

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
Thursday, January 10, 2008**

Present: R. Scott Wyman, Andrew Black, Mike Martin, Ron Copp
Absent: Adrian Kendall, Matt Manahan, Ed Kirstein, Sam Wilkinson

Staff: William Longley, Code Enforcement Officer, Pam Bosarge, Clerk

The meeting was called to order at 7:10 p.m.

Mr. Wyman welcomed the applicants and gave an overview of the rules of procedure for the meeting. Mr. Wyman stated there would be opportunity for public testimony.

The meeting was called to order at 7:05 p.m.

I. Hearings and Presentations:

1. Special Exception: Danielle & Terry Robinson request a special exception for a Home Occupation; Nations Trust Mortgage at 8 Winn Road; Tax Assessor Map R05B, Lot 2 in the Rural Residential 2 (RR2) district.

Mr. Longley presented background information as follows: The Robinson's have purchased the property at 8 Winn Road and have been doing extensive renovations to the house. He met briefly with the applicant, the proposed use is not one listed in the Ordinance as a Special Exception use. The application was missing a parking plan, which was received this evening.

Mr. Terry Robinson, owner, applicant stated Nations Trust Mortgage was started two years ago; their main offices are on Bridgton Road, Westbrook, and in Bangor. They currently live in Gorham and have been looking for a house with space for an in-home office. This property is very unique and meets that need. The offices in Westbrook and Bangor still exist; the intent is that he and his wife Danielle will have the opportunity to have a home office. There will be no other employees at this location. Mr. Robinson presented the Board with photos showing the parking layout. Mr. Robinson stated a sign was important to them and is required; they would like a sign visible from the road, similar to the one across the street. The sign will consist of the logo "Nations Trust Mortgage". Mr. Robinson stated they are excited to move into the property in February; their intent is to become a part of the community.

Mr. Wyman asked what jurisdiction regulated the sign requirement.

Mr. Robinson stated the credit companies they are affiliated with require signage.

Mr. Wyman clarified the sign is not a State requirement.

Mr. Robinson stated the sign is a lending requirement.

Mr. Wyman asked if there was a size requirement for the sign, and asked Mr. Robinson to clarify why this request is a home occupation and not a satellite office for the corporation.

Mr. Robinson stated they have two offices and the main office is already established, the intent of this request is to provide the flexibility of a home office; they do not intend to grow this office. The sign will not advertise rates, and there will be no influx of clients as a result of the office at 8 Winn Road. Mr. Robinson reviewed the proposed floor plan for the office.

Mr. Wyman asked if most of their business was residential mortgages.

Mr. Robinson answered yes.

Mr. Wyman asked about on-site clientele.

Mr. Robinson stated about 10% of their clients come to the office.

Mr. Wyman asked about outside vendors such as UPS and FedEx.

Mr. Robinson stated there would be no added traffic, packets are scanned and e-mailed, and their business uses the internet.

Mr. Martin asked how many people would work from the 8 Winn Road location.

Mr. Robinson stated him and his wife Danielle.

Mr. Martin asked if there were any other owners of the company.

Mr. Robinson stated one, he lives in Bangor.

Mr. Black asked about the sign and would it look like the neighbors?

Mr. Robinson stated the sign hasn't been designed pending the outcome of tonight's meeting. They would like to mimic something similar to the neighbor's sign.

Mr. Black asked what the neighbor's sign said.

Mr. Robinson answered "Blonde Dog Farm".

Mr. Black asked if the sign was for a business or the name of the house. He also asked if "Nations Trust Mortgage" was affiliated with any other franchise.

Mr. Robinson stated no, they started the company.

Mr. Black asked about licensure as a branch office, and how the use would not change the character of the neighborhood.

Mr. Robinson stated if they meet with a client at a location they have to be licensed. They intend to keep the integrity of the home, the sign will be the only exterior evidence the house is used for anything other than residential. There will be no change to the driveway.

Mr. Black asked about parking.

Mr. Robinson presented the Board with photos showing the size of the driveway.

Mr. Wyman asked if the driveway would be adequate and prevent on-street parking.

Mr. Robinson stated yes.

Mr. Black asked if State licensing required a sign.

Mr. Robinson stated no, there will be instances where a client or realtor will meet at the house, and the inspection process for credit companies requires a sign. They are flexible with the size of the sign.

Mr. Black asked if Mr. Robinson knew the rationale for the sign requirement, and asked if the sign would be designed to attract customers.

Mr. Robinson stated he didn't know, no the sign will have only their logo, their source of business is referrals.

Mr. Black asked the hours of operation.

Mr. Robinson stated the mortgage business is a 24/7 business, but the office would be open Monday thru Friday, with special exceptions for customers or referrals.

Mr. Black asked how many employees were in Westbrook.

Mr. Robinson stated four.

Mr. Black asked on a typical day how many people stop by the office.

Mr. Robinson stated one person a day, there could be some days with no one or three or four people.

Mr. Black asked if they would hold closings at the 8 Winn Road location.

Mr. Robinson stated rarely, 99% of closings are held at attorney's offices.

Mr. Black asked if there would be other employees at the location.

Mr. Robinson stated no.

Mr. Black asked Mr. Robinson if he would agree to a condition of approval stating there would be no other employees at the location.

Mr. Robinson stated yes.

Mr. Wyman asked if there would be any lighting on the sign.

Mr. Robinson stated no.

Mr. Wyman explained the Board would hear public testimony in favor, opposed and on a neutral basis, neither for nor against the application. Mr. Wyman explained a special exception is neither special nor an exception it is tantamount to a permitted use.

Mr. Wyman asked for testimony from the public that was in favor of the application.

Mr. Frank Oulton, of 4 Winn Road stated he previously owned the farm, it was his original homestead. He has seen the request and doesn't have a problem. A sign is fine, the Country Club has a sign; there are plenty of parking spaces in the driveway.

Mr. Martin stated he has seen this property, and asked if it were a two-family.

Mr. Oulton stated at one time it was a 3-family.

Mr. Longley stated the house had been the Oulton homestead since 1928 until it was sold to the golf course in the 80's.

Mr. Edward Oulton, of 11 Winn Road stated he lives across the street and is pleased with the plan for the property. It's a nice old house that needed a lot of work; this will be a good use for the property.

Mr. Wyman asked when the house was built.

Mr. Oulton stated in the early 1800's.

Mr. Wyman asked for testimony that was in opposition.

Mr. John Gates, of 22 Hazeltine Drive stated he had a petition from ten or twelve neighbors concerned about signage. A sign changes the nature of a community; he also voiced concern of his neighbors being notified of the hearing. Mr. Gates read the petition into the record and stated that George and Kathleen Babeu had emailed information.

Mr. Wyman stated all e-mails become part of the permanent record.

Mr. Gates stated he understood a decision would be made this evening. He stated the "Blonde Dog Farm" is the name of his neighbor's house. Mr. Gates reviewed the application that was e-mailed to him. Mr. Gates questioned the number of employees at 8 Winn Road, and the need for a sign. He dialed the phone number for "Nations Trust Mortgage" and there was a reference to Acadia Mortgage and Mr. Fernandez of Upward Development; he asked if these businesses would be located at 8 Winn Road. Mr. Gates stated he has no objection to business, but anything overtly commercial would decrease property values. He suggested an evergreen screen for the parking area. He also had no problem with a small sign on the house; again he stated his main concern is a commercial use in a rural residential neighborhood. Mr. Gates consulted with a real estate broker and was told a commercial sign wouldn't add value to property.

Mr. Wyman asked Mr. Gates if he were opposed to a sign, or was his concern the size of the sign.

Mr. Gates stated he thought a prominent street number would be sufficient, and he was opposed to a sign on a post located near the road. Mr. Gates referenced the reaction of residents with the proposal of a bank on Main Street at Dr. Paulding's office.

Mr. Copp asked Mr. Gates where he would want evergreens planted.

Mr. Gates stated he wasn't sure without inspecting the property, but in general terms to shield the parking from view when driving along Winn Road; the Hazeltine side is already screened.

Mr. Copp stated the parking wouldn't be visible from the end of Hazeltine Drive, and thought it would defeat the purpose if the property wasn't visible.

Mr. Wyman asked if the "maintenance sign" on the maintenance building detracts from the value of the neighborhood.

Mr. Gates stated that is part of the Country Club.

Mr. Martin asked Mr. Gates if he objected to the nature of the business, and if a Doctor or Dentist office would be more acceptable.

Mr. Gates stated he objected to any business; doctor's offices have historically been located in residential neighborhoods.

Mr. Martin asked if the "Blonde Dog Farm" sign offended his sense of aesthetics.

Mr. Gates stated he understands this is the name of his house, if everyone named their house, yes; but it doesn't terribly offend him.

Mr. Black asked Mr. Gates if he had seen the logo.

Mr. Gates stated yes, and "Nations Trust Mortgage" communicates a commercial use.

Mr. Black asked if "Nations Trust Medical" would be less offensive.

Mr. Gates stated he would prefer at Dr. Somebody as opposed to a Bowdoin Medical Group.

Mr. Black asked Mr. Gates if he represented all the residents of Hazeltine Drive and Merion Way.

Mr. Gates stated not officially he only presented the petition.

Mr. Black asked when he received notice of this application.

Mr. Gates stated seven days ago.

Mr. Wyman noted that the Hazeltine Drive and Merion Way residents were opposed to the request, but not the residents of Winn Road.

Mr. Wyman asked for testimony that was neither for nor against but neutral.

Mr. Gregg Copenhagen, of 14 Hazeltine Drive stated he signed the petition based on a large sign; he is not opposed to a sign similar to the "Blonde Dog Farm" sign.

Mr. Wyman asked Mr. Copenhagen how long he had resided at 14 Hazeltine Drive, and could he see the front yard of 8 Winn Road.

Mr. Copenhagen answered ten years, and he cannot see the front of 8 Winn Road, there is a buffer. He stated this use seems to be a business that would have less traffic than a Doctor's office; he is not opposed to a small sign.

Mr. Black asked if he was opposed to a sign by the road.

Mr. Copenhagen stated no.

Mr. Wyman asked about the need to plant evergreen trees.

Mr. Copenhagen stated it would be hard to say, if the traffic is no more than stated in the application; it would be no different than him having company with two or three vehicles.

Mr. Wyman thanked the public for their testimony and e-mails which become part of the record.

The public portion of the meeting was closed.

Mr. Wyman explained this is a quasi-judicial Board and members are not allowed to discuss specific cases prior to the meeting.

Mr. Martin stated he had no problem with the mortgage office, the building is nicer than it was, and there will be fewer cars than associated with a multi-family use. He is sympathetic to the concerns of a sign, but would support a small non-illuminated sign. This is an innocuous use to the property with less impact than other home occupations such as a daycare.

Mr. Black stated he understood the concerns; a sign could have potential impact on the character of the neighborhood. Other signs in the area are "Sunrise Acres" a farm with business / retail and the maintenance building which is less attractive than the proposed use. Hazeltine's location is different screening is a non-issue; and the amount of traffic generated by the business will be no different than a personal vehicle. Mr. Black asked Mr. Robinson if he would be comfortable with a condition of approval stating there are to be no employees other than Terry and Danielle Robinson, and a 2' x 3' sign consisting only of the logo "Nations Trust Mortgage" with no illumination. Mr. Black stated people may be more comfortable with a doctor or dentist office in the neighborhood, because this is what people have grown up with. This is a low impact use, with a green element and he is in favor with the stated conditions.

Mr. Copp stated he didn't see a problem Winn Road has farms, and a golf course and is similar to Route 9, he doesn't see this use more commercial than a Country Club. This will be an improvement to the current condition of the property.

Mr. Wyman stated the photos were helpful; the maintenance building at the corner of the property has a sign. The petition presented was from neighbors, who can't see the property. Mr. Wyman stated the driveway and front of house face Winn Road, and asked about a sign on the front of the house.

Mr. Robinson stated his first option is a sign at the road.

The Board reviewed the Special Exception standards, Section 603.2.3 with the following findings:

- .1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;**

There will be no substantial increase in traffic generated from the in-home business, and it will not create hazards to vehicular or pedestrian traffic.

The Board found this requirement to be satisfied.

.2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;

There will be no water pollution caused by the business.

The Board found this requirement to be satisfied.

.3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;

There will be no unhealthful conditions generated by the proposed in-home business.

The Board found this requirement to be satisfied.

.4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;

The proposed use will be compatible with uses that are adjacent to and neighboring the residence. The proposed business will be open Monday thru Friday with special exceptions for customers. There may be one customer or as many as 3 or 4 in one day.

The Board found this requirement to be satisfied.

.5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

There will be no glare, fumes, or noise that would create a nuisance to the neighboring properties.

The Board found this requirement to be satisfied.

.6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

The proposed use will not create environmental impacts on surrounding properties.

The Board found this requirement to be satisfied.

.7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

The proposed use will not depreciate the economic value of surrounding properties.

The Board found this requirement to be satisfied.

.8 If located in a shoreland zone, the proposed use (1) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use.

[Amended, effective 12/2/86]

The Board determined the property is not in a shoreland zone.

In addition, Section 603.2.7 was reviewed with the following findings.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

.1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;
The in-home Mortgage Office will not create noise that will exceed 60 decibels at lot boundaries.
The Board found this requirement to be satisfied.

.2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;
There will be no noise or vibration generated by the proposed in-home business.
The Board found this requirement to be satisfied.

.3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;
There will be no wastes generated by the proposed use that would transfer beyond lot boundaries.
The Board found this requirement to be satisfied.

.4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and
There will be no odors from the proposed use of the property.
The Board found this requirement to be satisfied.

.5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed.
[Amended, effective 12/2/86]
The use will not discharge any harmful or unhealthful elements into any water supply.
The Board found this requirement to be satisfied.

The Board reviewed the criteria of 414.1 Home Occupation and found the use requested met the criteria based on the following findings.

414.1 Any home occupation such as arts and crafts work, dressmaking, tutoring, music teaching, and the use of a portion of a residential building as a bed & breakfast inn, day care home, or as the office of a physician, dentist, lawyer, engineer, architect, hairdresser, barber, real estate broker, insurance agent, accountant or similar uses may be approved as a special exception by the Board of Adjustment and Appeals if: [Amended, effective 12/13/89]

The Board found based on testimony that the Home Occupation, Nations Trust Mortgage met the criteria of a Home Occupation.

.1 The occupation of an office will be managed by a member of the family residing within the dwelling unit. Up to two employees who are not members of the family may be employed in a home occupation, and;

The home occupation, Nations Trust Mortgage, is owned and operated by Terry and Danielle Robinson; who reside at the dwelling. The 8 Winn Road location will be used as a satellite branch for Terry and Danielle only.

The Board found this requirement to be met.

.2 The occupation or office will be located wholly within the principal or accessory structures, and;

The office will be located entirely within the dwelling as outlined in the application.

The Board found this requirement to be met.

.3 Exterior displays, exterior storage of materials, and exterior indication of the home occupation will not be permitted except for signs as may be specifically provided for by the Board of Adjustment and Appeals and as may otherwise conform to the conditions of this Ordinance; and

The only exterior display for the company would be a proposed sign with the company logo.

The Board voted to allow a wooden sign no greater than six square feet; the sign will hang from a post and be similar to the design submitted to the Board.

The Board found this requirement to be met.

.4 Noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare will not be detectable beyond property limits, and;

There will be no noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare associated or unassociated with the business at 8 Winn Road due to the nature of the business, that will be detectable beyond the property lines.

The Board found this requirement to be met.

.5 Off-street parking spaces will be provided in an amount to be determined by the Board as necessary to avoid street congestion.

No off street parking spaces will be necessary, there will be no street congestion.

The Board found this requirement to be met.

414.2 The granting of a special exception approval for a home occupation shall apply to the applicant only while the applicant resides at the property.

Mr. Black asked if the property was still considered a two-family.

Mr. Longley stated the building permit application reverts the property to single-family dwelling.

Mr. Copp stated there was testimony of other businesses, will "Nations Trust Mortgage" be the only business at this address.

Mr. Robinson stated yes, Anthony Fernandez is separate with no connection; and he and Danielle ran Acadia Mortgage prior to opening "Nations Trust Mortgage", and took over Acadia's phone number.

Mr. Martin stated assuming a 3' x 4' sign is too big, what size would be acceptable.

Mr. Robinson stated the sign across the street is 2' x 3' they are flexible with the sign.

Mr. Black asked if there was a sign design, he suggested scroll work similar to example submitted.

Mr. Robinson stated they had not thought of scroll work, they want a sign that would fit with the residential character of the neighborhood.

Mrs. Robinson stated the wooden sign presented was an example from the web site.

Mr. Martin asked if the Board had authority to dictate design of the sign, there are no design standards.

Mr. Longley stated specifying a wooden sign limited to six square feet would be workable.

Mr. Black suggested a two-sided sign on a single-post no larger than six square feet, he preferred scrolling.

Mr. Robinson stated he will work with Mr. Longley, Code Enforcement Officer on the design of the sign.

Mr. Black moved to approve the request of Terry and Danielle Robinson for a special exception for a home occupation; Nations Trust Mortgage at 8 Winn Road, Tax Assessor Map R05B, Lot 2 in the Rural Residential 2 (RR2) district subject to the following conditions:

1. Terry and Danielle Robinson will be the only employees of Nations Trust Mortgage to work at 8 Winn Road.
2. The sign content is limited to the logo submitted. The sign will be no greater than six square feet in size. The design of the sign is to be similar to the example provided. The sign will be wooden and hang from a single post; the sign will have no illumination.

Mr. Martin seconded.

VOTE: Unanimous

Mr. Wyman thanked the public for their testimony.

II. Administrative Matters

1. Minutes of November 8, 2007

Mr. Martin moved to approve the minutes of November 8, 2007.

Mr. Black seconded.

VOTE: 3 in favor (Martin, Black, Copp)
1 abstain (Wyman)

Mr. Longley stated the Zoning Ordinances had been updated with the Route 100 amendments. The previous Local Business district allowed single-family dwellings as a special exception, this no longer exists, and there might be fewer applications before the Board.

III. Adjournment:

Mr. Martin moved to adjourn.

Mr. Black seconded.

VOTE: Unanimous

The meeting was adjourned at 8:45 p.m.

A TRUE COPY ATTEST:

R. Scott Wyman, Board Chair

Pam Bosarge, Board Clerk