

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
January 5, 2022

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Keith Perkins, and Kenneth Vincent

EXCUSED MEMBERS: Brad Fredette and Glenn Garvin-Alternate

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

The meeting was called to order at 7:03PM.

1) Approval of the minutes:

Brooks stated edit for the motion of the last item, it speaks to a denial and should be just a continuance motion.

Brooks **MOVED** to accept the December 1, 2021 minutes as amended.

Vincent seconded the motion.

The **MOTION CARRIED** 4-0.

2) OLD BUSINESS

- A) **CONTINUED:** Brian Rodonets of Coastal Architects is seeking a variance from Table 4.A.1 and Table 5.A.1 to allow multifamily use and variance relief from the 150' frontage requirement on a property located at 271 High Street, in the Residential Duplex (R2) District, Assessor's Map 15 Lot 16A, ZBA#15-2021 PUBLIC HEARING

Mears stated the applicant sent an email requesting to be continued to the February meeting.

MOTION: Brooks stated after review of the request, I move that the application of Brian Rodonets of Coastal Architects for a variance from Table 4.A.1 and Table 5.A.1 to allow multifamily use and variance relief from the 150' frontage requirement be **CONTINUED** to the meeting of **February 2, 2022** at 7 PM for the following reasons:

1. To allow the applicant to provide additional information.

The **MOTION** is **SECONDED** by Vincent. **The MOTION CARRIES 4-0.**

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

3) NEW BUSINESS

- A) **James Weisheit, is seeking a variance from Table 5.A.1 to convert an existing 3-unit to a 4-unit multifamily without the required frontage or lot size on a property located at 1 Silver Street, in the Residential Multifamily (R3) District, Assessor's Map 10 Lot 78, ZBA#16-2021 PUBLIC HEARING**

James Weisheit, 154 Summer St. Kennebunk, ME was in attendance to represent the application.

Keiser stated the Board is 4 members need 3 votes in the affirmative to pass a variance, would the applicant like to move forward with a short Board.

Weisheit stated he wished to move forward with 4-member Board.

Keiser opened the public hearing:

Mears stated the applicant is seeking to convert an existing 3-unit to a 4-unit, applicant is proposing to reduce the number of bedrooms on site. This currently has 7 bedrooms. Multi-family is an allowed use in this zone. If approved, the applicant would need to file for Site Plan approval of a multi-family site. **Existing lot size:** .333 acres (13,939.2 SF). **Required:** 26,250 SF (over 3 units plus the number of bedrooms) plus number of bedrooms for each unit. **Existing frontage:** 110' Pleasant St. Side / 124' Silver St.* **Required: 150 ft. Required: 26,250 SF (for 3 units) plus 5,000 SF for 2 bedroom = 31,250 SF.**

Weisheit stated the site has a large 4-bedroom unit and his preference would be to break it up to have two smaller units. Stated having less people would be easier to manage and allow the site to be a better neighbor. He stated renting a 4-bedroom unit would be difficult and has the added challenge of having to be limited to 3 unrelated persons. He stated he would be eliminating a bedroom and dining room to convert the 4-bedroom unit into 2 new units (for a total of 4 units). Noted then would have less people in the building.

Keiser opened for public comment:
No comments received.

Keiser asked for elaboration on the referenced Chapter 19 Section 29 being referenced.

Weisheit stated the City has a maintenance requirement in the ordinance and having more people would be more difficult to comply.

Keiser inquired if the current units are rented.

Weisheit stated there is a tenant there that has been there for 20 years. He recently purchased the property. Explained if he could not split the larger unit into two units the existing tenant would likely be displaced.

Brooks inquired how having more units would be less maintenance, noted there would be more appliances to maintain.

Weisheit stated that was strictly based on wear and tear in regards to people.

Vincent inquired if there is adequate onsite parking.

Mears noted this would come up in the Planning review as it would be a requirement that there be 2 spaces on site for each unit.

Weisheit stated he reviewed the existing area and as it exists not but more parking could be accommodated along with a turnaround area.

Keiser asked for more information on the hardship that exists.

Weisheit stated the hardship is the ability to get market value rent for such a large unit, maintaining the such a large unit and that with 4 bedrooms would be looking at least at 5 tenants.

Keiser clarified the hardship would be the difficulty in renting or cannot find tenants to pay the fair market value.

Weisheit elaborated on the rental situation.

Keiser noted that the number of people in each unit could go up with more units, one person could still rent a 4-bedroom as it is being done currently.

Brooks stated he knows they are not supposed to take finances into consideration but how is fair market value determined.

Weisheit stated review of other 4-bedroom units for rent on the market and 1-bedroom, noted difficulty with COVID circumstances and explained what he would expect to receive for rent. He stated there is concern for the amount of people in the building and financially 2 units is better than 1 unit (to total in a 4-unit building).

Keiser inquired if this building was larger than surrounding buildings.

Weisheit stated it is the largest in the area and the lot size is average for the area.

Keiser closed the public hearing

Vincent clarified the use is allowed it was the dimensional requirements missing in this instance requiring the variance.

Mears stated yes, the required lot size for a 4-unit is 31,250 SF.

Brooks noted that as it exists as a 3 unit it is non-conforming because there is less than the minimum lot size for multifamily.

Keiser reviewed the criteria with the Board:

1. Explain how the proposal would not diminish surrounding property values:

Brooks, Vincent and Perkins stated they do not see it affecting surrounding property values.

2. Explain how granting the variance would not be contrary to the public interest:

Keiser stated he did not think granting the variance would be contrary to the public interest.

Vincent noted the surrounding properties are all also multi-family sites.

3. Hardship

Vincent noted that the Chandler School at the corner of Pleasant and Green St does not conform to dimensional requirements.

Keiser noted that there could be different circumstances for that lot.

Perkins stated the hardship to him is in renting a 4-bedroom apartment, does not think there is a lot of families searching for rentals and Section 29 of the Zoning Ordinance speaks to restricting the number of unrelated persons living in a home.

Brooks stated the structure is a three unit now and can continue as a three unit, has noticed there is a trend of moving away from having more than 2 bedrooms in a unit.

4. Explain how granting the variance would do substantial justice:

Keiser noted that substantial justice would be done because the applicant has expressed it would be difficult to rent for fair market value, also that he does not find the use would be contrary to the spirit of the ordinance.

Brooks stated it would be allowing for higher density than what is permitted in the zoning.

Keiser stated it would not change the characteristics of the neighborhood but questioned if not being able to receive a certain rate for rental income a hardship.

Vincent stated he is familiar with the rental market. He stated in this case the square footage of the lot there is quite a bit of difference in existing and required, does not think it would impact the neighborhood, parking would need to be closer reviewed, knows they need to focus on the criteria before them and is in favor of the request.

Brooks stated he is still held up with the hardship criteria. The unit could be rented as is, as it is allowed to continue as a 3-unit building, even that being more than what is allowed by ordinance.

Keiser stated he agrees that the hardship criteria has not been met. The lot size is only 13,000 SF where over 30,000 SF is required. He does not see how the property is unique enough to justify granting the variance.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that the hardship criteria of the five criteria has **NOT** been satisfied and I move that the request of James Weisheit for a variance from Table 5.A.1 to convert an existing 3-unit to a 4-unit multifamily without the required frontage or lot size on a property located at 1 Silver Street be **DENIED**.

The MOTION is SECONDED by Keiser. **The MOTION FAILS 2-2.**

Keiser stated without 3 consecutive votes the motion fails. Would entertain a motion to continue to the next meeting for a full Board.

MOTION: Vincent stated I move that the request of James Weisheit for a variance from Table 5.A.1 to convert an existing 3-unit to a 4-unit multifamily without the required frontage or lot size on a property located at 1 Silver Street be **CONTINUED to the February 2, 2022 Zoning Board meeting for the following reasons:**

- To allow for a full 5-member Board.

The MOTION is SECONDED by Perkins. The MOTION CARRIES 4-0.

B) David Wold, is seeking a variance from Section 19.20.D.1.b. to allow a 30" x 20.25" double sided sign for a home occupation for a property located at 274 Green Street, in the Residential Single Family and Agricultural (R1 & A) Districts, Assessor's Map 18 Lot 04, ZBA#17-2021 PUBLIC HEARING

David Wold of 274 Green Street, was in attendance to represent the application.

Keiser stated the Board is 4 members need 3 votes in the affirmative to pass a variance, would the applicant like to move forward with a short Board.

Wold stated he wished to move forward with a 4-person Board.

Keiser opened the public hearing.

Mears stated the applicant is seeking to be able to have a 30" x 20.25" double sided free-standing sign for a home occupation, where only a 1' x 1' house mounted sign is allowed. Sign permit application included with packet.

Wold provided the Board with a copy of the proposed sign and images of the surrounding area. He stated literal enforcement of the ordinance would be a significant hardship due to the significant conditions of his property, a 1'x1' sign would be materially not visible affixed to the house due to the setback of the house. He stated the restriction does not serve the purpose in a fair and substantial way. He stated it would be a small professional sign that is aesthetically pleasing to be placed on a large vacant area of a well-maintained yard. He noted his property frontage is in the R1 which is the same as the surrounding properties who have signage those being, 242 Green St and 216 Green St. He stated 242 Green Street lot is mostly in the Agriculture district but the frontage is in the R1 and that is where their sign is located and the sign is 4'x6' and is within his neighborhood. He stated additionally 216 Green St. has a legal non-conforming sign that is 4'x5' that is much closer to the road than what he is proposing. He stated these properties do not detract from the R1 neighborhood and his proposed signage he would respectfully submit is keeping in with the facts on the ground of the neighborhood.

Wold stated it has been demonstrated time and again people look for residential communities close to excellent schools and high-level training opportunities. He provided personal background of his home

occupation and growth for community and the arts. He noted denial of the variance would be harmful to residents and the proposed signage is completely in the spirit of the community including the International Children's Festival and schools. The variance would not be contrary to the public interest. He stated it would provide fairness, justice and common good principals to allow the proposed signage. He stated it would be a detriment to the community and create a significant hardship if the variance was to be denied.

Keiser opened for public comment.
No comments received

Vincent stated he considers music to be therapy, noted the proposed sign is very small. Asked if the sign was double sided and would it be setback from the property line.
Wold stated yes to both.

Keiser inquired if the applicant would consider Green St. to be a busy street.
Wold stated it is busy during the typical commute times and later evenings it quiets down. He stated per the ordinance, he provides piano lessons to not more than one student at a time.
Keiser clarified a 1'x1' sign would be difficult to see if affixed to the house from the road.
Wold stated yes, it would be an impediment to have the sign on the house. He noted his home is on a 4'-6' high embankment.
Keiser inquired if the tree in the front yard blocks the view of the house when in full foliage.
Wold stated yes.
Keiser stated a temporary real estate sign is restricted to be not more than 4' in height, but the proposal for this sign is 6.4' in height.
Wold stated that could be easily adjusted.
Keiser stated that per the ordinance signs for home occupations shall only stated the name of the occupant and the type of occupation and the proposed sign included in the packet shows a phone number but the variance is only seeking relief from the size restriction. The purpose of the ordinance is to locate rather than advertise.

Vincent clarified the property was located at the corner of Green and Clement.
Wold stated yes.

Wold stated if the Board is considering in favor, he would prefer to keep the phone number but understand the restriction. He noted he would not expect many other private music teachers making a similar request.

Keiser closed the public hearing.

Vincent noted the surrounding signs have a phone number.

Keiser stated he is in favor of the request and feels it meets the criteria. He noted though he feels it would be more appropriate to restrict the height to not more than 4' as that would be reasonable in comparison to a temporary real estate sign.

Perkins stated he would be in favor of the 4' height restriction because that is similar to a fence in the front yard and would like to see a condition to have the sign setback, possibly 20', to ensure there is no sight line issues.

Brief discussion on the setback.

Perkins stated he would find 10' to be reasonable.
Keiser stated he was concerned with phone number where the other home occupations would not be allowed for a phone number on their signs.

Vincent inquired if there is restrictions of height or setbacks for signs in this zone.
Mears stated the restriction for home occupation signs is to be affixed to the primary structure but otherwise no.

Keiser suggested conditions 10' setback for the sign, 4' height and no phone number.

Vincent stated agrees with conditions and additionally feels the sign ordinance should be reviewed and updated.

MOTION: Perkins stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied as discussed and I move that the request of David Wold, for a variance from Section 19.20.D.1.b. to allow a 30" x 20.25" double sided sign for a home occupation for a property located at 274 Green Street be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. **The freestanding sign be setback at least 10' from the front property line;**
2. **The sign shall be no higher than 4' tall; and**
3. **There shall be no phone number displayed on the sign, as the ordinance allows for *The legend shall show only the name of the occupant and the type of occupation.***

The MOTION is SECONDED by Vincent.

Discussion: Brooks stated after further consideration this request is similar to one reviewed on W. High St and will be voting in favor of the request. The sign remains small and respectable of the neighborhood.

The MOTION CARRIES 4-0.

C) Rules of Procedure – Amendment to allow up to 3 alternate members

Mears stated the proposed change of the rules of procedure is to allow for 3 alternate members where the current rules allow for 2.

Vincent stated knows often they run into circumstances, such as tonight, not having a full Board, this will allow for more alternates and a full board. Has had discussions with the Mayor who is ready to appoint another alternate.

Keiser stated he has no issue with allowing for 3 alternates but need members of the public to step forward to volunteer to be on Boards.

Brooks suggested reaching out to people who already are volunteers, such as moderators.

MOTION: Brooks stated, I move to APPROVE the amendment of the Zoning Board Rules of Procedure to allow up to 3 alternate members.

The MOTION is SECONDED by Vincent. The MOTION CARRIES 4-0.

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

Vincent stated he would like to see the existing sign ordinance to be revised.

Mears noted that the Department knows that this is an issue, there was a court case that come out Reed v. Gilbert in 2015 and working to establish a new sign ordinance proposal.

Further discussion of the sign ordinance.

Keiser noted there are some other items of the rules of procedure that are out of date such as there is a criteria item that does not appear to be current with the RSA and would suggest they look into that.

Brooks stated on page 2 there is a requirement for 5 days posting.

There was a brief discussion regarding public hearing notice and agenda posting requirements.

Mears informed the Board that moving forward all applications will need to be reviewed and voted on if the Board feels there is potential for regional impact per RSA 36:54.

Keiser stated one of the applications that was reviewed at the December meeting has submitted a motion for rehearing. The Board needs to hold a special meeting to review that motion for rehearing and determine if they will hold a rehearing of the application.

The Board determined to hold a meeting on Thursday January 13th at 7PM.

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

Perkins seconded the Motion.

The **MOTION CARRIED** 4-0 8:15PM.

Respectfully Submitted,
Dana Crossley, Planning Secretary