

TOWN OF EPPING, NEW HAMPSHIRE**ZONING BOARD OF ADJUSTMENT****Wednesday September 3, 2008**

PRESENT: Paul Spidle, Dave Mylott, Ron Nowe, Paul Brown; Alternates Peter Loch, Patrick Pagnani; Secretary Phyllis McDonough.

CALL TO ORDER: Chairman Spidle called the meeting to order at 7:00 P.M. and appointed Loch and Pagnani to sit in on the discussion for the request for rehearing of J.H. Realty. Brown stepped down as he is an abutter.

REQUEST FOR REHEARING OF ADMINISTRATIVE APPEAL OF J.H. REALTY TRUST – Property located at Railroad Avenue and Main Street, Tax Map 29 – Lot 290 (the “Property”)

Chairman Spidle explained the Board has been asked to reconsider the appeal of J.H. Realty Trust based on four issues sited in the packet submitted to the Board:

1. Fraudulent building permit purporting to authorize the change in use;
2. Lack of Planning Board approval of any change in use;
3. Representations by the Planning Director and the Planning Board to JHRT that no decision relating to the proposed change of use had been made; and
4. JHRT’s location within 2,000 feet of the proposed Recreational Vehicle Sales Establishment.

Mylott explained the procedure for the request for rehearing. He explained a decision was made and the question is to rehear. He stated this can be based on error of procedure from the Board or they’re identifying Information that was not part of the first hearing. The purpose of this request is if the Board will consider rehearing the application.

Chairman Spidle explained the Board denied the original application due to the fact that the request was not timely.

Nowe questioned item #2 an affidavit from Paul Harvey, which he feels is not such for the reasons of handwritten changes, dates have been changed and it has not been notarize.

Mylott advised the Board should look at each of the issues sited, and explained the first issue is the decision based on a “fraudulent building permit” and then second shows an affidavit by the former building inspector. Mylott explained he concurs with Nowe on that affidavit ruling out the validity of the affidavit.

Nowe explained the building inspector’s secretary could not read some handwriting and typed the decision and put it on the permit. He explained this procedure has since been stopped.

Chairman Spidle asked if the Board is going to consider the building permit or the affidavit. Mylott explained the previous code enforcement indicated it was falsified and recalls signing it for a fence and not a change of use.

Pagnani explained that normally if there are handwritten changes on an affidavit they are initialed and does not see that here, and questioned with something of this importance why would someone neglect to have it notarized.

Next issue addressed was the “Lack of Planning Board approval for change of use”. Mylott explained he does not see anything that stands out other than the applicant disagreeing with the Board’s decision. He stated that the dates in the minutes of the meeting of December 20 meeting was brought up and discussed, therefore does not see that as new evidence.

Next issue was Representations by Planning Director and Board that no decision relating to the proposed change was made. Mylott stated he does not feel there was new evidence other than court cases sited and the “Municipal

Estoppels” that he does not see that as new evidence and was something that was discussed.

Next issue JHRT’s location within 2,000 feet of the proposed Recreational Vehicle Sales Establishment regarding the second decision and whether they had standing in the case and explained the Board’s decision it was out of the 2,000 foot standing.

Mylott explained the argument of the 2,000 feet was discussed at length. He reminded the board the Thomas case was brought up which is not new evidence.

Mylott stated he felt the one issue that needs addressing is the affidavit valid and explained if it was signed and sealed affidavit he could not use that as justification to ask for a full rehearing as it is not evidence.

Mylott moved, Loch seconded the motion to deny the request for rehearing of the Administrative appeal of J.H. Realty Trust. The motion carried unanimously.

Gatchell Family Trust – Chairman Spidle read notice for a Special Exception concerning Article: VI Section: 6.9(3)(c) to permit a building setback and a Variance concerning Article: 6.9, Section: 3a Maximum Density. Parcel is located at 242 Main Street (Tax Map 022 - Lots 060) in the High Density Residential Zone. Abutters present: Grace Lavoie.

Chairman Spidle reinstated Brown and appointed Pagnani to sit in for Jordan.

Paul Gatchell came before the Board with his proposal. He explained he is requesting three, four unit buildings on his lot at 242 Main Street, where the zoning permits in density seven units which would be doubling the density. Gatchell explained they would be townhouses with garages and an extra parking spot. Gatchell stated he would be looking for a 35 foot setback.

Gatchell addressed the criteria:

Proposed use:

- Residential and is allowed in the zone.

Granting the variance/benefit:

- High density belongs in the high density zone and promotes a vibrant downtown.

Hardship:

- The use is permitted in the zone.
- The increased density would be permitted on a larger lot.
- The size of the lot prevents the ability to construct the development as designed.
- Reducing density would increase costs to construct these units and make the project burdensome, leaving units too expensive

Chairman Spidle asked the size of the lot. Gatchell noted it is a little over an acre and three quarters.

The Chairman asked that Gatchell is looking to double the density, two cars per unit making it 28 cars, two trips per day and stated he feels this would quite a bit of traffic coming on to Main Street and felt there would be a problem with the site distance. Gatchell explained site distance was looked at and explained there is a straight view with no problem on the site distance.

Nowe stated he has no problem with the site distance but feels the density needs to be discussed.

Gatchell explained he has been before the Planning board who stated they have no problem with the proposal. Gatchell also explained the whole back of the site is all wooded.

Chairman Spidle stated he is still concerned with doubling the density and stated Gatchell would need a Special

Exception also.

Mylott explained his concern is with the hardship and what is the aspect of this property that makes this site unique compared to other sites in the area. He stated only real hardship is adding more but does not see anything unique to the land.

Chairman Spidle stated that the hardship test has to be a special circumstance of the particular property that distinguishes it from other properties in the zone.

Gatchell explained the setbacks are needed with the existing lots, the impact is minimum, and to obtain the space that is needed is less intrusive than what is existing.

Nowe asked how far he would be expanding over the staging area. Gatchell showed on the plan only area to be disturbed.

Mylott asked Gatchell if he considered positions at rotating the two that need the variance. Gatchell explained he went through many options and saw this as the least impacting for doing the project.

Abutter Grace Lavoie explained she has a problem with the proposal as she will be able to see this development from her property and stated does not think the property can sustain the influx.

Nowe suggested instead of voting on all 5 criteria to have Gatchell come back with a letter and a new plan. Chairman Spidle added that Gatchell needs to apply for a coverage variance. Nowe explained this project would go better with the neighborhood than what is there presently. Chairman Spidle stated that the Board has to go by the criteria.

Mylott explained that a hardship can not be for financial gain.

The Board as a whole agreed Gatchell needs to come back with a new plan.

Chairman Spidle advised if Gatchell comes back with a new plan explaining the new goals of the Town and that he would have to apply for a coverage variance as well as density. A letter of clarification, show setback lines, decks and stairs, reposition of buildings water & sewer. The Board asked for a letter from Planning Board outlining their support of the proposal and why the applicant did not have to apply for lot coverage, why it required 50 percent and not 25 percent and why he did not have to apply for frontage.

Chairman Spidle requested a letter from the Planning Board on their position of the application. The Chairman authorized the secretary to sign his name to the letter.

Nowe moved, Mylott seconded the motion to continue to October 1. The motion carried unanimously.

MINUTES OF 7/16/08 FOR APPROVAL – Mylott moved, Nowe seconded the motion to approve the minutes. The motion carried unanimously.

MINUTES OF 7/30/08 FOR APPROVAL -- Loche moved, Brown seconded the motion to approve the minutes. The motion carried with Chairman Spidle and Nowe abstaining as they were not in attendance.

33RD ANNUAL MUNICIPAL LAW LECTURE – PRE-REGISTRATION REQUIRED – The Board was informed they would have to submit their registration to the Zoning Office.

INVOICE FROM SCOTT LAPOINTE FOR APPROVAL – The Board unanimously agreed to pay the invoice from Attorney LaPointe in the amount of \$200.00.

Peter Loch informed the Board that he would be resigning from the Board pending the outcome of the sale of his house. Loch thanked the Board for allowing him to serve as an Alternate. Chairman Spidle asked Loch to submit

a letter to be put in the file.

ADJOURNMENT – Nowe moved, Loch seconded the motion to adjourn the meeting at 8:54 pm. The motion carried unanimously.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

APPROVAL NOTIFICATION: September 3, 2008 - Minutes of July 16, 2008 were unanimously approved. The minutes of July 30, 2008 were approved with Chairman Spidle and Nowe abstaining as they were not in attendance.

Paul Spidle

Dave Mylott

Bob Jordan

Ron Nowe

Patrick Pagnani