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COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

Zoning Board of Adjustment
Draft Minutes
March 22, 2011

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman
Dianna Fallon – Secretary
Elizabeth Dunn – Member
Heath Partington – Member
Jim Tierney – Alternate (Excused)
Mike Scholz – Alternate (Excused)
John Alosso – Alternate (Absent)

Staff

Tim Corwin - ZBA/Code Enforcement Administrator
Patricia Kovolyan – Administrative Assistant

Lot 3-B-112, Case #10-2011

Owner/Applicant – James A. Hatzos
Location – 119 Rockingham Road
Zone – Rural District

A variance is requested from Section 706 to permit a 24 sq. ft. freestanding sign advertising a proposed pool table repair/service/supply home occupation business, where a sign of only 3 square feet is permitted.

Mrs. Fallon read the case into the record.

Mr. Corwin gave a brief overview. The application for a variance originated as a code enforcement action with respect to the commercial use of the property within the Rural District as well as the unauthorized sign. The Applicant has operated the pool table business from the mid to late 1990's. Prior to 2002 the property was zoned Business District A so that the business may have been a permitted use when it began operating. Because the business never received site plan approval and because it ceased operating from the property for several years during the 2000's, it cannot be considered a legal non-conforming use. The Applicant will seek a Conditional Use Permit from the Planning Board for a Customary Home Occupation but a variance is required from Section 706 of the Zoning Ordinance for a 24 square foot freestanding sign.

The owner, Mr. James Hatzos, presented his case. The sign has been in the same location for 17 years and was installed during the time when the property was zoned commercial. The sign is crucial for advertising the business which is the sole source of Mr. Hatzos' income.

Mr. Murray asked when the property was zoned commercial. Mr. Hatzos did not know exactly but thought it was approximately 20 years ago and the sign was installed during the time that the property was commercially zoned.

Mr. Corwin advised the Board that no permit was ever issued for the sign.

Mrs. Dunn asked how close this site is to a commercially zoned property.

Mr. Corwin said that the motorcycle repair shop is directly next door to this property.

Mr. Hatzos said just north of his property on the same side of the road is the Granite Oaks building that holds a spa, salon and a Doctor's office. The Picnic Table Factory is beyond the Granite Oaks Building and further up the road is the Animal Hospital.

Mrs. Dunn said that if this sign has been in place for 17 years, then what is "justice" in this case.

Mr. Partington asked Mr. Hatzos what knowledge he had of what happened in 2002. A number of properties on Route 28 were rezoned at that time by the Planning Board. Mr. Hatzos said that he did not know about the rezoning until a year and a half ago.

Mr. Hatzos read the supporting facts into the record and presented two photos that were marked as Exhibits A&B.

Mr. Michael Salvo of 137 Route 28, Rockingham Road, Windham NH spoke in favor of this request.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case 10-2011

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

Mrs. Fallon said that a 3 square foot sign is designed for a customary home occupation that is in a residential area. This area has more business use than residential and the sign is in line with other signs in the area. Mrs. Fallon did not have a problem with the request.

Mr. Murray agreed with Mrs. Fallon.

Mr. Partington mentioned that the Planning Board in 2002 purposely created three pockets of different zones up Route 28, Commercial A, Rural and Neighborhood Business. The Planning Board minutes from that time are slim and you can't get much information from them. In general using something that is illegal as part of the hardship requirements is not something he would want

to do. For some reason, the Town and the Planning Board voted to zone this area Rural at that time. Mr. Partington said he did not find it easy to say this shouldn't be a Rural area and he would be ignoring what the area had been zoned. Mr. Partington said that this is a Rural property with a big sign on it. There is nothing unique about this property compared to the property next to it or the property across the road. Mrs. Dunn said all the other businesses that are zoned rural have signs on them. Mr. Partington said that one business does and that would be the cycle shop.

After going through the criteria Mrs. Dunn said that the application does meet those criteria.

Chairman Samsel said that he agreed with Mrs. Fallon and Mrs. Dunn.

