

DRAFT
Zoning Board of Adjustment
April 13, 2009

Members Present: Vice-Chair Holmes, Alex Azodi, Alternate; Barbara Richmond; Steve Russell; Sue Russell, Alternate, Helen Wright

Ms. Holmes called the meeting to order at 7:15 p.m. and appointed Mr. Azodi as a voting member for this night's hearings.

At 7:15 p.m., Joan Morena, property located at 276 Rollins Road, Newbury, NH will seek a Special Exception as provided for in 5.4.1 to permit the following: Part time Massage and therapeutic services as a cottage industry. Map 029-579-008.

Ms. Morena informed the Board that since the last hearing, she has received a 2/3 majority approval from the 22 property owners of her subdivision and has had an official addendum to the deed covenants recorded at the Merrimack County Registry of Deeds, Book 3113 Page 827:

'Amendments to Declaration of Covenants and Restrictions of Sunapee Overlook Subdivision

This amendment to Declaration of Covenants and Restrictions of Sunapee Overlook Subdivision is hereby adopted this 2nd day of March 2009 by the undersigned being the owners of two thirds of the Lots numbered #1 through #23 in the Subdivision located in Newbury, County of Merrimack and State of New Hampshire, shown on a plan entitled "Sunapee Overlook" dated November 12, 1981 and recorded in the Merrimack County Registry of Deeds as Plan #6966.

WHEREAS, there are 23 lots in Sunapee Overlook Subdivision.

WHEREAS, the Sunapee Overlook Subdivision recorded June 11, 1982 in Volume 1417, Page 469 of the Merrimack County Registry of Deeds.

WHEREAS, said restrictions require the acquiescence of two-thirds of the lot owners in order to terminate said restrictions.

WHEREAS, paragraph two of said restrictions provides in part "All lots of the subdivision shall be used for residential purposes only."

WHEREAS, Alfred P. Morena and Marijoan Morena are the owners of Lot 10 of the Sunapee overlook Subdivision by virtue of a deed dated July 30, 2007 ad recorded in Volume 3007, Page 1103 of said Registry.

WHEREAS, Alfred P. Morena and Marijoan Morena desire to operate a part time therapeutic service and massage business within their dwelling on Lot 10, provided that services are performed by a certified and licensed New Hampshire massage therapist, and further provided that no more than one (1) client be permitted on the premises at any one time for said services. These services will not exceed 6-8 hours per week.

NOW THEREFORE, the undersigned agree as follows:

- 1. That a part time therapeutic service and massage business may be operated on Lot 10 of Sunapee Overlook, provided that services are performed by a certified and licensed New Hampshire massage therapist, and further provided that no more than one (1) client be permitted on the premises at any one time and no more than 6-8 hours per week of services are provided said clients.*
- 2. That the rights set forth in paragraph 1 above shall terminate at such time that neither Alfred P. Morena nor Marijoan Morena shall own Lot 10 at Sunapee Overlook.*

In witness whereof, we have hereunto set our hand on the dates indicated below.'

Ms. Morena advised the Board that she is seeking a special exception for a cottage industry for a part-time therapeutic and massage service at 276 Rollins Road. She expects one client at a time, and no more than 6 – 8 hours each week. She stated that there will be no changes to the existing

building, her home. The massage service will be performed in an existing guest bedroom on a portable massage table. The table will be taken down between clients. She explained that she did not realize there were covenants attached to her deed until a neighbor brought it to her attention.

Mr. Azodi asked how many property owners are there in the subdivision and if they all agreed to the addendum.

Ms. Morena informed Mr. Azodi that there are 22 different property owners. Two property owners could not be located and one property owner did not agree due to religious reasons. She stated that the remaining property owners were supportive or indifferent.

Ms. Holmes asked Ms. Morena to review Article 16 in support of her application.

Ms. Morena addressed Article 16 as follows:

16.6.1 The part time provision of therapeutic, muscular and massage services will NOT be detrimental to the neighborhood since nothing will be visible to the eye, there will be no noise, and parking is limited to one client at a time in the driveway.

16.6.2 The use of the existing room in the residence for these services will not be detrimental to the neighborhood in any manner.

16.6.3 The provision of the above noted services at this location will not be contrary to any public health, safety or welfare provisions. No traffic hazards will exist since only one car/one client is provided services at a time. There are no other employees besides the owner at this location. These services do not involve emissions of any sort, waste disposal issues or unsanitary conditions.

