

ZONING BOARD OF ADJUSTMENT MEETING
AUGUST 22, 2013

PRESENT: Wendy Freeman, Chairman, David Lage, Marianne Graham, Clark Baldwin, Becky Doyle, Joanne Meshna

The meeting was called to order at 7:30 p.m. at the Town Office. Clark was appointed as a regular member for this evening's meeting.

7:30 p.m. The Zaremba Group for Dollar General Stores - Motion for Rehearing:

A Motion for Rehearing for The Zaremba Group for Dollar General Stores was received on August 14, 2013. The Board reviewed the Motion:

#1.-#3. Board agreed with.

#4. Becky - they failed to mention that the school property footprint is not 18,000 square feet

#5. Read by Wendy - ...The Zoning Board of Adjustment arbitrarily, unlawfully and unreasonably denied the Variance request." Wendy - totally disagreed with statement

#6. Board agreed with

#7., #8 **Spirit of the ordinance.**

- Wendy - she does not interpret restrictions of Village District II the same way as applicant
- Becky - under purpose of Village District, applicant failed to include the first sentence "The purpose of this district is to retain the character of the long established villages in New Ipswich;"
- Wendy - does not consider Dollar General a service business but rather a retail business;
- Clark - it is a retail business
- Wendy - Attorney D'Amante wants to compare Dollar General to an auto service station without any restrictions on square footage and she disagreed
- David - what they presented is a retail business
- Becky - the district is on the National Historic Register which implies it is historic in character; the Board never referred to the district as a Zoning historic district
- Marianne - the Board talked about the character or nature of the village; want to preserve the rural district with many historic buildings
- Wendy - a large retail store would be inconsistent with the character of the neighborhood
- Becky - agreed
- Wendy - if there is something unique about the property and it meets the variance criteria, the Board could have approved it but in this particular instance the variance criteria is spirit of the ordinance which would have been violated; it would be rewriting the ordinance if it had been approved

- Clark - goes along with 8.d. completely; was the basis of his voting against the application; contrary to the spirit of the ordinance; cannot overturn the language of the ordinance
- Becky - the Board did not ignore the compliance issues; felt that the character and National Historic concept outweighed the benefits of the conservation provisions
- Wendy - the Board acknowledged over and over again that adding the Carron property and proposing something that did not violate our wetland ordinances as the current building does was excellent on their part; the problem is that the building is too big and in the wrong place
- Wendy summarized - applicant missed first sentence of the Village District purpose, they are considering the store a service business rather than a retail business; the Board did not consider Village District II a Zoning historic district, the Board agreed that granting the variance would be tantamount to amending the spirit of the ordinance, the Board did not ignore their compliance with setbacks

#9. Substantial justice.

- Becky - do not recall considering who would come out ahead financially
- Marianne - Attorney D'Amante brought it up a lot
- Wendy - the applicant brought up the financial loss to the school district
- David - when discussed substantial justice, considered if Dollar General were built on that site would the public benefit be greater than the denial and what would happen to property values and the rest of the district by giving approval for a retail business that exceeded the zoning requirements
- Wendy - giving up too much to get a little; there is no justice for the public
- David - applicant kept bringing up the cost for remediation, etc. but the Board never worked out the costs to the applicant versus what the town gets
- Becky - by maintaining the character of the village consistent with the Master Plan the intrinsic value of that component of their decision outweighed the loss to the owner
- Marianne - we did not talk about financial loss; discussed value to the community and future of the community and nature of the community; did have discussions about the impact on property owners in the district and what would happen if we changed the nature of the village district; asked for evidence of the impact and not provided
- Wendy - did not see Dollar General coming in and buying the school as a significant financial benefit to the Town or school district
- David - we did not look at the financials at all
- Marianne - did acknowledge that they made proposals to improve the property
- Wendy - applicant focused on financial, not the Board; not clear how substantial justice would be done; not clear from what was presented by the applicant that they could show substantial justice

#10. Effect on Value of Surrounding Properties.

- 10a. Wendy - it is not the responsibility of the Board or any of the interested parties or abutters to provide evidence as to the impact to surrounding properties; the real estate agents that did speak were very conclusive in that this would have detrimental impacts to surrounding property

- values; made a point during the public hearing to ask the applicant if they wanted to continue the hearing so they could provide information and they did not
- Becky - the applicant did not submit data supporting what they were saying; subjective opinion; Board can rely on our own opinions or knowledge
 - Wendy - the applicant should have provided evidence and they are not providing evidence in the request for rehearing
- 10b. David - the applicant never made a proposal to restore the existing building; their proposal was to remove the existing building and put up a new one
- 10c. Wendy - the school building is 18,000 square feet more or less; as far as the restoration of the building having an impact on the value of surrounding property values, it would depend on what is in the building
- Becky - the school building is 18,000 square feet; not interested in the square footage of the building but the footprint of the building so when comparing 18,000 square feet to a 9,100 square foot building, the footprint is not half the size of the existing school building footprint
- 10d. Becky - no-one said there was an absolute limit of 1,500 square feet
- Clark - how did we get to a variance; remembered bringing it up because of the scope
 - David - we got there because they submitted an application for a variance; they knew they would never be classified as small retail
 - Wendy - applicant submitted a variance because it exceeds 1,500 square feet and is retail; even an auto service station would require a special exception; there are additional requirements for small retail and not exceeding 1,500 square feet
- 10e. Becky - there is no data that the traffic will be reduced; the numbers in the traffic study did not add up; they had the traffic reduced with a store in there
- Wendy - traffic study was inconsistent
 - Becky - they had no data; the data did not support the words and they never corrected it
- 10f. Becky - the Board clarified several times that the existing uses were established prior to zoning
- David - only one that exists over 1,500 square feet and they required a variance
- #11. **Unnecessary hardship.**
- 11a. Becky - disagree with second sentence; RSA says that it is specific to the owner
- David - the Board's consideration of hardship was the property itself and what makes that property any different from any other 2.3 acre lot; is there any uniqueness
 - Becky - RSA 674:33, "the unnecessary hardship referred to in the statute must have related to the owner and not to an option holder." Welch v. Nashua
 - David - the hardship is on the property and what is so different that they need to be given special consideration
 - Wendy - they also talked about the high cost of demolition and environmental remediation
 - David - it is the property and not the building on it
 - Wendy - if you look at the land and if you could put a 1,500 square foot building on it, you would not even need the Carron property

- Becky - as far the property goes we do not see any uniqueness that distinguish it from other properties in the area
 - Wendy - they talk about the hourglass shape but when you add the Carron property it no longer looks like an hourglass
 - David - does that hourglass shape make it unique
 - Becky - we do not see an unnecessary hardship
 - Wendy - the building has to come down, the site has to be remediated; the School Board is under the impression that the building is useless and has to be come down so is that an unnecessary hardship; are we creating an unnecessary hardship
 - Becky - from Rowe v. Salem: "the criterion for unnecessary hardship to warrant the issuance of a zoning variance was not the uniqueness of the plight of the owner by the uniqueness of the land causing the plight"
 - Wendy - nothing unique and does not create unnecessary hardship; did not clearly meet this criteria
- 11b. Becky - option holders do not have standing for determining unnecessary hardship
- 11c. Wendy - there is a relationship between the purpose of the zoning district and the restriction of 1,500 square feet and the requirement for a special exception for retail; there is a distinction between services and small retail
- Becky - left off the first sentence of the purpose which is protect the character of the village
 - Wendy - the Board stated that the ordinance does not allow retail greater than 1,500 square feet; it is not commercial use, it is small retail
- #12 **Reasonable use.**
- David - the first sentence is incorrect; would not have applied for a variance if it was permitted
- #13-17 **Board stated the ordinance does not permit any commercial use in the district greater than 1,500 square feet and placed great weight on this factor.**
- Wendy - the applicant is stating that the Board's position was no commercial use could be in the village district which is incorrect; the Board agreed if it was an auto service station that applied for a special exception, they would have to meet the criteria for special exception; Dollar general is a small retail and not a service
 - Becky - the applicant states that the Board misinterpreted the zoning ordinance by stating no commercial use in the village district greater than 1,500 square feet; we clarified that several times
- #18-20 **No findings of fact.**
- Wendy - the Board disclosed the reasons for the motion very clearly; the Board went through each criteria; decision would not have changed if findings of facts had been listed
- #21 **New evidence introduced During ZBA Deliberations.**
- Marianne - was not new evidence, did not present new evidence, had mentioned before that there were other options; total misinterpretation of what she said
- #22-23 **ZBA improperly applied the reasonable use of the land test in relation to the town's purchase rights for the school property.**

- Wendy - stated she lived in town since 1995; did not say "the Town would eventually take action when there was crisis"; went to the applicant's statement that there was no other significant interest in the property

#24. ZBA disregarded the school buildings for all purposes.

