

TOWN OF NEW BOSTON

NEW BOSTON ZONING BOARD OF ADJUSTMENT

Minutes of 2020 - Meeting conducted virtually, using ZOOM due to COVID-19 pandemic.

December 15, 2020

The virtual meeting was called to order at 7:00 p.m. by Zoning Board Chairman David Craig. Present virtually were Vice Chairman Kenneth Clinton, and regular members Michael Dahlberg and Anthony Olivier. Also present virtually was Zoning Board Clerk Nadine Scholes and Planning Coordinator Shannon Silver. Absent was alternate member Wayne Charest.

David Craig read the meeting preamble as follows,

‘MEETING PREAMBLE DURING COVID-19 EMERGENCY

Good evening, as Chairman of the Town of New Boston Zoning Board, I am invoking the provisions of RSA 91-A:2, III (b) during the current State of Emergency. Governor Sununu has issued Emergency Order #12, pursuant to Executive Order 2020-04, that allows local government and this public body to meet virtually. I am declaring that conducting this meeting is imperative and required in order to continue vital Town government, services and operations.

We have utilized the Zoom platform to conduct the meeting and all Board members will have the ability to communicate concurrently and the public has access to concurrently listen and if necessary, will be given the opportunity to participate in the meeting when opened for public comment.

If anyone has an issue connecting, they should contact Nadine Scholes [REDACTED]
[REDACTED]

Property owners, applicant and direct abutters were given proper notice of this hearing, along with the instructions of how to access the meeting. Public Notice and Zoom access instructions were also posted for public view on the Town website.

To help minimize background noise and provide privacy to everyone, we have started this meeting with all microphones muted and video cameras off. You do not need to turn on your camera to participate in the meeting and we ask that everyone keep their microphones muted unless you would like to speak. Any public comment will need to wait until the meeting is opened to the public and will need full name and address stated for the record.

If anyone accessing this meeting is disruptive, they will be asked to cease the disruptive behavior. Should the disruption continue thereafter, that person will be automatically removed from the meeting.

Please be aware all votes taken during this meeting will be done by Roll Call vote. Let's start the meeting by taking a Roll Call attendance. When each member states their name, please also state if there is anyone else in the room with you during this meeting, under the provisions of the Right-to-know law.'

Roll Call attendance, David Craig present and alone, Kenneth Clinton present and alone, Michael Dahlberg present and alone, Anthony Olivier present and alone, Nadine Scholes present and alone and Shannon Silver present and alone.

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Review and approval of the minutes of October 20, 2020.

David Craig asked if the Board had any changes to make on the October 20, 2020, meeting minutes. There were no changes.

Michael Dahlberg **MOVED** to approve the meeting minutes of October 20, 2020, as written. Anthony Olivier seconded the motion. The motion **PASSED**. 3-0, Roll Call Vote: David Craig-yes, Michael Dahlberg-yes, Anthony Olivier-yes, Ken Clinton abstained, he was not present at the meeting.

David Craig opened the Public Hearing.

DONALD L. PATRICIA K. GROSSO, TRUSTEES
GROSSO FAMILY REV TRUST 2014 (OWNER/APPLICANT)

Application for a Variance

Location: Mont Vernon Road

Tax/Map Lot #8/110

Small Scale Planned Commercial "COM" District

Present virtually for the hearing was Donald and Patricia Grosso.

Don Grosso noted that they purchased the property in 1976, as a single-family home with a detached barn. They had originally converted the home into a two (2) family and the barn had been converted into retail space. The 2-family house was eventually also converted into office space and a hair salon.

Don Grosso stated that the office space had been vacant for 2+/- years and the application is to allow the office space to be converted to a single apartment, keeping the existing salon. He noted that the size of the existing septic should be enough (even oversized) for the change of use.

Don Grosso noted that the Fire Department recommended that the salon unit have the same alarm system installed as the one installed in the office space, which is a wired system for smoke and heat detection. He explained that there are currently 40 parking spaces total for the 2 buildings and there would be no additional parking needed for the change in use.

Don Grosso pointed out that a section of the hair salon would become part of the apartment on the first floor and there would be 2 bedrooms upstairs and 3 rooms with a bathroom downstairs.

Don Grosso reviewed the facts/criteria from the Variance application he had submitted.

Facts in support of granting the variance:

1) Granting the variance would not be contrary to the public interest:

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- No changes to the exterior, no increase in traffic and the property has residential abutters to the west and southwest.
 - 2) If the variance were granted, the spirit of the ordinance would be observed because:
 - It conforms to the Town's Master Plan, Smart Growth goals to allow mixed use.
 - 3) Granting the variance would do substantial justice because:
 - It would conform to the Master Plan goals and would allow the property the same options that the non-conforming residential properties already enjoy. The commercial zone is arbitrarily assigned and unduly oppressive giving non-conforming properties more options than that of conforming ones.
 - 4) If the variance were granted, the values of the surrounding properties would not be diminished:
 - The surrounding properties have mixed use options already, two (2) abutting properties are residential homes within the area considered New Boston Downtown.
 - 5) Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.
- A. For the purposes of this paragraph unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
- i. The use meets the spirit of the Master Plan and is a reasonable use of the property due to location among two (2) existing residential properties.
 - ii. The proposed use is a reasonable one because it meets all the parking needs, fire codes and would not jeopardize the New Boston Master Plan goal for the Smart Growth objective.

Ken Clinton confirmed that there would be 5 rooms total with the kitchen and the bathroom that would be included in the apartment unit. Don Grosso agreed. Ken Clinton stated that he had some issues with the commercial space remaining, being only 14% in that building, which he opined that would not be consider 'mixed' use of the overall building space. He understood that the office space has been vacant for some time now and the current pandemic situation has made it difficult to find renters for the space, but he doesn't agree that there would be no desire for office space in the future. Don Gross explained that there is additional commercial space in the other building (barn) on the same lot that would be included in that ratio. He explained that there are fire safety requirements and the layout for the apartment met those requirements.

The Board discussed the character and use of surrounding properties that are mixed use. The Planning Coordinator, Shannon Silver mentioned that there are some properties in Town that are mixed use, with an office and an apartment but she opined home offices are becoming more popular, rather than renting a space in Town.

David Craig confirmed with the Planning Coordinator, Shannon Silver, if the need for office space came back in the future, then the Grosso's could request the apartment space be reversed back to commercial use. Shannon Silver replied yes, the property is zoned COM, office space is a permitted use in that district, and they have an approved site plan for that use.

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There were no comments from the public.

Michael Dahlberg **MOVED** to grant the Variance to allow a change of use, currently office space to one residential apartment, for a property owned by Donald & Patricia Grosso, Trustees of the DL & PK Grosso Family Rev Trust of 2014, located at 81 Mont Vernon Road, Tax Map/Lot #8/110, in the Small Scale Planning Commercial 'COM' District. Anthony Olivier seconded the motion. The motion **PASSED**. 3-1, Roll Call Vote: David Craig-yes, Michael Dahlberg-yes, Anthony Olivier-yes, Ken Clinton-no.

JAMES & DONNA ZYLAK (OWNER/APPLICANT)

Application for a Variance

Location: Tucker Mill Road

Tax/Map Lot #2/17

Residential Agricultural "R-A" District

Present virtually for the hearing was James Zylak and Donna Zylak.

James Zylak presented the application for a Variance requesting to permit the construction of a garage within the 50' front setback. He said that the size of the garage was determined to accommodate two (2) vehicles and equipment storage for his business. The existing shed is not adequate.

David Craig asked what type of equipment is going to be stored in the garage and would the equipment be used in the garage or on the property. James Zylak explained that the equipment is for his contractor business and is used only on job sites, there would be no construction or equipment operations on the property, the equipment is only going to be stored in the garage. David Craig asked why the applicants had chosen this location to construct the garage on the lot and what was the size of the lot. James Zylak replied that the lot was just over 2 acres and the location of the existing septic and well would prevent the garage to be built outback or on the opposite side of the house. The existing shed cannot be moved and the only location that would be reasonable for a garage was the proposed location within the front setback. David Craig asked if the shed has a foundation. James Zylak replied no, it was placed on blocks. David Craig asked again why the shed could not be moved if it did not have a foundation. The Zylak's noted that the shed was large and would need to rent a crane to move it, which could cost at least \$900.00 to rent the crane for only half of the day and they were unsure how long it would take to move. David Craig asked if they had an estimate for the cost of constructing the garage. James Zylak said yes and noted that the cost was identified on the plans submitted for the hearing, estimated construction cost was +/- \$20,300.

Ken Clinton questioned what happened to the wetland delineated on the plan submitted to show the location of the garage. James and Donna Zylak noted that Nadine Scholes had mentioned that the Board may question the wetlands shown on the plan

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presented when they first applied but stated they do not have any wetlands on the lot. Ken Clinton explained that the plan used to show the proposed location for the garage, which he believed it was the septic plan, does show a delineated wetland. He noted that the plans, photos submitted and aerial images available show the wetland was removed by filling it in and regraded, which is a violation of the State's DES Regulations.

James and Donna Zylak stated that there was no water found in the wetland and he understands that building in a wetland is not allowed, he is a contractor and would not build a structure in a wetland because it would not be stable. They stated that they did have all the trees cleared and the land was leveled for a suitable building surface but there was no water there and never has been since they purchased the property in 2015. Ken Clinton asked if the trees were cleared and grading had been done when the new driveway was constructed. James Zylak said the trees were removed the year before and the driveway that existed was not changed from what previously existed, only had the driveway regraded and paved last year.

Ken Clinton noted that per the septic design, as well as the approved subdivision plan, showed delineated jurisdictional wetlands, which does not mean there would be apparent surface water but wetlands are identified by a Licensed Professional Scientist and it would be a violation if the wetland were filled and/or removed. Ken Clinton mentioned that he would also question the accuracy of the septic design because it appears the house location proposed and where it was built seems to be closer to the wetland than what is shown for the proposed house location on the plan. If that were the case, the shed would actually be right up against where the wetlands used to be and that could be an additional violation on the required setback from a wetland.

Michael Dahlberg agreed with Ken Clinton. The Zylak's reiterated that there was no wetland where the trees were removed, and land leveled. Michael Dahlberg explained that there are forestry wetlands that are not wet, meaning that wetland may not have standing water 365 days a year, but the soil type identified it to be a wetland and because it was filled in by the applicant, that was a violation of State DES Regulations.

Ken Clinton opined that the applicants may not have filled in the wetland intentionally because of their perception of what is a wetland they did not recognize that there were jurisdictional wetlands, however with the subdivision plan that was recorded at the registry and the septic design plan showing there to be delineated wetlands, the Zoning Board could not approve the application request for a Variance based on those facts.

James Zylak asked why he would have been permitted for the shed if there were wetlands, he had used the same plans for the shed permit and the permit for the garage. The Board explained that they were not involved with the shed permit and could not comment.

David Craig noted that he thought the existing shed appeared to have been closer or even on top of the filled wetland. Ken Clinton agreed and noted that the house does appear to have been constructed closer to the wetland than what was proposed on the plans.

David Craig explained that the Zoning Board clearly had an issue granting a Variance when potentially a wetland violation had occurred, also he is bothered by the

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size of the proposed garage structure so close to the road in a rural setting. The shed could be moved because the applicants said it would cost too much, that would not meet the criteria in his opinion for a hardship, even if the wetlands had not come into question.

James and Donna Zylak explained that they had a hard time with the Building Inspector, he had told them for months that a permit would be provided and they submitted everything that was asked of them but issues kept stopping the permit to be issued and then they were told they would need to get approval from the Zoning Board before he could issue a permit because of the setbacks. They opined that the Building Inspector seemed to not know what he was doing and what the rules are. They noted that they own the property and pay taxes, they should be allowed to use their property as they see fit. Michael Dahlberg said that any property owner can do anything they want with a property but within the scope of the Ordinance and Regulations. He explained to the applicants that they have two (2) opinions, either withdraw the application or the Board would deny with prejudice. They would need to clear up the wetlands violation with the State but even once that situation is reclaimed with the State, there is no evident hardship with this proposal that would meet the criteria in order for the Zoning Board to grant the Variance to construct the garage within the front setback.

James Zylak questioned what steps they should take to clear up the wetlands situation that the Board indicated was a violation.

David Craig explained to the Zylak's that the Zoning Board would not have the jurisdiction to advise the applicants what the next course of action would be, he recommended they contact the Building Department but State of NH DES would need to handle the situation with the wetland.

James and Donna Zylak requested that the application for a Variance be withdrawn.

There was no other business to discuss.

Michael Dahlberg **MOVED** to adjourn at 8:19 p.m. Anthony Olivier seconded the motion and it **PASSED** unanimously.

Respectfully submitted,
Nadine Scholes, Zoning Board Clerk

Minutes Approved: 03/16/21