16.6.4 One through eight. These part time services will not involve any changes to the existing structure of our home. An existing room in the house is used for both these part time services by putting up a the therapeutic/massage table when needed and the same room houses a futon which folds into a bed for guests when visiting. So this service has not resulted in any changes to the house inside or out. Nor do I intend to have a sign erected at the top of the driveway. No parking issues are involved since the existing driveway is capable of parking two cars – my own and one for the client when on site.

16.6.5 The provision of these services will not result in any environmental concerns such as odors, noise, fumes, etc.

Ms. Morena informed the Board that in order to receive her license from the State, she has had to complete 100+ practicum hours. She has been able to complete those hours over the past year and a half and the neighbors were never aware.

Ms. Holmes opened the hearing to the public for questions and/or comment.

Debra Prussman, Newbury resident, commented that she was one of the fortunate people Ms. Morena worked with during her practicum; and in her opinion, Ms. Morena does a great job and does not see this service as being anything but a great service provided in Newbury.

Being no further questions or comments from the public, Ms. Holmes closed the hearing to the public. The Board began deliberations.

Mr. Russell commented that this business seems as though it will have extremely minimal impact on the neighborhood and appreciated all of the extra effort Ms. Morena put in to satisfy the concerns of the neighbors regarding the addendum to the deed covenants.

Ms. Holmes commented that in her opinion, Ms. Morena was very honest and forthright to bind the number of clients in the addendum. She stated that this application has a lot of merit.

Mr. Russell asked what happens to the special exception approval if Ms. Morena moves.

Ms. Morena stated that it is written in the addendum that if they move the approval is null and void.

Ms. Richmond commented that the application is well put together.

Ms. Wright commented that in her opinion the conditions of cottage industry have been satisfied.

Mr. Russell made a motion to vote to approve Ms. Morena's application for special exception. Ms. Richmond seconded the motion.

Mr. Russell voted to grant.

Ms. Wright voted to grant.

Ms. Richmond voted to grant.

Mr. Azodi voted to grant.

Ms. Holmes voted to grant.

Ms. Holmes advised Ms. Morena that there is a 30-day appeal period for any party with a material interest in the application to appeal the Board's decision.

At 7:15 p.m. Rockwall Properties LLC for property located at 882 route 103, Newbury, NH will seek a Variance from the requirements of Paragraph 14.2.1 of the Newbury Zoning Ordinance to permit the following: Placement of a 12 ft. x 8 ft. sign at 882 route 103. Newbury Tax Map 020-046-050.

Josh Perkins explained that he applied to the Board of Selectmen for a sign permit and they sent him to the Zoning Board of Adjustment because although they were supportive of the concept, they could not approve the sign based on the existing regulations. There is not a clear definition of a sign in the zoning ordinance. Mr. Perkins shared with the Board a letter from the Board of Selectmen in support of his sign. He explained that the proposed sign is a 12 ft. x 8 ft. slab of granite, 16 in. thick with the name of his company, Stone Face Excavating, LLC across the middle of the slab. His interpretation would be that the bottom portion of the slab is the base, the lettering is the actual area of signage, and the top portion would be considered art. He stated that it would not be any higher than 11 ft. above the centerline of Route 103. This height is

permitted per Article 14.4.1 *Any free standing sign and the supporting structure shall not exceed eight (8) feet in width or eleven (11) feet in height above the road surface or above ground level at the location of the sign.* Since the grade drops after the edge of the road, 12 ft. in height from grade will not exceed 11 feet in height above the road surface. He pointed out that Article 14.2.1 allows signs in the business district to be as much as 72 sq. ft., but that is for multiple businesses. The state's right of way at that place is 50 ft. from the centerline; therefore the slab would be set back 35 ft. – 40 ft. off the side of the road with landscaping around the bottom.

Ms. Richmond asked Mr. Perkins how much of the slab will be underground and how will it be supported.

Mr. Perkins stated that the slab will not be underground but will be drilled and pinned to a concrete slab, which will be just below grade.

Ms. Holmes commented that the lettered portion of the granite is in compliance with the sign ordinance because it is not more than 24 sq. ft.

Ms. Richmond commented that the slab would be more like a statue with both sides detailed.

Ms. Wright asked Mr. Perkins if he has considered that the State may have issues the Old Man of the Mountain emblem being copied.

Mr. Perkins stated that he looked into that issue when creating the logo for his LLC, and the State made no opposition.

Ms. Wright asked Mr. Perkins what the actual size of the entire piece of granite would be.

Mr. Perkins stated 96 sq. ft.

Mr. Azodi clarified that it would actually be a little less than that after carving. He commented that in his opinion, the bottom section could be considered the base and the top section could be considered decoration if the letter section was outlined within an area of 24 sq. ft. or less thereby differentiating the sign portion from the rest.

Ms. Holmes suggested perhaps sandblasting a border around the lettering, which would constitute a definite parameter of the "sign".

Ms. Russell commented that she has tried to envision the space of 8 ft. x 12 ft. and realizes the enormity of that size. She stated that a sign that size is going to be very big on the side of the road, and she would like to see a smaller piece.

Mr. Perkins addressed Article 16.7 as follows:

16.7.1 Granting this variance will not be contrary to the public interest because we believe this sign is very tasteful and follows the overall theme of the town staying rural looking. Although this sign would not meet the letter of the law, it does keep with its intent. The actual size of the sign – the lettering area – is less than 24 sq. ft. allowed by 14.2. The balance of the

slab is base area and the top is the State icon. If both the square feet of the sign and the Old Man were counted, it would be equal to one single sign at 24 sq. ft. plus two business signs at 6 sq. ft. each. Not counting the 32 sq. ft. of the base, the rest of the sign is less than the 72 sq. ft. allowed.

16.7.2 Denial of the variance will result in unnecessary hardship to the owner as proven by the following arguments: Denial of this variance would not cause hardship as a regular, not so nice, sign could be constructed. We are trying to raise the bar with a sign that we believe fits the overall intent of the law. It will be constructed of local New Hampshire granite, designed by a local artist and created by a local business. It will pay honor to our state icon and over time become a local landmark. Denial would be disappointing for us, but an approval would be an asset to the town.

16.7.2.1. Taking into account the unique setting of this property in its environment, the application of the cited paragraph of the Zoning Ordinance to this property will interfere with the owner's reasonable use of the property because: we believe we are following 14.2's intent and this sign is as rural looking as it gets.

16.7.2.2. There is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the restriction placed on this property because: we are meeting the intent of the ordinance.

16.7.2.3 Granting a variance in this case will not injure the public or private rights of others because: this sign will be set back from the road causing no safety concerns. No rights should be affected because there is less than 24 sq. ft. of text and overall less than the 72 sq. ft. of sign allowed with multiple business signs.

16.7.3 The use will not be contrary to the spirit of the Ordinance because the actual square footage of the granite slab used as signage will be less than the 24 sq. ft. allowed in 14.2. We would suggest that the bottom section is base (as posts would be in a normal sign), the old man is our logo but mostly he is the State icon and thus his square footage should be allowed over the 24 sq. ft. The balance of the granite slab is truly support structure.

16.7.4 By granting the permit, substantial justice would be done because we "are" meeting the "intent" of the Ordinance, by limiting the text to less than allowed. The sign, although sounding large, is smaller than the overall 72 sq. ft. permitted for multiple business sign once you delete the base area.

16.7.5 The proposed use will not diminish surrounding property values because this sign will be in the business or commercial area. It will be set back from the road so there will be no line of sight or safety problems. The sign is clean, simple, classy, and is "rural New Hampshire."

Mr. Azodi commented that although he is not in agreement with all of Mr. Perkins' comments he believes the proposal has merit. He asked Mr. Perkins if the previous owner had a business sign.

Mr. Perkins stated that the previous owner did have a business sign, but they are no longer there. There is only one business there now. He clarified that in theory, there are two businesses. Rockwall Properties, LLC is the owner, and Stone Face LLC rents from Rockwall Properties, LLC; but they only need one sign.

Mr. Russell commented that a business in the 35 mph zone on Route 103 may not need such a large sign to be noticed. He stated that the sugar house further down the road in the 50 mph zone has a smaller sign and is very visible.

Being no further questions from the Board, Ms. Holmes opened the meeting to the public.

John Croteau, abutter, commented that he does not have a problem with the design or location of the sign.

Mr. Perkins informed the Board that he has been in verbal contact with the other abutters and none of them had any issues and were all in support of the design and location.

Mr. Russell asked how much the slab of granite will weigh.

Mr. Perkins estimated almost 10 tons.

Being no further comment from the public, Ms. Holmes closed the meeting to the public. The Board began deliberation.

