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HILLSBOROUGH ZONING BOARD

Meeting Minutes

June 23, 2014

Date Approved: August 11, 2014

Present:

Members: Chairman Roger Racette, Larry Baker, James Bailey and Richard Booth

Alternates: Russell Galpin and John Segedy

Absent: Michael McEwen and Planning Director Robyn Payson

Members from the Public: Erik Hagstrom and James Hickcock

CALL TO ORDER

The meeting was called to order at 7:04 p.m. by Chairman Roger Racette.

MINUTES:

Chairman Racette said Mrs. Payson has contacted the LGC (now known as the N. H. Municipal Association) regarding the issue of allowing conference calls. She said they strongly recommended not allowing conference calls as you would then have to allow all the abutters to call in.

Mr. Booth made a motion to accept the minutes of May 19, 2014 as amended. Mr. Baker seconded the motion. The Board voted to approve the minutes except for Mr. Bailey who abstained.

PUBLIC HEARING:

Case #14-003Z - Application for a Variance – Used Car Lot in the Rural Zone – on property located at 221 Henniker Street (Tax Map 12, Lot 109) – Owned by Erik and Samantha Hagstrom.

Mr. Baker recused himself as the application will also have to be heard by the Planning Board.

Chairman Racette asked for a motion to appoint alternated John Segedy and Russell Galpin to replace members, Mr. Baker and Mr. McEwen for this hearing.

Mr. Booth made the motion. Mr. Bailey seconded the motion. Chairman Racette announced the appointments.

Chairman Racette asked the applicant to address the five criteria which have to be met in order to obtain a variance.

Chairman Racette read: Section 2: Part A: Granting the proposed Variance will not be contrary to the public interest.

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Mr. Hagstrom said the property has always existed as a retail/commercial location and the proposed use is a similar to the usage within the direct area. He said he is looking to sell used cars at 221 Henniker Street which for years was known as a flower shop.

Mr. Segedy asked if the auto sales would be in addition to or in place of the existing consignment/antique sales.

Mr. Hagstrom said the auto sales would be in addition to the existing business.

Chairman Racette asked how the antique business came to be.

Mr. Hagstrom said the last owner of the flower shop asked him if he wanted to sell antiques out of one side of the building. He said when the flower shop closed he bought the building and continued to sell the antiques.

Chairman Racette asked if when the antiques business was started was the lot zoned commercial.

Mr. Hagstrom said it has always been zoned rural for as long as he has owned it. He explained that the cars would be placed on the area previously filled in, with NHDES approval, and occupied by the Yum Yum Shack.

Mr. Galpin said the property's use has always been nonconforming because it was a business in the rural zone. He added its use was there before we had zoning.

Chairman Racette read Part B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance.

Mr. Hagstrom said the properties in the area are predominately commercial and this property has always been commercial/retail use.

Chairman Racette noted that on the map provided the rural zone dips down to Henniker Street to include Mr. Hagstrom's lot and the house next door. He said for the most part the lot is surrounded by the commercial zone.

Mr. Bailey asked what ordinance the applicant is requesting relief from.

Chairman Racette said Table 4 is the new chart showing different uses in the various zoning areas and whether or not they are acceptable or need a variance. He said according to the chart motor vehicle sales in the rural zone needs a variance.

Chairman Racette read Part C: Granting the proposed Variance will do substantial justice.

Mr. Hagstrom said it will bring additional business to the town and provide affordable options for vehicle purchase because they will be under \$5,000.

Chairman Racette noted the application stated no more than fifteen cars at a time.

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Mr. Hickcock affirmed that number.

Mr. Segedy suggested including a number in the Board's conditions if the variance is approved.

Chairman Racette agreed.

Chairman Racette read Part D: Granting the proposed Variance will not diminish the values of the surrounding properties.

Mr. Hagstrom said by having a business there the lot will be properly maintained.

Chairman Racette asked whether there would be an office on site.

Mr. Hickcock said he would have a small office in the existing building.

Chairman Racette read Part E: Literal enforcement of the provisions of the ordinance will result in an "unnecessary hardship".

Mr. Hagstrom said there are similar uses within this area, it is abutting the commercial zone and the town's assessment card has the land use as commercial/industrial.

Mr. Galpin noted the lot doesn't abut the commercial zone because there is a right-of-way in between.

Mr. Hagstrom noted that roads and streams have to be ignored when notifying abutters and the lot across the street is zoned commercial.

Chairman Racette said any permitted use in the rural district requires two acres and this lot is not two acres. He said because of the lot's size in this zone it creates a hardship and is an existing condition of the property.

Mr. Galpin asked whether there should have also been a request for a variance on the size of the lot.

Chairman Racette said the size of the lot would be the bases for the variance because the size creates the condition.

Mr. Segedy said if the Planning Board determines that size is an issue then the applicant will have to come back for another variance because that issue was not noticed for this hearing.

Mr. Bailey questioned how many different types of businesses can be on one lot in the rural zone especially on such a small lot.

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Mr. Segedy didn't think there was an ordinance addressing multiple businesses on one lot and that is why he had asked the question earlier as to whether this be replacing the existing business or in addition to it.

Chairman Racette asked if there were any further public comments.

Mr. Hagstrom thanked the Board for meeting with them tonight. He has been trying for years to bring a business to this lot.

Chairman Racette closed the public hearing at 7:48 p.m.

Chairman Racette said the Board doesn't have to deliberate tonight we have thirty days to deliberate.

The Board members expressed an interest in deliberating tonight.

Chairman Racette said the lot is uniquely located it's surrounded by commercial activity. He said the permitted uses for this property are less reasonable than the proposed use. He added the size of the lot being nonconforming creates a hardship.

Chairman Racette asked if the Board was ready to vote.

Mr. Galpin asked for a point of order that the Chairman should announce how the voting results work.

Chairman Racette said in order for the Board to approve this variance each of the five criteria you need three affirmative votes if any one fails they all fail and the application fails.

Chairman Racette said on criteria A: Granting the proposed Variance will not be contrary to the public interest. Mr. Booth – yes, Mr. Segedy – yes, Mr. Galpin – yes, Mr. Bailey – yes and Chairman Racette - yes

Chairman Racette said on criteria B: Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance. Mr. Segedy – yes, Mr. Galpin – yes, Mr. Bailey – yes, Mr. Booth – yes and Chairman Racette - yes

Chairman Racette said on criteria C: Granting the proposed Variance will do substantial justice. Mr. Galpin – yes, Mr. Bailey – yes, Mr. Booth – yes, Mr. Segedy – yes and Chairman Racette - yes

Chairman Racette said on criteria D: Granting the proposed Variance will not diminish the values of the surrounding properties. Mr. Bailey – yes, Mr. Booth – yes, Mr. Segedy – yes, Mr. Galpin – yes and Chairman Racette - yes

Chairman Racette said on criteria E: Literal enforcement of the provisions of the ordinance will result in an "unnecessary hardship". Mr. Segedy – yes, Mr. Galpin – yes, Mr. Bailey – yes, Mr. Booth – yes and Chairman Racette – yes

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Chairman Racette announced the vote was unanimous on all five criteria.

Mr. Booth made a motion to grant the variance as proposed. Mr. Galpin seconded the motion.

Chairman Racette asked that before we vote does anyone think there should be any conditions on the property.

Mr. Galpin felt that was an issue for the Planning Board.

The Board concurred and Chairman Racette called for a vote on the motion.

The Board voted all in favor.

Chairman Racette announced the variance is approved.

WORK MEETING:

Chairman Racette said the Planning Director, Robyn Payson, has given the Board a proposed schedule to set the third Monday of every month as a ZBA meeting night and all hearings or work sessions would be scheduled for that night.

Mr. Segedy asked why the third Monday.

Chairman Racette said at the time that seemed the best night for everyone and the availability of the building.

Mr. Segedy said the school board meets on the first and third Monday so there may be a conflict with some people.

Mr. Galpin said many holidays fall on Monday.

Mr. Baker said is the Board can always cancel a meeting if there is no business to conduct. He said it will just make it easier to schedule hearings.

After a short discussion the Board the consensus was to schedule regular monthly meetings on the second Monday of the month.

Mr. Segedy made a motion to schedule the next meeting on Monday, July 14 and subsequent meetings on the second Monday of each month at 7:00 p.m. Mr. Galpin seconded the motion. Board voted all in favor.

Chairman Racette said the rules of procedure are required by RSA 676:1 and has to be on file for the public to have access to. He said they would include what would happen if only four members were in attendance. He added some communities have a rule that if the applicant goes ahead with his hearing with only four members present and the vote is two to two it

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automatically grants the applicant a rehearing. He said the rules of procedure would address how alternates will be used.

Mr. Baker would like to add to the procedures how the audio recordings are handled. He said the Planning Board added a paragraph to describe what the purpose of the audio recording is. He said in the case of the Planning Board it is to assist the person writing the meeting minutes to make sure they are accurate and they will be deleted thirty days after the written minutes are approved.

Mr. Segedy disagrees with the deleting of the audio recordings. He feels they should be kept indefinitely because they are an electronic record and should be treated the same as all other documents.

Mr. Baker agreed but other members of the Planning Board didn't feel it was necessary to retain them once the minutes were approved.

Chairman Racette asked how the audio tapes would be kept indefinitely.

Mr. Baker said there lays the question, who would be in charge of maintaining them and where would they be kept.

Mr. Segedy said they could be kept on the hard drive and copied to disk once a year.

Chairman Racette asked if an opinion had ever been asked of the LGC.

Mr. Baker said he thought there had been but deferred him to Mrs. Payson.

Mr. Segedy said the answer will depend on how the question is worded.

Mr. Galpin disagrees with keeping the recording once the minutes have been written and accepted. He said after thirty days the recording would be redundant. He agrees there is more on the recording than in the minutes but ninety-nine percent of it is immaterial to the minutes.

Chairman Racette said once the minutes are approved they would become the official documentation of the meeting. He asked have approved minutes and a recording which one would take precedence legally.

Mr. Segedy either one is legal in a court hearing. He added even if town destroys the recordings and someone has a copy it can be used in court.

Chairman Racette said he is sure the Board will be discussing this further. He would like to see a procedure when an alternate is appointed for a hearing and if that hearing is continued that alternate remains appointed until the application is voted on.

Mr. Baker suggested asking the LGC because the only person who can recuse a member is the member himself. He said we may be able to write it as a suggestion.

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Chairman Racette said it makes sense to let the alternate sit at the continued hearing because he has the information needed to vote.

Mr. Segedy didn't think you could make it a rule but it could be a suggestion.

Mr. Baker said if he missed a hearing and it was continued he would recues himself because the alternate sat at the first session of the hearing and is better prepared to vote on the application.

Chairman Racette asked if a recused member should vacate the meeting place.

Mr. Galpin said yes because if the application is going to be presented to another board the member is also a member of he could be influenced by what he heard here.

Mr. Baker suggested having Mrs. Payson supply the Board with any information she received from the LGC regarding the saving of meeting recordings.

Chairman Racette put the remainder of the rules and procedures draft on hold until the next meeting on July 14.

Chairman Racette said Mrs. Payson has mentioned two possible hearings in the future, one for the second hand shop near the pub and one for a gentleman who wishes to live in a travel trailer permanently or indefinitely.

ADJOURNMENT:

Mr. Booth made a motion to adjourn. Mr. Bailey seconded the motion. The Board voted all in favor.

Chairman Racette announced the meeting adjourned at 8:35 p.m.

Respectfully Submitted:

Iris Campbell
Recording Secretary