



Zoning Board of Adjustment Workshop
Tuesday, June 24, 2008
Council Chambers, City Hall at 6:30 p.m.

Workshop Minutes
Approved July 7, 2008

Meeting Called to order at 6:30 pm by Chair Hurd

I. Roll Call

Present: Robert Woodman, Jim Hanson, Michael Hurd, Pierre Caouette, Carolyn Towle, Ed Friedman

Absent: None

City Staff: Eric Giles, City Planner; Allan Britton, Director of Planning & Development; Jane Taylor, City Solicitor; Katrina Spaulding, Administrative Assistant

II. Workshop

Basics:

What is zoning and why do we have it? Zoning, or Ordinances, are rules that a community has for its own land use. An Ordinance states the rule and according to State Law there is a Board to enforce Ordinance. Zoning ordinances are written in Black and White, the job of the board is to alter the ordinances according to the needs of the community. It is a safety valve to allow property owners to use their property. The Board makes adjustments from the “rules”.

Zoning Board Requirements:

- 5 regular members required
- 3 year term, not to have more than 2 members appointed in a given year
- Can have up to 5 alternates that sit when a regular member is **unavailable**. Alternates should not participate when there is a full board.

Jane discourages from having an alternate fill in on a continuance. The applicant can waive the appointment of an alternate. If an alternate is not requested the applicant needs to provide his/her expressed permission.

- To have a Quorum, three members must be present and voting

Zoning Board Duties:

Jane mentions the Rules and Procedures should be reviewed as well as updating the Zoning board bylaws in order to cut down on long meetings.

- The Zoning Board is a Quasi-judicial body, “court like”, the job of the Board is to solely act as an appellate body. The board should hear ONLY appeals. (planning board acts in a legislative role)
- Zoning Board Exists to provide procedural due process, “for creating a record that permits meaningful judicial review upon appeal” (Paul G. Sanderson, Esq., LGC ‘The ZBA Decision Making Process’) The Zoning Board has the authority to overturn the decisions made by others within the community. The board cannot be seen as taking sides. Must hold public and fair hearings, shows respect for the process and the applicant, and conflict issues need to be avoided:
 1. *communications* – Don’t talk about the cases amongst one another, however get familiar with the individual case details
 2. If there is a conflict between a board member and an applicant – say there is a conflict. There is an alternate that can fill in.

- Conflicts include: doing business with someone, being related to the applicant, being an abutter (may be an abutter to the applicants business), employing the applicant etc. A conflict exists when a member is “NOT indifferent” to the outcome, in other words has formed an opinion BEFORE the public hearing. This would be pre-judging or making up ones mind prior to hearing the facts.

Participate and ask questions – challenge the applicant to prove his/her case. Ask direct questions to create a legal record.

Statutory requirements:

- *Application* – NH Office of Energy and Planning template – creates the criteria for each type of application. The first two pages of the application are instructional. Board usually sees the last three pages. Things that need to be done prior – application must be complete, must be signed, if the applicant is one other than the property owner, there needs to be authorization from the property owner, Needs to be a **complete** listing of abutters (this should also include any holders of easements), fees must be paid.
- *Notification* – There is Certified Mail notification to the applicant and abutters. Notice must be no fewer than 5 days prior to the hearing. Notice must be published in newspaper no fewer than 5 days before the hearing. Notice must be posted in 2 public places. The notice must briefly describe the application including the name and location of the applicant and property.
- *Public Hearing* – The hearing must be held within 30 days of receipt of the application. Applicant has the burden of Proof. Must show that the relief they are seeking meets the required criteria for the type of application. The applicant also has the burden of production. The burden to put into the record information for each element of the application. Conditions can be placed on the applicant at the hearing.
- *Findings of Fact* – Time for the ZBA to discuss amongst themselves. If you close the public hearing you don’t have to talk to anyone in the audience. Must have three votes for an application to pass. Variance can be withdrawn at any time – if a variance doesn’t get three votes it can’t be brought back – it must be substantially DIFFERENT.
- *Vote* – If you vote against something you NEED to have a reason. A reason can be that there is insufficient evidence.
- *Notice of Decision* – written decision given to the applicant and if denied, the reasons for the denial must be included. Notice also includes the appeal rights.

Appeals:

Variiances – A decision by the Zoning Board to exempt a specific structure or use from the zoning requirements – i.e. a permitted nonconforming use. When overruling a specific provision in the zoning ordinance, The Zoning board can authorize a variance with proof of the five criteria:

Use Variance:

1. Will not diminish the value of surrounding property – applicant needs to prove the *effect* of the variance.
2. Is not contrary to the public interest – applicant must show there will be no harm to the public interest if granted
3. Would not result in Unnecessary Hardship – Applicant must prove the following:
 - a. That the zoning restriction as applied to their property interferes with their reasonable use of the property, considering the *unique setting of the property in its environment*; a Use variance needs to be reasonable in the context of the property. You CAN consider a reasonable return on investment (only with a Use Variance). Need to be able to SHOW the financial benefit. Need to prove whether or not the proposed use will alter the character of the residential neighborhood. .
 - b. Must show there is NO fair and substantial relationship between the purpose of the ordinance and the specific restriction on the property. What are the reasons BEHIND the restriction.

- c. Must determine whether granting the ordinance would injure the public rights of others – a private nuisance (an unreasonable interference with the use or enjoyment of someone’s personal property).

AREA Variance Applicant must prove:

- **Hardship**, the application has to show **special conditions** of the property are necessary in order to allow the proposed use. The applicant must show that practical considerations make it difficult or impossible to implement the permitted use given the special conditions of the property. Property must be unique in it’s surroundings.
 - Applicant can not achieve the same result by some other reasonable feasible method that will not create a huge financial burden to the property owner.
 - Is there any other method to get to the same result without major additional financial burden on the property owner?
4. Granting the variance must result in substantial justice – Is the loss to the applicant outweighed by the public interest?
 5. Use must not be contrary to the spirit of the ordinance – what is the underlying purpose of that provision the person wants to vary.

Appeals from administrative decisions: purpose behind the appeal for someone who doesn’t like the local decision. ZBA’s role is to referee in the determining of a correct interpretation of the ordinance.

If the board suggests a lesser request rather than a denial, it can be handled by the board. All use variance will go before the planning board for site plan review. Board can suggest that an applicant withdraw an application.

Mike Hurd would like it to e placed on the application that the GIS has a disclaimer that the lines are not accurate and shouldn’t be used as fact or in place of a proper survey.

Eric stated the Office of Planning and Development will have to start requiring the applicants to provide - Legal documentation and survey

III. Adjournment

Motion to: Adjourn

Made by: Jim Hanson

Second: Pierre Caouette

Vote: Unanimous

Meeting adjourned at 8:45 p.m.

Respectfully Submitted,

**Katrina Spaulding
Administrative Assistant**