

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, July 3, 2023

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Joseph Hoppock, Vice Chair
Jane Taylor, Vice Chair
Joshua Gorman
Michael Welsh

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Mike Hagan, Plans Examiner

Members Not Present:

Richard Clough

I) Introduction of Board Members

Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting: May 1, 2023 and June 5, 2023

Ms. Taylor stated that the approval of the May 1, 2023, meeting minutes had been postponed because she had a question about the meaning of line 60. [Line 60: “He continued that he was contacted through his attorney, Tom Hanna, by the Putnams, requesting that this be delayed to the June meeting.”] Ms. Taylor asked Zoning Clerk Corinne Marcou to address this.

Ms. Marcou stated that what the Minute-taker wrote in the minutes is what Mr. Phippard stated. She continued that they (Community Development Department staff and the Minute-taker) assume that Mr. Phippard meant that Mr. Phippard was contacted through the Putnams’ attorney, Tom Hanna. With the way that it was written, it sounded like it was Mr. Phippard’s attorney, but it was the Putnams’ attorney. Staff have come to that conclusion due to conversations they have had with Mr. Phippard in the office.

Ms. Taylor asked for the minutes to include a parenthetical addition to clarify that, such as, “...contacted through his (the Putnams’) attorney.” Ms. Marcou replied yes, she can do that.

Chair Hoppock asked if any other corrections or changes are needed for the May 1 minutes. Ms. Taylor replied that the Board discussed the other changes at the June 5 meeting, and those changes are correctly listed in the June 5 minutes.

Mr. Gorman made a motion to approve the May 1, 2023, meeting minutes with the corrections made by Ms. Taylor to lines 60, 564, and 683. Chair Hoppock seconded the motion, which passed by a vote of 3-0. Mr. Welsh abstained due to having been absent.

Chair Hoppock asked for comments on the June 5 minutes. Ms. Taylor stated that she has an addition to make. She continued that they lost internet partway through the meeting, took a break, and then Mr. Hanna finished his testimony. Then, two members of the public spoke in opposition. For purposes of completeness, she would like to insert, after line 640, the names and addresses of the two people who were opposed and the fact that they opposed the application.

Zoning Administrator John Rogers replied that staff knows the names and addresses, so yes, they can insert those. Chair Hoppock asked Ms. Taylor to state what the addition should read. Ms. Taylor suggested the addition after line 640 read, "John Hillock of 511 Marlboro St. and Penny Bell of 511 Marlboro St. both stated their opposition to the application."

Mr. Gorman made a motion to approve the June 5, 2023, meeting minutes with the suggested edit from Ms. Taylor. Mr. Welsh seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Chair Hoppock asked if there is any unfinished business. Mr. Rogers replied no.

IV) Hearings

- A) **Continued ZBA 23-16: Petitioner, 147-151 Main Street, LLC and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Special Exception for property located at 147 Main St., Tax Map #584-060-000-000-000 and is in the Downtown Core District. The Petitioner requests to permit a drive-through use in the Downtown Core District at this property, per Chapter 100, Article 8.4.2.C.2 of the Zoning Regulations.**

Chair Hoppock read ZBA 23-16 aloud and stated that it is being removed from the agenda at the request of applicant, and continued to the August meeting, because there is not a five-member Board tonight.

Ms. Taylor made a motion to continue ZBA 23-16 for 147 Main St. to the next regular meeting on August 7, 2023. Mr. Gorman seconded the motion, which passed by unanimous vote.

- B) ZBA 23-18: Petitioner, Lynn Stanford of Keene, requests a Variance for property located at 334 Chapman Rd., Tax Map #241-048-000-000-000 and is in the Rural District. The Petitioner requests to permit the building of a single family home on the substandard lot size of 1.03 acres where five acres are required, per Chapter 100, Article 3.1.2 of the Zoning Regulations.**

Chair Hoppock asked to hear from staff.

Plans Examiner Michael Hagan stated that 334 Chapman Rd. is zoned Rural and has 1.03 acres. He continued that as of the end of June, the Land Development Code (LDC) has changed to only require two acres in the Rural District instead of five. This significant change happened after the applicant had submitted their application. This property has had four Variances; on February 7, 2000, it was granted a Variance to allow a single-family home to be built on a substandard lot. It was granted with two conditions: the existing garage to be removed, and the Variance was extended for five years, expiring February 7, 2005. In January 2005, the second Variance was granted with another five-year extension. On December 7, 2009, a third five-year extension was granted to December 2014. On December 1, 2014, the Board approved the Variance with another three-year extension.

Chair Hoppock asked when the three-year extension expired. Mr. Hagan replied December 1, 2019. Chair Hoppock asked if it is correct that there has been no activity on the property since then, in terms of Variances. Mr. Hagan replied that is correct.

Ms. Taylor stated that she believes the Board did grant a two-year extension with ZBA 19-13. Mr. Hagan replied that he did not see that in the file and apologizes. Ms. Taylor replied that it was the October 7, 2019 meeting. Mr. Hagan replied that they will make sure to get that into the file. Chair Hoppock replied that he thinks that is the one in their agenda packet tonight.

Ms. Taylor stated that there were comments in the application about what has taken place on the property. She asked if there have been any City inspections, permits, or anything like that issued and asked if they have put in a septic system and a pad. Mr. Hagan replied that there was nothing in the file currently with any building permits for a septic system or pad.

Mr. Welsh stated that he has a point of clarity. He continued that the prior Variances were applied to a Zoning Ordinance that specified five acres in the Rural District, and the current/new Zoning Ordinance specifies two acres, so this is a Variance that would be to a less substandard type of lot than the prior Variances would be. Chair Hoppock replied yes.

Chair Hoppock asked if anyone had further questions for staff. Hearing none, he asked the applicant to speak.

Lynn Stanford stated that she owns 334 Chapman Rd. She asked what the Board would like her to do. Chair Hoppock replied that ideally, she could speak to the criteria for evaluating her

Variance request. He continued that she could tell the Board why she thinks the criteria are met, and the Board will have questions for her.

Ms. Stanford stated that she thinks where they left off with Mr. Hagan was that there was Variance ZBA 19-13, which was active when she purchased the property, fully intending to build a home on it. She continued that she knew it would expire within that year that she was going to be closing, which was that February. After contracting to buy the property, life “threw her family a curveball.” Fortunately, everything ended well, but there was a lot of duress and she was not involved in thinking about developing property at the time. One of the solutions was to purchase a home on Court St., because she did not have the time to go through planning and building a home but needed a residence for a family member to recover. Now, she needs to sell the property (on Chapman Rd.). She explained that she’s run on Chapman Rd. for many years, and noticed numerous homes on acreage that were smaller, and always admired this piece of property.

Ms. Stanford continued that there is a precedent set, about 20+ years of this specific plot being designated for a single-family home. Tim and Christine Symonds, she believes, are the ones who developed the building pad. It was surveyed, and they even had a septic system plan, which was enclosed in the application. It was never built, but it was surveyed and approved to be installed. She assumes that life changed for (the Symonds) as well, and they sold the property to another owner, whom she purchased it from in 2021. Even though it never came to full fruition and a house was never built, that is what it was fully intended for as it cannot serve as anything else. She would like to sell it so that someone can actually get this development of this property completed and it can reach its full potential as a residence. It would be a hardship for her if the Board declined the Variance because the real estate value would plummet if it could not be built on. She needs to be able to sell it at the value she bought it for.

Mr. Welsh stated that he has a clarifying question. He continued that Ms. Stanford mentioned the Symonds, the prior owners. He asked if they are the people Ms. Stanford bought the property from. Ms. Stanford replied no, there was another owner in between. She continued that the Symonds held the property for the majority of the time, with all the Variances. She does not know for sure, but believes that when they purchased the property there was a trailer or mobile home on it and a couple outbuildings. The Symonds cleaned the property up and planned on building, but it never happened.

Ms. Taylor stated that she has a question, since Ms. Stanford has the plans and surveys. Ms. Stanford replied that she does not actually have them; she has a copy of them that was given with the closing deed. She continued that it is hard to read, even with reading glasses, but the name of who surveyed it is on the plot plan that is enclosed with her application. Ms. Taylor stated that she was curious about whether Ms. Stanford had any information on the current status of those improvements. Ms. Stanford replied yes, (the current status is) nothing. She continued that it is dead in the water. Nothing has moved forward, because her time and attention has been on 326

Court St. instead of 334 Chapman Rd. She would have loved to have designed and built on 334 Chapman Rd., but things change.

Chair Hoppock asked if it is Ms. Stanford's view that other than a single-family home of some sort, no other reasonable use can be put to this property. Ms. Stanford replied that it is a "postage stamp" (small lot) surrounded by a five-acre plot to one side and a seven-acre plot to the other side. She continued that it is completely landlocked. You cannot even get to the trails from it, because the property "dog legs" behind it, although there is a right-of-way of way behind it. It is perfect for a private, modest home, because there is a lot of space between the property and the neighbors' homes.

Chair Hoppock asked if the Board had further questions. Hearing none, he asked if Ms. Stanford wanted to add anything else. Ms. Stanford replied no. Chair Hoppock asked to hear from the public, beginning with anyone wishing to speak in opposition. Hearing none, he asked to hear from anyone wishing to speak in favor.

