



**Raymond Zoning Board of Appeals
Minutes*
Monday, September 30, 2013**

PUBLIC HEARING

Present: Chairman Matthew Schaefer, Vice Chair Peter Leavitt, Elden Lingwood, and Mary Picavet.

Absent: Larry Murch

Staff: Chris Hanson, Code Officer and Danielle Loring, Recording Secretary.

Applicant: Kevin Gagnon

Other: Mark & Nancy Accuosti, Sharon & Richard Dodson, Christine & Glen Winn, Barbara Lovell, and Mike Reynolds.

1. Call to order: Chairman Matthew Schaefer called the meeting to order at 7:03pm and quorum was declared.

2. Approval of Minutes:

a) May 20, 2013

MOTION: Elden Lingwood motioned to accept the minutes of May 20, 2013; seconded by Peter Leavitt.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (4/0)

3. Applications:

**a) Map 035, Lot 017
126 Sloans Cove Road
LRR1 Zone
Kevin & Karla Gagnon**

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Chairman Schaefer asked Mr. Gagnon to explain his request, and Mr. Gagnon stated that he was requesting a setback reduction from 20' to 18' for his property on Panther Pond. He added that he had a letter from the immediate abutter stating that he was alright with the encroachment.

Chairman Schaefer asked if the Board had questions and there were none. He then opened the hearing for public comment for those in favor of the project and there were none; he then asked for public comment in opposition to the project and there were none.

Mr. Leavitt asked if this was only option for this project, and Mr. Hanson responded that this was a 30% expansion of an existing structure and it was to the greatest practical extent.

MOTION: Peter Leavitt motioned to approve the Setback Reduction requested based primarily on the criteria for the site; seconded by Elden Lingwood.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (4/0)

**b) Map 055, Lots 031 & 032
1233 & 1237 Roosevelt Trail
C Zone
Kevin Gagnon DBA Trinity Properties, LLC**

Mr. Gagnon explained that he had purchased the Raymond Shopping Center the previous year and was working to renovate the location. He explained that his existing parking was encroaching on the State Right-of-Way (ROW) and, if he were to make any substantial changes to his property, it would require him to bring his parking 20' from the ROW, which is 70' from the center line. He explained that doing so would reduce his parking by 24 spots, which would create a hardship for the shopping center. He explained that the ordinance did allow for a building to go up to the ROW but not parking.

Chairman Schaefer clarified that this event would be triggered by change of use and site plan change and whether this was recently added provision, and Mr. Hanson explained that it was created in 2009 but it is unclear if that was the intent of the Comprehensive Plan Implementation Committee (CPIC).

Mr. Hanson explained the standards for Site Plan Review and the different tiers. He added that this event regarding parking was triggered by any substantial change of use for Mr. Gagnon's property, not just adding a bank that he was proposing.

Mr. Leavitt called a point of order because this was a variance request and found the application incomplete with regard to the four points of hardship and did not find the answers

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to 1 & 4 in the submission.

Chairman Schaefer asked Mr. Gagnon about what information he had to substantiate his claims for his needs, and Mr. Gagnon explained that it had been requested that he get a professional's opinion but felt that he had sufficient experience with his past projects. He felt that this issue was related to having the right mix of businesses and this was why the bank project was so important.

Chairman Schaefer clarified if the application was related to parking in the rear because of a letter they had received from Christine Winn. Mrs. Loring explained that she had spoken with Mrs. Winn and explained the application to the abutter. Mrs. Winn was in favor of the approval because she did not want to see development in the rear of the lot.

Mr. Leavitt explained what the first criteria of variance was regarding reasonable return versus maximum return. He explained that the bank project would maximize the return and would have to prove that he needed to keep those 24 parking spaces. He brought up the Speedy Stop in the 2012 Planning Board meeting and how they had recovered spaces when they had to go through a similar process. Mr. Gagnon explained the loss of profit centers that he had to take by having vacancies because of the site plan review standards.

Chairman Schaefer asked for the history of the tenants within the last 24 months, and Mr. Gagnon explained the history of concessions in order to keep tenants. Chairman Schaefer asked if any of the tenants had left, and Mr. Gagnon responded that no one had.

Mr. Leavitt asked if there were any assurances regarding the parking when he bought the property, and Mr. Gagnon responded that there were not but was unaware of the situation at the time of purchase.

Mr. Lingwood asked what the risk was for Mr. Gagnon if he did not build a bank, and Mr. Gagnon explained that it was the caliber of tenants and the effect as "credit tenants."

Chairman Schaefer opened the hearing for public comment in favor of the application.

Mark Accuosti, Speedy Stop, explained that he felt that the approval was important for the future of the businesses in the commercial district. He felt that this would set the precedence to change the ordinance.

Mrs. Loring explained that the Planning Board was currently reviewing the ordinance to make it a waivable standard because they see the hardship that it creates for businesses, but it would not be approved until Town Meeting 2014 and would be of no help to Mr. Gagnon, who had a tenant waiting.

Chairman Schaefer explained that there would be no precedence because each applicant was held to a standard defined by the ordinance. He wanted to know about the history of the

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vacancies in the building. Mr. Accuosti explained the history of spaces and the lack of competition with Windham. Chairman Schaefer asked why he sold the Shopping Center to Mr. Gagnon, and Mr. Accuosti explained that his father sold it for retirement funds and Mr. Gagnon was a developer. Chairman Schaefer asked about the Family Dollar rent reduction, and Mr. Accuosti explained that he was given an ultimatum by them as a credit tenant.

Chairman Schaefer asked Mr. Hanson to read the ordinance before the change. Chairman Schaefer felt that the operative change was replacing “road” to “ROW” because when considering the parking relative to the road, Mr. Gagnon was in compliance. Mr. Hanson felt that the intent was for greater flexibility and to make it waivable.

Mr. Lingwood clarified that, without the bank, Mr. Gagnon faced a financial hardship, and Mr. Accuosti agreed.

Mike Reynolds, Keilt Drive, explained that he was neutral part and he was a member of CPIC but not a member of Comprehensive Plan Committee and also worked on Design Guidelines. He recalled the intent of his work with the CPIC. He felt that that purpose of the Design Guidelines was to create a “village” feel. However, the intent was was not make it harder for businesses.

Mr. Leavitt clarified the function of the appeal process when a mistake was made.

Chairman Schaefer asked if there were additional comments and there were none, and he closed the Public Hearing. He opened the discussion for the Board.

Chairman Schaefer asked for clarification on reasonable return; and Peter Leavitt explained that there was a difference between reasonable return and maximum return.

In regards to Criteria #2, Mr. Leavitt agreed with the unique characteristic of the property because it was grandfathered nonconforming. He wanted to know if they were within their rights to grant approval and if it been vetted by attorney, and Mr. Hanson explained his discussions with the town attorney. Mr. Leavitt asked if either party had spoken with the MDOT, and Mr. Hanson explained that Mr. Gagnon was only asking for a variance for 20' from the MDOT ROW and the Planning Board could address those spaces are within the ROW.

Mr. Schaefer wanted to know if the Board needed to include a condition regarding the Planning Board in their approval, and the Board felt that it would be required as part of the project. He also clarified that the MDOT would not lose their rights to taking their lands.

Mr. Leavitt explained that he agreed that the project complied with Criteria #3 agrees the property and request did not alter the character of the land. He explained that he did have an issue with Criteria #4 because the situation was created by owner or previous owners, and Chairman Schaefer stated that the condition resulted from a change in the ordinance and it

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was not an intentional action by the previous owner. Chairman Schaefer stated that the creation of the condition and the financial viability were based on the changes in the Raymond ordinances. Mr. Lingwood felt that the action was taken by the Town of Raymond and MDOT, and Mr. Leavitt added that he felt that the situation was due the lack of due diligence by the new owner. Chairman Schaefer stated that it was not an issue of going over the line versus being too close to the line and the success of the site due to the operation of the ordinance.

