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**Town of Henniker
Zoning Board of Adjustment Meeting
Wednesday, November 20, 2019
Henniker Town Hall**

Members Present: Chairwoman Doreen Connor, Vice Chair Joan Oliveira, Leon Parker, Alternate Ron Taylor

Members Excused: Gigi LaBerge, Robert Pagano

Town Planner: Mark Fougere

Recording Secretary: Colleen Gagnon

Guests: Kay and Robert Owens

Call to Order/ Attendance

Chairwoman Connor called the meeting to order at 7:05pm. She stated that the board has convened to address an application for a variance from section 133-70 Abandonment of a non-conforming use. Chairwoman Connor stated that at this time there are four board members present. A full board would consist of five board members. The applicant was advised that they have the choice to proceed or to table the case until the board has five members present. Chairwoman Connor explained that in order to be granted a variance the applicant would need three votes. If the board had a tie, the variance would not be granted. Mr. and Mrs. Owens questioned why a tie would lead to a negative response. It was stated that the RSA determines a tie leads to a negative determination.

Mr. Owens stated he would rather have a full board of five members. Mrs. Owens stated that she felt confident and would like to present their case. Chairwoman Connor suggested that the applicants take a few minutes in the hallway to discuss how they would like to proceed.

Meeting Minutes October 2, 2019- Review and Accept

The board reviewed the meeting minutes from October 2, 2019. Edits to the minutes were discussed. **Mr. Parker made a motion to accept the minutes with the discussed edits. Mr. Taylor seconded the motion. The motion passed unanimously 4-0**

Public Meeting:

Case ZBA 2019:03 Request a Variance from Article XVI Non-conforming uses, Section 133-70 Abandonment of non-conforming use, to allow for the installation of a mobile home to replace a mobile home that formally existed on a pad more than two years ago. This mobile home park

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exists in the CH zone where residential uses are prohibited, Applicant: Wood Hill Village Owner; Robert & Kay Owens, Map 1 Lot 305E, Zoned CH Heavy Commercial.

Mrs. Kay Owens addressed the board and stated that she and her husband, Robert Owens, are the owners of Wood Hill Village, a mobile home park at 780 Old Concord Road. They have owned Wood Hill Village since 1981. They are here tonight because of the information they received regarding the ZBA meeting on October 2, 2019 where a similar case was brought before the board. Mrs. Owens stated that she and her husband did not know that they would need a variance for this situation. She explained that they were allowed to add another mobile home under similar circumstances two years ago. It was explained that in 2014 a manufactured home in Wood Hill Village was demolished. Over two years after the home was demolished, the Owens requested a building permit, which was granted, and they replaced the home that was demolished with no need for a variance.

Mrs. Owens explained that due to that their previous experience they did not realize a variance was required for their current situation until the last month when the ZBA heard a similar case where a variance was requested due to abandonment of a non-conforming use.

Mrs. Owens further explained to the board that she and her husband were approached by a perspective tenant who would like a mobile home put on a specific lot that is currently vacant. If that perspective tenant does not work out, Mr. and Mrs. Owens would become the owner of the proposed home. The proposed home would be a 14ft x 68ft manufactured home, which is consistent with the other homes in Wood Hill Village. Mrs. Owens reviewed the history of the vacant lot. The mobile home owner died in 2015. In 2017 the Owens became the owners of the mobile home. In the interim the Owens and the deceased's family looked to sell the home but were not successful due to the home's state of disrepair. Mrs. Owens stated that they fully intended to put a new home on that lot but did not realize the time constraint. They are requesting to place a new manufactured home on that lot. Mrs. Owens referred to a Google map of Wood Hill Village, she identified the lots that are currently vacant and their purpose. Mrs. Owens explained that in 1988 they changed their regulations to state that the maximum number of occupants per lot be three in order to extend the longevity of their septic system.

Chairwoman Connor asked for clarification regarding the timeline of the original mobile home. It was clarified that the original mobile home stopped being used as a mobile home in September 2015 due to the death of the home's owner. The mobile home was demolished in August 2017. Mrs. Owens stated that if they had know about the variance they would have replaced the mobile home sooner. She reviewed that the last time they replaced a mobile home that was vacant for over two years they applied for and received a building permit with no need for a variance and the zoning was the same.

Chairwoman Connor asked if there were any audience members who would like to speak.

Mr. Owens addressed the board. He stated that when they applied for the variance there were two paragraphs on the application that they did not filled out. He asked to add to his application. Chairwoman Connor explained that he could not add to application because it had already been sent to abutters but that he could add to the argument and present the information.

Mr. Owens addressed the question on the application regarding special conditions. He spoke about the special consideration that the lot is part of a commercial business that has been in

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continuous use with no intention of it being abandoned. The lot is not an individual piece of property it is part of a larger commercial property. Mr. Owens further stated that the purpose of the property is that it was designed to be a lot for a manufactured home among others within a manufactured home park and the lot can only function as part of a mobile home park. The property can not be used for heavy commercial.

Chairwoman Connor asked if the board had any questions. The board entered into deliberations. Vice Chair Oliveira questioned the procedure of going through the steps, it was stated that three firm positive votes would be need to pass.

Mr. Parker discussed his feelings regarding the function and purpose of the ZBA. He stated he felt the purpose is to make sense of the regulations.

Chairwoman Connor discussed that a variance within the framework allows the board to look at special characteristics of a property. She feels a non-conforming use ordinance is different . A non conforming use is grandfathered for a certain period of time and under certain conditions. She stated that she understands the argument that is being made is different in the way that a mobile home business has been grandfathered as opposed to one individual mobile home. The concern is that a precedent may be created where then the board could not enforce the zoning regulations.

The board discussed and agreed that a mobile home, not part of a mobile home business, would not be granted a variance for non-conforming use if it was left vacant for two years or more and then asked to rebuild.

Vice Chair Oliveira stated that her concern is that this same situation occurred two years ago and the Owens were issued a building permit.

The time line of the previous situation was reviewed. The original mobile home was demolished in 2014 and the new home was put on the lot and connected in November of 2017. The Owens stated that they did not know they needed a variance. Vice Chair Oliveira explained that she feels there are extenuating circumstances because of the situation two years ago where a building permit was issued without the need for a variance.

Vice Chair Oliveira stated that it bothers her that this mistake was made. She is asking if an exception should be made because of what happened before. The Owens didn't come further earlier to request the building permit because they did not realize there was a time constraint due to the previous situation.

Chairwoman Connor discussed that the Owens do need a variance but that there is gray area.

Vice Chair Oliveira made a motion to vote on ZBA Case 2019:03 without going through the steps. Mr. Parker seconded the motion. The motion passed 3-1 (Connor)

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**Vice Chair Oliveira made a motion to close the meeting, Mr. Parker seconded the motion.
The motion passed unanimously 4-0**

Meeting was closed at 7:40pm