- Becky - the Board did not disregard the school building for all purposes
- Wendy - might have; the applicant kept stating the building had to be demolished
- Marianne - certainly heard it enough so put some weight on it; did have discussions about multi-purpose uses downtown; did consider other uses; it is not the Board's job to decide what to do with the school but to determine if the applicant meets the requirements
- Becky - Board did not disregard environmental problems

#25 ZBA disregarded the unique characteristics of the school property.

- David - there is no uniqueness in the property

#26 Competition by applicant.

- Wendy - the Board did not mention competition at all when making decision

#27-33 ZBA action constitutes an unconstitutional taking of the property by inverse condemnation.

- David - Wendy had stated that the School Board had gotten their money's worth out of the building; they could turn it into something else
- Wendy - the Board recognized Greenville was part of the school district
- Becky - states "left no reasonable way to put the School to an economically viable use"; that was because the Board did not agree with his application
- Wendy - did make a point that there could be other uses
- Marianne - does not preclude other organizations from assuming the property and turning it into a use
- Becky - with regard to the constitutional quote, we did not compel the school district to convey the property to the town without compensation
- Marianne - did not have control over the economy

#34-36 Proposed use would not be contrary to the public interest

- Becky - very redundant
- Wendy - we did acknowledge that they were fixing the non conformities
- Becky - does not remember that discussion about resolving the water problems in Carron basement or eliminating the Carron driveway

#37 Remediation and demolition.

- Wendy - what we said was fixing the property would be in the best interest of the public; correcting the non conformities would be in the best interest of the public; it was also important to the public to keep retail to 1,500 square feet in that district
- Marianne - to keep the rural character of the community which is the essence of the spirit of the ordinance
- Wendy - short term gain for long term harm and that is not in the public interest; there is significant gain in remediating the site; cannot outweigh the negative impact to the public
- Becky - the applicant does not mention that the village is on the National Historic Register

- David - does not agree demolition of the building makes the property unique
- Becky - does not find it unique at all

#38 **Unsuccessful marketing analysis.**

Nothing further.

#39 **Leach field contamination.**

- Becky - the septic system was contaminated years ago; the school put in a new leach field that has been operating successfully for years; no standing to discuss contamination now; not relevant

#40 **Water wells.**

- Becky - thought they were going to pay their fair share, not substantially underwrite the school district's costs of providing the water service
- David - in their costs analysis they were giving money up front to put in all the water services they would need and they would pay their fair share; not relevant; is a financial decision

#41 **Reuse of the existing building.**

- Becky - the reuse of the building is not relevant; not reusing existing building

#42 **Traffic.**

- Becky - incomplete traffic data; not demonstrated that there would not be a negative impact

#43 **Dollar General Use.**

- Becky - reiterating application; making statements that the Board does not agree with

#44-45 **Conclusion.**

- David - the 1808, Short Stop, Mobil Gas Station, the Bank, the market, the antique shop, all abut wetlands
- Wendy - do not agree that the Board disregarded the unique, special characteristics and conditions of the school property
- Marianne - the Board did not disregard, just disagreed

#46-#162

- Becky - this is the attorney's case again; it is the exact same information just discussed
- Wendy - we gave the applicant an opportunity to provide additional information on property values which they did not do; we told them the traffic study was inconsistent and they did not correct it; there is short term benefit and long term detriment; changes the overall character of the village; going beyond the intent of the zoning district and would be tantamount to rewriting the zoning ordinance

David made a motion to deny the Motion for Rehearing based upon:

- 1) the applicant did not provide any new evidence that would warrant a rehearing
- 2) the Zoning Board of Adjustment's decision to deny the variance will stand since none of the five criteria for the variance have clearly been met
- 3) details of the deliberations for each variance criteria are outlined in the meeting minutes

Marianne seconded the motion and it passed unanimously.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joanne Meshna, Land Use Manager