

ZONING BOARD OF ADJUSTMENT
May 16, 2017
FINAL 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, Robert Prior Alternates Joanne Petito and Martha Pennell were also present. Staff present: Doug Eastman. Members of the public were present as well.

3. New Business

The application of Anne C. Bushnell, Trustee of the Anne C. Bushnell 2004 Trust as Amended and Restated 2011 for a variance from Article 4, Section 4.4 Schedule III: Density and Dimensional Regulation (Non-Residential) to permit dwelling unit density of a proposed multifamily structure to be greater than the required maximum density; and to allow a ten-foot (10') rear yard setback where twenty (20) feet is required. The subject property is located at 12 Front Street, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #72-2. Case #17-15.

John Lyons, representative of the applicant appeared before the Board. Mr. Lyons discussed the property, saying that this property is unique, historic and important. It is a single-family home and the only one on the street. The owner has owned this property for 17 years and has done everything she possibly can to maintain the property as a single-family home. She has been attempting to sell it for approximately 4 years because the cost of maintaining it has been significant. The application before the Board is to build in the rear of the lot a 9-unit multi-family building. They are trying to preserve the front building while creating a building in the back that will help offset the cost of the lot and help to sell the property. Mr. Lyons explained how this project would meet the requirements, the variance will not be contrary to the public interest as it meets all of the requirements and it preserves 12 Front Street. This structure will not impact parking as they will have plenty of parking, and it will help give additional downtown residential units and increase people shopping in the down town. The applicant is trying to build this new building as far back on the lot as possible.

Mr. Prior said they could put a building up in that spot without appearing before the ZBA if they met certain criteria. The specific relief being sought is for the density, zoning allows 6 units and they are requesting 10. He would like to know why they are requesting this specific variance and not just building the 5 additional units allowed. Mr. Lyon said that the applicant is passionate about preserving the original building and would like to place this new building far back to preserve that street scape and that original building. If they are given the lower number of units, it makes it more practical to divide up the front building which is what they are trying to avoid. If they are allowed a lesser number of units then requested they would likely build two bedroom units instead of one bedrooms. The owner has tried to sell this property for a number of years and no one will buy it as a single-family home. The real estate agent has told them they need to balance the front building and this was the best way to do it. Mr. Prior said this was the first of many presentations they would have to make on this project. They would need

to speak to the HDC, the town will have to weigh in on the municipal lot usage, and the planning board. Mr. Prior also said that he wanted to clarify that it would be entirely possible for them to build a building with 5 units in the back without needing these variances and without making changes to the existing structure.

Corey Belden, Civil Engineer said he wanted to make a conditional statement on the 10-foot setback, in the application it is noted that there is a 14-foot gate that accesses the municipal lot, parking stalls have been added by the town to close off this access. After going through numerous site layouts, it was recommended that they access the parking from the side of the lot instead. If the driveway is in the middle of the lot to do this, it pushes the building backwards which is why they are asking for the 10-foot setback.

Ms. Pennell said the town is noted for its lack of parking, and there have been conversations about a parking garage and how if/when this ever happened how would this affect the viability of these units. Mr. Lyons said that there are instances in Portsmouth where units face a parking garage selling for large amounts of money. The real estate agent said this potential garage would have no impact on the value of the apartments. Ms. Pennell also said they are not thinking of dividing up the front building if this is approved, and this was confirmed.

Ann Bushnell, the property owner appeared before the Board, she wanted to say that to her aesthetically a parking garage would be far better than the surfaced parking lot, the other is that when they began talking about this, the logical thing seemed to be town houses because that is very popular now. She personally does not like town houses but she also did not want them up next to the original house. She felt that were a lot of people in town that are not part of a family unit currently and they need housing as well. Ms. Bushnell read some demographics from the 2010 census to illustrate this.

With no further public comments, the Board closed the public session and entered deliberations.

Mr. Thielbar felt this was a creative way to preserve an old house, he felt you don't have to drive too far down Front Street to see what happens when there is not enough money to keep them up. They certainly do not need this building to look worn out. It made sense to him to push this back on the property to avoid the historical district. He also felt that since the neighbor on this part of the property was a parking lot they would not be offending anyone. Mr. Theilbar said restricting the number of units, would result in larger units but the parking situation would remain the same. He felt they should accept it as submitted since they have many other folks to appear before as well. Ms. Davies agreed that it is a style of housing that is popular, but that she felt the setbacks were to protect both properties. She also did not feel people who had balcony's that face the potential parking garage would be unhappy when it was built. Mr. Prior said he was coming around to the proposal, he is concerned about the massing on the lot, he wishes it was less. They are not asking for a height variance but it will still be a large building on the back of this lot. Ms. Davies would like to caution them on the parking garage, nothing that municipal buildings do not have to adhere to zoning because they are exempt.

Ms. Pennell noticed in the application said the potential layout of the apartments looks like they have 2 bedrooms. Mr. Thielbar said this is common in apartments of this size, the layouts have a den and a bedroom. This is standard and how it is done. The applicant confirmed this was the intention.

MOTION: Mr. Thielbar moved to approve the request for the variance to allow the 10-foot setback and a unit density of 2200 square feet, Ms. Pennell seconded.

Ms. Pennell moved to amend the motion to add that the existing home remain as a single-family unit. Ms. Davies also said the original motion did not have a single bedroom units. Mr. Prior agrees with the sentiment of Ms. Pennells motion, but was not sure this was enforceable. The Code Enforcement Officier explained that they do have the right to make this condition of approval. The amendment passed unanimously.

Mr. Prior wanted to amend the original motion to say “as presented in the application” Mr. Theilbar seconded. The motion passed unanimously.

MOTION: Mr. Thielbar moved to approve the request for the variance to allow the 10-foot setback and a unit density of 2200 square feet as presented in the application. The existing home will remain as a single-family unit. Ms. Pennell seconded. The motion passed unanimously.

The application of Kimball Island, LLC for a variance from Article 5, Section 5.6.6 to permit no off-street parking where 61 off-street parking spaces are required for the proposed uses at the island property located at 4 String Bridge. The subject property is located in the WC-Waterfront Commercial zoning district. Tax Map Parcel # 7231. Case #17-19.

This application will be deferred to the next Board meeting in June.

The application of Varsity Wireless Investors, LLC for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Article 5, Sections 5.2 and 5.4.2 F. to permit the construction of a wireless communication tower and associated site improvements on the property at 8 Kingston Road. The subject property is located in the NPNeighborhood Professional zoning district. Tax Map Parcel # 81-49. Case #17-16.

Francis Parisi, the representative for the applicant appeared before the Board. The applicant has also applied to the Planning Board for a site plan review of this project and they will be appearing before them next week. The subject property is in several different Boards, including the conservation committee which they have already appeared before and received approval. They are proposing a facility that is 125-feet tall. Many people have cut their land line and only have wireless now, over 70% of 911 calls in the state of NH are made via wireless phones. There is more and more of a demand for telecommunications and therefore for cell sites. Mr. Parisi explained the application what was submitted, and explained that for tonight’s meeting he brought pictures of what the tower will look like as he knows abutters will be interested in this. A PowerPoint presentation was presented to the Board and the Public. Mr. Parisi felt that after a brief construction period, that there would be no impact from the cell tower. That everyone is getting used to these types of structures, similar to how everyone got used to telephone poles.

Ms. Davies asked whether or not they can supply property valuation data, Mr. Parisi said he could get this. Ms. Davie felt abutters would be interested in knowing where he got his information from. Mr. Parisi said his company has done these types of studies for many years, they can track the sales in the area and look at time on market and difference between sale price and asking price, etc. He can bring in people to present this information. Ms. Davies agreed, she said that she had never seen an impact on

property values for properties located near a cell tower, she just wanted Mr. Parisi to explain this for people who may be new to this.

Ms. Petito asked Mr. Parisi to explain the current state of coverage in town, and Mr. Parisi explained that they put two reports in the packet one specific to T-Mobile and one general report. Mr. Parisi explained they do extensive traffic and population data gathering and this could be highlighted. Mr. Thielbar stated that he was not in favor of this, he is not convinced it is essential. We have a whole generation of people being negatively impacted by these devices. He does not accept total connectivity as a wonderful thing.

Mr. Thielbar said he understands he will never be able to convince him of these items, but he wanted to discuss the part where he says the state of NH requires them to say yes. He does not believe Exeter is part of Northern NH. They are required to show that they have made every effort to find something suitable. He feels the transfer station has an elevated location that may be better suited for this project. There are areas off of Epping Road that are commercial and this tower would not be nearly as offensive as the spot chosen. Mr. Parisi explained that he met with the town planner and this is how some of that essential piece was determined. Also that during times of natural disasters cell service is essential as they do not go down.

Mr. Prior asked Mr. Parisi to see the slide from Westside Drive fully built out, explaining that one of the criteria that they have to meet is that the applicant must exhaust all other options on tower location to minimize adverse visual effects. Mr. Prior also said that the zone they would like to build in is very small, compact and very residential. This is a commercial zone but is directly next to a residential zone. This is an extreme concern to him. Mr. Prior said that he did not see how this would not have a negative impact on the property next door. Mr. Parisi said there really are no industrial or commercial zones and it is a challenge in all communities when they start to build in residential zones. They thought they had found the best solutions. Mr. Prior felt that an alternative was to not build the tower. Mr. Parisi said the data supports that there is a need for a site here. The bylaw does not state it must be invisible or not in a residential area. Mr. Prior said they are required to minimize the visual impact and Mr. Parisi said they have done a lot to minimize this.

Mr. Petito said they have to show the coverage gap, how big it is to prove that this is the only alternative. She feels having that data is important.

Ms. Pennell questioned why we need this tower since a tower is being built on Cross Road. It was explained they are not designed for huge coverage areas and is designed to complement not replace other towers. Ms. Pennell felt they had a year to come forth with the Cross Road Tower, and it was explained that a lease was just signed a few months ago. Ms. Pennell said that it was passed by the towns people two years ago. Mr. Parisi said the delay was because the town wanted them to build on the land fill and due to environmental reasons, and the DPW engineer in town did not want them to build there. The tower under discussion tonight is not replacing this tower, it is complementing it.

After a short break, Ms. Davies announced that it is Board policy not to open new cases after 10PM, so any items not opened prior to this time would be postponed until the next meeting.

In the interest of time, Ms. Davies said that everyone has the right to be heard but she wanted to ask for a show of hands of who is in favor and who is not. And then abutters could come up and give a brief

comment. Ms. Pennell did not agree with this, and Mr. Prior also was not comfortable with this. Ms. Davies decided to stick to normal procedure.

Mark Ouellette, 13 Westside Drive: He has both a cell phone and a landline and in his living room he has 5 bars. This proposed gap does not exist in his universe. His home is in a unique situation and has a beautiful sloping yard, and wetlands. There is an abundance of wildlife that he gets to see here. He does not want to look out his kitchen window and see that monstrosity that will have negative impacts. He feels this is a dog and pony show from a salesman.

Denise Gurshin, 19 Westside Drive: She moved to this street specifically due to the wetlands in the back area. They have invested heavily in this home due to the beauty of the area. She has a huge issue with a cell phone tower going in her backyard. There would be no benefit to herself and her family to the tower, they have no service issues. She would like to see the statistics from the applicant.

Scot Luczko, 25 Westside Drive: They have lived here for almost 4 years, the first thing he did was look at a coverage map for his work and he had enough to get by. The important thing is the view in his backyard. It is a pristine view for him, and he gets to teach his children about wildlife. As for the 911 portion that was mentioned, the FCC website says that since cell phones are mobile they are not fixed to one location or address while the closest tower may give a general location it does not give precise location and cannot get help to the caller any more quickly. He would also like to know if this tower would interfere with any people who use antennas for their TV. He also would like to know if it would interfere with wifi in the neighborhood.

Mr. Parisi explained that in terms of interference, they are heavily regulated by the FCC and designed to not create interference. He also said he would bring in more data to the next meeting on the saleability of homes, etc. Also, 911 is not a perfect system but they are working with them as a mandate by the FCC to fix this. The Board asked if he wanted to continue to another meeting, and it was explained that this was the applicant's decisions. IT was agreed that he would continue to the next meeting, but he would like to know exactly what information they would like to see. These requests were explained.

Mr. Prior wanted to note that they did not close public session, so at the next meeting they would open in public session.

MOTION: Ms. Davies moved to continue until the next meeting it was unanimous to do so.

The application of Kendall Wheeler and Donna Taylor for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses, Note #1 and Article 5, Section 5.2 to permit the conversion of an existing single-family residence into two residential units. The subject property is located at 12 Pleasant View Drive, in the R-2, Single Family Residential zoning district. Tax Map Parcel #85-61. Case #17-17.

The applicants Kendall Wheeler and Donna Taylor appeared before the Board. They would like to request a conversion of a single-family dwelling, there is currently an in-law suite they would like to make this into another apartment. They would like to add a kitchen. It does not change the size of the property, etc. They are requesting this conversion because staff had advised them that they did not have enough space outside to qualify for the accessory dwelling. Mr. Eastman said they do not meet the lot requirements for an accessory dwelling because they are not a conforming lot within their district. Mr. Prior asked if they intended to have this owner occupied and they confirmed that they did. Mr.

Thielbar asked if it currently had two garages, and it was confirmed that there are three. Ms. Davies went through the requirements for a conversion.

Nancy Demers 7 Granite Street: She is not in favor of the request, she believes it is about 50 feet from the back wall of their home to the backwall of her home. She doesn't know how the backyard will house recreational space for two families. She asked about the current in-law suite, she doesn't believe this is how it was built and she is concerned about the exterior of the building not being changed. She does not see how they can enter the downstairs without adding another entrance. She is also concerned about parking. She also questioned what would happen with property values. Ms. Davies asked if they made it a condition that it had to be owner occupied if that made her feel better. She said that since this is difficult to enforce, so how would they even know it wasn't owner occupied.

Haley Washington, 5 Granite Street: From her backyard, she can see this property and she has concerns. They cannot guarantee who they rent to, and there is no privacy. They purchased their home with the idea that it was going to be a single-family neighborhood and not a rental community. She also has concerns about parking and traffic on the street. She is not for this project. Ms. Davies said any single family can be rented currently. Mr. Prior wanted to point out that one of the families that is going to live there is in this room tonight.

Ms. Taylor said there is already an entrance in the back, this already exists. Yes, there will be people in the backyard but her family is only two people, and they get to choose their renter. She would like to create this because it is difficult to buy and rent in town. They also have the ability to park 3 cars in a garage currently so parking should not be an issue. She also offered to put up a privacy fence, as she also had concerns that neighbors were looking into their backyard.

Mr. Prior asked about the entrance, and it was explained there is a door through an existing garage door and an entrance in the back. Ms. Pettito asked if they were purchasing this home now and it was confirmed that they were and the offer is not contingent on this going through. Ms. Taylor explained this unit is currently rented to a family member of the current owners.

The Board closed the public session to enter deliberative session.

Ms. Pennell asked why this is being applied as a conversion instead of an accessory dwelling unit. Ms. Davies explained that it does not conform to dimensional requirements. It is a nonconforming lot and does not qualify under an accessory dwelling unit. Ms. Pennell asked if this conflicted with the recent state law on accessory dwellings. It was explained that they are still allowed to have their own criteria. The state law changed the dimensions and said they had to allow them in other zones.

Mr. Prior would be happier if this could be an accessory dwelling. Ms. Davies wanted to go through the special exception criteria. Since this is a one-bedroom and of small size, practically it may not make any difference. Ms. Pennell also asked about building codes, can they have a front door in a garage. It was explained they have an exclusive door as well as the garage entrance. Mr. Prior felt this was a compact area and full of single-family houses and he has concerns about altering the neighborhood. There is a limited amount of control that any landlord has. He does find comfort that this would have to be owner occupied. Ms. Davies agreed and felt that when the owner was present there would be a greater degree of caution used. The criteria were discussed at length. The Board had concerns about this becoming rentals in the future.

Ms. Pennell asked if they could ask town council about adding a restriction on the deed on having one unit owner occupied. Ms. Davies felt the ordinance was written the way it was written, if they wanted to change the wording they could discuss this. She did not think they should change the rules for this application.

MOTION: Mr. Thielbar moved to accept the request for conversion as requested, Mr. Prior seconded. The motion passed unanimously.

Ms. Pennell asked the town planner get clarification on the conversion issues involving owner occupied and not owner occupied.

The application of Ben and Sarah Anderson for a special exception per Article 5, Section 5.2 and Article 6, Section 6.10 to permit the use of an existing barn structure for community gatherings (for the sharing and cultivation of the arts). The subject property is located at 66 Newfields Road, in the RU-Rural zoning district. Tax Map Parcel # 24-29. Case #17-18.

This application was postponed until the next meeting.

Approval of Minutes:

The minutes were delayed until the next meeting.

Election of Officers:

Only full members can vote in this portion.

MOTION: Mr. Prior would like to nominate Laurie Davis as chair, Mr. Thielbar seconded. The motion passed.

MOTION: Ms. Davies would like to nominate Mr. Prior as the vice chair, Mr. Thielbar seconded. The motion passed.

MOTION: Mr. Prior would like to nominate Mr. Thielbar as clerk, Ms. Davies seconded. The motion passed.

Adjournment

There being no other business before the Board this evening, Mr. Prior moved to adjourn, seconded by Mr. Thielbar, and the vote was unanimous. The session was adjourned by Ms. Davies at 10:50 P.M.

Respectfully submitted,

Jennifer Dionne
Recording Secretary