

TOWN OF TEMPLE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

February 7, 2008

MINUTES OF PUBLIC MEETING

ZONING BOARD: Vice Chair Honey Hastings; members Jenny Houston and David Martz;
alternate member Mary Beth Ayvazian.

AGENDA: **Request for Rehearing Re: Case # 11/1/07-1 Norvell Luke Peterson**

Honey Hastings called the meeting to order at 7:34 p.m.

Minutes – December 6, 2007

The board studied the minutes and reviewed the decision work sheet.

The following amendments were discussed and made:

- Page 2, 14th line from bottom – change building to *structures*.
- Page 3, 17th line from bottom – should read... must be *met*, though there is no...
- Page 6, first sentence – should read: Move by Hastings... to separate businesses and homes. To... (Fix run-on sentence.)
- Insert paragraphs throughout the document to make it easier to read.

MOTION: (Dave/MaryBeth) To approve the 12/6/07 minutes, as amended. All were in favor.

Request for Rehearing Re: Case # 11/1/07-1 Norvell Luke Peterson

Honey read from a section of the ZBA Handbook relating to the 30-day period that the applicant has in which to submit a request for rehearing: “If the minutes or written decision were not filed within 144 hours of the vote, then the person applying for the motion for rehearing shall have the right to amend the motion within 30 days after the date in which the written decision was actually filed.”

She said that since the minutes were not completed on time, the date the applicant filed the Motion for a Rehearing should not be a problem. The Motion for Rehearing was received on January 8th. The decision was filed on December 13th and the minutes were filed January 3rd. Since the Motion was made within 30 days of when the decision and minutes were filed, Board members agreed to proceed and consider the merits of the Motion for Rehearing.

Honey read some excerpts from the ZBA Handbook relating to rehearings. She ended with: “No purpose is served by granting a rehearing unless the petitioner thinks a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing.”

Board members went through the Motion for Rehearing responding to the three points discussed therein:

1. The applicant has failed to show that there is not a fair and substantial relationship existing between the general purposes of the zoning ordinance and the specific restriction on the property.

MaryBeth pointed out that the Motion just repeated the original argument and the only error mentioned was in the conclusion of the board. Dave observed that the Ordinance as quoted by the Motion states that it is designed to “lessen congestion in the streets;” and that Mr. Peterson’s expansion of his business will increase congestion. Honey stated that if there is more traffic as Mr. Peterson intends then the set backs are even more critical and should not be varied. She observed that the Motion didn’t point out a technical error; it just restated the original case.

Jenny and MaryBeth stated that no technical error or new evidence is presented in this portion of the Motion. Dave said that no reason is given in this section for granting a rehearing. MaryBeth expressed the opinion that Mr. Peterson is not prevented from doing his business, so no substantial injustice is done by denying his application for a variance. Dave and Honey agreed that if Mr. Peterson just wanted to modernize his two bay business and not expand it to four bays, then he would not have a problem with the Ordinance. MaryBeth agreed that Mr. Peterson is expanding his business.

The board unanimously agreed that no technical error to the applicant’s detriment nor new evidence, nor evidence unavailable at the time of the hearing was found in this section.

2. The zoning ordinance does not restrict the reasonable use of the property

Honey disagreed with the Motion’s statement that a four-bay garage is “a reasonable use for this property.” Likewise she disagreed with the Motion’s statement “The denial of the variance in this case does not impact the use on the property.”

Jenny stated that the pivotal issue is whether expansion is reasonable. Going to four bays is an expansion. The neighbors object. Mr. Peterson does not meet the set back requirements for a business. It was not an error on the Board’s part to say that expansion is unreasonable.

Honey stated that Mr. Peterson could improve the property without expanding it. He could have a modern two-bay garage. Granting the variance would double the traffic. It would impact the neighborhood. Dave agreed and noted that since Mr. Peterson has not promised to disable his old garage he could do more than double his business. He could triple it to six bays: the original two bays plus the four new bays.

Honey drew the board’s attention to the top of page 4 and the discussion of *Rancourt v. City of Manchester*, 149 NH 51 (2003). She said that this argument is unpersuasive; it is an argument previously made and introduces no new evidence. Jenny agreed that there is no new evidence presented in this section.

The board unanimously agreed that no technical error to the applicant’s detriment nor new evidence, nor evidence unavailable at the time of the hearing was found in this section.

3. The spirit of the ordinance seems to be to separate businesses and homes and eliminating the set back requirements would be contrary to the spirit of the ordinance.

Honey pointed out that the Temple ordinance separates business from homes with set backs not with separate zones, as the Motion suggests it should if it wanted to. She disagreed with the

Motion's statement that "Granting the variance will allow this present use to continue to exist" arguing that Mr. Peterson's proposal is to expand his use, increase the size of his business and move it to a new building.

MaryBeth took exception to the Motion's statement: "the Temple Zoning Board of Adjustment seems to deny the fact that a business currently exists on the property in question." She disagreed stating the Board has never said there is no business on the property. She said that the Motion does not address the proposed expansion of Mr. Peterson's business. Honey pointed out that the Motion does not mention expansion, but in the minutes of the Hearing Mr. Shepard does admit to expansion of Mr. Peterson's business.

Dave disagreed with the Motion's assertion on page 5 that "The wetlands area in essence expands the set back provided for the proposed commercial building." Dave said that given the chance of chemical spills from the garage its proximity to the wetlands is significant. Honey pointed out that additionally much of the abutting property that will be encroached is not wetlands. Dave agreed that the encroachment of the neighbors' land was the main issue.

Jenny stated that Temple residents want space between homes and businesses; the ordinance could have made the separation between businesses and homes 100 feet or less, but the ordinance requires a separation of 500 feet. Honey agreed stating that 500 feet is the largest set back in the Ordinance. This 500 feet is how the Ordinance separates homes from businesses. Jenny agreed that if the Board varies the set back requirements (the 500 feet between homes and business and the 100 feet from the property line) the Board would be overlooking the spirit of the ordinance.

The board unanimously agreed that no technical error to the applicant's detriment nor new evidence, nor evidence unavailable at the time of the hearing was found in this section.

MOTION: (Dave/Mary Beth) To deny the Motion for Rehearing based on the fact that there was no evidence of technical error to the detriment of the applicant and no new evidence nor evidence that was unattainable at the first hearing. All were in favor.

OLD BUSINESS

New Applications and Instructions

Board members spent some time going over the *Appeal of Administrative Decision* application but decided to wait until the next meeting to make any changes.

MOTION: (Jenny/Mary Beth) To adjourn the meeting. All were in favor.

The meeting adjourned at 9:03 p.m.

Submitted by Diane Nilsson, Clerk