

(Approved August 17, 2016)
MINUTES
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING
**NEW LOCATION—EARLY CHILDHOOD LEARNING
CENTER
77 RAMSDELL LANE**
Barrington, NH
July 20, 2016
7:00PM

Members Present

Karyn Forbes, Chair
George Bailey
Meri Schmalz
Raymond Desmarais
Dawn Hatch

Alternate Members Present

George Schmalz
Cheryl Huckins

MINUTES REVIEW AND APPROVAL

1. Approval of June 15, 2016 Regular Meeting Minutes.

A motion was made by R. Desmaris and seconded by M. Schmalz to approve the minutes of June 15, 2016. The motion carried unanimously

ACTION ITEMS CONTINUED FROM MAY 18, 2016

2. [239-2/235-1,2,3-TC-16-Variance \(Owners: John & Linda Svenson, Garth & Elizabeth Svenson & 1962 Real Estate, LLC\)](#) Request by applicants for variances under Article 16 Planned Unit Development (PUD), Article 16.3.2, Minimum Lot Size/Lot Area, Article 16.3.2(2) Residential Uses proposing to permit the net density for a single family dwelling to be based upon 16,250 sq. ft. rather than 40,000 sq. ft. per dwelling. 16.5.2 Commercial Component Requirements, where the applicant is proposing 26.5% when 50% of the total development tract is required to be commercial on Christmas Lane and Franklin Pierce Highway (Map 239, Lot 2 and Map 235, Lots 1, 2,3) in the Town Center (TC) Zoning District. By: Kenneth A. Berry, PE LLS; Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825

FX Bruton represented the applicant. He had previously outlined the requirements for a variance and how the applicants believed they had met those requirements. The applicants had provided a concept of how a development might look. The proposal had not gone through engineering. If they received the Variances requested they could start at day one with the Planning Board.

FX Bruton explained the land was a unique piece of property and any future layout would probably look similar. There would be a new commercial lot created and John Svenson's lot would be deed restricted to be commercial. The Fire Chief had been concerned with some additional access. The applicants had met with the Chief and staff to discuss Fire Access and overall concerns.

After discussion with the Planning Board in June the conclusion seemed to be that this was a tough spot. The development would provide a good cluster of homes to provide foot traffic for the commercial development. The homes might be appealing to those who had lived in the Town for a long time and would be downsizing. The homes may appeal to someone who would want to walk to the doctor, walk to the vet, and walk to Calef's or to stores that may come in the future. The property had been marketed for a long time and had not been successful as a commercial because everything would have been pushed to the back or a residential site because of the lack of density. The applicant believed they had received a positive answer from the Planning Board.

The first variance was for the density which was a request for 25 single family homes on the 37 acres; calculating the density based upon 16,250 sq. ft. rather than 40,000 sq. ft.. The second request was for 26.5 % commercial when 50% of the total development tract was required. They were providing 40 % open/civic space where 20% was required. The applicant believed in the PUD concept and hoped that they had achieved what the Town was looking for in a mixture of residential and commercial development.

The location of the land involved lacked access to Route 125, which was what they believed was what most of the Town thought of as the Town Center when the ordinance was developed. They had to take into consideration the size and configuration of the lot and the commercial entities that already existed.

Ken Berry of Berry Surveying and Engineering gave an overview of the site in respect to the other commercial properties in the area. The railroad bed, Barrington Family Practice and the Veterinary Clinic were pointed out, along with Calef Country Store and George Calef Fine Foods. Mr. Berry showed where the driveway would be moved to for construction of the road. A potential future connection to route 125 was left. The reaction from the Planning Board had been positive.

G. Bailey asked if the proposed road would be a fire road.

Mr. Berry said that the road would be a fire road and posted for limited use. The details would be worked through at the Planning Board level.

M. Schmalz asked what the feeling of the NHDOT was on the entrance and increased traffic flow.

Mr. Berry expressed NHDOT wanted the road moved to the identified location. The 1962 Real Estate properties all took into consideration the new placement of the road.

G. Bailey asked if the pond was considered as part of the commercial percentage.

Mr. Berry stated yes. The pond was wholly included on John Svenson's parcel and probably took up half to two thirds of the .80 acres. A restriction would be put on Mr. Svenson's property. There would also be a considerable amount of driveway and road that would be abandoned, created more operational space on the property.

G. Bailey asked if the driveway would be moved.

Ken Berry explained it would be moved closer the Christmas Dove and would be discussed extensively at the Planning Board level.

D. Hatch asked if more commercial development sought space in the future would they have room if they desired to create more.

Mr. Berry explained that a substantial piece would be added to the 1962 reality piece for development.

D. Hatch expressed there was the potential to come more in conformance down the road even if the density variance was given.

FX Bruton explained a Special Exception had been granted by the Board for the driveway access which was good for five (5) years and they would ask that if the Board granted the variances they would also be granted for five (5) years.

R. Desmaris asked if the numbers were a baseline and if the density could be reduced later would they need to come back.

FX Bruton expressed they would then be more conforming and he did not believe they would need to come back. He used the analogy of a variance for a 16 sq. ft. sign would not require an applicant to return for a 12 sq. ft. sign in most communities.

FX Bruton went over the criteria for a variance.

1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

FX Bruton stressed the term "unnecessary" because the standard asked if there was a significant relationship between the purpose of the regulation and the specific application. The hardship was the size of the lot but most importantly the location. The lot was located in an odd portion of the Town Center District. Businesses did not want to be that far from Route 125 and Route 9 because there was no visibility in the back, so that became a hardship for them.

FX Bruton explained the purpose of zoning was to provide for the health safety and welfare of the community. They believed the requests would not adversely affect the community, so there was no relationship between those restrictions and the request they were making.

2. Granting the Variance would be consistent with the spirit of the Ordinance.

FX Bruton explained the spirit of the ordinance is upheld because the configurations of the lots were consistent with the restrictions the location of the lot imposed. They were trying to foster a mix of uses between commercial, residential and civic and open spaces. They believed the plan was consistent with that spirit. The test was whether the variance granted marked and unduly conflicted with the ordinance, such that it violated the zoning ordinances basic zoning objective. They did not believe it did.

3. Granting the variances will not result in diminution of surrounding property values.

FX Bruton explained that in the minutes of the Planning Board it stated that a direct abutter came to the meeting and spoke in favor of the proposal and did not believe it would have an adverse effect on them. The applicant did not believe it would have a negative effect. FX Bruton expressed that the zoning allowed for what would amount to an industrial park. They had shown a plan that showed the industrial park type layout and were trying to avoid a similar development.

4. Granting the variance will do substantial justice.

FX Bruton explained that test was a balance between any effect on the public verses the gain or loss of the applicant. They did not believe there would be any adverse effect on the public for all the reasons previously stated.

5. Granting the variance would not be contrary to the public interest.

FX Bruton explained that that variance referred to whether the variance would alter the character of the neighborhood. The requests were not regulations that affected the character of the neighborhood, such as setbacks. The request for a commercial reduction was to allow them to utilize the commercial as much as possible, so that it could be marketable and useable.

G. Bailey asked why they considered it a hardship. He could not see the relationship between the hardship and the proximity to Route 9. The numbers didn't make sense to him.

FX Bruton expressed the configuration of lots was narrow and off Route 125 and Route 9 in regard to frontage. The applicant believed that the Town Center Ordinance related more to properties that had frontage on Route 9 and Route 125. He believed the lot for commercial purposes was less appealable because of its location and lack of frontage than other lots similarly zoned. In regard to housing the ability to only have 10 houses was a hardship because no one could pay to build a road to get to the spot where the houses could be built. He questioned whether the theory was to go forward with a commercial development with only 10 houses. The 25 houses were needed to make the whole thing work. They wanted the mixed use feel so that the residential could utilize the commercial.

G. Bailey expressed that he had supported 75% when the ordinance was written. He could not quite reach the hardship part of it.

K. Forbes asked M. Gasses when the Village District was created.

M. Gasses explained that this was the Town Center, which was different than the Village District. The Town Center was established in 2007.

K. Forbes expressed that it had been nine (9) years and asked if there had been any development.

G. Bailey explained the Gas station that was still pending, the veterinary clinic and the Frisbie Medical Center

FX Bruton expressed a PUD had not been developed; this was an opportunity to have a true mixed use development. The other developments which had occurred were commercial only. You could have strictly a commercial development which he believed would look like an industrial park. He believed this was the opportunity for the Town to start with a true mixed use development. The only opportunity the Svenson's had to develop there mixed use project was with the board that evening.

R. Desmaris asked if they could have different housing types; duplexes and condominiums and increase the density further.

FX Bruton explained that the density was by unit. They were looking at 25 single family lots.

R. Desmaris expressed that if they had one building with 10 units they would have more open space.

FX Bruton expressed they were trying to create a neighborhood feel. He believed the small lots were suited toward the elderly, where they could walk to facilities. The project screamed as a way to get mixed use projects started in Town.

D. Hatch expressed where nothing has been done for a several years maybe this was the time to look at redesigning the Town Center to have it be more of a Town Center with smaller requirements. This was a good start with a problem lot to create a PUD and make it work.

G. Bailey expressed they could put elderly housing up to 8 units in that type of area. There was the availability for other types of housing. It was not fair to the Board with the way the lots were shown.

R. Desmaris expressed that he just wanted to present the topic. If they were trying to do the mixed use residential there were options.

D. Hatch did not believe elderly housing would be enough to support commercial purposes; it needed to be mixed in order to work.

FX Bruton expressed if he did not get the units the project would die.

K. Forbes asked if there was anyone to speak in favor.

No one spoke.

K. Forbes asked if there was anyone to speak in opposition.

No one spoke in opposition.

M. Schmalz expressed she liked the explanation for 25 instead of 10 units and supported the request.

R. Desmaris expressed he believed it would be a good catalyst for the Town Center.

K. Forbes expressed she believed it was about time.

D. Hatch agreed.

G. Bailey expressed he could not support it. A lot of time had gone into writing the ordinance to help develop commercial use. Units were allowed in the commercial buildings in order to help support the commercial development.

K. Forbes expressed the hardship was the shape was odd and cut off by the railroad tracks. The lot had a small amount of frontage on Route 9. The area was cut off from Route 125. There was little likelihood of commercial down back, which is where they got the 26%. The wetlands kind of moved development to one area. She liked single family dwellings next to each other on small lots. She believed it was time something gave downtown.

A motion was made by R. Desmaris and seconded by D. Hatch to allow for the minimum lot size under 16.3.2. The motion carried 4-1

FX Bruton raised a point of order that the motion had stated "lot size". The variance request was for the number of units not lot size.

A motion was made to amend the previous motion by R. Desmaris and seconded by D. Hatch to allow the single family dwelling density to be based upon 16,250 sq. ft. and that the variance be available for five (5) years. The motion carried 4-1

A motion was made by R. Desmaris and seconded by M. Schmalz to allow for 26.5% commercial portion and the variance would be available for five (5) years. The motion carried 4-1

A motion was made by R. Desmaris and seconded by M. Schmalz to approve the minutes. The motion carried unanimously

A motion was made by G. Bailey and seconded by D. Hatch to adjourn at 7:55. The motion carried unanimously

Respectfully submitted,

Marcia J. Gasses
Town Planner and Land Use Administrator