Minutes of the
Zoning Board of Adjustment
Meeting of February 4, 2020

A meeting of the Zoning Board of Adjustment was held on February 4, 2020 in the Knightly Meeting Room of the Municipal Office Building, Geremonty Drive, Salem, NH.

PRESENT: Bonnie Wright, Vice-Chair; Jeff Hatch; Michael Smith; Claire Karibian, Alternate; Kellie Annicelli, Alternate; and Ross Moldoff, Planning Director.

The meeting was called to order at 7:00 p.m. Vice-Chairman Wright introduced the board members and explained how the meeting will proceed. The ZBA is a quasijudicial board, and all testimony should be truthful and accurate. Per the Statute, all the board members have visited all the sites.

REVIEW OF MINUTES

1. January 7, 2020 – Regular Meeting

MOTION by Mr. Hatch to accept the minutes of the January 7, 2020 meeting as printed.

SECOND by Ms. Karibian.

VOTE ON MOTION: 4 – 0 – 1 (Ms. Annicelli abstained.)

PETITION # 1 – Map 151, Lot 19

14 Sand Hill Road Realty Trust, David Giroux, Trustee, hereby requests a Variance from Article III, Section 490-301B(1), and asks that said terms of the Zoning Ordinance be waived to permit replacement of existing non-conforming manufactured home, being a second dwelling on the existing lot, with a new modular housing unit, where a single family dwelling structure is allowed per lot in the Residential District.

Property Location: 14 Sand Hill Road

Abutters: There were no abutters present.

Attorney Bernard Campbell from Beaumont & Campbell Professional Association, is here on behalf of Mr. David Giroux who is the trustee of 14 Sand Hill Road Realty Trust and is present. You have two plans in your packet. First is the existing conditions plan and there is a proposed plan. He showed the site. There is an existing dwelling in front and an existing trailer in back. The trailer is prior nonconforming and got zoning relief decades ago. We have two dwellings on one lot. This trailer is beyond its useful life and Mr. Giroux would like to replace it with a modular home. There was a discussion about whether a variance was even needed. They contacted the town attorney, who determined that because the original variance that allowed it to
be placed there spoke of it as a trailer, and since it was going to be replaced with modular, they
decided it was enough of a change to come before you. We are here to change it from a
manufactured home to a modular home. He then showed the proposed conditions. There are no
issues with side setbacks. The unit will be moved further away from the existing house. We are
adding about 10 feet. He made a site visit to the site, and Ross sent him pictures of the site. He
wants to address a couple issues regarding the site. He is aware that there are a couple pieces of
construction equipment on the site. He has explained to his client that he could either get rid of
them, or ask for a variance to allow them to remain. We’ll stipulate that they’ll disappear. We
would like to let the board know we are willing to have a stipulation that those two pieces of
construction equipment will be gone. The question is timing. Mr. Giroux wants to use them to do
the site work for that structure. So the stipulation we propose is that those two pieces of
construction equipment will be gone before a certificate of occupancy could be issued because he
wants to utilize them in the site work that will occur there. There is a loader and dozer he wants
to use for grading around the property as part of installing the foundation. So the proposed
stipulation is that those construction equipment pieces will be gone before a certificate of
occupancy is issued for the new structure and those pieces of equipment will be utilized for the
construction of this dwelling. He is also aware of some issues with storage vehicles. There is a
white truck being used for storage. All of those will be gone. We will stipulate that those
temporary structures for storage will all be gone. The existing shed we’d like to maintain. The
other associated structures will all disappear. Mr. Giroux will tell the board that a couple of those
vehicles belong to the former tenant in the trailer who left in the summer of 2019. They will have
to disappear as part of the construction of the new dwelling. We are prepared to stipulate that the
storage facilities and vehicles, all that storage will disappear. This is an opportunity to clean up
the site and raise the quality of the neighborhood. By having this project go forward, it will allow
us and the town to accomplish things. The last item is, the issue of keeping a chicken or a coop
for a chicken on the site. He wasn’t aware that it was a violation. Mr. Giroux is distressed that he
will have to remove his pets from the property, but if the town insists that the chicken coop
disappear as part of this project, then it will. There are several issues on the site. We understand
the concern. Mr. Giroux understands that the equipment needs to disappear, but he wants to use
them for the site work for the new project. So our request is to have them disappear before a CO
is granted for the project. We think this proposal will accomplish the goal of the town to get this
site cleaned up and replace that structure which is a bit of an eyesore, with something more
attractive, and it will be a win-win for the community. He then read through the criteria.

PUBLIC INTEREST: There is already an existing trailer being used as a dwelling unit as a
result of prior variances on the property. The change will not result in any change to the
character of the neighborhood or any threat to the health, safety, or welfare of the community.

SPIRIT OF ORDINANCE: The request will not violate the spirit and intent of the ordinance
because the requirement for a single structure per lot is intended to regulate density and to
provide adequate room for placement of structures (including wastewater disposal). The existing
unit being replaced is estimated to be more than forty (40) years old; both structures are served
by municipal water and sewer.
DRAFT

**SUBSTANTIAL JUSTICE:** It will allow an upgrade of an existing trailer unit to more modern housing standards without making any change to the existing density of the community.

**DIMINUTION:** Replacement of the existing 45 +/- year old trailer should enhance the value of surrounding property; both in appearance and consistency with neighborhood.

**HARDSHIP:**

**Special Conditions:** The dwelling unit to be replaced already exists as a result of prior land use approvals.

**A.**

i. The prohibition of multiple dwelling units on a single lot cannot be enforced in this case because of prior non-conforming use and/or previous land use approvals.

ii. Replacement of existing non-conforming unit will allow improvement to housing conditions while maintaining an additional affordable housing opportunity.

Vice-Chairman Wright said, we have two alternates this evening. She spoke with Attorney Campbell and he was acceptable with that.

Mr. Hatch discussed the history of this property. There was a beauty salon. Is the beauty salon still there? Attorney Campbell said no. Mr. Hatch asked, can we stipulate that that variance will be gone? Mr. Moldoff said yes. The variance would no longer be in effect if it had been removed for longer than a year. Attorney Campbell said, it has been gone for a long time, so we can’t re-establish that without coming back before the board. We’ll stipulate, there is no beauty salon or business on the site, with the exception of the construction equipment.

Mr. Hatch said, there was a variance for the trailer that was denied in 1970. Then in 1977 it was granted with the stipulation that it be removed in 6 years. That never happened. In 2004, Attorney Campbell convinced the board that they had rights to continue granting that and they granted it without a stipulation.

Attorney Campbell explained that during the 1970’s certain members of the ZBA used to grant variances with time lapses. Attorney Soule advised the board that they didn’t have the legal authority to do that. There were several that had been granted in that fashion. Attorney Soule had said that was not proper. That was the basis for the 2004 administrative appeal on which we relied on Attorney Soule’s commentary that granting a use, he gave an opinion to the town that they couldn’t lapse them in that way. In 2004, when we brought that, Mr. Zannini conceded that and indicated that he thought it should be made permanent because the earlier variance could not have a lapse date on it.
Mr. Hatch mentioned the construction equipment. The attorney mentioned a dozer. Attorney Campbell said, and a loader with a blade on it. Mr. Hatch asked, what about the dump truck with the snow plow? Attorney Campbell said, he will have his client speak to that.

Mr. Moldoff showed pictures of the site. Attorney Campbell said there are five chickens. He explained what items on the site will be gone. The tenant left behind vehicles and that truck he believes was the tenant’s and it will disappear.

David Giroux, 14 Sand Hill Road, said if it has to go he can make it go.

Mr. Hatch said he just cares about the dump truck and the rest of the equipment. Mr. Giroux said he agrees to get rid of that. Mr. Hatch said, the reason to keep the equipment is to do the work yourself. Do you have a place to store that afterwards or will you sell it? Mr. Giroux said he will sell it. Mr. Hatch asked, do you have a place to store those right away, or will you leave them on the lot until they are gone? Mr. Giroux said if he can leave them on the lot until he does the foundation, and once that’s in, he won’t need the equipment anymore and then he can sell it.

Mr. Hatch asked, by the time you are done building the house, they will probably be gone? Mr. Giroux said absolutely. Attorney Campbell said, we will make the stipulation that, at the time of CO, it will be gone.

Mr. Hatch said, there have been 3 or 4 vehicles for sale from time to time. Will we have anymore car sales there? Mr. Giroux said, he had a few extra cars and he was trying to clear things out.

Mr. Hatch asked Mr. Moldoff, there is no demand betterment fee? Mr. Moldoff said, he doesn’t think there is a difference between the manufactured home and the modular home.

Ms. Annicelli asked, what is the difference between a manufactured and modular home?

Attorney Campbell explained that manufactured homes come with a chassis and is transportable with wheels underneath. The modular home is on the back of a truck and gets lifted off with a crane and are put onto a foundation. They don’t travel with wheel assemblies, they must be trucked. There are also construction standards for the two, which he explained.

Ms. Karibian asked, will each unit, the house and the new modular home, have their own separate utility and own sewer and water? Attorney Campbell said yes, they have them now.

Mr. Smith asked, do they have two separate utilities currently? Mr. Hatch said, there are two meters.

Mr. Smith is trying to figure out what they were thinking in 2004. They were talking manufactured home, trailer and 720 square feet. Now we are talking a modular home at 1,568 square feet. Was that their intent in 2004 to enlarge, or to allow the trailer to stay because that’s what they had? They approved a trailer at 720 square feet. Now we’ll have a problem with two homes on one lot. Attorney Campbell said, his recollection is the trailer you see is the one that was approved in 1977. We are here to make those changes. The issue in 1977 was the timing in terms of putting a lapse date on it, which came back in 2004. He is not sure what triggered it, but he explained what happened in 2004. They granted a variance that had a lapse on it and the
concept of a lapse date for a variance was ruled to be not appropriate. So we got an
administrative appeal and in 2004 the board said it can’t lapse. The trailer met the criteria to be
placed there and the simple passage of time would have no effect on the criteria that we talked
about in 1977. So what you have is what was approved. He agrees that the current proposal has
about 85-90 percent more square feet. He will check that. At the end of the day, what we are
talking about is, it is a single family for a single family and we are meeting a setback. We don’t
have a density issue. The difference was the language that the current town counsel felt that a
modular was not the same as a manufactured home. He doesn’t think they raised any square
footage issue but you can look at that. It’s a use for a use. It is a single family home being
replaced with a single family structure.

Mr. Smith said, there was some type of wood structure going into the trailer. Do we have any
permits on when that was built? Attorney Campbell said, some of the older records got
photographed into microfilm and are not in the folder anymore. He didn’t see a permit in the
folder. The town has a microfilm but may not have a viewer to see the older stuff that was taken
out of the folder. He didn’t see a permit.

Mr. Smith said, there is more than one unregistered vehicle. He discussed how it has transpired
over the years. The violations were not removed yet so he is afraid of falling into that again.
Attorney Campbell said, he has told his client that filing this request has brought a spotlight on
the property and raised issues. The town will monitor the construction process and the town will
be pretty certain not to allow anyone to occupy that property without a CO if his client fails to
remove the construction equipment. It becomes an enforcement issue. Mr. Giroux doesn’t want
to make an investment without putting a tenant in it, so he thinks we have done all we can.

Ms. Karibian asked, the trailer that is there now, is it a three bedroom? Attorney Campbell said
yes. Ms. Karibian asked, the modular home will also be a three bedroom? Attorney Campbell
said yes.

Vice-Chairman Wright asked if there were any abutters to speak in favor of this petition. There
were none. She asked if there were any to speak in opposition. There were none.

Attorney Campbell said, this is an opportunity to get the site cleared up. The replacement of the
unit meets the criteria.

Vice-Chairman Wright then closed petition # 1. We now have an Assistant Town Manager
whose prime duty is code enforcement.

Mr. Hatch said, if we deny this, they will be able to put another trailer in the same footprint. To
him, it comes down to, do we take a lot that is already nonconforming with a trailer on it by
variance? He would rather see a modular home that sits on a foundation and looks like a single
family home and belongs in a residential neighborhood, versus a trailer that you can tell is a
trailer and goes against the ordinance since it is not allowed in a residential zone.

Vice-Chairman Wright said if we pass this, we can enforce the clean up.
Mr. Hatch said, and it may still be nonconforming, but it will look a lot better than what it does now. He doesn’t think we have much of an option. He would much rather see a modular home that looks like a home, and sits on a foundation and the construction is better.

Mr. Smith said he does somewhat agree. But then, we approved a second home. Two homes on one property versus putting a trailer on. Now it is two dwelling units and they can subdivide. Mr. Hatch said he doesn’t think they will subdivide. He would rather have a trailer. The modular would fit into the neighborhood better.

Mr. Moldoff said it can’t be subdivided. There is not enough frontage and they wouldn’t meet the setbacks.

Vice-Chairman Wright asked, can we stipulate that it can’t be subdivided?

Mr. Moldoff said, you can but you don’t need to. They need a variance to subdivide.

There was discussion of the 2004 meeting and this property.

Ms. Karibian said she would like to have seen it as a subdivision. Why can’t the new structure be moved to the back of the lot and have the driveway as a common driveway for both properties?

Mr. Hatch said there is not enough frontage to do that, unless they get a variance and then they need Planning Board approval.

There was more discussion of the property.

Ms. Karibian said, she just hopes that it doesn’t set a precedent with the neighborhood. She doesn’t think there are any properties there that have two houses on it. That is her concern. We are not in the position to be able to stop it, but she hopes it doesn’t set a precedent for the rest of the town.

Vice-Chairman Wright said, there are few properties that meet these specific circumstances. She doesn’t think we need to worry about setting a precedent in this case. Mr. Hatch explained that every lot is different. Mr. Smith explained his concern with expanding the non-conforming use.

Mr. Hatch said he doesn’t care about the size. He would rather see a modular home, a building that looks like it belongs in a residential neighborhood, then putting a trailer in there. Vice-Chairman Wright said she heard Attorney Campbell refer to the chickens as pets. Mr. Hatch said that the Planning Board had a discussion that farm animals are not pets.

**MOTION by Mr. Hatch to grant with the stipulations that the prior variances all go away; the construction equipment needs to go before a certificate of occupancy is issued.**

Mr. Moldoff said, the other things they talked about were the storage structures and the chicken coop and you talked about the dump truck. Mr. Hatch said he considers that construction material. Ms. Annicelli asked about the unregistered vehicles. Mr. Hatch asked, they are only allowed one, correct? Mr. Moldoff said yes.
Mr. Hatch said, remove the storage structures other than the one depicted on the plan to stay. He doesn’t have an issue with the one that looks like a pod. Mr. Smith said, remove all but one shed.

Mr. Moldoff said, they said they’ll remove them.

Mr. Moldoff said he has the following stipulation: Construction vehicles, the dump truck, other unregistered vehicles, storage structures other than one shed, and the chicken coop to be removed prior to occupancy.

SECOND by Ms. Annicelli.

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<td>Mr. Hatch</td>
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<td>Mr. Smith</td>
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<td>Ms. Annicelli</td>
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<td>Ms. Karibian</td>
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<td>Vice-Chairman Wright</td>
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VOTE: 4 – 1 MOTION PASSES. PETITION # 1 GRANTED WITH STIPULATIONS.

Vice-Chairman Wright recognized Jeff Hatch. This is his next to last meeting and he has done a great job and she wished him well and thanked him for his service.

Ms. Annicelli said that Salem High School is performing the Wizard of Oz on February 14th, 15th and 16th. There are 500 tickets left. Go to the Salem School District website for tickets.

Vice-Chairman Wright said the primary election is a week from today.

MOTION TO ADJOURN: by Mr. Hatch. Second by Ms. Annicelli.

MEMBERS IN FAVOR: All were in favor.

The meeting adjourned at 7:51 p.m.

Minutes by: Susan Strunegn

Approved: Zoning Board of Adjustment

Date: