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**Town of Henniker
Zoning Board of Adjustment Meeting
Wednesday, October 2, 2019
Henniker Town Hall**

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

Members Excused: Gigi Laberge

Town Planner: Mark Fougere

Recording Secretary: Colleen Gagnon

Guests: Mr. Bourdon, Cuie Hu, Mr. Chen, Martha Taylor

1. Call to order

Chairwoman Connor called the meeting to order at 7:00pm and stated that she is pleased to announce that they have a full board for the meeting. Gigi LaBerge is excused from this meeting but Alternate Ron Taylor is present.

Chairwoman Connor stated that the board will hear two cases that were tabled on Wednesday September 18, 2019. The first is case number 2019:01 which means it is the first case of the year.

2. Case ZBA 2019:01

Case ZBA:2019:01 Request a Variance from Article II, Definition of a Two-Family, Applicant is requesting the ability to construct two modular homes adjoining each other with the only common wall being two adjoining garages, no adjoining living walls exist. 221 Elm Street, Map 1 Lot 542, Applicant/owner John & Greg Bourdon, Zoned CR Commercial Recreation.

Chairwoman Connor turned the presentation over to the applicant. Applicant, John Bourdon presented to the board. Mr. Bourdon addressed the board to determine if they all had copies of his proposal. Mr. Bourdon discussed a change to the plan, that he has eliminated the stand alone building in the back. He has eliminated the hanger and explained to the board that he would like to make the garage bigger. Mr. Bourdon also explained that he pushed the houses back about 140 feet from the runway due to advice from the insurance company. Mr. Bourdon explained to the board that he would like to build two houses, either stick built or modular. The proposal is to have a house, a garage/hanger then another house. Each home will allow access to the hanger/garage. Mr. Bourdon stated that the area is zoned CR and the CR zone allows two family

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homes and the way he sees the definition according to Article II it says a detached residential building containing two dwelling units designed for occupancy by no more than two families. Mr. Bourdon feels the only difference to his proposal is that he has a garage/hanger in-between. Mr. Bourdon stated that the reason he wants to build on that side is because of the view. Mr. Bourdon shared a photo of the property with the board. He stated that it is the reason for what he wants to do. Mr Bourdon says that the definition in Henniker does not state that there must be a common living space wall. He feels that having a garage/hanger between the two houses is the same thing. Mr. Taylor asked about the garage. He asked if there would be a wall or if it was wide open. Mr. Bourdon stated that it is wide open and he shared a sketch with Mr. Taylor. The sketch was then shared with the rest of the board. Mr. Taylor asked about the fire code and Mr. Bourdon assured the board that the building would be built to the fire code. Mr. Fougere discussed the fire department requirements for sheet rock. Chairwoman Connor addressed the audience if there are any members of the audience who would like to speak to the case, speak in favor or speak against. An audience member spoke in favor and stated that he felt the zoning should be addressed. Mr. Bourdon stood to address the board again. He stated that in Greenland he saw a community that had built houses with a garage in the middle of two houses. He feels that an airplane hanger is just a larger garage.

Chairwoman Connor stated that she is looking out into the audience and she does not see anyone else who would like to speak. Chairwoman Connor asked if there were any further questions or if the board was ready to go into deliberations. The board members agreed to enter into deliberations. Mr. Parker stated he does not see anywhere that specifies that a garage is not part of a house. Mr. Parker feels if a game room was put over the garage the whole unit would be residential. Mr. Parker stated that he does not see a way to give a variance but he doesn't think it needs a variance. Chairwoman Connor directed the conversation to Vice Chair Oliveira, she stated that she would like to hear from the rest of the board but that a hanger is just a bigger garage that fits a plane. Mr. Pagano stated he would also like to hear from the other board members. Mr. Taylor stated that the only reservation he has is a plane being between two dwellings and he agrees with Mr. Parker that the variance should be granted. Chairwoman Connor stated that she agreed with Mr. Parker that the applicant did not need a variance. Mr. Fougere stated that the board can make the decision that a variance is not needed. Chairwoman Connor asked Mr. Fougere why he felt the proposal needed a variance. Mr. Fougere stated that Henniker does not do a lot of duplexes. He sees a duplex as two dwellings with a common wall. Chairwoman Connor stated that the safety of having a plane between two houses is not up to the ZBA. It was determined the safety regulations would be addressed through the building permit at the fire department.

Mr. Leon Parker made a motion that the board make a determination that a variance is not required in this case. Mr. Pagano seconded the motion. Chairwoman Connor asked if the board would like to talk further or are they ready to vote. The board voted. **The motion passed unanimously 5-0.**

3. Case ZBA 2019:02

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Chairwoman Connor introduced the second case.

Case ZBA 2019:02 Request a Variance from Article XVI Non-conforming uses, Section 133-71 Damage by fire, 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 exists in the CH zone where residential uses are prohibited, Applicant: Sunny Side Hill, LLC, Owner: Cuie Hu, 139 Wood Hill Village, Map 1 Lot 305B, Zoned CH Heavy Commercial.

Chairwoman Connor recognized the applicant. Cuie Hu addressed the board. Ms. Hu stated that she hopes this is easier as there was a home there. She stated that when she first came to the park and saw the vacancy and her first reaction was that a piece was missing and she would have to fix it. Ms. Hu explained that she spoke to homeowners who told her that there were folks in town who were still waiting for affordable housing. She explained that that is why she is here tonight to ask for the boards' consideration and approval to add one more mobile home.

