

Town of Boscawen
Planning Board Boscawen Municipal Complex
Meeting Minutes
Tuesday, August 8, 2017 at 7:00pm

Members Present: Bruce Crawford, Chair, Roberta Witham – Vice-Chair, Matt Lampron, James Scrivens, Barbara Randall, Roberta Witham, Bernie Davis, Ex-Officio, Alan Hardy, Katie Phelps.

Member Absent: none.

Alternate Members Present: Rhoda Hardy, Jeff Reardon

Member Ex-Officio Absent:

Alternate Ex-Officio Absent: Roger Sanborn.

Others Present: Alan Hardy – Planning and Community Development Director, Katie Phelps – Planning and Community Development Clerk

Chairman Crawford called the meeting to order at 6:58 pm with a voting Board.

Roll call made by recording secretary.

Review and Acceptance of Prior Meeting's Minutes: The Minutes were from the July 11, 2017 meeting. Bernie Davis abstained from the vote. Bruce Crawford noted that the August meeting was cancelled due to a lack of a quorum, which makes this the next meeting. Jeff Reardon noted that this meeting was only for the Dollar General.

Bruce Crawford made a statement that he believed that some of the Board members should recuse themselves from this case before he recused himself as the Chair.

Roberta Witham became Acting Chair.

Old Business:

Acceptance of an Application for Site Plan Review, for 7500+ SF Retail Store submitted by **Boscawen DG, LLC, 83 Orchard Hill Park Drive, Leominster, MA 01453**, owned by, **The Peach Pond Trust, 100 River Road, Boscawen NH 03303** with the location at **Map 81A, Lot 42, 169 King Street** in a **COM zone**.

Acting Chair Roberta Witham called meeting to order 7:05 pm.

Roll call was taken by the recording secretary.

Alan Hardy gave introduction and procedural history. He noted an appeal was filed with the Court. The April 4, 2017 conditional site plan approval is vacated. The Board will be rehearing the application under RSA 676:4 but the record, as previously submitted including testimony and documents submitted by the town consultants and Boscawen Dollar General will remain part of the record. A new hearing will be noticed at the applicant's expense.

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The Board may establish a schedule of public hearings including planning issues to be heard at each hearing. Upon the Courts granting this motion the plaintiff's appeal is dismissed. The motion was granted by the Court.

A **motion** that there is no regional impact was made by Bernie Davis, seconded by Barbara Randall and failed for lack of a vote.

Procedural issue were taken up by Attorney David LeFevre who was representing abutters Elaine Clow and Andy Newcomb. Under regulation Article 4, as a condition of acceptance, the plan has to comply with the town's Zoning Ordinance. If the plan does not, if they need a variance or special exception, the rule is that the Board does not accept the plan and they would need to go back to the Zoning Board for relief. He believes 3 variances are needed. As a matter of procedure the Board should not vote to accept the plan without variances being granted. Alan Hardy noted that the court order of remand states that everything up to this point is accepted. Attorney LeFevre said that the first order of business is acceptance and if they need a variance from the ZBA they cannot accept it. What you have in the record is part of the record. Alan Hardy would like to hear what his points are to see if the Board feels they are valid.

He has 3 areas where the Zoning Ordinance needs to come into play. Parking is the first issue. Article 8, Off Street Parking ordinance is surprisingly clear. The requirement is 200 s.f. of gross floor area. The parking calculation on the plan is based on net area, which is the retail space. He assumes that is the area that is open to the public. The parking calculation is based on 5,915 s.f. That is not the gross floor area. Per the plans and the application, it is 7,489 s.f. per his calculation, which means they need 38 spaces and the plan only provides 30 spaces. The plan does not comply. In the alternative if they want to put in 8 more spaces, they will exceed the lot coverage percentage. They would need a variance to exceed the lot coverage requirements. The second point is that the language in the ordinance states that the required parking spaces may not be used for storage, display signage or maneuvering areas for loading docks or bays. The Zoning Ordinance specifically says they cannot use those parking areas for maneuvering a tractor trailer. The lot size is 60,000 s.f. +/- . The minimum lot size is 80,000 s.f. and they need a variance for lot size. This is not a nonconforming lot according to the town Zoning Ordinance. Article 9 deals with nonconforming uses, structures and lots states: 9.05 (c) a nonconforming lot which has come into conformity shall not again be changed to a nonconforming lot. This property was previously developed – it had a home on it. The lot, property and use was conforming. The applicant wants to change the use and make it nonconforming. The lot is substandard for this use and needs a variance from the ZBA. The Ordinance is pretty clear. He suggests they talk with the town Attorney Raymond. If the Board accepts and the plan doesn't comply with zoning and there is an appeal and the judge agrees then they will be back before the Board again. There are 3 or 4 variances that the ZBA need to take up. He asks the Board to take a vote on that before accepting.

Applicant: Attorney Paul Bower of Devine Millimet and Branch is here on behalf of the applicant. Parking: the City Planner Mr. Hardy issued a written opinion on that issue which was never appealed. Parking spots being used for access to the loading docks and bay – they do not propose using parking spots for that use. The minimum lot size issue, Mr. Hardy had addressed this issue as well and brought it before the ZBA as well. These things have been previously addressed.

Town of Boscawen
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Alan Hardy stated that the discussion regarding the gross area calculation - he did rule on that based upon retail sales area. The calculation of necessary spaces was based upon that. The issue of where it stands in the ZBA discussion he does not have a clear recollection on that without accessing his files.

Austin Turner of Bohler Engineering spoke. They had appeared before the ZBA on a number of occasions. They had asked Mr. Hardy for an interpretation and he documented it in writing and that document was presented to the ZBA. The ZBA took a formal motion and voted to accept and agree with Alan's interpretation. Without that item, other things would have been moot. He doesn't recall the hearing date without the documentation. Bernie Davis asked if there were a time limit on appeal. Alan Hardy said 30 days.

Attorney LeFevre stated that you have to be a party to be involved in the appeal. His clients were not given an opinion. Is the Board prepared to approve a plan that doesn't comply with zoning? This property was conforming with a residence on it. As far as he knows they granted a variance for a sign, nothing more. If the applicant is getting an opinion that it was a nonconforming lot, was there an appeal of that?

Austin Turner stated that he had originally applied for relief and based on Mr. Hardy's interpretation a variance was not needed or required. It was made by a formal motion at a formal hearing. It wasn't that they were seeking an advisory opinion. Bernie Davis asked Alan Hardy if the lot that the house was on was nonconforming. Alan Hardy said lots become nonconforming over time if the zoning ordinance changes. There is a map in the 1970's showing that strip of land being commercial. The house use being on it, isn't consistent with the zoning. The Town doesn't allow the nonconformity to be replaced after a year of it being vacated. They lose their vested right. If they were trying to create that lot today, the lot would be a much larger lot. Bernie Davis asked if they were not making a conforming lot non-conforming. Alan Hardy stated that they were making changes over time for a reason this action does not make a conforming lot non-conforming. They can go back and pull those records if the Board would like them to do that.

Attorney LeFevre stated that a residential use is allowed in commercial district and the lot size is 40,000 s.f. The prior use of the property with the home was conforming as the use was allowed; the size of the lot was conforming. The prior use of the lot was conforming and the Ordinance says you cannot go from conforming to nonconforming. There would have to be a denial if they requested a variance from the lot size requirement then the ZBA would have denied their request.

Roberta Witham wanted a recess to allow time to pull up the zoning information. The Board recessed at 7:36 pm. The Board came back into session at 8:00 pm.

Roberta Witham will ask for a continuance of the meeting and would like to do that on August 29, 2017 at 7:00 p.m.

A **motion** was made to continue the hearing to August 29, 2017 was made by James Scrivens seconded by Barbara Randall, unanimous vote.

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A **motion** to adjourn the meeting at 8:04 pm was made by Bernie Davis, seconded by Matt Lampron and passed by a unanimous vote.

Next Meeting: August 29, 2017 at 7:00 pm.

Respectfully submitted,
Rose Fife