone. The Petitioner is requesting to permit signage on adjacent wall to the store front of an abutting tenant per Section 102-1282 Definition of Building Frontage and 102-1311 Sign in the Commerce Zone of the Zoning Code.

Chair Zerba read the petition and stated that it has been withdrawn. Mr. Schneider stated that the Petitioner could not obtain the property owner's approval of the sign.

V. New Business

21st Annual Spring Planning & Zoning Conference - May 20, 2015

Chair Zerba asked if anyone was interested in this conference. Mr. Stout stated he would most likely attend. Chair Zerba asked if Mr. Schneider could send out a list of the topics that will be discussed at the conference. Mr. Hoppock asked where the conference is held. Chair Zerba

replied, the Marriot in Concord, New Hampshire. Chair Zerba stated that Board members should respond in a week if they will be in attendance.

V. Communications and Miscellaneous
None at this time.

VII. Non Public Session (if required)

VIII. Adjournment

Chair Zerba adjourned the meeting at 7:15 pm.

Respectfully submitted by:

Lana Bluege, Minute-taker

March, 2, 2015