

TOWN OF BENNINGTON
PLANNING BOARD/ ZONING BOARD OF ADJUSTMENT
Minutes of the Meeting- December 17, 2012

Present David McKenzie, Planning Board Chairman
 Jeffrey Rose, Planning Board Ex-Officio
 Sam Cohen, Planning Board/ZBA
 Christopher Clough, ZBA Vice Chairperson
 Melissa Clark, ZBA Alternate
 Steven Osienski, ZBA
 John Paradise, ZBA Alternate

Guests Holly Mecheski
 Donald Trow
 Peter Martel

Planning Board Chairman David McKenzie called the Trow Hearing to order at 7:10 p.m. John Paradise and Melissa Clark were made voting members of the ZBA for the purpose of the Hearing. It was noted that Peter Martel has recused himself from the hearing and is present as a member of the public.

The minutes of the December 3, 2012 joint Planning Board and ZBA Hearing were reviewed and accepted with minor corrections.

Peter Martel submitted a letter to the ZBA stating his opinion on the case. The letter will be placed on file. After all had ample time to read the letter comments were heard. The applicant noted that she did not agree with Mr. Martel's opinion. Sam Cohen stated that his job is to follow common sense. No other public input was heard. Sam Cohen made a motion to close the Public Hearing to public input. Melissa Clark seconded the motion and all were in favor. At this point Peter Martel left the meeting.

The Hearing was turned over to the Zoning Board of Adjustment. The variance requests were reviewed as follows. Zoning Ordinance VII;C Setback – Sam Cohen noted that he does not see a problem with the proposed location. The State definition of right of way is extreme for the area. It is logical to locate a business such as what is proposed near the roadway. John Paradise agreed. The spirit of the ordinance would be observed because the intent of the ordinance is to keep buildings from encroaching on the roadway. The proposed location of the structure is no closer than what the existing cement pad is. The proposed take-out food stand is not a big factory. The location of the proposed structure would not diminish the surrounding property value as it is surrounded by fields and propane tank storage.

It was noted that this is a unique situation and it was noted that this might be an opportunity for a temporary permit from the Selectmen.

Sam Cohen made a motion to approve a variance for article VII;C- Setback. Melissa Clark seconded the motion and all were in favor.

Article VI;D;2- Permitted Uses- Sam Cohen noted that though a take-out food business is not on the list of permitted uses, it is not contrary to public interest and no list could be complete. The spirit of the ordinance is to limit undesirable uses. Sam Cohen noted that it is his belief that the intent of the ordinance is not to limit businesses such as take-out food stands. Sam Cohen made a motion to approve the variance request. John Paradise seconded the motion and all were in favor.

Article X;5- lot size and frontage (WRPZ)- The lot requirement for the Water Resource Protection Zone is 3 acres. The proposed location consists of just less than 1 acre. The proposed business will not require water or sewer services as there is a holding tank and a port-a-potty will be located on the property. The proposed business will not use significant space and not granting the variance poses a hardship because it is believed that the ordinance was not written for this unique situation that is temporary in nature and poses little to no impact on the property. John Paradise noted that there used to be a diner located in that general area. Melissa Clark made a motion to grant the variance. Sam Cohen seconded the motion and all were in favor.

Article X;5- impervious surfaces- It was noted that many of the variance requests were supported with the same list of reasons for granting the variance due to the nature of the lot and variances requested. Though the proposed business would be located in the Water Resource Protection Zone, the proposed business would have no impact on the environment. Christopher Clough made a motion to grant the variance. Sam Cohen seconded the motion and all were in favor.

Article VI;d;2- Multiple Uses- David McKenzie noted that the ordinance specifically allows duplexes. In his opinion it does not allow both residential and business uses together. Sam Cohen stated that this is implied. Jeffrey Rose stated that it is inferred that a second use would require twice the acreage. Sam Cohen stated that if it is not listed as prohibited, the Board should not infer that it is. Multiple uses are not specifically allowed and are not mentioned. It was questioned if a variance is really needed in this case. Melissa Clark made a motion to dismiss the variance as it is not needed. Sam Cohen seconded the motion and all were in favor. Steve Osienski noted that all variances to be granted in this case are based on the fact that the structure and use is temporary. Jeffrey Rose stated that from a land-use perspective there is no such thing as a temporary structure. It was also noted that though the existing concrete pad had a garage located on it and was grandfathered; the garage has been gone for more than a year. Only the concrete pad is grandfathered. Jeffrey Rose stated that it appears that the concrete pad is located in the State right-of-way. It was noted that the distance for the State right-of-way is different in many locations along the highway, but the concrete pad is possibly in that right-of-way. The ZBA verbally granted the variances based on the fact that the structure is temporary. This is contingent on whether a variance can be granted on a temporary structure. The ZBA will seek advice from the Town Attorney. If granting the variances is allowed, they will be written very specifically. The approval is specific to the case of the take-out food stand. The ZBA will reconvene for the purpose of writing the variance approvals on December 27, 2012 at 7:00 p.m. at the Bennington Town Hall.

The Planning Board discussed a possible list of items that will need to be clarified. The list contained parking, location of spaces, lighting, signage, snow removal and storage, and traffic flow. It was noted that the only proposed lighting would be accent lighting around the building.

It is proposed that the business will close at sunset. The applicant supplied a copy of the proposed signage noting that a sign will be located on the building. At the present time, the sign ordinance only allows one sign per business limited to 20 square feet. The Planning Board has proposed a change to the sign ordinance to allow the use of portable signage. It was noted that there is no proposed landscaping for the area. The applicant will be asked to define the flow of traffic and parking as well as showing the width of the driveway and location of the port-a-potty. The Planning Board scheduled a continuance for December 27, 2012 at 7:30 p.m. at the Bennington Town Hall.

As there was no other business at hand, the meeting was adjourned at 9:03 p.m.

Respectfully Submitted by

Debra Belcher
Planning Board/ Zoning Board of Adjustment Recording Secretary