

HENNIKER ZONING BOARD OF ADJUSTMENT
Approved Minutes

February 20, 2008

Members Present: Leon Parker, Chairman; Doreen Connor, Vice-Chair; Bob Stamps; Joan Oliveira; Gigi Laberge, Alternate; Jeff Connor, Alternate.

Members Excused: Kris Blomback; Rick Patenaude

Others Present: Laura Scott, Planning Consultant; Jennifer Astholz, recording secretary; Skip Sagris; Gregory Sagris; Gail Hayden; David Hayden; Irish & Teresa Burnett; Jean Lewis

Chairman Parker called the meeting to order at 7:00 pm. The Board decided to review the minutes of the January 16, 2008 meeting after conducting the public hearings.

Chairman Parker stated that typical protocol is for Board members to check the certified mail status of the abutter's notifications. He stated that due to a clerical error, the abutters' notices were sent by regular first-class mail. Ms. Scott, Town Planning Consultant, called the applicants in both cases and gave them the choice to go through with the hearing or not. A letter of explanation will be mailed to the abutters this Friday (2/22/08) explaining the clerical error and the procedure to appeal any Board decision that has been reached. Those letters will be sent via return-receipt requested and will include the Notice of Decision for the case.

Case 2008-101: A request has been made for a Special Exception under 133-28F. The applicant, Skip Fern, on behalf of Gail T. Hayden, is proposing to construct a drive-thru facility for a retail commercial development. A Special Exception is required for drive-thru facilities in the Commercial District Regulations. The property is located at 1805 Old Concord Road (Map 1 Lot 619-A) in the Heavy Commercial (CH) District.

Chairman Parker disclosed that he is the broker trying to sell the abutting property. The property he represents is separated by a physical boundary, and the proposed application has no impact to the property whatsoever. Chairman Parker stated that the rules allow him to make the decision whether to recuse himself from the panel or not; he was requesting the Board's input. The Board members stated no concerns. The applicant stated that they have no concerns with Chairman Parker remaining on the panel.

Chairman Parker stated that the five-member panel would consist of himself, Doreen Connor, Joan Oliveira, Bob Stamps and Alternate Gigi Laberge. Alternate Jeff Connor will participate in Board discussion but will not vote.

Chairman Parker explained the hearing protocol. Ms. Scott stated that the application is complete, and the packet includes necessary documentation, including a copy of the notarized letter, copy of the tax card and the copy of the tax map.

Skip and Gregory Sagris introduced themselves and described their application. Mr. Skip Sagris stated that he has developed many Dunkin' Donuts franchises in Massachusetts and New Hampshire. A satellite store is scheduled to be put in Bradford. That store will not have sit-down service and or a drive-thru. The proposed store on Old Concord Road will be the main store and house the office for the region. Mr. Sagris showed plans of the existing site with the sugar shack and storage areas. He stated that he is working with Dunkin Donuts Corporate offices to keep the existing Golden Pineapple building. The plans show a 20'x30' area for the drive-thru window, though it may actually be only 12'x30'.

Mr. Sagris stated that fill will have to be brought in and a retaining wall will be required.

Mr. Sagris explained the need for a drive-thru window and the convenience that it would offer to the community. He stated that drive-thru service is helpful to disabled persons, drivers with children and regular customers who don't want to get out of their cars in bad weather. He stated that the drive-thru does not put any undue hardship on the Town roads. He had designed a right-turn lane to enter the property from 202/9; however, the State DOT contacted him stating that they were going to install the turn-lane in that area anyway. He stated that having two outgoing lanes helps ease traffic flow from the property. This section of road already carries heavy trucks and this use will not add any undue hardship for traffic.

Mr. Sagris stated that this use is not out of character for the area. He stated that approximately 50%-51% of business is from the drive-thru window. He stated that they would have to (at least) double the size of the parking lot if a drive-thru is not installed. He stated that nice landscaping is proposed for the area.

Chairman Parker stated that the State DOT made a presentation last week about road matters in the area. A State representative described widening the lane and making right-turn lanes from the bridge on Rush Road to Route 89. He stated that the public was asking for wider area to accommodate large truck traffic. Traffic along Rtes. 202/9 and Rte. 127 were discussed.

Chairman Parker called for public comment in favor of the application. Jean Lewis, who represents the applicant, stated that the Sagris's have been extremely diligent in complying with Town regulations. She stated that they seem to care about the impact that this business will have on the Town.

Chairman Parker called for any public comment against the proposed application. Hearing none, the public hearing was closed.

Jeff Connor, Alternate Board member, asked about truck parking. Mr. Sagris stated that they are only showing the drive-thru on the plans tonight. The establishment is planned to have the look of a colonial-type building. There are plans for paved truck parking.

Ms. Scott reminded the Board that the hearing is only to consider the Special Exception to allow for a drive-thru.

Mr. Sagris stated that some of their other stores are located in Pittsfield, Bristol, Alton, Plymouth and Loudon.

Bob Stamps, Board member, asked if a traffic signal had been considered to mitigate traffic pulling out of Old Concord Road onto Rte. 202/9.

There was further discussion of the right-turn lanes and dual exit lanes on Old Concord Road, which will help traffic turning left onto 202/9 or going straight across the intersection.

Ms. Laberge asked about parking spaces. It was explained that they have planned for six dedicated employee spaces and three other spaces.

Board deliberations ended at 7:39 pm.

The following vote was recorded based on the criteria for granting special exception:

- 1) The specific site is an appropriate location for the use of the structure.

5 - Yes 0 - No

- 2) The use requested is allowed by special exception.

5 - Yes 0 - No

- 3) The use will be compatible with neighboring land uses.

5 - Yes 0 - No

- 4) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

5 - Yes 0 - No

Chairman Parker stated that traffic is a concern and the State is dealing with some of the issues already. Ms. Laberge stated that traffic on Rte. 202/9 could be difficult in that area as there is a lot of truck traffic. Having a truck pull-off would be significant. She would like to attach a condition of approval of the special exception. Mr. Connor stated that there could be hazards if truck drivers park on the side of the road. Ms. Oliveira stated that this does not create undue traffic as it is already present. Mr. Stamps stated that the proposal could create congestion as a drive-thru will attract more traffic to a busy intersection. Ms. Connor agreed with Ms. Laberge's suggestion to attach a condition of approval to ensure turning lanes.

- 5) That granting the permit would be in the public interest.
5 – Yes **0 – No**

- 6) That the proposed use would not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.
5 – Yes **0 – No**

- 7) That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odor, heat, glare, or unsightliness.
5 – Yes **0 – No**

Doreen Connor **MOVED** to grant the Special Exception for Case 2008-101 with a condition that the approval is contingent on the applicants instillation of a right-hand turning lane from Rte. 202/9 onto Old Concord Road and a right turning lane at the exit of Old Concord Road onto Rte. 202/9 heading east. Gigi Laberge **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Case 2008-102: A request has been made for a Special Exception from 133-28D. The applicant, Skip Fern, on behalf of Gail T. Hayden, is proposing to construct parking spaces and an access drive (drive-thru) closer than the required 10’ from the property line/public ROW for a retail commercial development. A Special Exception is required for the reduction of the 10’ setback in the Commercial District Regulations. The property is located at 1805 Old Concord Road (Map 1, Lot 619-A) in the Heavy commercial (CH) District.

The applicant stated that they are requesting to make a portion of the parking area and the drive-thru 5’ from the property line instead of the required 10’. This would have the pavement encroach on the property line rather than the stream.

Doreen Connor opened the public hearing. Seeing that there was no public comments, the hearing was closed.

Board deliberation of the necessary criteria began at 7:55 pm.

- 1) The specific site is an appropriate location for the use of the structure.
5 - Yes **0 - No**

- 2) The use requested is allowed by special exception.
5 – Yes **0 – No**

- 3) The use will be compatible with neighboring land uses.
5 – Yes **0 – No**

- 4) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

5 – Yes **0 - No**

5) That granting the permit would be in the public interest.

5 – Yes **0 – No**

6) That the proposed use would not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.

5 – Yes **0 – No**

7) That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odor, heat, glare, or unsightliness.

5 – Yes **0 – No**

Doreen Connor **MOVED** to grant the special exception as requested for Case 2008-102. Bob Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Case 2008-103: A request has been made for an Area Variance from 133-40 and an Area Variance from 133-22E. The applicants, Irish and Terry Burnett, are proposing to convert an existing barn into 2 apartments, thus creating the permitted use of a home rental of up to 2 apartments. The Area Variances are required because the lot is 23,086 sqft when 30,000 sqft is required (133-40) and the existing barn setback varies from 4.5-9.5 feet where 30 feet are required (133-22E). The property is located at 83 Hall Avenue in the Village Proper (RV) District.

Chairman Parker stated that the voting Board is comprised of himself, Ms. Connor, Ms. Oliveira, Mr. Stamps and Ms. Laberge.

Mr. Burnett, the applicant, presented their request for the Area Variances. He stated that the property (barn) has been used as apartments in the past, although not currently. The footprint of the barn is not being changed, but the interior is being completely remodeled.

Ms. Scott, Town Planning Consultant, stated that although it is a nonconforming lot that previously had apartments in the barn, because that use stopped it is considered ungrandfathered. The applicant is requesting waiver of site plan review from the Planning Board. They already have adequate parking on the lot. The Fire Department and Building Inspector have already signed off on the proposed use.

Mr. Stamps questioned why they have to ask for variance on setbacks and lot size when it is already built and not new construction. Ms. Scott stated that in order to do a new home-occupied rental use, it needs to meet current zoning. It was unclear whether the setbacks needed a variance but that they wanted to be safe and have the ZBA make that determination.

The applicant stated that water and sewer are in place. They are replacing the floor but are not doing structural work. The applicant stated that there are apartment buildings on both sides of their property and further up on Hall Avenue.

Chairman Parker called for deliberation of the five criteria.

- 1) The proposed use would not diminish surrounding property values.

5 – Yes 0 – No

- 2) Granting the variance would not be contrary to the public interest.

4 – Yes 1 – No

Ms. Oliveira – Yes. If the applicant rents their space (SF home), they will be violating zoning; this is approving for an owner-occupied rental.

Ms. Laberge – Yes. She asked for description of the apartments. The applicant stated that there are two, two-bedroom apartments each just under 800 sqft. The first and second floors would be apartments and the third floor would be converted to attic storage space.

Chairman Parker – Yes

Ms. Connor – Yes

Mr. Stamps – No. He stated that one apartment is right for the area, and two apartments does not meet zoning.

- 3) Denial of the variance would result in unnecessary hardship to the owner because:

- A) the special conditions of the property make an area variance necessary in order to allow the development as designed.

3 – Yes 2 – No

Ms. Oliveira – Yes, it does cause an unnecessary hardship.

Chairman Parker – Yes. Lot size variance is helpful when the lot is so small that it creates a problem.

Ms. Laberge – Yes. She stated that while she can see both sides of it, looking at the neighborhood, this seems reasonable.

Ms. Connor – No. She stated that while she doesn't have a problem with the property itself or their idea, there is nothing special about the property which causes a hardship. She stated that there is an existing structure which is no longer grandfathered and zoning was put in place for a reason.

Mr. Stamps – No. He stated that no hardship exists; they can have one apartment but two apartments no longer meets zoning.

- B) the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden.

4 – Yes 1 – No

Chairman Parker: Yes

Ms. Connor: Yes

Ms. Oliveira: Yes

Ms. Laberge: Yes

Mr. Stamps: No

4) Granting the variance would do substantial justice.

4 – Yes 1 – No

Chairman Parker: Yes

Ms. Oliveira: Yes

Ms. Laberge: Yes

Mr. Stamps: Yes

Ms. Connor: No

5) The use is not contrary to the spirit of the ordinance.

5 – Yes 0 – No

Doreen Connor **MOVED** to approve the area variance as requested from 133-40 and that the area variance pertaining to 133-22E is not required. Bob Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Review of Minutes

The Board reviewed the minutes of the January 16, 2008 meeting. Ms. Laberge **MOVED** to approve the minutes as presented. Mr. Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (6-0)**.

Correspondence

1. Chairman Parker stated that the Board of Selectmen approved the ZBA's new fee schedule, effective March 1, 2008.

2. 2008 Town Meeting Zoning Ordinance Ballot Questions

Ms. Scott stated that text changes made by the Planning Board have been done.

3. Workshop Notification

a. NH DOT US202/NH9 Informational meeting

b. CNHRPC Sustainable Landscape Workshop

c. UNH Coop Extension NH Current Use Tax Rules

Revised ZBA Applications

The Board reviewed the revised applications. It was noted that they can be posted online for the public to download. Mr. Stamps **MOVED** that the Board adopt the new forms. Ms. Connor **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (6-0)**.

Proposed Revised ZBA Rules of Procedure

There was discussion about putting the Board's operating procedures in writing.

Chairman Parker stated that a tie vote means that no action is taken.

The Board discussed "Conflict of Interest." (section 6.4) Ms. Connor suggested eliminating the second and third paragraph and referencing the applicable RSA to avoid misunderstanding.

After much discussion of Article VIII and the Right to Know law, it was decided by a vote of 4 (only referencing the RSA) to 2 (keeping the section intact) that Article VIII will state that the Board will follow the RSA governing the Right to Know law.

Section 9.3 Public Relations was reviewed and deemed to be deleted. Language will be added to 3.2 Duties of the Chair that the Chair will represent the Board.

Chairman Parker **MOVED** to accept the Rules of Procedure as revised so a corrected draft can be recorded with the Town Clerk. Mr. Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (6-0)**.

The Board unanimously voted to adjourn the meeting at 9:00 pm.

Respectfully submitted,

Jennifer Astholz
Recording Secretary