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance for Case #10-2011 as requested from Section 706 to permit a 24 square foot freestanding sign advertising a proposed pool table repair/service/supply home occupation business. Motion passed 4-1.

Mr. Partington voted against the motion because the request did not meet the hardship requirement.

Approval of the February 22, 2011 Minutes

The February 22, 2011 minutes were discussed. At the March 8, 2011 meeting Mr. Tierney mentioned that the February 22, 2011 minutes seemed one sided. Mrs. Kovolyan and Mr. Tierney viewed the February 22, 2011 video at different times on different computers but both had difficulty hearing the video. Mr. Partington had no problem hearing the video on his computer and offered to send comments to Mrs. Kovolyan to be incorporated in the minutes. Mrs. Kovolyan will include Mr. Partington's notes and then resend the minutes to the members.

Approval of the March 8, 2011 Minutes

Mr. Partington motioned and Mr. Murray seconded the motion to approve the March 8, 2011 minutes as amended. Motion passed 4-0-1. Mrs. Dunn abstained because she did not attend the March 8, 2011 meeting.

Review of Revised ZBA Applications

Mr. Corwin advised the Board that the revised applications include the suggested changes made at the March 8, 2011 meeting.

Mrs. Dunn asked that the heading on the applications be boxed in and that the fifth line in the heading be changed from *Date Hearing Scheduled* to *Date of Hearing*.

Mr. Murray motioned and Mr. Partington seconded the motion to accept the revised applications with the changes recommended by Mrs. Dunn. Motion passed 5-0.

Miscellaneous Board Business

Mr. Corwin advised the Board that they would receive a revised 2011 Zoning Ordinance. There were some administrative errors in compiling all of the recently enacted amendments into the text.

Mr. Corwin said he would check on the time line for the new zoning map and get back to Mrs. Dunn with that information.

Election of Officers

Chairman Samsel stated that he was not interested in being Chairman again but nominated Mr. Murray as Chairman, Mr. Partington as Vice-Chair and Mrs. Dunn as Secretary. Mrs. Dunn said that she found it highly unusual that a Chairman would come forth with a motion instead of opening up for nominations and requested that that be done. Mrs. Fallon seconded the nomination. Chairman Samsel withdrew his nomination and Mrs. Fallon withdrew her second.

Mrs. Dunn nominated Mr. Partington as Chairman; the nomination failed because there was no second.

Mr. Partington said he did not expect to be nominated but thought he could do the job.

Mr. Murray said that this would probably be his last year on the Zoning Board and would welcome the opportunity to be Chairman.

Mrs. Dunn said that she is happy to participate but has no desire to be secretary. Mrs. Dunn went on to say that the ZBA has had some long standing members and there is a time when there is a need for new faces and a new outlook on how things should be run. Tom has had problems in being able to be on time and that was part of her decision and she continues to believe that Heath would be the best choice for Chairman.

Mrs. Dunn nominated Mr. Partington as Chairman again; the nomination failed because there was no second.

Mrs. Fallon nominated Mr. Murray as Chairman. Mr. Murray seconded the nomination. Passed 3-2. Mr. Partington and Mrs. Dunn voted against the nomination.

Mrs. Fallon nominated Mr. Partington as Vice-Chairman. Mrs. Dunn seconded the nomination. Passed 5-0.

Mrs. Dunn, in response to Mrs. Fallon's question, said that she was not asked to be secretary and is not tremendously interested and prefers not to be secretary. Mrs. Dunn would not refuse if no one else was interested in the position.

Mrs. Fallon nominated Mrs. Dunn as Secretary. Mr. Partington seconded the nomination. Passed 4-0-1. Mrs. Dunn abstained.*

Adjournment

Mrs. Dunn motioned and Mr. Partington seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for April 12, 2011 at 7:30 PM in the Community Development Office.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.

* *NOTE: The Board also approved a motion to cancel the ZBA meeting scheduled for April 12, 2011. However, a Re-Hearing Request was subsequently submitted. The Re-Hearing Request must be heard by the Board within 30 days of submittal and, as a result, the Board must meet on April 12 in order to comply with the 30 day requirement.*