

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**June 3, 2020**

**MEMBERS PRESENT:** Richard Brooks Vice Chair, Brad Fredette,  
Keith Perkins-Alternate, Coty Donohue, Matt Keiser Chair, Glenn Garvin-  
Alternate  
**MEMBERS ABESENT:** Ken Vincent-Alternate  
**STAFF PRESENT:** Shanna B. Saunders, Director of Development Services,  
Dana Crossley Planning Secretary

The meeting was called to order at 7:09PM.

Saunders stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to watch to this meeting through the Local Government Cable Access Ch. 22 (Comcast), and streamed live through the City's website at [www.somersworth.com](http://www.somersworth.com). Although this is a public meeting, the public is encouraged not to attend and instead to leave comments or concerns at the following phone number # 1-603-841-2936, by emailing [ZBA@somersworth.com](mailto:ZBA@somersworth.com) or by sending written comment to Zoning Board of Adjustment, 1 Government Way, Somersworth NH 03878. Comments must be received no later than 4pm the day of the meeting. The public can access the meeting and listen live by telephone and then adding webinar I.D.

Roll call attendance was taken. Brooks, Keiser and Perkins were in attendance in City Council Chambers. Donohue, Fredette and Garvin were in attendance remotely and alone. Also in Council Chambers was Director Saunders and Planning Secretary Dana Crossley.

Chairman Keiser appointed Perkins as a full voting member for the meeting.

**1) Approval of the minutes:**

Brooks stated that on page 2 of the minutes, 'raise' should be changed to 'raze'.

Brooks **MOVED** to accept the minutes of March 4, 2020 with amendments.

Donohu seconded the motion.

The **MOTION CARRIED** by a 4-0-1 roll call vote. (Keiser abstained)

**2) OLD BUSINESS**

- A) Any old business that may come before the Board.
  - i. No other business.

**3) NEW BUSINESS**

- A) Daniel Vincent, is seeking a variance from Section 19.6.C.1.a. to expand a non-conforming use (residential two-unit dwelling) by constructing a 916sf addition to a detached, carriage-house apartment on a property located at 21 Linden Street, in the Residential Single Family/A with Historic Overlay (R1AH) District, Assessor's Map 11 Lot 118, ZBA#03-2020 PUBLIC HEARING

Saunders stated an email was received from Daniel Vincent that he would like to withdraw his application.

**B) Lincoln T. Soldati, is seeking a variance from Table 4.A.2 and Section 19.25.B to allow two (2) honeybee hives to be kept on a property located at 18 Grand Street, in the Historic Moderate Density (HMD) District, Assessor's Map 11 Lot 48, ZBA#04-2020 PUBLIC HEARING**

Keiser opened the public hearing at 7:14 PM.

Saunders stated the raising of bees or “apiculture” is considered “Agriculture” in Somersworth. Agricultural uses are allowed only in the Agricultural Zone. These hives exist and were discovered by an anonymous call to Code. The property owner was notified in writing by the City that the use of the property was in violation.

**Lincoln Soldati** was in attendance virtually to represent the application. He stated he was surprised to learn that bee keeping was not allowed outside of the Agriculture District in Somersworth. He explained how bees are important for the environment. He stated he does not know if he will sell the honey produced by the bees. He stated the bees are not a threat to anyone or the community. He stated the only time there could be an issue is if you go up to the hive and threaten the hive. He stated the bees leave people alone and go about their business pollinating. He stated he was informed by other Somersworth residents that there was no permits or approvals needed to start bee keeping in Somersworth. He stated that apiculture is just listed as part of the agricultural use definition. He stated with other uses of agriculture, like cattle, one would not want the cattle running about in neighborhoods. He stated that there is no way to confine bees and restricting to the agriculture zone makes no sense. Soldati stated the bees travel from 2 to 5 miles a day.

Soldati stated there is nothing in the ordinance that speaks to the spirit and if you wanted to speak to the spirit of the bees, you would remove the reference to apiculture as solely an activity allowed within the agriculture zone. He stated it is not simply an agriculture use and it benefits the entire City. He stated there is no distinction between having a hive or a couple of hives in the backyard then it is to have a hive next to the barn in the agriculture zone. He stated it does not appear there was any specific reason to have apiculture listed in the agriculture zone when it is actually in the public interest. Soldati stated his property is located on ‘the hill’ and many of the surrounding residents take great pride in their gardens. He stated those gardens will benefit from the presence of the honey bees. He stated he has received nothing but encouragement and positive feedback from his neighbors. He stated he is at the property often and there is a great interest from his neighbors.

Soldati stated the bees will enhance the community and does not violate the spirit of the ordinance. He stated if the idea of having them in the ordinance was to confine them it is a ridiculous notion because bees cannot be confined.

Keiser stated there has been a comment from an abutter received and the Director will read that into the record.

Saunders stated **Michael Taylor** of 22 Grove St. (direct abutter) called on June 1, 2020 at 12:30 pm and stated the following: He is not in favor of allowing bees at 18 Grand St. He feels it should not be in a residential area but rather a more secluded area. He stated there is a lot of foot traffic in this area and is not comfortable with the bees around those people and his family. He stated there is a school bus stop at the corner of Grand and Grove. He stated he has noticed the bees prior to receiving the public notice and had wanted to address the issue with the property owner.

No other abutter comments were received via mail, email or phone.

Soldati stated the bees do not pose a threat to people walking on the street. He stated the honey bees are not interested in humans. He stated the only time the bees would confront a human was if someone was to approach the hive, which is located on private property. He stated many people in Dover and Portsmouth have bees in more densely populated areas. He stated the honey bees are not aggressive and will not chase school buses or people. He stated the bees are only interested in pollen and even he has not been stung.

Brooks questioned if the flower gardens in the neighborhood would be a form of horticulture. He asked how large the bee hives are.

Soldati stated 19" x 20", almost square in terms of foot print. He stated the hives are medium hives with 10 frames that are less than 6" high each. He stated the hives are just over a foot high and 19" square roughly. He explained how the bees use the frames and other functions of the bees. He stated the winter is the most dangerous time for the bees to survive.

Keiser stated the question was about the size of the hive.

Soldati stated he has two boxes on each hive. The boxes are about 6". The hives are sitting on cement blocks. He stated in his case the maximum number of boxes he would have is 4 per hive. It would be about 2.5' high.

Brooks clarified the hives are about the size of a standard trash can. Soldati stated that is correct.

Brooks asked where the hives are located. Soldati stated the bees like a southern exposure, they are on the Grove Street side of the property, sitting about 6' from the old structure foundation. He stated it would be tough to move them but he could do it.

Brooks asked if he anticipates expanding. Soldati stated no, he is not interested in anything more than the two hives.

Donohue asked if there was a natural time or end date that if this request was denied the hives could be moved without killing them all. Soldati stated if needed, the best time would be winter.

There was a brief discussion on the fencing along the property.

Fredette asked if he lived at the property or in the City. Soldati stated no to both but he has family in the City.

Fredette asked how many hours a day he spends on the property with the bees. Soldati stated he is typically at the property from 9-5 daily. He stated he is not constantly monitoring the hive though; the bees need to be left alone. He stated he checks the hive every 10-14 days.

Fredette asked if there is a bathroom on site. Soldati stated no.

Fredette asked if the hives go into storage in the winter. Soldati stated no, but the bees do go into hibernation. He added that the neighbors let him know when there are issues at the property when he is not there.

Fredette stated one of his concerns is that no one lives at the property.

Soldati stated he is more attentive of his hives than most bee keepers. He stated he goes to the property every day whereas many bee keepers do not go to their hives daily. He stated he is engaged in the activities of his property. He stated he had lived at 18 Grand St for 30 years and was very involved in the community. He stated his intent is to be at the property as much as possible. He stated he sees no negative aspects of the bees being on the property.

Keiser closed the public hearing at 8:08 PM.

