
Zoning Board of Adjustment Minutes
February 18, 1998

Deputy Chairperson Michael Iafolla called the meeting to order at 7:30 P.M. with Mark Johnson, Terry Mackin, Allen Brandt, Russell Jeppesen, Susan Zarlengo, members of the Planning Board, Town Council Attorney John Ryan and members of the public present.

Allen Brandt excused himself because of a conflict of interest, and Sam Checovich joined the members.

Case 98:11 Richard Tharp, 17 Pine Road, requests a variance to construct a pavilion at Deerborn Park within the front setback line. The Eagle Scouts, for the recreation department, is promoting this project. Pavilion will be constructed on a concrete slab. Mr. Tharp addressed each of the 5 points necessary to obtain a variance. He stated the pavilion would be a benefit to children and parents to stay out of the rain and sun; that this location is the best place to avoid potential injury from the adjacent ball fields; arts and crafts can be conducted under the pavilion during the summer camps; and that the road is actually greater than 30 feet away from the structure and should have no detrimental effects on it.

In order to allow the alternate zoning member, Checovich, to go home, the board deliberated.
Mackin made motion to approve as read. Checovich seconded. Motion carried.

Allen Brandt came back to the table. Michael Iafolla excused himself as an abutter, and Allen Brandt chaired the discussion.

Mackin read letter that he had written to reinforce his position of professionalism and good judgement while acting on the board. Letter in "February" file.

Reconsideration submitted by Turner Porter.

A motion for reconsideration (attached to these minutes) submitted to the board from Turner Porter's attorney, Walter Mitchell, was read. Brandt granted Mr. Porter's attorney and a spokesperson from the opposing side, 5 minutes to present their case. Attorney Bates, from Mitchell and Bates of Laconia, represented Mr. Porter. He stated the issues raised by the appeal brought forward by Mr. Daskocil and Mr. Peterson was not appealable to the zoning board under State Statute. He explained that the Zoning Board had no jurisdiction to hear that appeal, and requested that they determine not to hear that case. Attorney Bates addressed each of the issues raised in the Daskocil appeal:

1. Traffic problem. A professional firm completed a traffic study. Copies are with the Planning Board.

2. Hydrology. This is not appealable to the ZBA because the zoning ordinance gives the planning Board the authority to request this study if they believe it is necessary. Additionally, a hydrology study was performed.
3. Conditional Use permit granted by the Planning Board. Again, conditional use permits are not appealable to the ZBA, according to State Statute.

Town Council also reviewed the appeal and had previously submitted to the ZBA an opinion that they did not have jurisdiction over these issues.

Mr. Dorskocil stated he would turn his 5 minutes over to his Attorney Costello, from Hampton. Attorney Costello stated the original letter written by Dorskocil regarding the issues previously stated was not meant to be part of the appeal. Mr. Dorskocil thought he would have the right to be heard if he filed an appeal. Attorney agreed that the traffic study was not an issue. However, he believes that the hydrology was. Abutter's wells in the area have previously had problems. Attorney Costello discussed the procedure for adopting zoning regulations and stated that the voters may not have properly understood the implications of approving certain zoning regulations that gave the Planning Board certain rights without a chance of appeal to the Zoning Board of Adjustment. He stated that although several issues are identified both on the appeal application and in the letter, there are other issues of concern that his client would like to have the opportunity to discuss.

Discussion returned to Board.

Mackin asked the Chairman of the Planning Board, Forest Griffin, if the traffic study was done to the board's satisfaction. Mr. Griffin replied "yes". Mackin also asked Mr. Griffin who conducted the hydrology study. Mr. Griffin replied that Dr. Ballestero of UNH performed the study.

The board deliberated on the validity of their jurisdiction over the Planning Board issues. They discussed Attorney Bates presentation and also the letter previously received prepared by Town Council.

Jeppesen made a **motion** that Case 98:10, the appeal submitted by Messrs. Dorskocil and Peterson, was not within the Zoning Board of Adjustments jurisdiction and would not be heard. Mackin seconded. Motion carried.

Brandt explained applicant has 20 days to file an appeal.

Case 98:10 Not to be heard due to decision on reconsideration filed by Turner Porter.

