

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES**

**TOWN OFFICE Upstairs Meeting Room
NEW HAMPTON, NH 03256**

April 3, 2019

MEMBERS PRESENT

Regular members: Mr. Tierney, Ms. Karnis, Mr. Hofling and Mrs. Belanger.

OTHERS PRESENT

Administrative Assistant Mrs. Vose

CALL TO ORDER

Mr. Tierney called the meeting to order at 7:00 PM.

PUBLIC HEARING

Keven French, NH Route 104, Tax Map U-8, Lots 1 & 1B, for a Variance -Article IV, Section E.3, of the New Hampton Zoning Ordinance.

Surveyor & applicant Kevin French, Engineer Kent Brown, property owners for 1625 Summer Street Ltd Partnership – Mark and Mike McDonough, and Liz Smith were present. Mark McDonough said they authorize Mr. French and Mr. Brown to act on their behalf.

Mr. Tierney advised that there was not a full board for this meeting and asked if the applicants wanted to reschedule. Mr. Tierney advised the applicant and owners that the absence of a full board was not reason for appeal of a decision. Mr. French and the McDonoughs agreed to continue the hearing with the members present.

Mrs. Vose read the public notice into record stating that the applicant, Kevin L. French, has requested a Public Hearing in accordance with RSA 676:7, for Variances under Article IV, Section E.3. of the New Hampton Zoning Ordinance. The applicant's proposal is to construct self-storage units in the Business Commercial District (BC-3). The ordinance does not list self-storage units as a permitted use in this district. The property belonging to the 1625 Summer Street Limited Partnership is located on NH Route 104, Tax Map U-8, Lots #1 (9.69 acres) & #1B (5.02 acres), in the Business Commercial District (BC-3).

Mr. Tierney advised that the application included a submittal from Certified General Appraiser William J. McLean III, dated 2/13/19, for an opinion on the effect of self-storage facilities to property values in the neighborhood.

Mr. Brown submitted a letter from abutter Michael Sirois, Mike's Performance Cycle LLC. Mr. Tierney read the letter into record, which supported the proposed self-storage buildings.

Mr. French submitted copies of the following:

1. Google Earth view of the vicinity including the subject properties and abutting properties.
2. Existing conditions plan from 2005 showing the parcels prior to

- their subdivision and elevations & wetland areas.
3. Preliminary site development plan from 2005 showing possible locations for storage buildings.

Mr. French said the parcels are 2 lots of record, he had met with the Planning Board and as warehouse/storage type buildings are not listed as a permitted use in the ordinance, and was referred to the ZBA for a variance. He said if this use is approved by the ZBA a Site Plan Review application will be necessary with the Planning Board. He said there are significant areas of wetlands on the lots which makes certain kinds of development difficult with this proposal having less impact relative to septic loading and traffic. Mr. French showed the preliminary layout created 10+ years ago saying that this development would likely have the same curb cut, but that any new site plan would now need to follow updated regulations from the town, remapping of wetlands, and review by NHDOT on driveway access. Mr. Brown said NHDES now has more restrictions on stormwater management.

Mr. Tierney asked if the plan would encompass both lots and Mr. French said it would probably be necessary to use both. The plan is for one small office which would require a very small septic system.

Mark McDonough advised there would be a climate controlled office with drive up one-story metal buildings on concrete pads, where people could rent a space for storage purposes. They have 20 years' experience with self-storage facilities in several other locations. There would be outdoor lighting and typically a landscape plan. These would be set back a good distance from the old Route 104, as opposed to the current 104, as that is the property line.

Mr. Brown said this is a use variance and they don't anticipate a problem meeting the dimensional requirements. They didn't want to finalize a concept until this use was approved.

Ms. Karnis asked if there were any future plans to offer additional office spaces and Mike McDonough said there were not. Ms. Karnis asked about restrictions on what would be stored there due to the concerns about the wetlands and proximity to the lake. Mr. McDonough said they don't allow storage of propane tanks, hazardous materials; vehicles are allowed but they must have absorbent mat under vehicle, no more 1/8 tank of gas, be roadworthy and inspected. The same rules apply to boats and RV's. Mr. McDonough said it is not likely they will offer outdoor storage.

Mr. McDonough said they've had the lots for sale for about 8 years at \$49,000 and \$89,000 with some inquiries but not one offer.

Mr. Hofling expressed concern with what the customers may store and asked what enforcement the McDonoughs could take relative to what is being stored. Mr. McDonough said the contract has a provision for them to enter the storage unit to see what's inside, also allowing them to auction or dispose of the contents as needed. Ms. Karnis expressed concern with a

future owner not taking the same precautions as the McDonoughs.

There was discussion on whether there was space for a septic system and that if there wasn't, a chemical toilet was an option, but that it appeared there is septic suitability for this limited use.

The board reviewed each criteria:

1. **The variance will not be contrary to the public interest** – The applicant wrote *“Storage facilities are a common use in commercial districts; there is a need (demand) for storage units in the area, warehouse/storage facilities are not specifically called out in any of the district in Town, so the BC3 District would seem the most appropriate; the proposed site is located in an area of existing commercial uses; the proposed site has adequate access and is conveniently located”*. Mr. French added that this is a low impact use. Mr. Tierney advised that this use is allowed in the Business Industrial District, listed as “Commercial”.
2. **The spirit of the ordinance is observed** – The applicant wrote *“the spirit of the ordinance is to allow for additional commercial uses to be located along the Route 104 corridor. Self-storage units would constitute an appropriate commercial use, located at a convenient accessible location.”*
3. **Substantial justice is done** – The applicant wrote *“it would allow for a low impact use on a piece of property that is restricted by wetlands and soil conditions”*.
4. **The values of surrounding properties are not diminished** – The applicant wrote *“it would be a complimentary commercial use, in an area of mixed commercial uses. Due to site condition and the wide Route 104 right-of-way the buildings would be further setback from the road creating even less visual impact”*. Mr. French also referred to the appraisal submitted, which gives the opinion that this would not have a negative effect on the neighborhood.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area;**
 - (A) i. **No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property because:** – The applicant wrote *“presently the lot is of adequate size for the proposed use. However, the number of commercial applications that are common in the area are limited due to the various intermittent wetland areas that exist on the property. This use allows the property to be develop with a low environmental impact, commercial use.*

Mr. Tierney advised that this answer doesn't address the issue that this is not an allowed use. Mr. French said the hardship is trying to match a use that fits the specific limitations of the property in a commercial way, in a commercial area.

Mr. Brown said if you look at the diner and the furniture store nearby, those uses would not be suitable for this property due to the amount of dredge and fill that would be required to create the type of parking needed for those businesses. This proposal reduces the amount of impervious area needed to support the business.

ii. **The proposed use is a reasonable one because:** – The applicant wrote *“it allows the property to be used for a viable commercial use, in a zone that is designated and appropriate for the proposed development”*. Mr. French added that this use can fit on the property within its limitations.

(B) If the paragraphs in 5(A) are not established what are the special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. – The applicant wrote *“the property is in an area that is designated for commercial development. The fact that the proposed use is not specifically addressed in the ordinance, should not preclude it from being considered as an appropriate location for this commercial application. Additionally, due to the limiting environmental conditions that exist on the lot, the proposed development allows for a use more suitable to the limiting conditions of the property.”* Mr. French added that other uses seen in the area could not fit on these lots due to their limiting environmental factors.

Mr. French said they've been trying to find a business to put on the site that works within its confines. Mr. McDonough said their family has a lot of experience with many different types of businesses and feel these lots could not fit those types of businesses but that this proposal could fit and have minimum impact. Mr. French reminded the board this would still need site plan review.

Mr. Tierney closed the public portion of the meeting to go into deliberations.

Details of the appraisal report were reviewed by Ms. Karnis and Mrs. Belanger. Ms. Karnis noted that the report mentions a 2-story structure, visible from the road, which she took to be the office and the comparisons the appraiser gave where from other storage facilities and the

establishments close to those, which were all commercial themselves; not residential. Mr. Tierney advised that the setback distance from the front property line is 100' and requires a vegetative buffer.

Mr. Tierney reviewed criteria 1 & 2 together - the variance would not be contrary to the public interest and if granted the spirit of the ordinance would be observed. Ms. Karnis said it doesn't appear to alter the essential character of the neighborhood because it will be a good distance off of Route 104, there's a mix of uses currently in the area, with her only concern being any threat to the wetlands by the renters using the space. Mr. Hofling said the McDonoughs have protections in place to address those types of problems so is not worried about that. Mr. Tierney read the purpose of the BC3 District in the Zoning Ordinance noting that the Planning Board had listed uses allowed but there is nothing that states "commercial" or "storage facilities". Ms. Karnis said in looking at what is allowed in the district the uses are typically smaller in size. Mr. Tierney said some of these allowed uses may require more parking than the McDonough's property would permit. Ms. Karnis said if this were granted she would like to see conditions to protect the wetlands. Mr. Tierney advised that site plan review is still necessary.

Criteria 3, the variance would do substantial justice - Mr. Tierney said that based on the particulars of the property this variance would meet this requirement. Ms. Karnis said the small amount of traffic would be a benefit to the wetlands and as the area has campgrounds and camps, the storage would be beneficial.

Criteria 4, the values of surrounding properties would not be diminished - Ms. Karnis said an appraiser has supplied a detailed report and appears to be fairly accurate while not addressing some residences in the area.

Mr. Tierney reviewed Criteria 5A & B and unnecessary hardship Mr. Tierney stated that the McDonoughs have owned the property for a long time during which time they have tried to sell it with no offers being made. He said he felt this was a unique property with wetlands and limited areas to put buildings as compared to others in the area, making it a hardship. Mr. Hofling said if the board were to walk the property today they would probably reach this same opinion. Mrs. Belanger said she agrees that the amount of wetlands on these parcels are an unnecessary hardship. Ms. Karnis said the district is riddled with wetlands, more so to the west of this parcel than to the east, but that the wetlands on these parcels are more mottled and unique, creating a hardship for development. The board reviewed the map of the parcel and its wetlands as mapped in 2005.

Ms. Karnis made a motion, to grant the Variance because it would not be contrary to the public interest as the site is suited for the proposed purpose given the needs in the area and would be consistent with the spirit of the ordinance with conditions. Ms. Karnis withdrew her motion for more conversation on conditions.

There was discussion on language for the conditions to ensure it can apply

to the land and any future managers of this proposed self-storage business.

The board agreed to come out of deliberative session to further discuss the application with Mr. French and the McDonoughs. Mr. McDonough said he understands the concerns and said in Goffstown they are addressing the same concerns for a new self-storage business there and advised that the New Hampton Planning Board and Fire & Police Chiefs during their process, will likely have similar questions. Mr. McDonough said they would put any safeguards in place that were required. Mr. Brown suggested the McDonough's rental agreement restrictions could be listed as conditions, though they were lengthy. As shown on Mark McDonough's phone, Ms. Karnis read the list of conditions agreed upon with Goffstown Fire Chief being: storage of vehicles allowed outside only and must be currently registered and insured with proof of same, batteries disconnected, vehicles with gas & oil must have absorbent pad underneath, storage of propane tanks prohibited including RV/campers, vehicles must be driven – not towed to the site, RV's and boats must be registered, trailers must be roadworthy, vehicles must have 1/8 of a tank of fuel – or less, and no repairs or extensive maintenance can be done to vehicles while in storage.

The board went back into deliberations. There was further discussion on appropriate language for conditions and whether they should be detailed, or broad, but to address the wetlands concerns, and any future property owners.

Ms. Karnis made a motion, seconded by Mr. Hofling, to approve the Variance on the condition that storage facilities built upon this land shall provide for the maximum safety and wetland security from stored materials.

The findings were that granting the Variance would not be contrary to the public interest because the use of the storage facility on that particular site is the best use of the land given its special needs and given that it would meet the needs of the community in that area; that substantial justice would be done; there would be no adverse impact upon property values in that area, and given the unique topographical layout of that site the hardship is established and this is the recommended best use. Vote was unanimous.

MINUTES

Ms. Karnis made a motion, seconded by Mr. Hofling, to approve the minutes of 11/7/18 as written. Vote passed.

Ms. Karnis made a motion, seconded by Mr. Hofling, to approve the minutes of 11/10/18 with the following amendments:

1. 2nd paragraph under "Public Hearing": Change 9.21 to "9:21"
2. Pg. 2, under "...nuisance or hazard created" insert "if" between "wondered" and "it".
3. Pg. 2: under "...aesthetic values exhibited...", 1st sentence..."Ms. Karnis said that is there.." strike "is" and in the same sentence "...but this additional at 192 sq. ft.." change "additional" to "addition".

4. Pg. 3, 2nd line: Change “need” to “needs”
Vote passed.

CORRESPONDENCE

There was none.

OTHER BUSINESS

For new member Mrs. Belanger’s benefit, the other members reviewed their experience and background on the ZBA.

Mrs. Vose provided to members a recent Supreme Court case on an Equitable Waiver of Dimensional Requirement, as provided by Ms. Karnis.

Mr. Tierney advised that the board should review the By-Laws to see if any changes are necessary for the May meeting which will include Election of Officers.

Mr. Tierney reminded members of the upcoming annual Spring & Zoning Conference that they can attend at the town’s expense.

Mr. Tierney advised members of the most recent Zoning Handbook in a digital format.

ADJOURNMENT

Mrs. Belanger made a motion, seconded by Ms. Karnis, to adjourn at 9:07 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Administrative Assistant

