



BOARD OF APPEALS MEETING MINUTES

Wednesday February 28 2018

Town Hall Meeting Room

6:30 p.m.

Call to Order

Pledge of Allegiance

Introduction of Board Members

Approval of Minutes

- Wednesday February 14, 2018

Motion: Ron Vigue motioned to approve the minutes.

Second: Diane Morrill

Russell Gagner pointed out that his name is misspelled in two locations.

VOTED – 5-0 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

Abstain: None

Public Hearing

- Robert Paige requests a variance on minimum lot size in the Rural Commercial/Industrial Zone. 513 Portland Street (R72-5) to convert office rentals to apartments.

Rebecca Lapierre introduced herself as the buyer of 513 Portland Street. Ms. Lapierre said she is seeking the variance.

The Code Enforcement Officer explained why the initial application was denied. The lot is 600,000+ square feet short of the minimum lot requirement.

Bob Paige the current owner of the property said that the property is an unusual property and that because of the lay of the land, the abutting properties will not be used, and this makes it a desirable location for the use Ms. Lapierre is seeking for the building.

Pat Boisvert asked about the septic system, Rebecca Lapierre said they would install a White Knight.

Russell Gagner asked for clarity on how many apartments are being proposed. Ms. Lapierre said that the initial plan was to convert to eight apartments, but the plan was changed to seven apartments.

Rebecca Lapierre said that she was unfamiliar with the four hardships associated with the application.

Jean Kovacs, the Paige's real estate agent, stated that the property has been on the market for three years and there has not been any other significant interest from other buyers.

Ms. Lapierre said that her plumber Ken Gardner said that there would not be an issue receiving a variance at the State-level for the septic system for the minimum lot size requirement.

Pat Boisvert stated that the property is already overbuilt and that when a building is already non-conforming, the ordinance states the next use should make the non-conformance better and not worse.

Motion: Ron Vigue motioned that the land in question can yield a reasonable return without a variance

Second: Diane Morrill

Ron Vigue stated there is mixed-use now and it has been used for a significant amount of time.

VOTED – 4-1 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; Diane Morrill; Ken Poirier

Opposed: John Campbell

Abstain: None

Motion: Ron Vigue motioned that the need for the variance is not due to the unique circumstances of the property.

Second: Diane Morrill

Ron Vigue stated that the use has existed in that neighborhood for a long time.

VOTED – 3-2 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Ken Poirier

Opposed: Russell Gagner; Diane Morrill

Abstain: None

Motion: Ron Vigue motioned that the variance would not alter the essential character of the property.

Second: Russell Gagner

VOTED – 5-0 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

Abstain: None

Motion: Russell Gagner motioned that the hardship is not due to the action of the prior applicant or owner.

Second: Diane Morrill

VOTED – 2-3 in favor

Motion Failed

In favor: John Campbell; Ken Poirier

Opposed: Russell Gagner; Ron Vigue; Diane Morrill

Abstain: None

Motion: Ron Vigue motioned that the application for a variance to be denied.

Second: John Campbell

VOTED – 4-1 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill;

Opposed: Ken Poirier

Abstain: None

Ron Vigue stated the reason for his motion is because two of the hardships were not met.

Bob Paige explained his hardship and that nobody is looking to purchase or rent commercial. Mr. Paige explained his health issues and that he will have issues maintaining the building.

- Administrative Appeal of Code Enforcement Officer's Decision – Philip Lemay
 - RE: Building Permit Issued at 183 Cranberry Meadow Rd. (R-37, 10)

The Town of Berwick's attorney, Phil Saucier, summarized the history of the appeal. Mr. Saucier said that the Board of Appeals found the applicant did not have good cause, which was overturned by the Superior Court. Mr. Saucier said the appeal will be heard de nova.

David Pierson is the attorney for Jeanette and Phil Lemay. Mr. Pierson stated that the appeal applies to the old Land Use Ordinance and not any subsequent amended Land Use Ordinances. Mr. Pierson stated Ms. Ellia's structure was non-conforming, on a non-conforming lot. Mr. Pierson stated that replacement is allowed only during a fire or other casualty loss.

Mr. Pierson explained that Ms. Ellia's structure and living space was expanded. Mr. Pierson said that the replacement required a variance on side setback. Mr. Pierson added that the application submitted by Ms. Ellia did not have a site plan or septic system, therefore the application was not complete.

Joe Rousselle, the Code Enforcement Officer, stated there was a septic system already on file. Mr. Rousselle explained the provision on section 6.3; the setback could be reduced per the Land Use Ordinance.

David Goldman introduced himself as the lawyer for Rose Ellia and requested to ask Ms. Ellia questions in front of the Board of Appeals Ms. Ellia explained she purchased the property twenty-five years ago. The mobile home was a 1968 model that has a shelf life of twenty-five years and had various issues included mice infestation.

Mr. Goldman said that previous structure had 1,526 square feet of living area, according to Mr. Goldman, the structure now has less. Mr. Goldman said, per the Land Use Ordinance, the side setback allowed was 5.7 feet.

Russell Gagner and Ron Vigue confirmed with the rest of the board that they did not receive the Goldman brief before the meeting.

Mr. Pierson said that the mater is replacement not a repair, or moderation, which is a separate issue according to Mr. Pierson.

Mr. Goldman said there is nothing in the ordinance that restricts property owners from demolishing and building new. Mr. Goldman said this is clearly a case of modernization.

John Campbell clarified that the Land Use Ordinance for this appeal is the version is dated before any amendments after 2016.

Joe Rousselle confirmed that the property is further setback than was once before. Pat Boisvert asked for clarification if the side setback would require a variance. Phil Saucier explained that it is up to the board to determine.

Mr. Pierson directed the board to Section 10.4.F in the Land Use Ordinance.

Phil Saucier said the decision on the setback is either in the 25 foot or the 7-8 foot range, the 25-foot setback would require a variance, and the 7-8 foot would not.

Pat Boisvert explained there were two numbers and percentages that were presented to the board, which were different and that the setback requirements change based upon the different numbers.

Russell Gagner said that it was apparent that Board of Appeals packets were not complete and because of this he recommended to stay.

Motion: Ron Vigue motioned to stay the proceedings until March 28th to give time for the Board to review the materials, and that no additional materials be submitted to the Board.

Second: Russell Gagner

VOTED – 5-0 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

Abstain: None

Adjournment

Motion: Russell Gagner motioned to adjourn

Second: Ron Vigue

VOTED – 5-0 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Ken Poirier

Opposed: None

Abstain: None

Minutes prepared by Town Planning Tech James Bellissimo, for consideration at the Berwick Board of Appeals next meeting

Signed as Approved by the Board

Russell Gagner, Chair

Date