

**SBVD PLANNING BOARD
MEETING MINUTES
October 1, 2018**

PRESENT: Members: Ted Xavier, Joel Spiller, Robert Gossett, Don Hawkins, Robert Weisner, Building Inspector Steve Keaney; SBVD Planner Tom Morgan

ABSENT: Alternates Bill Howley, Larry Deshler

MEETING OPENED: The meeting was called to order at 7:00 PM. Ted Xavier led the meeting in the Pledge of Allegiance.

MEETING MINUTES: Minutes from the 9/5/2018 meeting were distributed and reviewed.

Motion to approve minutes:

Bob Weisner

Motion seconded:

Joel Spiller

Motion passed by voice vote.

PUBLIC HEARING: The public hearing was opened at 7:05 PM.

Case #18-01 – Proposal by Maura Flynn Fabiani, Trustee of the Flynn Seabrook Realty Trust and Dianne D. Kiedaisch, Trustee for the Helen P. DeGeorge Family Real Estate Trust for a condominium conversion at 142 Ocean Blvd, Tax Map 22, Lot 30.

Don Hawkins asked Attorney Sanford Roberts introduced himself and to give an overview of the application. Mr. Roberts said he was the applicant's representative and the application was for a condo conversion at 142 Ocean Blvd Seabrook NH. He said the house has been a legal 2 family home for over 30 years. In 2009 there was a question concerning the validity of the 2 family status so the applicants went to the ZBA to have the status confirmed. Attorney Roberts presented a copy for the ZBA decision confirming the status as a legal 2 family.

The town of Seabrook has a requirement that all condominiums have separate water shutoffs in the town right of way. Mr. Roberts said adding a second line would be very expensive and time consuming, the distance to the street is over 300 ft, the line would cost \$8,000 to install and the owners did not have an easement to cross a neighbor's property for the second line. He has been working with the water department on a resolution to the problem and presented an access agreement signed by the Seabrook Water Superintendant on 9/26/2018. The agreement states the applicants will be allowed two separate water shut-offs on the existing water line outside the dwelling on the owners property provided the owner allowed the Town of Seabrook unrestricted access to the private shut-offs so the town could turn off water to either condo unit if the need arises. Mr. Roberts requested the PB to consider altering paragraph 6 of the agreement to allow the applicant to install a larger water line rather than a second line if the current line ever proved inadequate. Curtis Slaton did not agree to this because he could not forecast the conditions in the future and did not want to commit the Town to a resolution that violated the existing ordinance requiring two lines. Mr. Roberts presented a request for waiver of Site Plan Regulations Section

12.020 requiring water shut-offs for each unit to be located in the Town right of way. Don Hawkins said he did not think the PB should be spending time considering events in the future that may or may not happen. The PB's job is to decide on a condo conversion application considering today's circumstances, not to resolve undefined problems that may or may not need to be addressed in the future. Steve Keaney thought Paragraph 6 of the access agreement should be changed eliminating the statement that "the Town and owners will work together to solve the problem". Steve felt the Town had no responsibility to solve a water line problem on private property. Tom Morgan agreed and pointed out that item #3 in Curtis Slaton's original letter dated September 11, 2018 that; "If it is determined, the service line is no longer large enough to service both units, it will be up to the Property Owners to run the second line from the street at their expense."

Don Hawkins asked Tom Morgan to review his letter to the PB dated 9/27/2018 relating to the application. Tom said items 1, 3, 4, 5, 10 and 11 had already been addressed. He started with item 2.

2. The plan's legend includes gas lines, but none are depicted on the plan. Does this property have gas service? The applicants said the property did not have gas lines.

6. The plan depicts two 10-foot wide right of way (ROW) easements. The plan should identify the parties who have been granted the right to pass over these easements. If the easements allow public access, that should be clearly stated on the plan. Mr. Roberts agreed.

7. Section 4.511 of the Subdivision Regulations (adopted by reference for condominium conversion applications) requires the placement of the revision block to be to the left of the title block. Mr. Roberts agreed.

8. The stockade fence encroaches on the neighboring property to the south, and on Town property. The encroachment on Town property should be removed. After a long discussion trying to establish ownership of the fence the applicants said they had installed the fence and agreed to remove it from town property. They asked if they could move it to their property and were told they could.

Steve Keaney asked the applicants to confirm there were two walkways to the beach and who they benefited. The applicants agreed that the walkway to the north was for the use of the 144 Ocean Blvd and that the walkway to the south (center of the property) was for the use of 142 Ocean Blvd. Steve requested a note on the plan showing which walkway benefitted which house and that no new walkway to the beach will be established as a result of this condo conversion. Both units in 142 Ocean Blvd will use the walkway established for that house. The applicants agree to putting a note on the plan.

9. Section 12.070 of the Site Plan Regulations aims to ensure no obstructions to access or egress. The site plan reveals that the driveway is not entirely aligned with the ROW easement in the vicinity of Ocean Boulevard. Tom suggested that they be aligned so as to avoid disputes in the future. After some discussion Mr. Roberts thought that would be an issue for the two property

owners to resolve. Tom agreed and stated he was just trying to avoid future problems between property owners.

12. Section 12.010 requires that the applicant's attorney certify that the condominium documents are consistent with the zoning ordinance and with NH RSA 356-B. Tom said he has not seen the certification. Morgan explained his reason for asking for the certification letter and Mr. Roberts agreed to provide it.

Hawkins asked if any of the PB members had questions. No changes were requested.

Hawkins asked to return to the discussion of the Access Agreement and if anyone had any reason to change what was signed by Curtis Slaton and presented this evening. After a short discussion no one saw reason to make changes.