Amy Abel of 341 Chapman Rd. stated that she lives across the street from the property Ms. Stanford owns, and has lived there for at least 27 years. She continued that she remembers the people who lived in the trailer on the property, and remembers the Symonds and how excited they were about the idea of building on the property. Someone owned the property between (the Symonds and Ms. Stanford), and she was hoping she was coming to this meeting to meet her new neighbor. While the property sits empty, it has a driveway off Chapman Rd., which many of the local youth are well aware of. She continued that a vagrant camped there most of last summer and this spring, she has called the police a couple of times because there have been people driving up (to 334 Chapman Rd.), playing loud music, from pick-up trucks. She admits that she herself has trespassed on the property while walking her dogs and has discovered that beer cans and trash have been left there. She feels that continuing the Variance and giving them a fighting chance of having a house on that property, with neighbors who will be able to keep an eye on it, is probably in the best interest of the entire neighborhood. The houses on the properties next door on either side of 334 Chapman Rd. are well away, so having a small house on 334 Chapman Rd. will not impact them much. Ms. Abel added that present with her tonight is her other next-door neighbor.

Chair Hoppock asked if there was further public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

Ms. Taylor stated that she took the time to look up what the Board had done in 2019. She continued that one of the concerns they had, one of the primary concerns they always have, is the question of what the hardship is. At the time - at least according to the meeting minutes, and it does not appear that anything has changed - the Board determined under Section B. of the hardship criterion that there was no other reasonable use for this property other than as a residential parcel, given the Zoning, the neighborhood, and all the other considerations. She appreciates the neighbor's testimony, because it is very valuable to know what some of the issues

are, and it seems to her that it would be in the public interest to have something done with this property, rather than have vagrants and teenage beer parties. She thinks it is probably well within the spirit of the Ordinance, especially with the reduction in the parcel size to two acres. She continued that this is 1.03 acres, so it is not as much out of compliance as the past Variances have been.

Mr. Gorman stated that he reiterates what Ms. Taylor said. He continued that she touched on criteria 1., 2., and 5. Regarding the fourth criterion, about the devaluation of property, he thinks the testimony of the abutter speaks volumes to that. He thinks the property has more value for all parties surrounding it as a residence. Regarding the substantial justice criterion, he does not think there is any negative effect to the public and there is plenty of gain to the applicant here.

Mr. Welsh stated that he remembers this from last time. He continued that he thinks one of the things he articulated (at the previous meeting regarding this property) was that if four prior Zoning Boards had approved this Variance and they have seen no evidence that conditions have changed significantly, he sees no reason to go against the rulings of those four prior Boards, with the caveat that things have changed a bit. It is now two acres instead of five (that the updated LDC requires), so they are approving a Variance that is less out of compliance. Generally speaking, he is inclined positively.

Chair Hoppock stated that for the record, he agrees with what everyone has said. He continued that he would add that in terms of substantial justice, there would be no gain to the public that would justify the harm to the applicant, in this analysis/balancing test. He agrees with Mr. Welsh's comments about the four prior Board's actions. The only thing that has changed is the acreage criteria. He agrees with Ms. Taylor that subparagraph B. of the fifth criterion would be appropriate here, since the only reasonable use of this property is a residential use. The public interest in developing it in such a use is clear in light of what they just heard from the neighbor. He will vote to approve this application, and he is looking for a motion.

Mr. Gorman made a motion to approve ZBA 23-18. Ms. Taylor seconded the motion.

1. *Granting the Variance would not be contrary to the public interest.*

Met with a vote of 4-0.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Met with a vote of 4-0.

3. *Granting the Variance would do substantial justice.*

Met with a vote of 4-0.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Met with a vote of 4-0.

5. *Unnecessary Hardship*

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because*

i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because and*

ii. *The proposed use is a reasonable one.*

Chair Hoppock stated he is inclined to go right to 5.B., but they probably need to address 5.A. Ms. Taylor replied that if they feel 5.A does not apply, the record should at least reflect that. Chair Hoppock asked if anyone thought 5.A. applied. Hearing no reply, he moved on to 5.B.

B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Chair Hoppock stated that the lot size is the special condition. He continued that he agrees with the applicant that there is no other reasonable use other than a single-family residence.

Met with a vote of 4-0.

The motion to approve ZBA 23-18 passed with a vote of 4-0.

V) New Business

Chair Hoppock asked staff if there was any new business. Mr. Rogers replied that the new business is potentially a long conversation and does not need to be brought forward tonight.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 7:04 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk