

Town of Newington, NH  
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Monday, July 17, 2017

- Call to Order:** Chair Matt Morton called the July 17, 2017 meeting at 6:30 p.m.
- Present:** Chair Matt Morton; Ralph Estes; John Frink; Edna Mosher; Jim Weiner; Alternate members: Brandon Arsenault and Kathy Latchaw; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Public Guests:** Wendy, Welton Art Form Art Form Architecture, Inc; Kaliope Sotivovic (husband Sasha not present); Alisha Busconi with KeyPoint Partners; Jim Dean, with Dean Associates; Rachael Cormier, Crossings Senior Property Manager; Jack and Gail Pare; Denis Hebert

**Public Hearings:**

- 1) A request for a waiver from the 2009 International Residential Code Section R101.2 Scope, "...not more than three stories above grade plane in height". By Sasha and Kaliope Sotivovic regarding their property located at 168 Little Bay Road, Tax Map 15, Lot 8.

The applicant's architect, Wendy Welton with Art Form Architecture, Inc. explained that through a series of definitions in the building code, it was determined that applicant's split entry house that was built in the 1970's would require a waiver from the Zoning Board of Adjustment (ZBA). Ms. Welton stated that she worked with the Town building inspector, John Stowell and although the house only had three stories from the front, it was determined that the walkout basement of this house had to be counted as a fourth story because of the grade.

Ms. Welton said the house was built in the 1970's and because the current house overhung the foundation by two feet, which required pilings, it appeared that it was torn down to the foundation at one point. She said they could build a retaining wall at the back to meet the requirement, but the expense would not be justified.

Board member, Edna Mosher asked if there was a water issue at the back of the house. Ms. Welton replied that there was an area of concern, but there was a legal

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requirement to keep an escape exit from the basement. She went on to say that the trouble was that fill would be required to put soil against wood.

Alternate Board member, Edna. Mosher asked if they could slope the higher ground down. Ms. Welton replied that there was ledge and that would make the current dilemma worse.

Board member, Jim Weiner asked if she had talked with the fire chief and Ms. Welton said they had drawings for the fire department. She explained that any dwelling that had windowsills above twenty feet were required to have an escape balcony and this.

Chair Morton asked if there would be a bedroom on the fourth floor. The applicant, Kaliopé Sotivovic said her husband Sasha, who was not present for the meeting, planned on having his office on the fourth floor. Ms. Welton added that Dr. Sotivovic was an on-call trauma surgeon. Chair Morton commented that his concern was with someone lying on a sofa and falling asleep with a TV on and not being able to get out if there was a fire.

Chair Morton asked if they would consider adding sprinklers to the fourth story and Ms. Welton said they would rather not because sprinklers often damaged more than they saved.

Mr. Welton explained that the building code required a means of escape whether there was a bedroom or not. She said there was already a balcony on waterside in back, but she was putting one in front too.

Chair Morton said the issue was that the fire department's ladder could only reach 35 feet high. Ms. Mosher said the department also had a 100-foot ladder truck. Chair Morton replied that the fire chief stated that the ladder truck couldn't get there so they wanted the backside facing the water to be built up for the fire truck could get in.

Mr. Welton replied that this was news to her. She said they were requesting a waiver from building a 90-foot-long retaining wall that would require deck supports, but if the concern was with getting the fire truck in the back, they could consider building the grade up.

Chair Morton asked if they would move the stairway and Ms. Welton said they wouldn't need to if they built the grade up.

Chair Morton said the fire department had some concerns and asked if the applicant would be willing to have a fire protection engineer sign off on their plan to avoid liability for the Town. Ms. Welton replied that she saw no reason why not, except that most of her work was residential and fire protection engineers mostly did commercial work, so she didn't have any contacts, which would create a logistical and timing delay.

Board member, John Frink said asked if the town fire department could do an assessment. Chair Morton replied that the fire protection engineer would make the assessment, make recommendations and take responsibility.

Mr. Welton stated that the applicant was reluctant to build a balcony on the flat roof in front because it would build up snow over a finished dwelling, and the fire chief had

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still wanted a balcony on the back. Mr. Welton agreed, however that having an emergency exit balcony on the front might meet the requirement, so they wouldn't have to build up the grade in the back.

Mr. Weiner asked if owners would be okay with putting a deck on the front. Ms. Sotivovic replied that she was only half of the decision-making process, but she could call her husband.

Martin Leighton of 161 Little Bay Road stated that he lived across the street and he went before the ZBA for a variance when he was building his home because he wanted to add a 12 foot, 12-inch pitch on his roof, but was told he had to keep it at 12 feet 10 inches. He said he owned a 36-foot ladder himself.

Gail Pare of 188 Little Bay Road commented that she thought there was a 35-foot height restriction and it appeared that the tower would cause the building to be more than 35 feet. Ms. Welton replied that the height definition referred to the midpoint of the highest roof, not the peak.

Ms. Pare commented that she was not in favor of the proposal mostly because of the height, but also because she wish house designs in town remained in keeping with traditional Colonial styles.

Chair Morton commented that the Board was not a historic district commission and was not in the position to mandate styles.

Town Planner, Gerald Coogan agreed that the height was not defined in the Zoning Ordinance and the common definition was used. Ms. Welton added that the code officer provided the same answer.

Molly Chartier of 148 Little Bay Road expressed concern over fire access on a fourth floor. Chair Morton replied that other residents had wanted to build fourth floors, but had been denied because the fire truck ladders would not be able to reach that height, however, excavation at the back created the walkout basement, and the fire truck could reach the height via a balcony in the front.

Planning Board Chair, Denis Hebert agreed that the architect could research a solution to avoid putting the town at liability.

Mr. Frink commented that applicants usually provided letters from the fire chief. Chair Morton replied that they didn't have a letter, but he and Mr. Stowell talked with the chief extensively. He said the chief agreed that the problem was that the ladder couldn't reach the fourth floor from the back, but there would be no problem if a balcony was on the front.

Mr. Frink wondered if they could also put a raised area for the fire truck at the back too. Discussion ensued regarding building up the back. Ms. Welton replied that the Sotivovics were concerned with snow building up on a front balcony.

Alternate Board member, Brandon Arsenault asked if she would still need relief from building the retaining wall. Ms. Welton said they would because the cost would be out of scale for anyone. She added that she didn't think they could build a hill large enough to meet the average grade requirement either.

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Chair Morton asked about doing both. Ms. Welton said it seemed unnecessary and so they would probably do one or the other.

Ms. Welton suggested the Board hold off on their decision while she and the applicant step outside to call Mr. Sotivovic for his opinion and return after the Board heard the next applicant.

John Frink moved to resume the Sasha and Kaliope Sotivovic's hearing momentarily Edna Mosher seconded the motion and all were in favor.

- 2) A request by SBAF Running Fox (c/o KeyPoint Partners, LLC) for a variance from Article IV, Section 10, of the Newington Zoning Ordinance to allow more than one principal building per lot regarding property located at 45 Gosling Road, Tax Map 34, Lot 3.

Alishia Busconi, Vice-president from KeyPoint Partners, appeared before the Board with Jim Dean, lead architect with Dean Associates and the Crossings senior property manager, Rachael Cormier.

Ms. Busconi informed the Board that KeyPoint Partners had been managing the Crossings shopping center for the past ten years. She said currently there were three vacancies that included Bugaboo Creek, Me and Ollies and Sullivan Tire. She said Sullivan Tire left midway 2016 and it took a year to find a suitable tenant, which they believed they had with PetSmart.

Ms. Busconi said she had worked extensively with the technical review committee and the Town's engineering consultant, Eric Weinrieb with Altus Engineering. She said she presented the idea to the Town's original planner, Tom Morgan and understood it was a non-conforming building lot and would require a variance.

Ms. Busconi said she was also working with the Planning Board for site plan approval.

Ms. Busconi said they were looking to raze the 4,600 square feet building and replace it with 16,000 square feet, tilt-up corrugated steel building that would meet today's standards.

Mr. Arsenault asked if there were any disposed fuels remaining on the property from the auto repair shop. Ms. Busconi replied that there had been a study showing that the site was clean since the last renovation in 2000 that removed the old soils. MS. Busconi said she and a senior manager spent a day in the Town records looking through files and obtained 500 pages of records on the development history of the Crossings Mall. She said the records went back to 70 acres in 1948 and the shopping center began with the development of the JM Fields building, the Sullivan Tire building and McDonald's around 1967. She said they broke ground for the original 7,000 square foot Newington Mall in 1973.

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Ms. Busconi said after the property changed hands, the property fell into bankruptcy and the permitting process began in the late 1980's. She said in the late 1990's they separated buildings, created a causeway, added the Regal building and then added Bugaboo Creek, Best Buy and Barnes and Noble around 1998. She said the Midas Muffler shop was converted to the Longhorn Steakhouse and then Jared jewelry went in so there were nine buildings on 58 acres.

Ms. Busconi explained that the 4,700-square foot building leased by Sullivan Tire was one of original buildings built. She said they intended to raze the building and expand it to 16,000 square foot on the un-utilized existing pavement to put in a PetSmart.