Hawkins explained the next step in the approval process was to develop a list of Conditions of Approval. The PB will be voting to approve the application subject to the conditions listed. The list of conditions will be sent to the applicant in the form of a Notice of Decision. The applicant will sign the Notice of Decision noting his agreement. Once the conditions are met and after a 30 day challenge period the PB Chairman will sign the Final Plans and the plans and the condo docs will be recorded at the Rockingham County Registry of Deeds.

The PB developed the following Conditions of Approval:

1. The water shut-offs to both condo units shall be shown on the Final Plan.
2. The plan depicts two 10-foot wide right of way (ROW) easements. The Final Plan shall identify the parties, including the public if applicable, who have been granted the right to utilize these easements.
3. The revision block shall be moved to the left of the title block on the Final Plan.
4. The fence that encroaches on Town Property on the SE corner of the lot shall be moved off of Town Property. This change will be shown on the Final Plan.
5. There are two "walkway to the beach" depicted on the plan. A note shall be added to the Final Plan showing that units 1 and unit 2 will share the use of the southernmost walkway to the beach and that no new walkway to the beach will be established as a result of this condo conversion. A second note to the Final Plan shall be added to identify who has the right to use the northernmost walkway to the beach.
6. The applicant's attorney will rewrite his letter to certify that the condominium documents are consistent with the zoning ordinance and with NH RSA 356-B.
7. All outstanding bills must be paid to the Seabrook Beach Village District before Final Plans will be signed by the Chairman.
8. Final Plans must meet the approval of the SBVD Planner before it will be signed by the Chairman.

Tom Morgan said the PB had not yet accepted the plan as administratively complete. Hawkins explained the meaning of administratively complete.

Motion to accept the plans for Case 18-01 as administratively complete:

Don Hawkins

Motion seconded by:
Motion passed by unanimous voice vote.

Ted Xavier

Motion to approve Case 18-01 with conditions as stipulated earlier:
Motion seconded by:
Motion passed by unanimous voice vote.

Ted Xavier
Bob Weisner

Hawkins reviewed the next steps in the process.

- A Notice of Decision will be sent to applicant with a list of the conditions of approval. The Applicant will sign the document indicating his agreement and return it to the PB.
- The plans will be updated by the applicant showing the changes agreed to tonight and sent electronically to Tom Morgan for review and approval. Once approved, Final Plans and the Mylar can be produced and turned into the PB.
- Once all the Conditions of Approval have been met and the 30 day challenge period is over the PB Chairman will approve the plans.
- The PB will then record the plans and condo docs at the Rockingham County Registry of Deeds. This will require a separate check made out to the Rockingham County Registry of Deeds.

The public hearing was closed at 8:10 PM.

OLD BUSINESS:

A. Continue discussion on ADU as short term vacation rental

Hawkins said he followed up on the ADU discussion at the last meeting and contacted Julie LaBranche at the RPC, Tom Morgan and Walter Mitchell to comment on the SBVD ADU ordinance. Hawkins gave some back ground about last meeting's discussion. He said Julie LaBranche expressed some concerns because the existing zoning made no restrictions on short term vacation rentals which might indicate all existing properties could be rented short term. Tom Morgan said short term rentals and ADUs are two separate issues. Tom said that Ben Frost of NH Housing was the state's expert on ADUs and passed out a paragraph from NH Housing Guide Book on ADUs addressing this issue.

10. What about the use of ADUs as short-term rentals?

The ADU law does not refer to or limit in any way their use as short-term rentals (consider the widespread use of Airbnb, VRBO, and similar services). Some New Hampshire municipalities (e.g., Portsmouth) are moving ahead with regulations limiting short-term rentals, but this doesn't mean that an owner can't create an ADU. They are separate issues. There are various initiatives in the legislature to study or regulate short-term rentals, but the state of these efforts are in flux.

Tom said Portsmouth has not made a lot of progress with the issue short term rental but recommended we follow Ben Frost's advice and deal with the issues separately.

Ted Xavier asked what would happen if the owner rented both the main house and the ADU at the same time. Hawkins said that is not allowed in the ADU law. The owner has to occupy one of the units. The law is clear but it is still a difficult enforcement issue.

Tom Morgan said the ADU law is clear that the ADU cannot be discriminated against and have to be treated like other housing which may mean if there are no rental restrictions on other housing there can be no restrictions on ADU rentals. Tom was interested in Walter Mitchell's opinion. The board had some discussion about how the building inspector should handle an application he might receive tomorrow. Some thought building inspector should follow our ordinance as written until we decide to change it. Hawkins pointed out that we are waiting for a recommendation from our lawyer on how we should proceed. Tom Morgan predicts that in 10 years the SBVD will restrict short term rental because the problem will have gotten so big that the residents demand a solution.

B. Update on possible zoning change to increase building height for houses in the flood plain. Hawkins said he talked to Julie LaBranche about what other towns have done to help property owners trying to protect their property by raising the building higher than the base flood elevation even if the height of the building exceeds the existing limits. Julie said that both Hampton and Rye have changed their ordinance to allow buildings to be raised if the first floor is raised 1-2 feet above the base flood elevation. She recommended we talk to the Town Planner in Hampton about the process and the issues they encountered creating their ordinance. Julie said she thought Hampton limited the changes to existing homes. New homes are not allowed to exceed the height limits. Their first floor should be above the flood elevation when designed. Hampton may encourage people to raise the home above the base flood elevation by allowing the owner to skip the ZBA process if the building is raised to a specified level above the base flood elevation and does not exceed a specified building height.

NEW BUSINESS: None

OTHER: None

The meeting was adjourned at 8:45 PM.

Submitted by,

Don Hawkins

Next PB Meeting: The next meeting of the PB will be Monday December 3, 2018 7:00 PM.