

**Deering Zoning Board of Adjustment  
762 Deering Center Road  
Deering, New Hampshire 03244**

**Minutes of February 23, 2017**

Members present: David LeFevre, chair; Larry Sunderland, vice-chair; Phil Bryce; Robert Girard; Douglas Lalmond, alternate.

Others present: Allen Belouin, Select Board rep.; Aaron Christenson, Christenson Holdings, LLC, Applicant

Chair LeFevre called the meeting to order at 7:00 p.m.

Alternate Member Doug Lalmond was appointed to sit as a voting member.

Case No. 2016-04 public hearing continued from January 26, 2017 re-opened. The property is an existing non-conforming mixed residential and business use, with a single family residence and three (3) buildings related to the commercial use. The property is 1.393 acres.

The Applicant explained that they wished to replace one of three existing workshop buildings with a two-story residence building on the same footprint as the existing building and the attached deck, although it was noted that a small portion of the area of the deck was possibly located within the setback, and the location of the building could be moved slightly to avoid encroaching into the setback line. The building in question is a single story and is dilapidated.

The Applicant testified that it would initially be used as a rental unit but eventually could serve as office space for the business. He believed there was enough commercial use in the immediate area to justify such mixed-use and that the Planning Board had intended to address this issue. He said there was no abutter issue and Selectman Belouin said that abutter Ray Daniels who was unable to attend the meeting had called to confirm that he had no objections.

The applicant likened the replacement to that of an in-law apartment. Selectman Belouin explained to the applicant that an in-law apartment was a term of art used to explain a very specific type of residential use, and that what the applicant was proposing was not an in-law apartment. Notably, the applicant does not occupy the premises as his home, and the proposed new residential building was detached from the existing single family residence.

The applicant further represented that the residential/commercial use would remain 51% to 49% which was consistent with his SBA financing.

1 The applicant indicated that development of the property as proposed would increase its  
2 value, add to the Town's tax base, and increase the value of abutting property.

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4 Prior to closing the public hearing portion of the meeting, Chair LeFevre requested the  
5 applicant to address the five part test for a variance, and in particular, the hardship  
6 requirement. The applicant indicated that the existing use of the property as a business  
7 was unique, and that there was a financial benefit to the Town

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9 Before closing the hearing Board members commented that the applicant's request boils  
10 down to two residences on a 2-acre lot. It was also pointed out that the proposed two-  
11 story structure would be substantially larger than the existing single story structure.

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13 During the course of discussion, Larry Sunderland indicated that he felt the residential  
14 use was reasonable, but he was concerned about negative precedent. He indicated that the  
15 51/49 percent issue was simply not part of the analysis, and the applicant had no  
16 demonstrated hardship.

17  
18 Phil Bryce indicated that he thought the residential use, which was to be a rental, was  
19 more of a business use. He indicated that the existing business use was not part of the  
20 analysis, and that the application was no different than anyone else seeking to put an  
21 additional dwelling unit on a substandard lot.

22  
23 Rob Girard indicated that the purpose of the ordinance was to prevent overcrowding, and  
24 granting the variance would be contrary to this purpose. He also expressed concern for  
25 setting a bad precedent.

26  
27 Doug Lalmond indicated that renovating or replacing the existing structure would be  
28 appropriate if it was used in conjunction with the existing use that is grandfathered, but 2  
29 residences on a lot with less than the required minimum acreage for 1 residence was just  
30 asking too much.

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32 David LeFevre indicated that the applicant carries the burden of proof, and in this case  
33 the applicant has not met his burden. The proposed new building was significantly larger  
34 than the existing building, which would increase the property's nonconformity. The  
35 applicant's stated hardship was more in the nature of a financial hardship, which does not  
36 satisfy the hardship criteria, and there were no special circumstances.

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38 With regard to the individual variance criteria:

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40 Diminution of Surrounding Property Value. The Board was generally in agreement that  
41 granting the variance would not diminish surrounding property values in this particular  
42 case, but if the Board were to grant multiple variances such as what was being proposed,  
43 the aggregate or cumulative effect of doing so would likely diminish surrounding  
44 property values.

1 Spirit of the Ordinance and Contrary to the Public Interest. The Board was in agreement  
2 that while the requested relief was neither a threat to the public health, safety, or welfare,  
3 nor would it change the character of the neighborhood, granting the variance would  
4 contrary to the Ordinance's fundamental zoning scheme. Specifically, the Ordinance  
5 requires a minimum of 2 acres per residential use. The Property is only 1.393 acres,  
6 which is substantially smaller than the minimum requirement, and already has both a  
7 residential use and a commercial use. The Property is already greatly overburdened, and  
8 the proposed residential structure would actually increase the burden on the Property.  
9 Specifically, the structure that is proposed would encompass both the footprint of the  
10 existing structure as well as the existing deck, and would be 2 stories tall, whereas the  
11 existing structure is only 1 story.

12  
13 Unnecessary Hardship. The Board was in agreement there were no special circumstances  
14 which distinguished this Property any other property similarly situated. While the  
15 proposed use seemed reasonable, i.e. a residence in a residential neighborhood, the Board  
16 could not conclude that there was no fair and substantial relationship between purpose of  
17 the zoning ordinance, which is to prevent overcrowding, and which requires a minimum  
18 of 2 acres per dwelling unit, and its application to this case, because the Property was less  
19 than 2 acres and already has both a residence and a commercial use.

20  
21 Substantial justice. There was considerable discussion of the significance of this criteria  
22 in the present case but members felt there would be no injustice in denying the  
23 application.

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25 Chair LeFevre asked for a vote and all agreed that the application should be denied.

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27 Chair LeFevre explained the right of the Applicant to appeal the decision of the Board,  
28 first by asking for a rehearing. Upon a denial of the Board of a rehearing, an appeal could  
29 be taken with the Hillsborough County Superior Court in Manchester.

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31 Minutes of the previous meetings (8/25/16, 9//29/16, 10/6/16 and 1/26/17) were  
32 approved without change.

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34 Unfinished business: None.

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36 New business: 2017 meeting schedule approved.

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38 Communications & Miscellaneous: None.

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40 Adjournment at 8:30 p.m.

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42 Minutes jointly prepared by Larry Sunderland and David LeFevre, Acting Secretary.

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44 APPROVED: April 27, 2017  
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1     Zoning Board of Adjustment

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3     /s/ David E. LeFevre

4     By: David E. LeFevre, Chairman