Ms. Busconi said there was a surplus of 500 spaces on the lot and they intended on building over the existing pavement and some of the unpaved area with landscaping on the corner and deliveries at the back.

Ms. Busconi said one out of ten people had jobs in retail, adding that a few years ago there were 5,000 malls across the United States and now there were only 1,000 with 400 forecasted to close due to decreased sales, with another retailer closing every week causing traditional malls to close entire wings. She said they were continually looking for mixed national retailers, but also considering other ways to get people out shopping, whether it included food shopping, exercise, or medical care, but, some wanted their own buildings.

Ms. Busconi said they would be doing all the inside construction for the landlord and she hoped they could open the PetSmart by the end of the year.

Mr. Frink said the building would be three times larger than the Sullivan Tire building and asked if it would meet all the setback requirements. Ms. Busconi replied that they could meet all the wetland permitting requirements with Town wetlands consultant, Mark West's assistance.

Mr. Dean said he thought the Sullivan Tire building was about 20 feet height and the actual roof height of the PetSmart building would be 24 feet, with the tallest point at 30 feet. Ms. Busconi said the height of the building would be equal to Dicks, Best Buy and Barnes and Noble.

Mr. Arsenault asked if there would be a sign facing Route 16. Ms. Busconi said they had no plans at this time. She said PetSmart's concept plans showed a dog and cat on the sides of the building, but they only granted signage per the Town regulations and they would have to return to the ZBA if they wanted additional signage. Mr. Estes commented that the ZBA didn't like to grant signage variances.

Ms. Busconi presented Board members a response to the five criteria for granting her request.

*Ralph Estes moved to grant the request by SBAF Running Fox (c/o KeyPoint Partners, LLC) for a variance from Article IV, Section 10, of the Newington Zoning*

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*Ordinance to allow more than one principal building per lot regarding property located at 45 Gosling Road, Tax Map 34, Lot 3. Edna Mosher seconded the motion.*

Chair Morton informed the Board that Governor Chris Sununu announced that he had vetoed the New Hampshire Legislators' mandate to vote on each of the five criteria separately

Mr. Frink began a review of the five criteria, stating that granting the request would be in the public interest, met the substantial justice test, would not be contrary to the spirit of the ordinance and denying the request would create a hardship.

*The motion carried, and all were in favor.*

- 1) A request for a waiver from the 2009 International Residential Code Section R101.2 Scope, "...not more than three stories above grade plane in height". By Sasha and Kaliope Sotivovic regarding their property located at 168 Little Bay Road, Tax Map 15, Lot 8.

*The applicant, Kaliope Sotivovic and Wendy Welton with Art Form Architect returned, and Chair Morton reopened their hearing at 7:37 p.m.*

Ms. Welton said they spoke with Sasha Sotivovic on the phone and he agreed to an escape balcony on the front of the house without building up a landing area at the back. She said they were concerned that bringing the grade up in the back would bring the costs up significantly.

Ms. Mosher asked if building the balconing in the front would create a hardship. Ms. Sotivovic said their concern was with flooding in the winter time.

Ms. Welton said approval could be contingent on the fire chief's review. Mr. Weiner commented that granting approval contingent on having a fire protection engineer sign off on the plan would remove the Town's liability.

Chair Morton informed the applicant that they might need to return if they couldn't receive the approval of the fire protection engineer.

*Jim Weiner moved to grant the request for a waiver from the 2009 International Residential Code Section R101.2 Scope, "...not more than three stories above grade plane in height" by Sasha and Kaliope Sotivovic regarding their property located at 168 Little Bay Road, Tax Map 15, Lot 8 waiver with the condition that they seek and receive a fire protection engineer's approval for the addition of an emergency escape balcony with a deck in the front of the dwelling. Edna Mosher seconded the motion, and all were in favor.*

**Minutes:** *John Frink moved to approve the Minutes for the May 15, 2017 with corrections as noted. Jim Weiner seconded the motion, and all were in favor.*

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**Correspondence and Discussions:**

Mr. Coogan informed the Board that a summary compilation of all ZBA actions since 2007 had been put on a spreadsheet as well as stored electronically.

Mr. Weiner asked if there was an index listing all individual cases. Mr. Coogan replied that they could be searched by Tax Map and Lot numbers.

Mr. Hebert informed the Board that the Planning Board would be considering warrant articles for changes to the Ordinance and invited the ZBA's input.

**Adjournment:** *Brandon Arsenault moved to adjourn. Edna Mosher seconded the motion and the meeting adjourned at 7:52 p.m.*

**Next Meeting:** TBD

**Respectfully  
Submitted by:** Jane K. Kendall, Recording Secretary