

TOWN OF BENNINGTON  
ZONING BOARD OF ADJUSTMENT  
Minutes from the Meeting- June 4, 2009

Present: John Tyler- Acting Chairperson  
Barbara Moorehead  
Steve Osienski  
Barry White- Alternate  
Chris Clough- Alternate  
Peter Martel (7:00 p.m.)

Guest: Rex Gray

Acting Chairperson Tyler called the meeting to order at 6:43. Chris Clough and Barry White were appointed as voting members to give a total of five voting members for the hearing.

At 6:45 the hearing for Rex Gray was called to order. A check for \$79.90 was received by Mr. Gray.

Mr. Gray is requesting a variance from Article VII Section C of the Zoning Ordinance to permit the conversion of the two buildings located at 582 and 584 Francestown Road to be converted into six residential condominium units. Three of the residential units will be one bedroom units and three of the residential units will be two bedroom units. This would result in a total of nine bedrooms in the two buildings.

Mr. Gray shared with the Board that the existing property that the two buildings are located on is only .76 acres. The buildings were constructed on this lot pre-zoning. The property is located in the commercial/recreational zone, which allows residential condominiums. A variance was granted in 2002 which approved the development of a single family residence on the first floor of 584 Francestown Rd. However, this conversion never took place. At this time, there is a two-bedroom apartment located on the second floor of this building.

Mr. Gray's plans are as follows, with the intention to subdivide and sell the condominium units:

- 582 Francestown Rd-
  - To keep the one bedroom unit that currently exists, as is.
  - To convert the 1008 square foot retail unit that is currently being used for storage, into a one-bedroom residential unit.
  - To combine unit C and unit D, to convert the space into a two-bedroom unit.
- 584 Francestown Rd-
  - To keep the second floor, two-bedroom unit, as is.
  - To divide the first floor into a two-bedroom residential unit consisting of 1,670 square feet, and a one-bedroom unit consisting of 936 square feet.
  - To use the remaining space on the first floor to accommodate a laundry facility for the six residential units.

Acting Chairperson Tyler moved the hearing to looking at the five supporting facts of this request followed by Mr. Gray's reasons.

1. **The proposed use would not diminish surrounding property values because:** the lot abuts a motel, ski resort, and a condo development. The conversion would be consistent with the surrounding properties and would increase the values of the surrounding properties. Mr. Gray is looking at making the parking area smaller and turning the rest to lawn.
2. **Granting this variance would not be contrary to the public interest because:** converting these two buildings into residential units is the best use of the property and is consistent with New Hampshire's Workforce Act.
3. **Denial of the variance would result in unnecessary hardship to the owner because:** the existing property is 0.76 acres and is located in a zoning area that now requires two acres which makes an area variance necessary in order to allow any development to occur. Mr. Gray stated that the variance granted in 2002 would allow him to convert the first floor of 584 Francestown Road into a single family residence, however, it would not be economically viable to construct as the rent or selling price would not cover the cost of construction.
4. **Granting the variance would do substantial justice because:** the variance granted in 2002 would have allowed for seven or eight bedrooms to be located in the two buildings, along with a commercial space in 582 Francestown Rd. The proposed use in this request would actually place fewer traffic and safety concerns on the property, is more consistent with the other properties in the area, and does not negatively increase the density of the population.
5. **The use is not contrary to the spirit of the ordinance because** residential condominiums are an approved use in this area. The variance is required due to size of the lot and the current setback requirements. The variance granted in 2002 acknowledges the residential aspect of the area and was granted for seven to eight bedrooms plus a commercial space. This request improves the use of the property as it will become completely residential.

As there was no-one from the community present at the hearing for or against the proposal, the Board asked Mr. Gray questions. Steve Osienski asked Mr. Gray if the septic system would facilitate the proposed six-units. Mr. Gray has had Meridian (Surveyor) take a look at the property and has a letter from them regarding the septic system and leach field capabilities. The letter was not available for viewing.

The Public Hearing was closed at 7:35 p.m. so that the Zoning Board of Adjustment could discuss the request. The Board went through the Facts supporting the request.

1. **The proposed use would not diminish surrounding property values.** The Board felt that as the property is surrounded by a motel, ski resort, and a condominium

development, the proposal before them would fit in with the surrounding properties. A motion was made that the proposed use would not diminish the surrounding property values. A vote of 5-0 was made (John Tyler, Barbara Moorehead, Steve Osienski, Barry White, and Chris Clough were all in favor).

2. **Granting this variance would not be contrary to the public interest.** As there were no abutters at the hearing, the Board felt that the abutters were not against the proposed request. The proposal before them would clean up the property. A motion was made that granting the variance would not be contrary to the public interest. A vote of 5-0 was made (John Tyler, Barbara Moorehead, Steve Osienski, Barry White, and Chris Clough were all in favor).
3. **Denial of the variance would result in unnecessary hardship to the owner.** The Board discussed that there are multiple possibilities of what could be done with this property and that several things in the past have been tried. It was noted that Mr. Gray himself even stated that with the ski resort as an abutter, a restaurant would probably work. However, of the proposals that Mr. Gray has come to the Board with, the one before the Board tonight is one of the better ones. A motion was made that the denial of the variance would result in an unnecessary hardship to the owner. A vote of 4-1 was made (Barbara Moorehead, Steve Osienski, Barry White, and Chris Clough were in favor; John Tyler was against).
4. **Granting the variance would do substantial justice.** The Board discussed that if the approval of the variance does not harm anyone in the community, to deny the request would be unjust. The Board felt that if they were to approve the request, Mr. Gray would be able to use his property. A motion was made that granting the variance would do substantial justice. A vote of 5-0 was made (John Tyler, Barbara Moorehead, Steve Osienski, Barry White, and Chris Clough were all in favor).
5. **The use is not contrary to the spirit of the ordinance.** The Board discussed that residential condominiums are an approved use in this zoning area. However, a variance would be needed because the property is only 0.76 acres and the zoning ordinance calls for 2 acres per building. A motion was made that the use is not contrary to the spirit of the ordinance. A vote of 5-0 was made (John Tyler, Barbara Moorehead, Steve Osienski, Barry White, and Chris Clough were all in favor).

Next, the Board addressed the issue of density as the two buildings are on 0.76 acres. The Board voted to grant a variance from Article VII, Section C subject to meeting all the State and Town Ordinances and requirements. The Board felt that no variance was needed for setbacks, as the buildings are pre-existing. The Board notified Mr. Gray that to be allowed to subdivide the condominiums, he would need to go before the Planning Board.

A motion was made to continue the hearing until June 11, 2009 at 6:30 p.m. when the Board can meet to approve the written decision.

Members of the Board were notified that also on June 11, 2009, the Stockwell hearing is on the agenda for 7 p.m.

There being no other business, the meeting was adjourned at 8:07 p.m.

Respectfully Submitted by,

Karen Bartlett  
Zoning Board of Adjustment