

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**July 22, 2021**

**MEMBERS PRESENT:** Matt Keiser Chair, Brad Fredette, Richard Brooks, Keith Perkins, Glenn Garvin-Alternate

**EXCUSED MEMBERS:** Kenneth Vincent

**STAFF PRESENT:** Michelle Mears, Director of Development Services, and Dana Crossley Planning Secretary

The meeting was called to order at 6:33 PM.

Keiser appointed Garvin as a full voting member.

**1) NEW BUSINESS**

**A) MOTION FOR REHEARING:** Packy's Investment Properties LLC, is seeking a rehearing of the application denied on June 2, 2021, for a variance from Section 19.6.C.1.a to expand a non-conforming use (existing mini-warehouse) property located at 363 Route 108, in the Commercial/Industrial (C/I) District, Assessor's Map 48 Lot 22B, ZBA#07-2021

Mears stated the applicant is requesting a rehearing of the application to expand an existing mini-warehouse (self-storage) where mini-warehouses are not permitted. The rehearing process is a two-part process. The first step is for the applicant to request a rehearing per RSA 677:2. Per case law the rehearing shall be to correct any errors the ZBA may have made in the first hearing, if correction is necessary, and to consider new evidence provided by the applicant. If the Board grants the rehearing tonight, they shall schedule a rehearing within 30 days, with proper abutter notification (upon recommendation of our legal counsel).

Keiser stated at this meeting the Board will decide if they will grant a rehearing of the application or not. The discussion to grant a variance or not would be discussed if a rehearing is granted at their next meeting.

Fredette noted that Attorney Bruton's office (applicant's representative, Attorney FX Bruton submitted the motion for rehearing) represents a Revocable Trust that he is involved with, actively doing business with them. Wanted to ensure the applicant or the Board did not feel this was a conflict of interest.

FX Bruton and the Board did not express any issues with that matter.

Keiser stated in reading the information submitted by Attorney Bruton it came to his attention that he thinks there is new information present. New information has been presented in support of granting a variance and therefore he feels there is reason to grant a rehearing of this application to hear the new information.

Fredette stated he does not have a problem with this, the additional information provided is that they would add a 15' buffer. He stated he would be willing to hold a rehearing of this application.

Keiser stated he has found in the submitted motion for rehearing documents that the Attorney has provided new information on the buffers and case law that was not discussed at the last meeting. With the newly submitted case law it would be appropriate to have a rehearing to discuss that information.

Fredette stated he would agree.

Garvin clarified the direction of the Board discussion required. He inquired the purpose of the buffer being presented, if it was for the protection of the neighborhood. He stated the submitted documents reference that the purpose of the Zoning Board is to protect the residents of Somersworth and he has concerns that conditions do not do the job. He is not confident a condition does protect a neighborhood or that there is a process to enforce conditions. He stated at this time he is not in favor of granting a rehearing, the 15' buffer is not enough for him.

Mears noted that if this application was granted a rehearing and approved for the variance, it would be required to go to the Planning Board. She stated her job is to ensure that any Zoning Board conditions are met on those plans submitted.

Garvin stated he has a personal case where his neighbor is in violation of conditions of approval, the City sends letters and nothing is done. He stated his point is he does not trust conditions.

Fredette stated he hears Garvin's points and find a little concern of the applicants original argument in comparison to what is being submitted but they have not had a chance to hear the full new argument. He noted that even if they grant the rehearing it is not a guarantee the variance would be granted but rather a chance to hear the applicant's request and have further consideration. He stated he would like to give the applicant another chance to present the application.

Perkins stated based on the case law presented in this motion for rehearing it is enough new information to justify a rehearing. He would be in favor of a rehearing.

Garvin clarified the Board feels that the case law is enough new information to hold a rehearing. He stated he is fine with that because he would like to hear further discussion on the application.

**MOTION:** Fredette stated, after review of the request and all the information presented to the Board, I feel that new substantial evidence was provided and I move that the request of Packy's Investment Properties LLC for a rehearing of application ZBA#07-2021 **be GRANTED**

The MOTION is SECONDED by Perkins.

The MOTION CARRIES by a 4-1 vote (Garvin voted in the negative)

Keiser stated the application would be scheduled for the August 4<sup>th</sup> ZBA meeting if the applicant was in agreeance to that.

Attorney FX Bruton stated that would be acceptable.

**B) Any other new business that may come before the Board. – NONE**

Brooks **MOVED** to **ADJOURN** the meeting

Fredette seconded the Motion.

The **MOTION CARRIED** 5-0 at 6:46 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary