

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MARCH 1, 2017

MEMBERS PRESENT: Paul Maskwa, Chair, Roland Dumont, Bill Griffith, Alternate and John Kennedy, Alternate.
MEMBERS ABSENT: Matt Keiser, Vice Chair and Donald Routhier.
STAFF PRESENT: Shanna Saunders, Director of Planning and Community Development and Tracy Gora, Planning Secretary.

The meeting was called to order at 7:00 pm.

Maskwa appointed Griffith and Kennedy as voting members for tonight's meeting. Informed the applicants that there are only four voting members present tonight so they can request to be tabled until the next meeting in hopes that a full Board is present.

1) APPROVAL OF THE MINUTES OF THE MEETING OF FEBRUARY 1, 2017.

Motion: Kennedy moved to approve the minutes of the meeting of February 1, 2017.

Seconded by Dumont. Motion carried with a 3-0-1 vote with Griffith abstained.

2) OLD BUSINESS

A) Any old business that may come before the Board.

None.

3) NEW BUSINESS

A) Mandy Bruno, on behalf of Richard Coco is seeking a variance from Section 20.D.1.b of the Zoning Ordinance to allow "open" and awning signs on property located at 466 High Street, in the Residential Commercial (RC) District, Assessor's Map 40, Lot 02, ZBA #02-2017.

Saunders referred to her memo and stated that she noticed that one of the awnings only has a street number on it and that is not considered a sign so a variance is not needed for that one.

Public hearing opened 7:01 pm.

Brian Barrington of Coolidge Law Firm represented the applicant and addressed the Board. Stated that the applicants occupy the subject property and own the Psychic and Tarot Card Reading business that is there. Stated that they have a long-term lease on the property until 2024 so they have a long-term commitment to Somersworth. Stated that they received a variance in 2014 for the wooden freestanding sign and submitted photos showing the sign covered by all the snow (see attached). Stated that the closest other residential property is almost 100 feet away and on the other side of the street. Stated that this should be rezoned and talked about the residential history of the area. Stated that this property is zoned RC but there are virtually no other residential uses and the house is set back. Stated that because it is a residential use they have to comply

with the Home Occupation ordinance but that he envisions home occupations to be in the middle of a residential neighborhood but that there is zero residential nature left in this area. Stated that there are two enormous signs on properties on either side of this one. Stated that this all came about because Code Enforcement saw the little neon open sign. Stated that a variance was granted in 2015 and now they want to add awnings. Stated that vehicles using GPS always end up at Goodwill and that she has literally had people driving around looking for her business. Stated that the traffic on High Street moves fast. Stated that they are asking for proportionality. Stated that big signs are beyond the financial means for the applicant. Reviewed the five criteria and stated that this will not diminish property values because all the properties around this one are commercial with larger signs. Stated that this is not contrary to the public interest because you want to have the same type of uses clustered together and there are no residential uses here anymore. Stated that hardship has to be related to characteristics of the property and cited case law. Stated that the hardship here is that it is the only residential use and is surrounded by big businesses. Stated that the traffic isn't good for a residential use so they should be allowed a commercial use with signage consistent with that. Stated that substantial justice will be done because it is unjust that it is still zoned for a residential use. Stated that it is not contrary to the spirit of the ordinance because home occupations are to prevent a residential use from having a big business and standing out and causing traffic when surrounded by other residential uses. Stated that in this case the home occupation is really the only use of the property and that this seems reasonable.

Mandy Bruno, business owner and applicant addressed the Board and stated that she doesn't want to be an eyesore. Stated that she just wants her business to survive and that this is becoming stressful. Stated that she used to have a few people a day come in and now she is lucky to get a few people a week. Stated that the existing sign is covered by snow and that she just wants her business to survive. Stated that hers is a drive-by business and she wants people to know she is there.

Dumont asked if that snow was blown or put there.

Bruno stated that it was pushed there from the street.

Dumont confirmed that they are asking for the neon open sign in the window and two awning signs.

Saunders showed a picture from the application and stated that they are asking for a smaller freestanding sign also.

Griffith asked how big the open sign is.

Bruno stated that it is a standard sign from Home Depot.

Saunders stated that the awning over the front door will just have a house number on it so a variance is not needed for that one but the two awnings on the first floor will have signage.

Maskwa stated that the application says the freestanding sign will be temporary and asked if it is mainly a summer sign.

Bruno confirmed and stated that it won't be up in the winter.

Public hearing closed 7:16 pm.

Dumont stated that he is familiar with the property and understands the situation and it is because of what it is surround by. Stated that he is inclined to support this. Stated that if the hardship is money then they can't grant the request but that is not the case here. Stated that it is reasonable and he can support it.

Kennedy stated that he feels it is very reasonable and that it is an area of town that has drastically changed since the 80s and it not really residential anymore.

Griffith stated that he agrees.

Maskwa stated that he agrees with the applicant that it meets the criteria and that enforcement of the ordinance is a hardship. Stated that he is concerned with the temporary freestanding sign and stated that the Board should control that. Stated that the one shown in the pictures say there is a special price and the applicant doesn't want it as part of the regular sign. Asked about it being temporary.

Saunders stated that there is an allowance for special event signs. Stated that she is not sure how often the temporary sign will be out.

Bruno stated that originally it was a temporary sign because she wanted to offer a special promotion but were seeing the special sign more than the regular one. Stated that it is up all the time.

Saunders stated that it will not meet the definition of a special event sign in that case.

Barrington suggested that Bruno needs to add a strip to the existing, permanent sign.

Saunders stated that it would be an amendment to the original approval for the freestanding sign.

Maskwa stated that he likes the idea of a flap that can hang off the existing freestanding sign that can be removed when there is no special.

Saunders stated that a temporary sign is not one that is there two to three times a week.

Barrington suggested adding eight inches to a foot to the bottom of the existing freestanding sign.

Maskwa asked if that would be a condition of approval.

Saunders stated that she feels that just reading the motion that way would suffice.

Maskwa stated that this is for the open sign, two awning signs on the first floor and to add eight inches to the existing freestanding sign.

Griffith stated that it sounds reasonable.

Motion made by Dumont to approve the request as Maskwa stated.

Maskwa stated that following motion language: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Mandy Bruno for a variance from Section 8.F.5 of the Zoning Ordinance to allow an open sign, two awning signs on the first floor and the addition of eight inches to the existing freestanding sign be **APPROVED**.

Seconded by Kennedy. Motion carried with a 4-0 vote.

- B) The DesMarais Family Revocable Trust is seeking variances from Table 4.A.5. of the Zoning Ordinance to allow a food sales use and an office space for property at 230 High Street, in the Residential Multi Family (R3) District, Assessor's Map 14, Lot 18, ZBA #03-2017.

Saunders referred to her memo (see attached) and stated that the application talks about food sales and that she clarified with the applicant that he has interest from someone to open an ice cream stand and not have retail sales. Stated that the second variance is for the part of the property that currently only has a foundation on it. Stated that there was a variance in the past for a three-unit building. Stated that a building permit was approved and issued for the foundation of a duplex. Stated that the location of the foundation is nonconforming because of setbacks but that she thinks that it is grandfathered. Stated that the variance for the commercial use is the only one needed there because a duplex is allowed in the zone. Stated that in the past it was only allowed to be a two-story so she feels it needs to stay that way.

Public hearing opened 7:30 pm.

John DesMarais, applicant addressed the Board and stated that he would like to table the part of the variance that is for the commercial use on the existing foundation because he would like to wait until there is a full Board.

Saunders stated that he can do that but if it doesn't pass, he can't appeal the one heard tonight because there is not a full Board present.

DesMarais stated that he would like to hold on the variance for the foundation and move forward on the one for the existing building. Stated that it was approved in the past for other uses but now wants food sales.

Saunders stated that she spoke with the applicant prior and that he has someone interested in leasing the building.

DesMarais stated that he was approved for a commercial use in the past but that since it has been over a year he needs to reapply for that.

Saunders stated that he would like a commercial use and that the variance in 2014 has lapsed. Stated that if he wants to apply for more than food sales and a restaurant use then he would have to reapply and come back to the Board.

DesMarais referred to his last approval and stated that it was left open so that he wouldn't have to come back to the Board for zoning. Stated that this location has been a

business for a long time and has had food sales in it. Stated that he has someone interested in opening an ice cream parlor.

Dumont stated that it seems like the applicant wants to allow any commercial use to go there. Stated that in the past the Board put restrictions on what it can and can't be.

Maskwa stated he remembers the case for the cell phone repair use.

Saunders stated that staff can get the old files on the property.

Griffith stated that a drive-in use will create a difference for traffic and would prefer that people park and go in.

DesMarais stated that it will be a sit down restaurant with no walk-up window. Stated that the person interested in leasing it may want to expand to sandwiches and baked goods.

Dumont asked if the Board can grant a general approval for any business.

Saunders stated that they could but that she doesn't recommend it.

The Board took a short recess for staff to retrieve the old files for the property.

Saunders stated that there were two variances and that the first is from 1989 that allowed some commercial uses but was very specific and read from the decision letter. Stated that the second variance is from 2014 that allowed a cell phone store with repair and there were conditions of approval.

Dumont stated that approval was more specific.

DesMarais stated that at the 2014 variance hearing Mr. Routhier said that it has been a business forever but that they needed a variance for the cell phone store because it wasn't on the original list.

Maskwa stated that in 2014 they added uses from the list in the ordinance; they didn't subtract from it. Stated that food sales is not currently on that list so it would need to be added. Read from the Table of Uses.

Saunders stated that they would be adding it to the previous variance approval. Stated that commercial uses are not allowed in that zone. Stated that the 1989 variance lists specific uses that are allowed and then the Board added a cell phone store to that list in 2014. Stated that today he is asking to add a restaurant use to the list.

Dumont stated that the variance would be for a restaurant use and not limited to ice cream.

Griffith stated that the table of uses refers to a refreshment stand and asked what that is. Stated that with the high school down the street could cause an issue with walk-up customers after school.

Maskwa stated that this part of the application is for a variance for food sales and read from the application. Asked if the Board can act on that tonight.

Dumont stated that every time the use changes to something that is not already on the list the applicant would need to come back for another variance. Stated that the Board can't approval a general variance for any use.

Maskwa confirmed with the applicant that he just wants to move forward with the food sales request and come back next month for the new building.

DesMarais confirmed.

Maskwa asked how many parking spaces there are.

DesMarais stated that there are five in front and although not lined, there are seven on the side. Stated that the person looking to lease the building said that the employees can park on the side.

Maskwa stated that substantial justice is that it has always been a commercial use. Stated that an ice cream parlor is a reasonable use and the building will support it.

DesMarais stated that everything is brand new in the building.

Saunders stated that tonight is for a variance for the use but the applicant would still need site plan approval which would go over the parking layout, pedestrian access, etc. Stated that tonight is just for the use.

Dumont stated that they would be adding to an already approved list.

Saunders stated that this variance would be for a restaurant use and read from the Table of Uses. Stated that they can leave the drive-in part out of it if they want.

Maskwa suggested having a condition of approval that it only be inside service.

Public hearing closed 7:57 pm.

Dumont stated that he knows the history of the building and that there has never been a problem with the other businesses that have been there. Stated that he doesn't have any problem with adding this use with the conditional that were mentioned. Stated that he feels the applicant meets the criteria and supports the variance.

Maskwa stated that he agrees. Stated that it won't diminish property values, there is a hardship, it's within the spirit of the ordinance and that it would be in the best interest to grant this.

Motion made by Dumont to grant the request with conditions.

Maskwa stated that following motion language: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and move that the request of The DesMarais Family Revocable Trust for a

variance from Table 4.A.5.3 of the Zoning Ordinance for a Restaurant or Fast Food Restaurant use be **APPROVED WITH THE FOLLOWING CONDITIONS:**

- a. All food service must be inside and,
- b. There shall be no drive-in use.

Seconded by Kennedy. Motion carried with a 4-0 vote.

Saunders stated that the other variance request needs to be continued until the next meeting.

Maskwa stated that the other variance has to do with a new building and that will be continued until the April 5, 2017 ZBA meeting.

So **moved** by Dumont.

Seconded by Kennedy. Motion carried with a 4-0 vote.

C) Any other new business that may come before the Board.

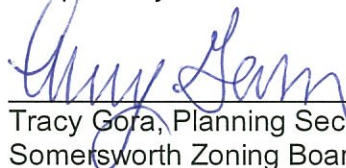
None.

Motion: Kennedy moved to adjourn the meeting.

Seconded by Griffith. Motion carried with a 4-0 vote.

Meeting adjourned at 8:06 pm.

Respectfully submitted:



Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment