

**City of Berlin, NH
Zoning Board of Adjustment
Meeting Minutes
July 24, 2023**

Members Present: Dana Hoyt, Tiffany Hale, Greg Marrer, Scott Losier, Mark Evans and David J. Lavallee Sr.

Members Excused:

Members Absent:

Others Present: Jerry Hamanne, applicant and Craig Smith, property owner of 12 Green Square

Others Present at City Hall: Michel Salek, Building Inspector/Zoning Officer; Jennifer Ouellet, Code Enforcement Administrative Clerk/recorder of minutes and Pam LaFlamme, Director of Strategic Initiatives, Assistant City Manager

The meeting was called to order at 6:30 pm.

Roll call was taken:

Dana Hoyt-present

Tiffany Hale-present

Scott Losier-present

Greg Marrer-present

Mark Evans-present

David J. Lavallee Sr.

Approval of November 2022 Minutes:

Greg Marrer made a motion to approve the minutes as presented. Motion was seconded by Mr. Losier. A vote was taken of each member by Mr. Hoyt, chair of the board and all members voted in favor, the motion to approve the November 2022 minutes passed.

Case 01-23: Jerry Hamanne, applicant for Variance at 12 Green Square, Map 118 Lot 14

Chair Hoyt explained to Mr. Lavallee Sr. that he wouldn't be allowed to vote.

Mr. Lavallee Sr. understood and mentioned it was his first meeting.

Mr. Evans didn't realize there was an alternate ZBA member and welcomed him to the ZBA.

Chair Hoyt then moved to the Reading of Zoning Board of Adjustment Rules:

The Building Inspector and/or Zoning Officer is required to follow the strict letter of the Ordinance while the Board of Adjustment is required to follow the intent and spirit of the Ordinance. Our function is to hear both sides, use judgment within the Ordinance, and render a decision in writing, within a reasonable time. The main purpose of the public hearing is to allow property owners and anyone concerned with the case to testify how the proposed variance (or special exception) will affect them and their property. The reason for these hearings is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against the appeal. While the evidence may be in the form of an opinion rather than an established fact; it should support the grounds which the board must consider when making a determination.. During the hearing, all persons wishing to speak will raise their hands, be recognized, give their names, address and interest in the case, then be sworn. If you wish, it is your right to be represented by counsel.

Please address all your questions and statements to the Board and not to any individual in this room. In order to give everyone a chance, no one will be allowed to speak a second time until all persons have been given a chance to speak for the first time...and the petitioner will be given the last word. If you feel any member of this board is prejudiced for or against your case, please let me know and if the facts warrant it, they will abstain from participating or voting in your case. I want you to know that although the board is to be impartial, it must abide by the intent and spirit of the ordinance and cannot rewrite the ordinance to please any particular individual.

Mr. Marrer read the request into the record.

Request: Case#01-23: The request for a Variance for 12 Green Square, Tax Map 118 Lot 14 in the Business General Zone. If permitted would allow: the replacement of present sign (expired contract) with new sign for Jerry, sales agent at Remax. This request comes under Article XV, Section 17-164 4 a & 4 f & Section 17-168 under the Berlin Zoning Ordinance.

Jerry Hamanne of 704 Hillside Avenue, Berlin, NH was sworn in by Chair Hoyt.

Mr. Hamanne, sales associate of ReMax is requesting a Variance to hang a canvas sign next to Dunkin Donuts. The present sign is owned by Peter Bill who has been out of business for 3 years. Mr. Hamanne's canvas sign is done tastefully and is more up to date to replace the present" out of "business sign. He is wishing City Council to grant permission to hang new sign.

Chair Hoyt asked if there were any questions from the board.

Mrs. Hale wanted to understand correctly that the new sign was to replace existing canvas sign in the same location not a different spot or a new frame? Mr. Hamanne answered that was correct. Chair Hoyt asked if there were to be any dimensional changes? Mr. Hamanne answered not at all.

Chair Hoyt asked if there where was anyone to speak in favor.

Craig Smith, property owner of 12 Green Square was sworn in by Chair Hoyt.

Mr. Smith stated he was the building owner and felt it would be an improvement to his building due to previous owner, Peter Bill not removing his sign. Mr. Smith mentioned when he approached the Code Department years ago he was told there might be a chance if he took the existing sign down he might not be able to put one back up. He has been advertising about 5 years. Mr. Hamanne approached him to put up a new sign. Mr. Smith is excited to have Mr. Hamanne's sign on his building due to Mr. Hamanne's 45 years of business and community service. It would be a blessing for the City due to Mr. Hamanne business experience and support for the community. Mr. Smith doesn't feel it would impede anyone's view or to detract aesthetically.

Chair Hoyt asked if there were any questions from the board.

Mrs. Hale commented that the building is next to Dunkin Donuts driveway so she assumes there will be some kind of game plan if the Variance is granted to Mr. Hamanne.

Mr. Hoyt questioned isn't the Dunkin Donuts opened 24/7?

Mr. Hamanne answered that he has spoke to the manager of Dunkin Donuts and the work would be done after hours. The building is 10 feet away from driveway.

Mrs. Hale asked if it would obstruct breakfast rush?

Mr. Lavalle asked if there was a street separating Dunkin Donuts driveway? He stated he has lived in Berlin just a few years and didn't know the answer.

Mrs. Hale stated people do use Mr. Smith's driveway as a street.

Mr. Hamanne answered it is Mr. Smith's driveway.

Chair Hoyt asked if there were anyone else to speak in favor of the applicant. There was not.

Chair Hoyt asked if there were any other public comments in opposition to the applicant. There was not.

Final words from Mr. Hamanne were that he wishes to hang sign and move forward. It will be an upgrade to 12 Green Square.

Chair Hoyt summarized case.

Mr. Losier stated he was not for the Variance.

Chair Hoyt answered this isn't the time to discuss you may when we deliberate. Chair Hoyt asked if his summary was incorrect?

Mrs. Hale felt Chair Hoyt's s summary was correct.

Public Hearing Closed at 6:40 pm. Chair Hoyt advised Mr. Hamanne that a decision would be made that evening and a letter of decision would be sent. He was also welcome to wait and be present to hear the Board's deliberations and decision. He was informed that if anyone chose to appeal the decision, the appeal must be filed within thirty days.

Chair Hoyt stated now we may deliberate.

Mr. Losier is concerned if the board passes the Variance to Mr. Hamanne then every agent will want to have their sign up. What will Berlin look like then?

Mrs. Hale asked how many grandfathered signs are in town?

Mrs. LaFlamme wanted to clarify what Mr. Losier is saying is the ZBA would be opening a door to other realtors. The board is quasi-judicial and needs to set a precedence. If she worked at Badger Realty or another agency she too would want the same type of courtesy. The Remax agency is over the allowed amount of on premise and off premise signage.

Mrs. Hale stated granting the Variance would be replacement of existing sign not a new sign location. She also asked how many non-conforming signs are there in the City of Berlin.

Mrs. Laflamme stated it is a nonconforming sign which is stated in Michel's packet and recommended to the Board to read the Ordinance.

Mrs. Hale stated it didn't mention number of nonconforming signs. She asked if there are more agents than nonconforming signs?

Mrs. Laflamme read the definition of nonconforming signs in Article XV, Section 17-168.

Mrs. Hale asked if this was the only nonconforming sign in town?

Chair Hoyt stated existing sign can stand as is on Mr. Smith's building and should have the issue been addressed?

Mr. Salek didn't have an answer to Chair Hoyt's question. He would have to police when existing signs expire.

Mr. Evans mentioned current sign on Mr. Smith's building is discontinued. Mr. Hamanne's sign would be current with current information.

Chair Hoyt questioned what the ordinance was for expired signs?

Mrs. Hale stated the contract expired on the existing sign not the sign itself.

Mr. Evans stated since being on board there has never been an expiration put on anything. He mentioned the existing sign goes on with perpetuity but a new sign with current information would be an improvement.

Mrs. Hale mentioned until sign falls off building it can stay in place.

Mrs. Laflamme read the Sign Ordinance which states that any sign that has expired should be taken down after 6 months. She recommended to the board to read through the packet that was in their possession.

Mr. Salek mentioned what Mrs. Laflamme read to board wasn't in packet.

Mr. Evans stated the sign expires once business has ended.

Mr. Lavallee asked if signs are to be taken down once contract expires?

Mr. Evans asked if this is just for conforming signs?

Mrs. Laflamme wasn't sure if this pertained to any historic value buildings?

Mr. Evans mentioned there would have to be someone going around town looking at signs. He brought up the old Pisani's sign.

Mr. Lavallee mentioned Pisani's sign and how terrible the building looks which would not interest him?

Mrs. Hale asked if the issue was specific to Real estate or is any sign not in favor at this location?

Mr. Evans stated that if this wasn't the issue than Mr. Hamanne wouldn't have to be at this meeting.

Mr. Hoyt questioned how many off-premise signs?

Mrs. Laflamme explained how many signs Remax has at this time. A discussion has occurred with Mr. Mercier the owner of Remax due to having not followed the ordinance. If this Variance is granted it is not just Mr. Hamanne being advertised it is also Remax. This would open a door for other agents. The board is to set a precedence. The planning board is working on updating the Sign Ordinance.

Chair Hoyt stated the purpose of the spirit of the ordinance would be off premise signage is limited to size to keep from being called Bill Board City.

Mrs. Hale questioned how long has this Sign Ordinance been in effect? She read 2007 then updated in 2022.

Mrs. Laflamme answered the Ordinance took effect in 1999 but since that time there have been amendments.

Chair Hoyt asked the members for comments on each Variance request. Chair Hoyt read Question 1 of "Individual Board Member Variance Worksheet" which reads Granting the variance (would/would not) be contrary to the **public interest** because: Mr. Hamanne's answer is there already exists a signage of 16 ft x 16 ft for a former tenant of Sun Financial Management and is over 20 years old and Peter Bill is out of business. Mrs. Hale answered leaving outdated signage would be contrary to public interested due advertising a business that doesn't exist. Mr. Evans never heard anyone complain about the existing sign being on building. Mrs. Hale mentioned a mural would be a nice addition to building. Mr. Lavallee mentioned leaving the condition of existing sign would be contrary to public interest and a change of sign would be an improvement in his opinion. Question 2, Chair Hoyt read the **spirit of the ordinance** (would/would not) be observed because: Mr. Hamanne's answer is it would be the same size as the present sign that exists, but new and updated, and not faded. Colorful and bright, with professional taste. Keeping up with the times and curb appeal for the city. Chair Hoyt not sure how this answers how the spirit of the ordinance would be observed? Mr. Evans answered it limits # of signs and size of signs. Mrs. Hale feels there is an existing sign so do we leave it or update it? Mrs. Hale's personal take is not to cover historical buildings or cover our beautiful buildings. There is a current sign present do we leave it or update it? Mr. Evans stated putting up a new sign will give it a new face. Question 3, Chair Hoyt read Granting the variance (would/would not) do **substantial justice** because: Mr. Hamanne's answer is the sign would be replaced by a new canvas wrap sign with an operating business, and renowned business man, Jerry, of 40 years in the community. Mr. Evans stated the current sign has been okay with City council over the years. Mr. Marrer feels change and progress is needed, it has been stagnating. Chair Hoyt stated the board must look at this as a new sign, the current sign isn't a permitted sign as it stands. Mrs. Hale asked if a new physical sign be put up or does the sign have to come down? She feels two different hearings were occurring at one time. Mr. Hamanne started to state that he knew he wasn't supposed to speak but in 1985 he's received a permit from the City. Chair Hoyt mentioned he was welcome to stay but wasn't allowed to speak. Mr. Lavallee questioned is the size of the proposed sign the issue? Mr. Evans mentioned it isn't Remax putting up sign it is Mr. Hamanne. Mr. Hoyt read nonconforming sign definition to the board. Mrs. Laflamme read #4 in ZBA Sign Ordinance 17-165 Permitting Signs. Question 4, Chair Hoyt read for the following reasons the **values of the surrounding properties** (would/would not) be diminished: Mr. Hamanne's answer is the signage would be updated and not worn out or faded. Chair Hoyt answered it doesn't affect surrounding properties. Mr. Evans said it was a slam dunk. Question 5, Chair Hoyt read **Unnecessary Hardship** if denied: Mr. Hamanne's answer was the present business being advertised is "out of business" and degrades the neighborhood. This will be the second off premises sign for Remax (1st is at Glen Ave, by the junkie's antiques) There is one on premises at the Berlin Remax office. The signage has been at the present location for over 35 years, and

grandfathered in place. The display of the present signage is an eye sore advertising a non-existent business. It is dated and shows aging display on Green Square. Mrs. Hale answered in the first place it is potential revenue for property owner. Mrs. Laflamme stated the board can't use financial hardship. Mrs. Hale stated to disregard her comment. Mr. Evan feels there is no other hardship than financial. Mr. Salek mentioned reading the definition of a Variance which is in the ZBA packet. Mrs. Laflamme also mentioned to refer to updated ZBA handbook which all members should have. Mrs. Ouellet stated she would send to ZBA members. Chair Hoyt read the definition of Variance to the board.

Chair Hoyt referred to the Variance worksheet and if there was any other discussion from the board.

Mr. Evans asked if the board was going to vote. Chair Hoyt stated if any one question fails then the Variance will be denied. Mrs. Laflamme mentioned if any vote fails then the Variance is denied. Mrs. Hale stated each point has to be unanimous. Mr. Evans thought that the vote can be a majority to pass the Variance if not the meeting could have finished an hour ago due to Mr. Losier going to vote no. Chair Hoyt asked if board was ready to vote and asked Mr. Marrer do a roll call. It would be a pass or fail vote.

Case #01-23 Deliberation

Mr. Marrer did a roll call and had each member voted on each of the 5 Variance questions. Each member voted on each of the five criteria and it came to a 3-2 vote. Mrs. Laflamme stated technically the Variance will pass but the board needs to go back and do a finding of facts that is essential based on the affirmative.

Case #01-23 Finding of Facts

Chair Hoyt read Granting the variance (would/would not) be contrary to the **public interest** because there is an existing sign which has never had a problem. It would be replacing old with the new. Chair Hoyt read the **spirit of the ordinance** (would/would not) be observed because the existing sign never has to updated. Mr. Evans answered the old sign existed such a long time and there has been no concern. 3) Chair Hoyt read Granting the variance (would/would not) do **substantial justice** because: Mr. Marrer felt It would have new accurate information to the public. 4) Chair Hoyt read for the following reasons the **values of the surrounding properties** (would/would not) be diminished: Mrs. Hale answered it will have a fresh look not faded and will increase value. Mr. Evans answered Dunkin Donuts is working with Mr. Hamanne to help him during sign installation. 5) Chair Hoyt read **Unnecessary Hardship** if denied: Mrs. Hale answered it is an existing structure rather than tear down to build a smaller one. Mr. Evans answered it would be hardship if applicant would have to build the sign structure from scratch. Mr. Lavallee mentioned there would be mismatched paint. Mrs. Hale stated due to its

unique situation it makes sense to use existing structure as it would be a substantial impact on abutter if a new structure had to be built. Mr. Lavallee answered it would turn a ½ hour job into a 2-day ordeal which makes more cost and disrupts Dunkin Donuts. Mr. Evans stated it has to be a hardship for Mr. Hamanne. It would be hardship to rebuild a new sign structure instead of just covering existing.

Case #01-23 Decision

Mr. Evans made a motion to Grant a Variance in Case #01-23.
Mrs. Hale seconded the motion, the Board took a vote, and voted 3-2 to grant the request.

Case #01-23 Vote

Chair Hoyt did a roll call and had each member vote on each of the 5 Variance questions. Each member voted on each of the five criteria and it came to a 3-2 vote. Chair Hoyt stated the Variance was granted.

Election of Officers: Mr. Marrer made a motion, seconded by Mrs. Hale and all members of the board were in favor to continue Chair Hoyt as Chair.
Mr. Evans made a motion, seconded by Mr. Marrer and all members of the board were in favor to continue Mrs. Hale as Vice-Chair.
Mrs. Hale made a motion, seconded by Mr. Losier and all members of the board were in favor to continue Mr. Marreer as Clerk.

Member Comments: Mr. Marrer mentioned how nice it was to have a meeting. Mr. Losier mentioned he wanted the existing sign at 12 Green Square to come down years ago. Chair Hoyt isn't against Mr. Hamanne's sign just voted on the ZBA Ordinance. Mrs. Hale mentioned her eight-year-old likes the vines on the building and hopes they are not removed.

Other Business:

Meeting Adjourned: Mr. Marrer made a motion to adjourn, seconded by Mrs. Hale. The meeting adjourned at 7:47 pm.

Respectfully submitted, Jennifer Ouellet

** Note: These minutes are unofficial until they have been accepted by the Zoning Board of Adjustment by motion.*