Mr. Russell commented that in his opinion, part of the intent of the sign ordinance is to prevent a commercializing look along Route 103.

Ms. Holmes commented that the point of putting a border around the lettering defines the “sign”. She suggested that if the application is approved, conditions be placed that there is a line around the letters to define what portion is the “sign”, no other signage can be added to it, and permanent engraving not more than 24 sq. ft of lettering. Any other business on the property needs to comply with the sign ordinance independent of this structure.

Ms. Holmes commented that the zoning ordinance does not designate what kind of base or supporting structures are acceptable. She suggested that the issue should be brought to the Planning Board for discussion and interpretation.

Ms. Wright commented that it is very large, but after clarification it is evident that the sign is in compliance with the regulations. She agreed that a condition that there is no additional signage added should be considered. If there were to be additional signage, Mr. Perkins would have to reapply for a new sign under whatever regulations are in place at that time.

Ms. Richmond commented that she has no questions and agrees with the conditions discussed.

Ms. Wright commented that the sign as presented is very tasteful which is more important than the size.

Ms. Wright made a motion to close deliberation. Mr. Russell seconded the motion. All in favor.

Mr. Azodi made a motion to approve application for variance for the sign with the following conditions:

1. The lettering portion is no more than 24 sq. ft. and permanently defined with a border;
2. No future additions to the sign may be made without application for a new sign to the Board of Selectmen; and

3. Placement of the sign must meet all setbacks and height restrictions as defined in the zoning regulations. Ms. Richmond seconded the motion. Discussion followed.

The board discussed the conditions to the motion and voted to reopen the discussion to the public.

Mr. Perkins asked the Board for clarification regarding what he would need to do if he wanted to have another business name carved into the sign.

Ms. Holmes explained that he would have to go to the Board of Selectmen and re-apply under a separate application and comply with the sign ordinance in place at that time.

Mr. Russell asked Mr. Perkins how the lettering is going to stand out.

Mr. Perkins explained that the lettering will be sandblasted and colored in, the same process as writing on a gravestone.

Being no further comments or questions, the meeting was closed to the public.

VOTE:

Mr. Azodi voted to grant with conditions:

1. The lettering portion is no more than 24 sq. ft. and permanently defined with a border;
2. No future additions to the sign may be made without application for a new sign to the Board of Selectmen; and
3. Placement of the sign must meet all setbacks and height restrictions as defined in the zoning regulations.

Ms. Wright voted to grant with conditions aforementioned.

Ms. Richmond voted to grant with conditions aforementioned.

Mr. Russell voted to grant with conditions aforementioned.

Ms. Holmes voted to grant with conditions aforementioned.

Ms. Holmes advised Mr. Perkins that there is a 30-day appeal period for any party with a material interest in the application to appeal the Board's decision.

MINUTES

The Board reviewed the minutes of November 10, 2008.

Ms. Wright made a motion to approve the minutes of November 10, 2008 as submitted. Mr. Azodi seconded the motion. All in favor.

The Board reviewed the minutes of February 9, 2009.

Mr. Russell made a motion to approve the minutes of February 9, 2009 as submitted. Ms. Wright seconded the motion. All in favor.

The Board reviewed the minutes of March 9, 2009.

Ms. Richmond made a motion to approve the minutes of March 9, 2009 as submitted. Ms. Wright seconded the motion. All in favor.

ELECTION OF OFFICERS

CHAIR

Ms. Wright nominated Ms. Holmes to be Chair of the Zoning Board of Adjustment. Ms. Richmond seconded the nomination. Ms. Holmes accepted the nomination. All in favor.

VICE-CHAIR

Ms. Richmond nominated Ms. Wright to be Vice-Chair of the Zoning Board of Adjustment. Mr. Azodi seconded the nomination. Ms. Wright accepted the nomination. All in favor.

OTHER BUSINESS

Ms. Holmes suggested that the Board should convene at 7:15 p.m., conduct administrative business and begin hearings at 7:30 p.m. Additionally, hearings should not be scheduled until all of the application material is complete and present. The Board members agreed.

Ms. Holmes suggested the implementation of a revised checklist to ensure that applications are clear to the applicant and complete when they are filed with the Land Use Coordinator.

Ms. Wright volunteered to edit the applications to the Zoning Board to facilitate the application process and email the draft to the Board members for discussion at the next meeting.

Ms. Wright made a motion to adjourn. Ms. Richmond seconded the motion. All in favor.
Meeting adjourned at 9:30 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary