

TOWN OF EPPING, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

Wednesday March 4, 2009

PRESENT: Paul Spidle, Dave Mylott, Ron Nowe, Paul Brown, Bob Jordan; Alternate Patrick Pagnani; Secretary Phyllis McDonough.

CALL TO ORDER: Chairman Spidle called the meeting to order at 7:00 P.M.

GATCHELL FAMILY TRUST – Chairman Spidle read notice for a Variance concerning Article: 6.9, Section: 3a Maximum Density for an increase in density from 7 units to 10 total units. Parcel is located at 242 Main Street (Tax Map 022 - Lots 060) in the High Density Residential Zone. Abutters present: Grace Lavoie, Robin Clements, Tom Sutcliffe.

Attorney Hogan representing the Gatchell Family Trust came before the Board. Hogan noted in October the original application for a special exception and variance for density was heard and approved by the Board, then a request for a rehearing by the Board of Selectmen was submitted and the board denied that request, and since then a subsequent request came by the Board of Selectmen, the board agreed and denied the Gatchell application. Attorney Hogan requested that from all previous applications and hearings the minutes be incorporated in the file.

Attorney Hogan spoke on the original request which was for 14 units when 10 were allowed, and the request by the Board was to eliminate units which the applicant has done and is looking for 10 units where 7 are allowed. Attorney Hogan explained the understanding was the existing commercial use would be eliminated by this plan. He explained the plan provides green space and parking areas, and in the past the general discussion with the board was that it is a better use although the density was an issue and since then have eliminated a third of the units. He showed on the plan the middle units were eliminated leaving the two that the board originally granted with the special exception for the setback.

Attorney Hogan noted when the plan was originally before the board for the special exception and variance the board granted the request for 14 units where 7 units were allowed and there was input from the board and abutters to move the building back on the lot and noted that the whole middle part of 4 units have been eliminated. Attorney Hogan explained it seemed the Boards concerns was density and the discussion by the Selectmen was the density in relation to the hardship criteria, and when the Board discussed it the density was part of the spirit of the ordinance. Attorney Hogan noted the result of the decision was the amount of buildings that were requested was doubled.

Myllott concurred that the concern was the number of units. He stated his concern at this time is the building closest to the Lavoie property and asked why that wasn't the one moved, as it has the most impact on the abutters. Attorney Hogan explained the units that are still there is part of the special exception that the Board granted. Attorney Hogan explained to the Board that while his client is not in attendance, and if there is a design change of relocating the unit on the lot, he will address the condition at that time to relocate that unit.

Jordan stated he remembered when the application was first before the Board and when the applicant was asked to move the building there was mention of losing trees. Attorney Hogan stated the movement of the building would be a loss of one of the trees and further movement of the building would be a loss of all the trees.

Nowe explained he would personally like to see the building moved even though it is not the purview of the Board to state where buildings are going to be built. Nowe explained at that meeting the consensus of the Board they all agreed to go with 10 units and if passed he hopes there will be great consideration to move the building over to the north away from the abutters. Attorney Hogan explained when it goes to the Planning Board for their review he felt they will look at consensus of the board and the abutters.

Chairman Spidle asked if a condition of approval of the variance is the impact on the abutters would that be a reason not to grant the variance. Attorney Hogan explained in terms of density, the Board can grant the density based on what is before them and if the Planning Board with its own jurisdiction or applicant decides to present an alternative design they can require or recommend conditions to the approval.

Nowe questioned if Hogan feels the applicant left the building there as that was where all the discussion was. Hogan stated he felt that could be the reason as that was exactly what the board had discussed.

Mylott stated his concern is when there is more than one request and always have to vote on each one individual. He explained the plan at that time he voted in favor of the special exception, and stated if the plan that is before the board at this time there is no way he would vote on granting the special exception.

Nowe stated if the one unit was moved to the right it would be less impact for water and sewer.

Attorney Hogan reiterated that the Planning Board does have the authority to look at the issue and will take into consideration the board's comments. The Attorney noted that the trees that were discussed at the rehearing are an amenity. He stated he felt his client looked at a few different designs and has now eliminated a third of the units as the board requested.

Chairman Spidle spoke briefly on the request that the applicant bring in figures proving a hardship. Attorney Hogan stated he has never been involved in a variance where an applicant had to bring in a business plan. Chairman Spidle stated that one of the conditions of Boccia can be based on financial. Given that the board originally approved the 14 units, the fact that a third have been eliminated it obviates that discussion.

Chairman Spidle opened the public hearing.

Abutter Grace Lavoie stated he concerns are the one building that is closest to her property line. She stated she feels when the ordinance was written and it stated seven units it meant on a vacant lot and does not feel this is in the spirit of the ordinance, and does not feel there is a hardship. She noted even with the commercial business this proposal would bring more vehicles, and noise.

Abutter Robbin Clements stated she still has the concerns with 10 units vs. 7 units. She stated she feels this would be a great impact on school, taxes, traffic, and noise. She asked that the minutes from the previous meeting show a question that she asked as far as if the setbacks are met but the density is not then the setback would not exist and the application would be denied. Chairman Spidle explained there were two

different requests. She noted she was assured that granting the application would not happen, and stated she has not been given any valid reason why this should be allowed. Clements noted that the land owner does not even live on the property and why that person would be given the right to have more people on the site. She stated she feels this proposal will decrease her property value and asked the board to give this great consideration.

Abutter Tom Sutcliffe first stated he was not notified of the meeting. Chairman Spidle explained he was notified of the first meeting that was canceled and the date for another meeting was announced at that meeting and that was his notification.

Sutcliffe explained he does not see hardship on the land and spoke about the owner being an absentee landowner. Sutcliffe stated his concerns are with traffic and the noise that would be heard.

Brown reminded the board and Sutcliffe that they are the ones that suggested Gatchell return with a reduced number of units, and that is exactly what the applicant did. Brown also noted that he did not feel Sutcliffe would be bothered by any traffic from where he lives.

Mylott explained that the abutters have valid points although there are rules that the Board has to look at if an application is a just reason and whether or not the proposal is better for the town and that is for the board to consider. Mylott stated he felt with this proposal it would be quieter than the commercial business that is there.

Sutcliffe explained he has been living in this area for ten years and does not hear any noise at the time with the commercial business on site, but stated he would hear noise with all the traffic that would generate from the site if the application is approved. Sutcliffe also spoke about what's affordable rent as the applicant had mentioned at a previous meeting and the proposal has no benefit to anyone other than the absentee owner.

Nowe explained with Boccia the criteria for hardship has changed, and informed Sutcliffe one of the reasons the noise ordinance came into town was due to all the heavy equipment on this site. Nowe stated all the equipment he has on his other site could be moved to this site and there would be much more noise than what is proposed.

Attorney Hogan reiterated this is a permitted use and encouraged by the town and has been discussed since the beginning of the process. He explained in context of the application and with the economy and a person who has responded to the board's process. He reminded the Board is here to hear requests for special exceptions, variances, appeals of administrative decision and to protect private property owner's rights. Attorney Hogan added he has never heard that an owner of a property has to live on the property where buildings are to be built.

Brown moved, Jordan seconded the motion to close the public hearing. The motion carried unanimously.

Chairman Spidle read the five criteria from the Board of Adjustment Handbook for the record, and asked that each member address the criteria for the minutes when they vote on the application:

- "A variance is a relaxation or a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the board of adjustment on appeal. Variances are included in a zoning ordinance to prevent the ordinance

from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated.”

- (1) “no decrease in value of surrounding properties would be suffered;
- (2) granting the variance would not be contrary to the public interest;
- (3) denial of the variance would result in unnecessary hardship to the owner seeking it;
- (4) by granting the variance substantial justice would be done; and
- (5) the use must not be contrary to the spirit and intent of the ordinance.”

- Terms such as spirit, hardship, and injustice cannot be measured as specific quantities. Each case must be considered separately.....based on the judgment of the board. Court decisions.....have shaped procedures.

Chairman Spidle also noted if this application is granted, a letter will be addressed to the Planning Board on the opinion of the Board to move building closest to the abutting property owned by Lavoie.

No decrease in value of surrounding properties:

Brown stated hopefully the Planning Board and builder take into consideration surrounding properties and finds it will not be a decrease to value.

Nowe stated he does not feel it decreases the value and that the Planning Board takes into consideration the building that is there and that would apply to the new buildings.

Mylott stated he does not think it would be decrease of the value, especially with the commercial business that is on site now.

Jordan stated he sees no negative impact when going from a vacant lot of sand to a developed piece of property.

Chairman Spidle stated, in general, it would not be a negative impact although feels there would be an impact to the Lavoie property.

Not contrary to the public interest:

Brown stated they do not feel it would be negative to public interest.

Nowe concurred with Brown.

Mylott explained public interest is difficult and thinks the Planning Board who represent the town in terms of the development in the area has agree with this type of development and in that sense in may benefit the public interest.

Jordan concurred with Mylott and it stated it is clear in the past the board has supported, as a town, development of multi family unit which goes to the benefit to work force housing. He stated at some point there has to be an allowance to this type of housing.

Denial of the variance would result in unnecessary hardship:

Brown explained this proposal is going to cost the applicant and feels it would be a hardship and would need to build at least ten units.

Nowe stated he feels there's a hardship on the land.

Mylott explained it is difficult to say when the hardship has to do with density. He questioned if this is a reasonable way to use this land and does the property owner have the right to build and give the property owner the right to use his property, and agreed that the applicant did reduce the amount of units as requested.

Jordan concurred with Mylott, and stated the only consideration with the hardship is there is an existing building on the property and this proposal has to work around that.

Chairman Spidle explained he does not see anything on the land that creates a hardship and has not seen any financial figures.

By granting the variance substantial justice would be done:

.....Each case must be individually determined by board.....the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance.

.....If the proposed project could be constructed such that an area variance would not be required, the burden is on the applicant.....that these alternatives are cost prohibitive.....**the ZBA may consider the feasibility of a scaled down version of the proposed use.....to also consider whether the scaled down version would impose a financial burden on the landowner.**

Spirit of the ordinance:

Brown explained the board is here to arbitrate, and with this proposal it is on town water and sewer and feels it is in the spirit of the ordinance.

Nowe feels it is within the spirit of the ordinance, the lot is smaller than what is called for, it can fit ten units comfortably, it has area for parking, more green area, and the spirit of the ordinance is to develop the downtown.

Mylott concurred with Nowe with the way the property laid out it meets the general intention.

Jordan concurred with Nowe and Mylott.

Brown moved, Jordan seconded the motion to approve the Variance for the density to increase the number of units from seven to ten, for the existing building to conform to the new buildings, and a letter will be forwarded to the Planning Board with the board's motion. The motion carried 4 – to – 1, with Chairman

Spidle against the approval of the variance.

Jordan noted he approve the application based on the five criteria.

Mylott noted he approve the application based on the five criteria.

Nowe noted he approve the application based on meeting the five criteria under Boccia.

Brown noted he approve the application based on meeting the five criteria under Boccia.

Spidle noted he voted against the application as he does not feel a hardship was met.

MINUTES OF 02/18/09 FOR APPROVAL – Mylott moved, Jordan seconded the motion to approve the minutes as submitted. Motion carried unanimously.

MINUTES OF 01/14/09 FOR SIGNATURE – Minutes of 1/14/09 were duly signed.

Mylott thanked Spidle and Jordan for their service on the board for a great job, and wished all candidates who are running for office luck in their positions.

Bob Jordan thanked the residents in Epping for all their support over the last three years

Chairman Spidle thanked the board for all their support and input. Spidle explained he always has tried to be fair to the applicants.

Brown thanked both Jordan and Spidle and under Spidle's leadership has brought the board together.

Nowe thanked both Spidle and Jordan.

ADJOURNMENT: Jordan moved, Mylott seconded the motion to adjourn the meeting at 8:30 pm. The motion carried unanimously.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

APPROVAL NOTIFICATION: March 4, 2009 - Minutes of February 18, 2009 were approved. Minutes of January 14, 2009 were duly signed duly signed.