



TOWN OF WAKEFIELD, NEW HAMPSHIRE  
LAND USE DEPARTMENT

2 HIGH STREET  
SANBORNVILLE, NEW HAMPSHIRE 03872  
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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING  
16 May 2016

Approved 27 June 2016

MEMBERS		ALTERNATES		OTHERS	
John Napekoski, Chairman	X	George Frothingham	X	Nathan Fogg, Land Use Clerk & Code Enforcement Officer	X
Sharon Theiling, Vice Chairman	X	Doug Stewart	X	Rick Sager, Town Counsel	X
Ceily Arnone		Judi DesRoches	X		
John Crowell	X				
Steve Brown	X				

**Also present were:** See attached sign in sheets.

**CALL TO ORDER**

1. J Napekoski called the meeting to order at 7:00 pm following the pledge of allegiance. Chief Ken Fifield offered a prayer of beneficial mutual conduct and dialogue. Alternate Doug Stewart was seated for Member Ceily Arnone.

**PUBLIC HEARINGS**

2. After the members introduced themselves, Chairman Napekoski gave a brief explanation of the process for audience members – a checklist of applications; applicant will be called to appear and present their case; the meeting will be opened to public comment for the applicant; then opened for public comment against the applicant; the public comment section will be closed; the Board will discuss and deliberate the case; then announce their decision and special conditions.
3. Town Counsel Rick Sager offered guidance for the public portion of the meeting. The Applicants have submitted two applications. The first is an Appeal of Administrative Decision. At the last Planning Board Meeting, the Planning Board determined that the maximum 70' width applies to both streets on which this proposed building is to be located. The Applicant disagrees with that interpretation of the Zoning Ordinance. Under New Hampshire Law and our regulations, they are appealing that decision to this Board asking that the Planning Board's decision be overturned allowing the Applicant to build more than a 70' width along one of the streets. If that decision is Denied, the applicant is not successful on that particular application, then they will go into their second Application which is a request for a Variance whereby they have to meet Variance criteria under New Hampshire Statutes in order to be granted a Waiver of the Zoning requirements that require the Applicant to be 70' along those streets. The Appeal of

Administrative Decision Application will be heard first. A decision will be made. Depending on if the Zoning Board of Adjustment Grants or Denies this Application, the meeting will either Adjourn or move forward to hear the Variance Application. Town Counsel echoed Chief Fifield's thoughts to keep the meeting civil.

4. J Napekoski stated the Board would proceed with the Checklist. N Fogg stated the Application was received in a timely fashion. The Notice was published in the Granite State News and the Carroll County Independent. All Abutters were notified of the meeting date and time and all fees were paid.

**MOTION:** To accept the Appeal of Administration Decision Application as complete.  
**Made by:** Sharon Theiling  
**Seconded by:** John Napekoski  
**Discussion:** None.  
**Vote:** 5-0.

5. Paul Bauer, Attorney representing Sanbornville Dollar General LLC spoke first. He introduced Austin Turner of Bohler Engineering, John Scribner, and Andrew Cuomo of Lisciotti Development. Mr. Bauer proceeded to speak of the opposition toward Sanbornville Dollar General specifically citing the Facebook Page NO DOLLAR GENERAL AT THE SANBORN HOUSE that has been created. He inquired if any Board members are part of the Facebook page against Sanbornville Dollar General, and if so, should recuse themselves if they cannot be fair, partial, and unbiased. Chairman Napekoski announced that the Board members have no issues.
6. Mr Bauer proceeded to state that Sanbornville Dollar General LLC has proposed to build a new retail store at 138 Meadow Street. A Site Plan Review was held on February 18<sup>th</sup> 2016 by the PB, and as indicated in the minutes of March 17, 2016, the PB issued an Administrative Decision with regard to Article 3, Table 3 in the Zoning Ordinance. The Board voted that the proposed project be no more than 70 feet wide along Meadow Street and Forest Street. This decision limits any corner parcel in the Village/Residential District to a maximum structure of 70 feet by 70 feet. This interpretation of the Ordinance was in error and should be reversed. The Ordinance defines building width as the dimension that runs parallel to the street. It does not define building length. Mr Bauer noted that discussions with Mr Fogg discussed and advised the Applicant that because the building has both a width and a length only one side of the building would be limited to 70 feet. The maximum building width allowed by the Zoning Ordinance in the Village/Residential District is 70 feet. The front of the building should face the main road and be limited to 70 feet. A building should have a width and a length, therefore only one side should be limited to 70 feet.
7. After the first planning board application was denied, the second application came forth with parking along the Meadow Street side of the building, which N Fogg had advised the developer should fix the 70 foot frontage problem. The planning board requested that the applicant table the application until the 70 foot frontage issue was addressed by the zoning board of adjustment. Mr Bauer noted that the Mr Fogg's interpretation is correct and the ZBA should grant the Appeal. He also noted that the Supreme Court has said that words should have their normal meaning. It is not ordinary for a structure to have two widths and zero length. There is no mention of corner lots in the ordinance and this effectively limits the structure to 4,900 square feet. The current 45% building coverage allowed would allow for a 17,000 square foot

building. Mr Bauer noted that the 70 foot limit only came to light after the second application was submitted. There is no reasonable basis to place such limitations on a corner lot. He thanked the ZBA for their time and noted that he would be happy to address any questions.

8. Chairman Napekoski opened the hearing up for public comment and reminded everyone to be civil and to try to stay on the 70 foot road limit.
9. Priscilla Colbath noted that the planning consultant, Mike Garrepy had noted towards the end of the September 17<sup>th</sup> public hearing that the proposed structure did not meet the 70 limit along both roads.
10. Kurt Pearson noted that N Fogg provided his opinion, but that the ZBA is the decision maker in this case. J Napekoski noted that the planning board is the decision makers for these matters.
11. Dennis Badman noted that 70 feet along both roads is appropriate and especially in this case because this is the most dangerous intersection in the entire village. It is located on a curve and a hill and a larger building will greatly enhance the danger of that intersection. A traffic light and crosswalks is the only way to keep the intersection from becoming even more dangerous.
12. Annette Perry noted that the ZBA should follow the Master Plan which notes the safety of the children. Approving the variance would reduce safety for our children going to and from school. J Napekoski reminded the public that this decision is strictly related to the 70 foot maximum building width. Ms Perry noted that requiring sidewalks is a safety issue for the children. She also noted that a 9,100 square foot store does not fit in with the parcels surrounding the parcel.
13. A woman from 631 Acton Ridge Road noted that a 4,900 square foot building would be very appropriate for the area.
14. Tracy Kolb noted that the Master Plan vision statement says that we are not looking for a strip mall type of structure in town.
15. Pam Wiggin noted that architectural scale is noted in the Master Plan and that a 70 foot by 70 foot structure is not in keeping the architectural scale of the area.
16. McKenzie Shepard has reviewed the town documents and agrees that the 70 feet applies to both street frontages.
17. J Napekoski closed the public input portion of the hearing. The ZBA will now discuss and deliberate.
18. D Stewart feels that based upon the ordinances the 70 foot maximum building width applies to both frontages. He agrees with the planning board decision as well as the opinion of our contracted planning consultant, Mike Garrepy.

**MOTION:** To deny the Appeal of Administrative Decision.  
**Made by:** Doug Stewart

**Seconded by:** Steve Brown  
**Discussion:** None.  
**Vote:** 5-0.

**MOTION:** To accept the Variance Decision Application as complete.  
**Made by:** Steve Brown  
**Seconded by:** Sharon Theiling  
**Discussion:** None.  
**Vote:** 5-0.

19. J Napekoski asked Attorney Bauer to present their case for the Variance.
20. John Mauer noted that Sanbornville DG LLC is seeking relief from Zoning Ordinance, Article 3, Table 3 limiting building with along a road frontage to 70 feet. Specifically to allow a 70 foot by 130 foot structure on the property, 70 feet along Meadow Street and 130 feet along Forest Street. RSA 674:33 requires that the applicant meet 5 factors and they will show that they satisfy all five factors.
21. The first factor is that the variance would provide substantial justice. Strict enforcement of the 70 foot maximum building width along both frontages would be inconsistent with other provisions in the ordinance and would render the property unusable for development. The zoning allows for up to 25,000 square feet of retail space. Enforcement of this provision would limit development to 4,900 square feet of building area. Building coverage is limited to 12% of the parcel. The proposed structure will be constructed in accordance with aesthetic requirements set forth in the site plan and subdivision regulations. Traffic will not be increased and a retail store will benefit the public and provide jobs and tax revenue for the town. These public benefits clearly show substantial justice will be done with this variance. Also the applicant had been initially advised by Mr Fogg that the only side of the building would be limited to 70 feet. The applicant modified the application to meet this advice. All of these factors point to the application providing substantial justice.
22. The second factor is that it will not affect surrounding property values. There is no evidence to support that property values will be adversely affected by a 70 foot by 130 foot building verses a 70 foot by 70 foot structure. The applicant's traffic and trip generation study noted that they did not expect any adverse traffic impact because of the proposed development. There is already a mixed use in the area, with hardware store, grocery store; pizza place, ice cream shop, and antique store all close by. The character of the area would not change. The structure would also replace a building that although it is loved by some, the applicant's engineer has deemed in great need of repair. Several sections of the house and out buildings have already been removed. Replacing this unsound building with a new retail structure would likely increase surrounding property values.
23. The third & forth factors are that the variance not be contrary to the spirit of the ordinance and provide substantial justice. Courts consider these two factors closely related and may be considered together. The supreme court notes that to be contrary to the public interest, the variance must unduly and to a large degree violate the ordinance by altering the ordinance by effecting the health, safety, or welfare of the public and violating the ordinances basic objectives. The variance requested does none of these things. The ordinance encourages the

most appropriate use of land, and promotes social and economic prosperity. The proposal by Sanbornville DG does none of these things. The proposal provides harmonious and aesthetically pleasing development within the permitted uses of the ordinance. Strictly adhering to the maximum width will not allow for reasonable use of the parcel for retail development.

24. The fifth and final factor states that literal enforcement of the ordinance will cause unnecessary hardship for the applicant. Unnecessary hardship means only the special conditions of the property, that no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of the property, and the proposed use of the property is a reasonable one. Sanbornville DG satisfies this standard. The parcel is located within the Village/Residential zoning district and allows for 25,000 square feet of general retail development. Strict adherence to the ordinance only allows 4,900 square feet of building. Only a quarter of the building coverage allowed by the ordinance is allowed on this corner parcel is possible because of the 70-foot restriction. The proposed limit serves no reasonable purpose. The building as proposed satisfies the architectural guidelines. Sanbornville DG meets the requirements of the variance requirements and should be approved.
25. J Napekoski noted that the building was referred to as being limited to 4,900 square feet; however this could be a multi-story structure that would allow more square footage than you are requesting. Why had they not considered that possibility? Atty Mauer noted that it would be impractical for Dollar General to operate in a multi-story structure.
26. R Sager explained the five criteria that must be proven in order to approve a variance. 1- Not contrary to the public interest; 2- The spirit of the zoning ordinance is observed; 3- Substantial justice is done; 4- Surrounding property values will not be diminished; and 5- Not approving the variance would result in an unnecessary hardship on the applicant.
27. J Napekoski opened the public input portion of the hearing.
28. Pam Wiggin refuted the applicant's statements for criteria 1-4. She cited the definition of the Village/Residential District and excerpts from the Master Plan that note development should be in keeping with the village character. She read a letter received from the NH Division of Historical Resources (attached as part of the record.) The Heritage Commission agrees that the proposed building does not meet the scale and architectural design, is not compatible, and would therefore diminish the value of the area.
29. McKenzie Shepard addressed criteria 1- questioned a lack of increased traffic; 2- feels property values would be diminished because of business noise; 3- Safety & welfare of school children would be compromised with this development.
30. Annette Perry feels that property values would be diminished because of Dollar General.
31. Dennis Badman feels his property value will be diminished and he protests the development. Public health will be affected due to increased traffic. Increased traffic is necessary or their business will not succeed. The intersection is already dangerous because of the curve and hill at the intersection. Most pedestrians at the intersection are elementary children. This development will in time cause an accident.

32. Priscilla Colbath addressed criteria 1. She presented a petition with several hundred signatures noting that the development is contrary to the public interest. The petition is attached to the minutes are part of the record.
33. Joe Kenney (Resident and member of the Governor's Counsel) noted that Turntable Park is adjacent to the Sanborn House property and holds many public activities including basketball, general recreation, and theater productions. The Town's lease of Turntable Park from the State of NH is up for renewal in 2017. Allowing a large business to locate at the Sanborn House property will change the dynamic of the area and potentially put into question the public trust that we have shown towards Turntable Park since receiving the lease and may jeopardize the renewal of the lease. Public safety is key for this proposal. Locals know our traffic best and where they need to exercise extra caution. Inviting additional traffic to this intersection is asking for problems. Boston & Maine railroad is in favor of keeping the Sanborn House. Mr Sanborn was not only an important local citizen but well respected throughout the state. He was superintendent of the railroad and instrumental in the development of Sanbornville. John Sanborn's history is the history of Sanbornville.
34. Tracy Kolb questioned whether or not Dollar General operated in a safe manner. J Napekoski did not see how that related to the 130 foot question being addressed this evening.
35. J Napekoski asked if DG had done any research on how property values were affected by the placement of one of their stores. Atty Mauer was unaware of any such research and noted that a number of factors can affect property values.
36. J Mauer responded to concerns brought up at the hearing. They intend to be cooperative and they have proposed a sidewalk along Forest Street and would be sensitive to other safety concerns moving forward. He noted that a petition in and of itself does not indicate that a variance is not in the public interest. The applicant has attempted to meet to work with the town to address the architectural design criteria. Austin Turner noted that the engineers and architects have worked extensively to design a structure that is in concert with the design regulations. They have not yet been able to present that design because the application was not accepted. They have operated in good faith to present a building that meets the design and in fact takes some design cues from the existing structure.
37. J Napekoski closed the public input portion of the hearing.
38. R Sager noted that we need to address the five criteria one at a time and suggested language for the first criteria's motion.

**MOTION:** The variance would not be in the public's best interest.  
**Made by:** Steve Brown  
**Seconded by:** Doug Stewart  
**Discussion:** R Sager asked why the variance would not be in the public interest. S Brown noted that he did not feel that the variance would be in the public interest because of the traffic situation. It is on a hill and a curve, we all know that it is already a bad traffic situation, we have 440 students that go up and down that road twice a day, and therefore it is not in the

public's best interest. D Stewart noted that the 130 foot building would create a building that would not fit into the village and he feels that is what the zoning is meant to control. S Theiling feels it would be a traffic problem and would not fit in the area.

**Vote:** 5-0.

39. J Napekoski did not hear any convincing evidence either way to support the criteria, however, his personal feeling is that a 130 foot long building cannot help the property values of the buildings in the immediate area. S Theiling noted that the Dollar General stores that she had seen were not attractive. J Napekoski noted that each store he had seen were different in style. D Stewart noted that the applicants had not presented any evidence to prove there would not be any impact on property values. He agreed that the residences in the immediate area would likely be affected more by a 130 foot building than a 70 foot building.

**MOTION:** The applicant has not proven that surrounding property values would not be affected by granting the variance.

**Made by:** John Napekoski

**Seconded by:** Steve Brown

**Discussion:** No further discussion.

**Vote:** 5-0.

40. J Napekoski noted that the next criteria is that the variance would do substantial justice. The applicant noted that the property would not be fully underutilized by being restricted to a maximum building width along both roads of 70 feet and that zoning allow for retail stores up to 25,000 square feet. J Napekoski notes that the applicants could get all the square footage they require by utilizing multiple stories. D Stewart noted that they claimed that the lot could not be developed with the 70 foot restriction. D Stewart felt that there are a lot of options available for that parcel that could make reasonable use of the parcel, including a smaller retail store. J Napekoski noted that a multi-story building could house a variety of uses. S Brown noted that the zoning ordinance allows up to 45% building coverage, but does not guarantee 45% building coverage.

**MOTION:** Based upon the applicant's presentation they have not proven that substantial justice be done by granting the variance.

**Made by:** Doug Stewart

**Seconded by:** John Crowell

**Discussion:** No further discussion.

**Vote:** 5-0.

41. J Napekoski noted that the next criteria is the variance is not contrary to the spirit of the ordinance. He feels that the 70 foot limitation was put in place to limit the potential of a strip mall being placed in the village/residential district. He feels that the 130 foot length along Forest Street would have the appearance of a strip mall. S Theiling noted that the question is whether it violates the intent of the ordinance. J Napekoski noted

that it is only because it is a corner lot that there is a problem. The business could be permitted, but it does not fit on the corner lot.

**MOTION:** The use is not contrary to the spirit of the ordinance.  
**Made by:** Sharon Theiling  
Failed for lack of a second.

42. D Stewart noted that the length of the building along a street is specifically what the ordinance is related to and the parcel is located in the Village/Residential zoning district. Allowing a building that is almost twice the size of what the ordinance allows goes against what the ordinance is trying to accomplish to keep the character of the village and is contrary to the ordinance.

**MOTION:** Granting the variance is contrary to the spirit of the ordinance.  
**Made by:** Doug Stewart  
**Seconded by:** John Napekoski  
**Discussion:** No further discussion.  
**Vote:** 5-0.

43. J Napekoski noted that the final criteria is that literal enforcement of the ordinance places an unnecessary hardship upon the applicant. R Sager noted that this criteria comes apart into 2 questions. First, is the proposed use a reasonable one, and secondly literal enforcement of the ordinance will result in an unnecessary hardship to the applicant, if you find for purposes of this subparagraph that the special conditions of the property that distinguish it from other properties in the area, do you find that there is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to this property. Do you find that there is a fair and substantial relationship between the general purpose of the ordinance and the specific application of that ordinance to this property?

44. D Stewart noted that this corner lot when compared to other corner lots in the district is not unique. This restriction applies to all corner parcels in the district. Nothing makes this lot any different from other corner lots in the district. J Napekoski noted that the use as a Dollar General store is reasonable. R Sager asked if the ZBA felt that the ordinance that the applicant seeks relief from is overly restrictive towards Dollar General on this particular parcel, or is it a reasonable restriction to be placed on the lot? J Napekoski stated that given the location and proximity to Forest Street and the residential buildings around the lot, the restriction is in fact reasonable. S Brown noted that following the first sentence of RSA 674:33, that the applicant did not prove that there are special conditions of this property that distinguish it from other properties in the area. The applicant has failed that test. This property is not unique and in fact you have an identical property directly across Forest Street from this property. They failed to distinguish any special conditions relating to this property to show that it is different than other properties in the area. R Sager asked that the ZBA get a motion on the table so that the record is clear.

**MOTION:** The applicant has failed to establish unnecessary hardship under subparagraph "A".  
**Made by:** Steve Brown

**Seconded by:** Sharon Theiling  
**Discussion:** No further discussion.  
**Vote:** 5-0.

45. R Sager noted that because they did not grant the hardship under subsection "A" so the ZBA needs to refer to subsection "B" of the RSA, can the property be used for any other reasonable purpose? J Napekoski noted that he had already stated that the property could be used for professional offices, hairdresser or any other permitted use within the zoning ordinance. R Sager asked if Mr Napekoski felt that the parcel could be used for another purpose. J Napekoski answered "absolutely".

**MOTION:** The applicant has failed to establish unnecessary hardship under subparagraph "B".  
**Made by:** John Napekoski  
**Seconded by:** Doug Stewart  
**Discussion:** No further discussion.  
**Vote:** 5-0.

**MOTION:** That the applicant be denied because none of the criteria required for a variance were met.  
**Made by:** John Napekoski  
**Seconded by:** Sharon Theiling  
**Discussion:** No further discussion.  
**Vote:** 5-0.

## **BOARD BUSINESS**

46. Donald Stewart sat with the ZBA to be considered as an alternate to the board. Mr Stewart has been coming to Wakefield since the 1940s. He is an attorney and is winding down his Massachusetts practice and now lives in Wakefield. He has served on land use boards in Massachusetts. He has practical knowledge that he would like to share with our local boards. N Fogg asked if he was now a resident of Wakefield. Mr Stewart replied that yes he is. N Fogg then asked if he felt there would be any conflict from serving on a board with his son. He responded that they rarely agree and that he felt they would each present their own views. Other discussion revolved around general ZBA issues.

**MOTION:** To nominate Donald Stewart an Alternate member of the ZBA for a three year term to the Board of Selectmen.  
**Made by:** John Crowell  
**Seconded by:** Sharon Theiling  
**Discussion:** None.  
**Vote:** 4-0-1, with Doug Stewart abstaining.

## **APPROVAL OF MINUTES**

47. Minutes from April 18<sup>th</sup> 2016 were reviewed. Four minor corrections were noted.

**MOTION:** To approve the minutes from April 18<sup>th</sup> 2016 as amended.

**Made by:** Doug Stewart  
**Seconded by:** John Napekoski  
**Discussion:** None.  
**Vote:** 4-0-1 in favor of the motion, with Steve Brown abstaining.

**ADJOURNMENT**

**MOTION:** To adjourn the meeting at 8:49 pm.  
**Made by:** Steve Brown  
**Seconded by:** John Napekoski  
**Discussion:** None  
**Vote:** 5-0 in favor of the motion.

Respectfully submitted,  
Nathan Fogg  
Town of Wakefield NH  
Code Enforcement Officer  
Land Use Clerk