

Town of Bennington
Zoning Board of Adjustment
Minutes of the Meeting - January 15, 2009

Present: Judy Heddy, Chairperson
Joan Schnare
Peter Martel
Steve Osienski
Barbara Moorehead
Barry White (7:57 p.m.) – Planning Board Liaison

Guests: Stephen Stockwell
Richard L. Edmunds
Ryan Kulbacki
Sharon Hubbard
Paul Day
Peter Mellen
Jeff Rose

Chairperson Heddy called the meeting to order at 6:47 p.m.

John Tyler was unable to attend the meeting due to his work schedule. Peter Martel was appointed as a voting member. The decision was made to change the meeting from the second Thursday of the month to the Third Monday of the month was discussed. Chairperson Heddy will check with John Tyler to see if this day will work for him.

The minutes from the November 13, 2008 meeting were reviewed and accepted as written with the following change: page 1, paragraph 5, sentence 7 add a period after the word written; page 1, paragraph 6, sentence 4 change “provide a written notice a their decision.” to “provide a written notice of their decision.” The minutes were approved by a vote of five (Judy Heddy, Joan Schnare, Peter Martel, Steve Osienski, Barbara Moorehead).

Chairperson Heddy shared with the Board answers to the questions that were raised by the Board at their November meeting. The answers came from Lisa Murphy from Southwest Regional Planning Commission.

1. **Should applications start with the Planning Board or the ZBA?** There has been a lot of discussion about this lately and it is still unclear. However, applications can start at the Planning Board or the ZBA. If it is obvious that a variance or waiver is needed an applicant can come straight to the ZBA. (The Board will share this information with both the Planning Board and Selectmen.)
2. **Can the ZBA vote on decisions at the hearing?** Yes.

3. **Do we reconvene to vote on the Notice of Decisions? Yes. Do we have to write up the Finding of Facts or are Meeting Minutes sufficient?** Finding of Facts are not mandatory, but the benefit of writing them is that they make it clear what the ZBA's thinking was when they made their decision. This can be important if there is an appeal.
4. **What should be included in the Notice of Decision?** Refer to pages 77 and 78 of the handbook to see what should be included in the Notice of Decision. (The Board felt that it would be beneficial to have these forms available when there are hearings so that they may be filled out at the time if the Board moved to vote on decisions at the hearing.)
5. **Do Notices of Decision have to be filed with the Registry of Deeds?** The statute says that Notice of Decision must be filed in a location that is available for public inspection. Therefore, they should be on file in the town hall. (Peter Martel brought up that a reference on the deed in the case of a granted variance would notify new landowners of the decision, whereas they may not be aware of this information otherwise.)
6. **Should a lot line adjustment be granted via a waiver or a variance?** (This question is being looked into further; the Board is awaiting a reply.)

Chairperson Heddy called the Stockwell Hearing to order at 6:58 p.m.

Stephen Stockwell came before the Board to appeal the Code Enforcement Officer's denial of a building permit application submitted to "relocate the replacement of manufactured housing". He stated that he wanted to place an identical sized unit in the same area as the existing unit, but due to its close proximity to a maple tree he would like to move the unit to a location approximately 50 to 60 feet away from the tree.

Chairperson Heddy suggested to Board members that as Chair she felt that the Board was missing pertinent information to hear this appeal properly since neither Peter Hopkins nor documentation of the denial of the application were available. The Board members apologized to Mr. Stockwell and those who attended the hearing that they were unable to proceed. Peter Martel made a motion to continue the hearing until February 16, 2009 at 7 p.m. Joan Schnare seconded the motion and all were in favor.

Joan Schnare will be contacting Denise French to be put on the agenda to meet with the Selectmen regarding the process for when a denial is made on an ordinance so that the Board will receive documentation of the basis and facts of the article in question.

Chairperson Heddy called the Rex Gray Hearing to order at 8:01 p.m.

A notarized letter from Rex Gray was received; it explained that he would be appointing Peter Mellen to represent him as he could not attend tonight's hearing. Peter Mellen is a licensed land surveyor of Mellen Surveyors. Peter Mellen spoke on behalf of Rex Gray in presenting a request of an area variance.

Rex Gray is requesting a variance from article VII section C of the zoning ordinance for lot size and setback requirements to permit the conversion of the building located at 584 Francestown Road into four residential one-bedroom apartments.

On June 27, 2002 a variance was approved with the following conditions:

1. Old restraint building converted to a single dwelling unit
2. Two retail units converted to 1 bedroom apartments
3. Remaining two retail unit remain unused

Planning Board Chairperson Jeff Rose addressed the Board stating that he felt that by the Board denying the variance, the denial would not result in unnecessary hardship due to what was granted with the 2002 variance.

Barry White asked Peter Mellen if he had done a survey of this site, Peter Mellen replied that he has not done any surveying of this site, but was here tonight as a representative for Mr. Gray. Barry White provided for the Zoning Board of Adjustment a packet outlining the Planning Board's concerns regarding the property, the Notice of Decision from the Planning Board rejecting the application due to the lot being non-conforming in size and not meeting setback requirements, a copy of ZBA Minutes from June 27, 2002, and the Notice of Decision from the hearing from June 27, 2002. The Planning Board's concern is that this property is already over used, and Rex Gray is asking to expand it further.

Jeff Rose provided the Board with information regarding the Planning Board's study on rental properties in town. At present 25% of the properties in town, not including the condominiums, are rental properties.

A motion was made to close the public hearing and all were in favor. The Public Hearing was closed at 9:12 p.m.

The Board outlined the following facts:

1. A variance was granted in 2002 to convert the building to a single dwelling unit
2. Currently the lot is non-conforming since it is .76 acres and the ordinance requires 2 acres in the commercial district
3. Would be an expansion in number of units
4. It is a small lot with dense usage already
5. Setback is not a concern because the existing buildings have been there pre-zoning regulations
6. Article 7, section C

In reviewing the questions on the application, the Board found the following:

1. The proposed use would not diminish surrounding property values because this property is surrounded by condominiums and a hotel.
2. Granting the variance would not be contrary to the public interest because it does not alter the character of the neighborhood or threaten health, safety, or general welfare.
3. Denial of the variance would not result in unnecessary hardship to the owner because there are other reasonable uses such as those given in the 2002 variance.
4. Granting the variance would do substantial justice because the public does not have anything to gain or lose.
5. The use is contrary to the spirit of the ordinance because the intent of the ordinance is to keep density minimal.

The Board supported the variance on three accounts (Questions 1, 2, and 4) and did not support on two accounts (questions 3 and 5).

Joan Schnare made a motion and Peter Martel seconded the motion to continue the hearing until Wednesday January 21, 2009 at 7 p.m. All were in favor.

There being no other business, Peter Martel made a motion to adjourn the meeting. The meeting was adjourned at 9:49 p.m.

Respectfully Submitted by

Karen Bartlett
Zoning Board of Adjustment Recording Secretary