Checovich was excused and Iafolla resumed as chairmen.

Case 98:12 Arthur Brady, III, 16 Cherry Road requests a variance for construction of an addition to an existing house on a non-conforming lot. The addition will meet all current zoning setbacks. He presented a plot plan of the existing property and structures and proposed addition. House built in 1993. Lot only has 1.6 acres, which is the only factor making it a non-conforming lot. There are no wetlands on the property.

Case 98:13 Aubuchon Company for property located at 5 Lafayette Road requests several variances for having two signs on the property, exceeding the height allowed, and size allowed, and constructing an awning with AUBUCHON HARDWARE written on it, and additional wall signs exceeding the 24 SF

allowed. Property is being leased from Mary Kilcup. She won't allow taking the existing fence down. Fence causes some sight problems with sign. Board discussed exactly what they wanted to do, and how they could incorporate the existing sign "Antiques". Discussed amending petition to allow a 40 SF sign 14 feet high. Representative from Aubuchon, Robilland, explained awnings are used to protect materials left outside, and that all Aubuchon stores have them with their name on it. Brandt questioned additional wall signs proposed for the side of the building.

Public Discussion

Mrs. Ellingwood stated that the board has in the past allowed other signs at the car wash, so that Aubuchon should be able to do what they want and keep the fence up. Also Mary should be able to retain her sign.

Case 98:14 Carolyn Fetter and Jay Diener, for property located at 59 Woodland Road requests a special exception for a home occupation. They explained any warehousing and shipping would be conducted elsewhere. Only administrative functions will occur at the home. No signs, possible one additional employee during busy holiday seasons. Total operation will be conducted within their house. Brandt determined that this is not a home occupation but someone working from their house. No special exception needed. *Brandt made motion that this does not qualify as a home occupation and doesn't need a special exception. Mackin seconded. Motion carried.*

Case 98:15 John C. Woodworth, 45 South Road, requests a variance to allow existing house located in the IB/R zone to be used for both residential and business purposes. He explained he is closing retail store at mall and will do mostly silk screening of team shirts, limited retail from his house. Mostly special orders and telemarketing activities will occur from his house. No chemicals are used in the process. Board members were not in favor of having retail from his house. Discussed that he would have to obtain site plan approval from the Planning Board.

Case 98:16 Fred and Donna Seigel, 126 Atlantic Ave. Case was not properly advertised, but Zarlengo obtained verbal and written confirmation from the abutters stating no objection. The case will be properly advertised in March and heard. If there is no objection, the variance letter would then be sent to applicant. Attorney Michael King of Sanders and McDermott explained the Seigels wish to install an in-ground pool behind their house, which happens to be within the 50 foot setback from wetlands. The lot is non-conforming because it is 1.55 acres, and the existing house does not meet current front setbacks. Shirley Carter and Nelson Burge, chairs of the Conservation Commission, reviewed and wrote a note saying they are in approval with the location. Abutter to the west, Mr. Waechter, spoke in favor of the project.

DECISIONS

Case 98:11 Mackin made motion to approve a variance to allow the construction of a pavilion within the 30 feet required setback. Checovich seconded. Motion carried.

Case 98:12 Brandt moved to approve variance to expand the non-conforming lot and construct an addition. Mackin seconded. Motion carried.

Case 98:13 Jeppesen made motion to accept one 60-sf sign 14 feet high. One sign only for the property. Johnson seconded. Vote 4 for, 1 opposed (Brandt). Motion carried.

Brandt made motion that one wall sign not to exceed 30 SF will be permitted. Johnson seconded. Vote 4 for, one opposed (Iafolla). Motion carried.

Case 98:15 Brandt moved to approve the variance and allow Mr. Woodworth to live and operate a business out of his existing home, restricting it to no retail sales and the sign would not exceed 20 SF. Mackin seconded, motion carried.

Case 98:16 Mackin moved to approve the location of the pool within the 50-foot wetland setback on a non-conforming lot, as shown on the plans submitted. Johnson seconded. Motion carried.

Meeting adjourned at 11:00 PM

Beverley Frenette
Secretary

Reviewed by:
Susan Zarlengo
Building Inspector