### Board Discussion

Fredette stated his concern in regards to being contrary to public interest is that the lot is in a fairly dense area. He stated there are a lot of multi-family dwellings with rotating residents. He stated honey bees do have stingers and there are people who are allergic to bees. He stated in his opinion bringing more bees to the area raises the risk of people being stung. He stated the idea of requiring the bees to be on a lot within the agriculture district has to do with the density and minimum lot size. He stated the spirit of the ordinance is to keep agricultural or farm activities like this out of residential areas. He stated granting this would be contrary to the spirit of the ordinance. He stated substantial justice would be done for the applicant in granting the request. He stated he understands this issue came up because of a complaint. He stated in regards to the value of surrounding property, he stated if granted it should be limited, but does not see how a couple of hives would have a negative impact to a neighbors. He stated he is concerned about the bees being on a property that has no one living on the property. He stated right now the applicant visits the property routinely but when the weather gets worse it won't be so enjoyable to go to the property. He stated he feels the application does not meet the criteria for not contrary to public interest, spirit of the ordinance and hardship.

Brooks stated he does not think 2 bee hives would diminish surrounding property values. He stated he does not think it is contrary to public interest especially because bees are becoming an endangered species. He stated considering literal enforcement and reviewing the definition of agricultural use, he feels it is more of a hobby than 'bona-fide agriculture'. He stated he felt it was no different than someone having a flower garden. He wondered if the ordinance is outdated because of listing horticulture, floriculture and silvaculture as part of the agriculture definition. He added there might be a hardship based on the ordinance being outdated. He stated bees are everywhere in nature. He stated he does not see a danger here. He stated substantial justice would be done because it is more of a hobby. He stated the spirit of the ordinance would not be observed but that goes back to his comment that the ordinance is outdated.

Donohue stated he does struggle with this request because the applicant lays out a good argument in his verbal and written testimony. He stated as the ordinance is written right now it is specific. He stated he does not see the logic of special conditions of this property in relation to a hardship to allow this lot to not have bees on it. He stated understanding and needs shift over time in the City and perhaps the ordinance is outdated. He stated there is a need for bees because they are endangered. He stated he does not see how the hardship criteria or spirit of the ordinance criteria is met. He stated the spirit of the ordinance, as the whole zoning ordinance, apiculture is listed specifically under the definition of agriculture. He stated he has tried researching to see if there is a level at which bee keeping becomes apiculture and he did not find a distinguishing factor between apiculture and a hobby. He stated he interprets that the ordinance mentions bona-fide agriculture and then the definitions specifically call out apiculture as agriculture. He stated he is not

against bee keeping but it does not meet the variance criteria. He suggested that the applicant may be able to advocate for bees through at different avenue.

Keiser asked if agriculture uses are differentiated if it is 'for profit' or 'not for profit'. Saunders stated the definition does not differentiate.

Keiser stated he thinks the proposal could affect surrounding property values because some people have a phobia of bees. He stated he knows a person who abuts a property with bees, the bees continuously come into their backyard and populate their pool and to them it is a nuisance. He stated it could discourage someone from purchasing a neighboring property and therefore affect surrounding property values. He stated though some people may be allergic or consider the bees a nuisance he does not think the bees are contrary to public interest. He stated he could not find a difference in this property and the surrounding properties that justifies a hardship that would allow for bees. He stated substantial justice would be done because having the bee hives would be a good thing and though it could be a nuisance to some it would not have a large effect on the public. He stated he could not find that the request meets the spirit of the ordinance. He stated section 19.25.B list uses that shall be done in only agricultural areas and this is clearly not an agricultural area. He stated he does see that the request has similarities to backyard chickens. He stated given what they have in the ordinance and the criteria that must be met; he finds it does not meet the hardship, spirit of the ordinance and surrounding property values.

Donohue stated that was well said. He stated he could see how the bee keeping may relate to the backyard chickens and eventually having its own specifications.

Donohue noted that it was brought up there are other bee keepers outside of the agriculture zone within the City. Saunders stated there are several properties under enforcement for having bees. She explained how the code enforcement process works.

Perkins stated he is in support of the bees. He stated he did not think having two small bee hives made the use apiculture, just as having a vegetable garden does not mean you're a farmer. He stated he is not sure why he needs variance at all.

Brooks stated looking at the criteria he does think it is hard to justify voting to allow the use. He stated looking at the definitions and ordinance itself many people would be in violation of an agricultural use outside of the agricultural district. He stated by criteria he should be voting against but does not feel like he should be against it.

Fredette asked if there is a way to differentiate agriculture bees from just hobby bees.

Saunders stated in order to differentiate the ordinance would need to be re-written. She stated the current ordinance does not differentiate between commercial or size.

Brooks read the purpose of the agricultural district. He stated he felt the proposed use is just a hobby and not bona-fide agriculture.

Donohue stated he referenced the definitions from Section 25. He stated apiculture is specified and does not differentiate the size that makes it apiculture. He stated he would be in support of discussion about suggesting an ordinance change to Council.

Donohue asked if this is denied, what the timeline to remove the bee hives would be. He asked if it was something the Board could put as part of the denial to allow a certain amount of time for removal.

Saunders stated it should not be part of the motion. She stated it would be a separate enforcement action and staff would work with the property owner within limits.

Garvin stated he feels property values to those people who do not like bees, would not like this proposal. He stated he sees no issue for the public interest. He stated he is not sold on the hardship argument. He stated there was a lot of talk about the difference between gardens and farming. He stated that discussion has not been had about bees and there was a reason to put it as being allowed only in agriculture. He stated he is not in favor but is not voting.

MOTION: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that the application failed to meet the following criteria:

- The literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship, as there is not a difference between this property and any of the neighboring properties, and
- The proposal is contrary to the spirit of the ordinance because it is clear that bees are part of the definition of agriculture and agriculture is only allowed in the agricultural zone.
- Public interest

and I move that the request of Lincoln T. Soldati for a variance from Table 4.A.2 and Section 19.25.B to allow two (2) honeybee hives to be kept **be DENIED**.

**The motion is seconded by Fredette**

**Discussion:** Keiser stated he agrees with hardship and spirit of the ordinance but wants more information on how it did not meet the criteria for public interest.

Donohue stated he would like to remove public interest from the motion and keep that the hardship and spirit of the ordinance.

Fredette stated he was in agreement.

Fredette stated there was some discussion of how it could affect surrounding property values.

Donohue stated he did not feel it has a strong argument to how it does not meet that criterion.

Brooks stated he does not feel right to deny the request but looking at the ordinance and criteria he feels he has to vote to deny the request.

Fredette stated he agrees with Brooks and hopes it spurs discussion within the City for an ordinance change.

The MOTION CARRIES by a 5-0 roll call vote. (Keiser, Brooks, Donohue, Fredette and Perkins)

**Any other new business that may come before the Board.**

Donohue stated it appears the Board would be in favor of further discussion on an ordinance change to allow bee keeping in some manner outside of the agriculture district.

Keiser asked the Director to research potential changes in regard to bee keeping and have it brought back to the Board for further discussion.

Brooks stated the definition of agriculture use may need to be further reviewed as well.

Saunders stated that Form Based Codes is moving forward to the City Council for the approval and adoption process. She stated there is also a revision of the Sign Ordinance before the City Council that addresses the Plaza signage. She stated she will provide updated zoning ordinances as things progress to the Board.

Brooks inquired how to submit comments about the Form Based Codes. Saunders stated comments can be submitted via mail, email or drop off letters.

Brooks asked if any of the land use boards have weighed in on Form Based Codes. Saunders stated the Planning Board has been apprised.

Brooks stated his concern is of the Historic District. .

Brooks **MOVED** to **ADJOURN** the meeting. Fredette seconded the Motion. The **MOTION CARRIED** 5-0 by a roll call vote and the meeting **ADJOURNED** at 8:45 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary