

Unofficial

HOOKSETT ZONING BOARD OF ADJUSTMENT
Tuesday, November 13, 2012
HOOKSETT MUNICIPAL BUILDING
35 Main Street
Minutes

CALL TO ORDER

Chair Chris Pearson called the meeting to order at 6:30 pm

Pledge of Allegiance

ATTENDANCE

Chairman C. Pearson, R. Duhaime, R. Bairam, G. Hyde, D. Pare, P. Denbow (alternate), M. Simoneau (alternate), and Jackie Roy (alternate)

Excused: J. Levesque

Staff: M. Labonte and L.A. Moynihan

APPROVAL OF MINUTES

September 11, 2012

R. Bairam motioned to approve the minutes of September 11, 2012. Seconded by G. Hyde.

Vote unanimously in favor.

REQUEST FOR REHEARING

NEURO RESTORATIVE OF NEW HAMPSHIRE

33 Prescott Heights

Map 42 Lot 13

A request for a rehearing on a ruling by the Zoning Board on September 11 2012 to deny a Variance from Article 7:B.5 to allow a handicap housing development on a property with a private well and septic where public water and sewer is required but not available.

C. Pearson introduced the letter that was received from Neuro Restorative requesting a rehearing based on the fact that the acquisition of public water was cost prohibitive and discrimination which is protected under the Disabilities act..

R. Bairam stated he believes it should be reheard and a capacity of well be test as it pertains to the site as well as the surrounding sites. This should be done by an independent firm selected by the Town and paid by the applicant.

P. Denbow: We don't know if they could get town water and we didn't have any specifics on what they can get.

G. Hyde: We talked about it a lot and I don't believe that point should drive us to a rehearing. I don't believe there was any new evidence raised.

J. Roy: Our ordinance clearly states that any elderly and handicap housing is required to have water and sewer.

M. Simoneau: We should abide by the recommendation of our town attorney.

C. Pearson asked for a motion and added that if the Board moves to rehear it should be stated that a third party recommended by the town and paid for by the applicant test the water availability at the site and as it pertains to the surrounding neighborhood. If we do rehear, we need to define the costs.

**The following Board members will vote on the rehearing:
M. Simoneau, P. Denbow, G. Hyde, R. Bairam, and R. Duhaime.**

G. Hyde: Neuro has accused the board of discriminating and that is offensive to me. In reading their letter and the counsel's letter, I feel he is reacting to the accusation of discrimination and therefore I cannot vote to rehear.

Roger Duhaime: I agree, I don't feel we discriminated at all and we only required the public water supply.

C. Pearson: In particular, we have knowledge that Prescott Heights is known to have water issues.

R. Bairam motioned to rehear the variance request to waive the requirement for public water and sewer with the stipulation that testing be done by third party to qualify the well. Third party independent recommended by the Town and paid by the applicant to test the well as it applies to site and the surrounding sites with volumes recorded. Seconded by M. Simoneau.

Vote 3:2 motion carries.

NEW PUBLIC HEARING

TNT PALACE GROUP

1377-1385 Hooksett Road

Map 18, Lot 30, 31, 31-A

A request to modify the prior approval by (1) revising Condition No. 1 to allow all 48 residential units to be relocated into a single apartment building and (2) by striking condition No. 2 relating to the phasing of commercial space before the residential use can be fully developed.

Full Board members will vote on the application

Ari Polak and Tom Toye, TNT Palace: We were here last year for an approval for a mixed use approach. We are here for a modification of the conditions of that approval. Some background for new members; the existing condition of the property at 1377 – 1385 Hooksett Road is now a mobile home and hotel along with car repair with 4 small cottages and 2 single family homes. It is a smattering of different uses. In 2006 when the town adopted the PZ the zoning changed to commercial and classified the existing mixture as non-conforming. A number of the residential units remain occupied. In 2011, TNT group, which became the owner and came forward to the ZBA for a complete redevelopment. That would preserve the mixed use approach for 48 units in 2 buildings and 10,000 s.f. of commercial. The thought was for the residential to preserve the use and give the economic backing needed to build the commercial piece. We asked for a variance to continue that use. In August of 2011 that was granted and was allowed to go forward with conditions with our plan that showed the 48 units in 2 buildings each with 24 units. The condition was that they be in two (2) building. Another condition was the phasing of the redevelopment. I do understand that the zoning ordinance and development regulations state only 24 in a building. The phasing condition of residential – commercial – residential. The approval recognized the residential was the spark and the cash flow for development and still bringing forward the idea of commercial development in the performance zone. We are here to ask the Board to strike the phasing which requires the commercial be built prior to all the residential. We do think there would be interest in the apartment style building and if we bring that portion forward more quickly it would be the spark for redeveloping that corridor more quickly. We also want all the apartments in one building. The site plan and the zoning state that a building cannot exceed 24 units. It was our conclusion that we would need to get a variance and the Planning Board would need to grant a waiver. We ask you to modify the definition of multi-family. The Planning Board could still say no. We are only asking for two modification and we hope the project can move forward more quickly with these modifications. We present these separately

A. Polak read from the application (see file)

C. Pearson: Do you have revised plan for a single unit, 48 unit plan?

A. Polak: We are only going to one building. We are going with the original plan. It is my position that the Planning Board will examine this plan.

Roger Duhaime: We need to see a plan if we are going to change our approval.

A. Polak: This is a conceptual plan and we have not done any engineering. We've got the variance. We are looking for a modification on the phasing.

C. Pearson: You need a variance for 48 units in one building and you need that before you go to Planning.

A. Polak withdraws the request for 48 units one building request and would like to come forward at a later date with that request.

Phasing

Roger Duhaime: My understanding is you want the residential first and the commercial later. What guarantee do we have that will be done?

A. Polak: I don't know what guarantee we can provide. I don't know if it will ever be done. I know it won't be done under these restrictions.

Roger Duhaime: Breaking from the Performance Zone is not in the spirit of the Ordinance by giving residential and no commercial.

D. Pare: Have you attempted to market the commercial?

A. Polak: Yes, Mr. Toye has not been successful in marketing the commercial. Reasons were varied.

C. Pearson opened the hearing to the public.
No comments

Public hearing was closed.

Roger Duhaime: I can see one residential and one commercial but I don't think it is in the spirit of the ordinance to have all residential without the commercial

R. Bairam: I agree, the commercial will never be developed. It will not be good commercial property.

C. Pearson: That phasing was critical to insure the commercial piece.

G. Hyde: The Performance Zone is local government trying to dictate the market. As a Board, we are not real estate agents. If they state that's what the market is, we should listen.

Roger Duhaime: The Performance Zone is trying to put the commercial on the busy road. The market changes, commercial will be in demand but the residential will already be established.

C. Pearson: This is the Performance Zone. It was a unique situation to allow the residential, much to the chagrin of the community in the PZ zone with the phasing. I think we did the best we could with the conditions imposed. The market has been down for four years and I don't believe it has changed that much.

R. Bairam: We are allowing the residential with a condition of commercial to keep in the spirit of the performance zone while giving relief of a mixed use.

*G. Hyde motioned to modify the variance to remove condition 2 which requires phasing of the residential and commercial development. Seconded by R. Bairam.
Vote 1:4 Motion failed.*

ADJOURNMENT

R. Bairam motioned to adjourn. Seconded by G. Hyde.

Respectfully submitted,

Lee Ann Moynihan