There was discussion between Mr. Leavitt and Chairman Schaefer regarding due diligence and the financial viability of the property regarding whether the testimony proved those points. Mr. Lingwood explained that the intent of the ordinances was not to make the process harder for the developer and was happy to hear that the Planning Board was considering revising the standard.

Chairman Schaefer stated that the Board has no role in working with the applicant other than following the ordinance, but the Planning Board could work with the applicant to reach a happy compromise. Mr. Leavitt agreed because their intent was not to design projects and only to look at the merits of the application.

MOTION: Matthew Schaefer motioned that, with regard to the four criteria of hardship in Land Use Ordinance Article 6.B.1.b., the second (That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood) and third (That the granting of a variance will not change the essential character of the locality;) criteria have been satisfied; seconded by Peter Leavitt.

DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (4/0)

Chairman Schaefer cited for language regarding issuing conditions and per Land Use Ordinance Article 6.B.2.h. he confirmed that the Board could give conditions. He asked the Board for conditions because the variance would run with the land if approved. Mrs. Picavet asked if the conditions would be set by the Planning, and Chairman Schaefer agreed because he felt they may limit the type of use for the development.

Mr. Lingwood asked what the next step for Mr. Gagnon would be and confirmed that it would be to go to the Planning Board for a full site plan review. Mr. Leavitt felt that they should base their decision and any conditions on the four criteria of hardship and leave the site plan review to the Planning Board.

MOTION: Matthew Schaefer motioned that, in regard to the 4th criteria of hardship per Land Use Article 6.B.1.b. (That the hardship is not the result of action taken by the applicant or a prior owner), was found to be satisfied; seconded by Mary Picavet.

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DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (4/0)

MOTION: Matthew Schaefer motioned that the 1st criteria of Land Use Ordinance Article 6.B.1.b. (That the land in question cannot yield a reasonable return unless the variance is granted), was found to be satisfied, seconded by Elden Lingwood.

DISCUSSION: Peter Leavitt stated that he would not be able to support the motion with the testimony that had been given. Matthew Schaefer found that the only testimony that had been given was that the property was that it would not yield a reasonable return without the variance, and the Board had to evaluate whether the standard was met by the testimony that they have.

VOTE: MOTION CARRIED (3/1 [PL])

Chairman Schaefer asked if they were going to include any conditions.

MOTION: Matthew Schaefer motioned that the variance be applied to the change of use to be reviewed to the Planning Board through site plan review; no second.

DISCUSSION: Mr. Hanson explained that it would not just be a change of use that would trigger by other substantial uses and felt that the Town would be protected by the ordinance. Chairman Schaefer agreed that the Board may not be able to find an open ended condition for the project.

MOTION RECINDED

MOTION: Mary Picavet motioned to grant approval for the application; seconded by Elden Lingwood.

DISCUSSION: None.

VOTE: MOTION CARRIED (3/1[PL])

4. Board Communications

a) Review of Draft Bylaws (Tentative)

Mr. Leavitt presented the changes that he made to the draft Bylaws.

MOTION: Elden Lingwood motioned to send the Bylaws to the Board of Selectmen for review; seconded by Peter Leavitt.

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DISCUSSION: None.

VOTE: UNANIMOUS APPROVAL (4/0)

5. Code Enforcement Officer Comments

Mr. Hanson outline the various projects that were being completed around Town.

*** Board communication**

Mr. Leavitt stated that the DEP was not protecting water quality per Natural Resources Council. Mrs. Picavet asked if the Town's groups were doing more, and Mr. Lingwood responded that they were being impeded due to funding limitations.

6. Adjournment:

MOTION: Elden Lingwood motioned to adjourn; seconded by Peter Leavitt.

VOTE: UNANIMOUS APPROVAL (4/0)

Chairman Matthew Schaefer adjourned the meeting at 9:13pm.

Danielle Loring
Recording Secretary

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