

**ZONING BOARD OF ADJUSTMENT
DECEMBER 20, 2016
DRAFT MINUTES**

1. Call to Order

The session was called to order by Chair Laura Davies at 7:00 pm.

2. Introductions

Members present Rick Thielbar, Clerk, Laura Davies, Chair, and Robert Prior. Staff present was Amanda White, Recording Secretary. Members of the public were present as well.

3. New Business

The application of Eugene A. Barker for a variance(s) from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations-Residential to permit the proposed subdivision of an existing 15,000 s.f. parcel on which two manufactured homes are currently situated. The subject property is located at 1 Dow Street (Units A & B), in the M-Manufactured Housing zoning district. Tax Map Parcel #104-82 and #104-82-1. Case #1515.

Ms. Davies gave the option to the applicant to wait until another meeting because a member of the Board was unable to attend the meeting due to illness. Eugene Barker appeared before the Board to explain why he is requesting a variance. He purchased this property almost 30 years ago, and had been renting it out and now he needs to sell them. He has replaced the mobile homes on the property. The properties have been for sale for 1.5 years and people are unable to buy them because they are unable to get financing. Financing cannot occur because they do not own their own land so he would like to subdivide the properties. The homes are on town water and sewer. Currently it is considered a condominium, Mr. Barker had it set up this way because he thought it would help but it didn't work. This is also why he gets two tax bills. Because it is shared land, no one will touch it. Ms. Davies said this was pretty unusual situation. Legally this works but practically it does not, he would need a cash buyer to keep it the way it currently is and that limits the options. Mr. Prior said that the decision would not have exact measurements because the applicant is unsure where the dividing line would fall. Mr. Barker would like to do it evenly but it depends on if that line would fall near one of the mobile homes, if so it would have to move. Mr. Thielbar thought they could require them to be equal, and Mr. Barker explained he wouldn't mind doing this even if he had to do a little zag somewhere to get that equal measurement. Ms. Davies thought that they grant the variance but the applicant would still need to go to the Planning Board to get it subdivided and this was confirmed as correct. Ms. Pennell asked if each home had its own line to the sewer, it was confirmed that this is not the case. It has its own meter for water but they both share a septic tank and a lift station pumps it to the town. Ms. Pennell said one of the requirements must be on its own sewer, the applicant explained that there is a shared pumping system that brings it to the town sewer. It was explained that in a sense each home as its own access to the town system. Ms. Davies said they would need to have some kind of maintenance agreement. Ms. Davies said the variance would be for lot size, lot width and doesn't meet setbacks due to a nonconforming site. Mr. Prior did not want to tie the applicant's hands by requiring them to be exactly equal sizes but to give him some flexibility for the surveyor. Ms. Davies is Ok with this being two

separate lots but does not want it to turn into something else later. If they want to change it in the future, they should have to come back. Ms. Pennell questioned when the second house was put on the lot, this was confirmed it was replaced 5 or 6 years ago, but it had always been two here. Ms. Pennell spent time looking at maps online, and couldn't see two on the property and she even checked the tax records. Also, the right of way is 50 feet wide and then on another map two of the buildings encroaching on the right of way. Mr. Barker said he would need a survey because they have always been in these locations and he is unsure if that is accurate. Ms. Davies said if he is encroaching on the right of way that is something he would need to work with the Planning Board on. Ms. Pennell wondered if the survey could be completed prior to them making a decision. Mr. Thielbar felt that what they were worrying about now were the Planning Board's domain anyhow. Ms. Davies said even if they approve the variance this cannot move forward without Planning Board approval. Mr. Prior said what they are looking at is whether or not this man can divide the property essentially in half, so he can sell and not much more than that. Ms. Davie asked for public comment and there were no public comments and public session was closed and the Board deliberated. Mr. Prior did not see any problems with this requests, other than properly constructing the motion. Mr. Thielbar agreed, he did not see a problem with this step. The planning board would have to be careful. Ms. Davies would like to make sure they don't word it to the existing footprint, she just like to keep it to the same property type. Ms. Pennell said they are bringing a zoning article up in March that would make it so you cannot subdivide a lot where one doesn't have access to a public road. It was confirmed that yes, but that does not apply to this application. That only applies to the "pork chop" lots that have been popping up in some areas. Ms. Davies said this is a legal decision and the physical will essentially remain the same.

MOTION: Mr. Prior moved to approve the variance application for a division of the lot into two approximately equal lots with a further variance allowing for flexibility on the lot width, setbacks and front setbacks. The motion was withdrawn.

DISCUSSION: Mr. Prior was vague about the motion because they do not know the exact dimensions yet, he may not be able to come up with equal lots. Mr. Thielbar said they don't need the side variance, but Mr. Prior felt that the applicant might. Mr. Thielbar felt another way to do it, was to require he divide the property in half, full stop. And then give him a variance for how that would impact the side and front setbacks. Ms. Davies felt they could call for approximately equal area instead and she wanted it to say the use remain the same. Mr. Thielbar was comfortable saying equal but Ms. Davies thought it was better to say approximate and equal area.

MOTION: Ms. Davies moved to grant the variances for lot area, frontage and the width and front setback and to divide the lot into two lots that are approximately equal area with the condition that they remain in the manufactured housing use. Mr. Prior seconded the motion. The motion passes.

DISCUSSION: Ms. Pennell said they were doing this without seeing them placed on a survey and would rather wait to see the survey. Ms. Davies said that would be ideal but it is not necessary for what they are being asked tonight. It will need to happen before the subdivision is complete. Ms. Pennell just wanted this to be legal, and Mr. Pryor said it will be. Ms. Pennell said the other lots on this street are larger, they are making two smaller lots. Ms. Davies said there are already two houses on this lot so that is why she is OK with this.

The application of Seacoast ShearWater Development, LLC for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the proposed construction

of a 'multi-use' building on the properties located at 146 Portsmouth Avenue; and a special exception per Article 4, Section 4.4. Schedule III - Density and Dimensional Regulations Non-Residential and Article 5, Section 5.2 to permit the proposed building to exceed the maximum height requirement. The subject property is located in the C-2, Highway Commercial zoning district. Tax Map Parcels #51-1, #51-3.3 and #51-3.4. Case #1516.

Craig Solomon, the attorney representing Shearwater Development, LLC appeared before the Board. Given the fact that there is not a 5-member Board for this meeting, they request to be postponed until the January meeting and be first on the agenda. Ms. Davies felt this was a reasonable request.

MOTION: Mr. Prior moved to postponed the hearing for case number 15 and 16 until the January 17 meeting and have it appear first on the agenda, Mr. Thielbar seconded. The motion passed unanimously.

The application of McFarland Realty Trust for a variance from Article 5, Section 5.7.5 to permit additional new signage which exceeds the maximum square foot area requirements. The subject property is located at 151 Portsmouth Avenue, in the C-2, Highway Commercial zoning district. Tax Map Parcel #51-13. Case #1517.

Ms. Pennell recused herself from this matter as she has done Business with them in the past. Sue McFarland appeared before the Board and asked if this meant she would need a unanimous decision now, this was confirmed. Ms. McFarland said she would like to continue to proceed. McFarland Ford would like to add an additional 103 square feet of sign frontage. The immediate abutter has written a letter of support. They are requesting a 34-foot Brand wall and to display their name in conjunction with the logo. All signs are backlit, and they feel it is critical to be seen from Route 101. Ms. Davies had some questions, she wanted to go through the calculations submitted. Ms. McFarland went through the packet she submitted to the Board prior to the meeting. They are removing 94 square feet that faces Portsmouth Avenue, what Ford has proposed in this location is a new small Ford oval which is 21 square feet. There will be less signage on Portsmouth Ave then what is there currently. The side that faces route 101 is what is changing, this is going to 147 square feet. Mr. Prior asked for the existing square footage of the signage, this was confirmed as 94 square footage. They are going from 94 square feet to 147 square feet at the request of Ford Motor Company. Ms. McFarland explained part of their lot is on the Stratham line and the larger sign would be facing Stratham. Ms. Davies said they do have a very large building and the back would be remaining the same. Mr. Thielbar suggested if in addition to saying they can have 103 square feet more, and then limit to the signage they showed tonight. Ms. McFarland would not mind this restriction. Ms. Davies asked if there was any public comment, and there was none. Mr. Thielbar did not have any problem with this application. Ms. Davies said typically when there is a dealership, they have very strict restrictions so she feels this is a reasonable request for a long-standing business. Mr. Prior has a slightly different view on this, he feels that if you drive down Portsmouth Ave now you notice the hotel has an unnaturally small sign, and he imagines that other places in town are under similar corporate influence. He feels that granting this variance will create more requests for similar issues. Mr. Thielbar said the example used is all on Portsmouth Ave and is a free-standing sign. This is a sign on a side of a building and this may help it to look better. Mr. Prior read the variance guidelines.

MOTION: Mr. Thielbar moved to except the request for the variance for the increase in signage of up to 110 square feet with the signage to be as submitted with the request and Mr. Prior seconded. The motion passed unanimously.

4. Other Business

There was no other business.

5. Approval of Minutes: September 20 & October 18

September 20, 2016: Ms. Davies has concerns with the first order of business there was no reference to any case number, address or map and lot. There needs to be better reference for this part. On Page 2, the paragraph that begins with, there was a name spelling error, this should read "Ms. McBurney".

MOTION: Mr. Prior moved to accept the meeting minutes for September 20th as amended, Mr. Thielbar seconded. The motion passed.

October 18, 2017: Ms. Davies had a hard time with a sentence on the second page, just wants to make it more clear. Towards the middle of the page, "There were no criteria for extensions in them, the Board should revisit". Mr. Prior said them was the zoning ordinances. The Board would have to look at the video to be able to tell. The Recording Secretary would investigate this from the video. Mr. Prior would feel more comfortable holding on these minutes until this paragraph had been revised. Mr. Thielbar said the last two lines on page 2, it should insert "short term" before renting and cross out "can be" and add "Meets the definition of".

6. Adjournment

There being no other business before the Board this evening, Mr. Prior moved to adjourn, seconded by Ms. Pennell, and the vote was unanimous. The session was adjourned by Ms. Davies.

Respectfully submitted,

Jennifer Dionne
Recording Secretary