Chairwoman Connor asked if the board had any questions. Mr. Pagano asked if Ms. Hu was adding a mobile home or restoring one. She responded that she is restoring one, the spot had a mobile home before. Chairwoman Connor explained that the issue is section 133-70 which says a non-conforming use, which this use is considered abandoned if the use has been discontinued for a period of two years. No abandoned non-conforming use may be resumed. Ms. Hu is seeking a variance from that particular section. Vice Chair Oliveira asked if the original mobile home park was allowed for a certain number of units. Martha Taylor, an audience member stated that the park was built for 12 units. When the other unit burned down the owner at the time looked for a purchaser for the unit. She stated that she did not want to build the home and then have to rent it out. It was stated that the septic and water are ready to go. The original park was built and approved for the 12 units. Chairwoman Connor asked if there were any further questions from the board. Chairwoman Connor turned to the audience for questions and comments. An audience member stated that she and her husband own Wood Hill Village which is the entrance to the lot in question. That lot has an address of Wood Hill Village. She stated that she would like for more mobile homes to come. She stated that she was surprised that the zoning was changed and the building was not grandfathered. The audience member is concerned about the size of the home. She explained what each family owned in the mobile home parks.. She stated that they are concerned about the size of the home. She stated that the last time they added to their park they just got a building permit. The home Ms. Hu is looking to put in is considerably larger than the last home the audience member was able to put in. The audience member asked Ms. Hu if the new home would be owned or rented. Ms. Hu stated it would be rented. That was a concern for the audience member as all her mobile homes are owner occupied. She is concerned about there being renters in the home as they own the access road. The current mobile home park does not have provisions for children to play. There is a concern stated regarding children playing in the road. Chairwoman Connor reviewed the audience member's concerns, the rental the footprint and the septic system allowances.

Martha Taylor, stated that she felt that the home should be allowed. She feels that Ms. Hu would be harmed if not allowed to restore the mobile home.

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Chairwoman Connor asked if anyone else in the audience would like to speak. Mr. Chen, from the audience stated that the mobile home would be a two bedroom unit.

Chairwoman Connor asked if members of the board had any further comment before they entered into deliberations. The board had no comment. The board entered into deliberations. Mr. Parker made an observation that most of the issues discussed by the audience are not concerns for the board. He stated that this is a mobile home park business that rents out mobile homes. Chairwoman Connor addressed the non-conforming use. A non-conforming use is a use that is expected to be phased out of existence. Mr. Parker stated that it is a business and Chairwoman Connor stated that it is the use of the structure.

Mr. Taylor stated that the business of the park is providing homes. If it is left for two years, the business has been a business for many years. Mr. Taylor feels that there should be no need for a variance or the zoning should be changed. Mr. Parker discussed a comparison of a parking spot to the mobile home business.

Vice Chair Oliveira stated that what she is concerned about is that the park was originally approved for 12 units and then the non-conforming use kicks in. She is having difficulty with that point. Mr. Pagano stated that the clock has ticked and it has ticked too long according to the zoning ordinance. But he feels that the original spirit of the decision should be discussed. Mr. Taylor explained that the park came before the zoning so the whole 12 units were grandfathered. It was discussed that the park is the business. It was also discussed that it is not a non-conforming business, it is a non-conforming use. Mr. Parker looked up manufactured housing and discussed that the business is a manufactured housing park. Chairwoman Connor asked Mr. Parker if he feels that this case deserves a pass because it is a mobile home park or if Mr. Parker does not like non-conforming uses. Mr. Parker is against picking the one lot and saying it is a non-conforming use. He asked what they would do with the one spot. Chairwoman Connor suggested it be turned into green space. Chairwoman Connor stated that economic issues are not typically considered in regards to granting a variance.

Chairwoman Connor stated that she is struggling with how this property is different from others that are similarly situated and how a distinction could be made. There is no dispute that it has been abandoned.

Chairwoman Connor asked if the board is ready for a vote. **Vice Chair Oliveira made a motion to vote on ZBA Case 2019:02. The motion is to go through the steps.**

First step is whether or not granting a variance would not be contrary to the public interest: Mr. Parker stated that it would not be. Chairwoman Connor stated it would be, Vice Chair Oliveira stated it would be, Mr. Pagano stated it would not be, Mr. Taylor stated it would not be.

The second step is the spirit of the ordinance would be observed by granting the variance: Mr. Parker stated yes, Chairwoman Connor stated no, Vice Chair Oliveira stated no, Mr. Pagano stated yes and Mr. Taylor stated yes.

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Third step, substantial justice would be done by granting the variance: Mr. Parker stated yes, Chairwoman Connor stated no, Vice Chair Oliveira stated no, Mr. Pagano stated yes, Mr. Taylor stated yes.

The fourth step is that the value of surrounding properties would not be diminished: Mr. Parker stated no change, Chairwoman Connor stated no change, Vice Chair Oliveira stated no change, Mr. Pagano stated no change, Mr. Taylor stated no change.

The fifth step is the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to this property: Mr. Parker stated yes there is hardship, Chairwoman Connor stated there is no unnecessary hardship, Vice Chair Oliveira stated there is no unnecessary hardship, Mr. Pagano stated yes there is unnecessary hardship, Mr. Taylor stated that yes there is unnecessary hardship.

The sixth step is owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because it a reasonable amount: Mr. Parker stated yes, Chairwoman Connor stated no, Vice Chair Oliveira stated no, Mr. Pagano stated yes, Mr. Taylor stated yes.

Chairwoman Connor announced that it passes.

Chairwoman Connor excused Vice Chair Oliveira.

A question from the audience member in regard to the Heavy Commercial Zone, there are seasonal residential places at the campground down the road. The audience member is questioning how it leaves her and her husband to restore homes in their park. Mr. Fougere stated that if the home is replaced within two years there would be no issue. It was asked if having a business in your home would conform and Chairwoman Connor stated that would be a different issue.

4. Adjournment

Chairwoman Connor adjourned the meeting at 8:02pm.