

ZONING BOARD OF ADJUSTMENT  
TOWN OF PETERBOROUGH  
Monday, January 5, 2015 – 7:00 p.m.  
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, David Sobe, Peter LaRoche, Bob Lambert, Peter Leishman and Loretta Laurenitis

Staff Present: Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer

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Chair Stewart called the meeting to order at 7:00 p.m. “Good evening” he said “this is the January stated meeting of the Zoning Board of Adjustment. I am Jim Stewart and I am the Chair.” Chair Stewart went on to introduce the members and staff and read the Rules of Procedure for the meeting reviewing the process of reading the application followed by a presentation by the applicant; questions from the Board; questions/concerns from the audience (in favor then opposed); rebuttal and closure of the hearing followed by deliberation and decision. He concluded by noting anyone interested in speaking about the case please state their name, address, and relationship (abutter, agent, concerned citizen) for the record. He then read the case:

**“Case No. 1210 Peterborough Retirement Community (Rivermead)** requests a Variance for the expansion of a parking facility that would allow vehicles to back into a public way, as regulated by the zoning ordinance in Article VII, Section 245-32 B 2. The property is located at 150 Rivermead Road, Parcel No. R004-003-000, in the Retirement Community District.”

Chair Stewart looked up and asked “are there any corrections or changes to this notice?” With none Chair Stewart continued “that being said I will ask the applicant to begin.” Mr. LaRoche interjected “I am a Board member of another retirement facility in town, I just wanted the members to know that.” With reference to recusing himself Chair Stewart replied “I think it is a stretch but if you feel you should recuse yourself ...” Mr. LaRoche noted he did not feel he should recuse, he just wanted the members to have that knowledge.

TF Moran’s Chris Rice introduced himself as the agent for the Peterborough Retirement Community (Rivermead). He also introduced Doug Shaw, Facilities Director at Rivermead. “We are requesting a Variance for a reconfiguration of a

parking lot that would permit vehicles to back out of a parking space on to a public way.” Mr. Rice pointed out the area on a graphic and explained where the additional twelve parking spaces would be located. He went on to say “the intent of the ordinance is to prohibit vehicular entry on heavily trafficked roads” adding “but this is a loop drive with a 15-mile per hour speed which Rivermead maintains and plows.” Mr. Rice also distributed a copy of a USGS aerial map depicting a string of spaces on the campus that have similar back-out parking.

Chair Stewart noted the ordinance being referred to was 245-32 *Off-Street Parking* and more specifically “backing up.” He read from the ordinance “all parking area having six or more spaces shall be so designed that no vehicles shall be required to back onto a public way or back onto a driveway serving as access to fifty or more parking spaces in order to enter or exit from a parking space.” Then noted “for the record I would like to have a general discussion about the definition of a public way and whether or not we have jurisdiction to hear this case.”

Code Enforcement Officer and ZBA Liaison Dario Carrara replied “well as I stated in my staff report the ordinance does not define a “public way” adding “and there is concern over both pedestrian and vehicular safety associated with this type of parking.” Mr. Carrara explained the increased risk of a collision with cars backing out of the new spaces along Rivermead Road. He also noted that road is often used by the residents who “walk along the edge of the roadway because there isn’t a sidewalk, so they are at increased risk for injury as well.”

Mr. Carrara described the gray area surrounding the ordinance. He gave an example of a local business (Mr. Mike’s Convenience Store) as being private property “but so many people drive around the building it is considered a public way.” He also told the members he had spoken with the Chief of Police about it “and it is a matter of safety” adding “as the zoning administrator I also believe it is a public safety issue.” Mr. Carrara then told the members “the ZBA has full authority to do what it wants including telling me I am wrong.”

Mr. Lambert asked for clarification on the status of other establishments whose parking back out on to public ways. Chair Stewart cautioned that they not mix preexisting nonconforming uses versus new issues. He went on to say “for the record, I *do* believe Dario made the right decision and this request is before us appropriately.” He then asked Mr. Rice to proceed.

Mr. Rice reiterated the 15 mile-per-hour speed limit on the road with mostly residents and employees using it. “Most pedestrians are only out when it is decent

outside” he said adding “the road is very straight and there is good sight vision.” He referred to the aerial map, pointing out similar parking configurations on the campus and reported “we have no record of any accidents at all, not vehicular or pedestrian.”

Mr. Leishman asked if the parking area could be moved to the east with Mr. Rice replying “we did not look at that as an alternative as we wanted the parking closer to the front entrance and without any disruption of the green space” adding “(that green space) it is the first thing you see as you drive up to the site and it is quite beautiful.” Chair Stewart interjected “so you have room to put the parking elsewhere but for aesthetic purposes you chose not to.” Mr. Rice replied “yes there are other places but it is only twelve parking spots, we are not asking for a full parking lot if you will.”

Ms. Laurenitis asked if the existing parking was parallel along the road with Mr. Rice relying “no it is straight in 90-degree parking so you back out and go.” He went on to note the new spaces would be angled “to assist with maneuverability in backing out.” Mr. Shaw also reiterated any alternative location’s distance from the front entrance. Chair Stewart asked if there was anything new at the facility that would attract additional traffic. Mr. Shaw noted the construction of the *Village at Rivermead* necessitated additional parking for both staff and residents. Mr. Sobe asked about visitors with Mr. Shaw relying “more or less it is residents and employees.” Mr. Sobe asked “is there a sidewalk?” Mr. Shaw replied “to the front entrance, yes but not along the loop of the road.” Mr. Lambert asked about the residents of the cottages and their backing out of their driveways. Chair Stewart noted the ordinance’s reference was for parking areas having six or more spaces. Mr. Carrara noted his concern with the lack of sidewalk on either side of the road for pedestrians adding “and when backing out people look left, then turn out and may find people backing out in front of them.” Mr. Rice noted an example of Shaw’s Supermarket “where there are a lot more pedestrians and cars with poor lighting conditions.” Mr. Leishman interjected “a parking lot is not a public way.” He also asked about expansion of the back parking lot. “There looks like there is adequate room to do that” he said.

Ms. Monahan noted she had recently been to a function at Rivermead “and the parking by the health center was hazardous” she said adding “parking is not even angled, it is 90-degrees straight in. I did not like it, I am just saying I thought it was scary with people walking in the road because there are no sidewalks. It was night and it was dark, I do have concerns.”

Chair Stewart suggested the members review the Variance criteria. Mr. Rice read the facts supporting the request. Mr. Rice noted that granting the Variance would not be *contrary to the public interest* because allowing vehicles to back out of a parking space did not pose a safety risk; that the *spirit of the ordinance* was observed because the roadway was not a high volume through street and backing onto it could be done safely. Mr. Rice went on to note that *substantial justice* was done because the reconfigured parking lot would provide additional parking spaces for the facility's residents and visitors without significant disturbance or impact to the open space and aesthetics (landscaping in particular) of the property, that *values would not be diminished* as the road is a loop drive that serves the residents, employees and visitors only, and that there would not be any *unnecessary hardship* as there was no substantial relationship between the general public purposes of the ordinance and the specific application of the ordinance on the Rivermead property. Mr. Rice reiterated the traffic volume was quite low and the posted speed limit was 15 miles-per-hour.

Any other questions?" asked Chair Stewart with Mr. Leishman asking for clarification of the total amount of current spaces in the front lot. Mr. Rice calculated the existing and potential spaces noting that because of the design and plan for angled parking three spaces would be lost for a total of 39 spaces. Mr. Laurentitis interjected "I have a couple of questions" and asked about delivery truck access (i.e. UPS, Federal Express or food serves deliveries) on the road. Mr. Shaw replied "we have a bit of that" adding most deliveries access the campus via the other entrance on Morison Road. "They come through the back where the main building loading dock is" he said. Ms. Laurentitis then noted "you mentioned earlier that the spaces would also accommodate residents from the new side" (the Village) and asked "is there not enough space over there for them?" Mr. Shaw explained residents of the Village often drive over to visit or utilize the pool located at main building. He also noted the availability of an on-demand shuttle bus available 13 hours a day for the residents to travel back and forth between the campuses "but a lot of them like to drive over" he said.

Chair Stewart asked about the area across the driveway to the north as a possible location for additional parking. Mr. Rice pointed out the green space as well as the drainage system and culverts located in that area. "We would like *very* much not to do anything with that area" he said.

Mr. Rice then asked the members if posting caution signs were advised they would be happy to oblige. Mr. Shaw noted several standing signs on the road indicating

the speed limit. “We also have a pole mount radar system to remind people that this is a slow area with pedestrian traffic.” Mr. Lambert pointed out that backing out of the main entrance of Rivermead was no different than backing out of parking areas in other places in town. Mr. Sobe cited an example of angled parking on Main Street downtown “if a large vehicle or van pulls in beside you - you have to pull half way out into the street before you can see anything.” He asked “if there is an accident, who is at fault?” Mr. Shaw replied “I can only guess you would back out slowly and assume that you will be seen” adding “Rivermead is certainly not in the business of endangering people. We have been there a long time and for what it is worth we do not see the flow of traffic as a problem.” Chair Stewart interjected “I don’t know it looks like a lot of traffic throughout the day.” Mr. Rice reported his best guess was “100 vehicular trips a day on the road.” He reiterated their speed limit of 15 miles-per-hour “the town’s speed limit for like roads is 30 miles-per-hour” he said. When asked if the Police patrolled the road Mr. Shaw replied “no, it is self-patrolled.”

“Any other questions?” asked Chair Stewart and with none he went on to say “we have no audience.” He then looked around the table and asked “do we have enough to go into deliberation?” He then asked “do we need a site visit?” the members all agreed they had sufficient information to go into deliberation and a site visit was not necessary. A motion was made/seconded (Stewart/Leishman) to go into deliberation with all in favor. Chair Stewart asked alternates Laurenitis and Lambert to step down for the process.

Chair Stewart read the Deliberative statement. He then noted “we will take a straw poll as usual” adding “I am the Chair so I will go first.” He began by saying “I think Rivermead is an incredible asset to the community but with that being said I am not convinced they are meeting the criteria and there are other alternatives to explore.” He noted “the parking could potentially cause an increase in the safety risks to the public. Parking on a road like this is just poor planning. I don’t feel I can support this request.”

Ms. Monahan began with “OK” adding “I *do* understand the need for parking, especially near the front entrance where the auditorium is located. So I feel bad because I want to give them parking but going by the criteria there are no special conditions that determine why it has to be this way so hardship has not been established.” She noted “I vote against it because there are alternatives. I feel this is a heavy spot for traffic and for public safety, I say no.”

Mr. Leishman noted “I cannot add much more than the Chairman and Vice Chairman have said” adding “and I would like to note the large number of pedestrians on the road and the potential problems with vehicles backing out. So I concur.”

Mr. Sobe also agreed with the comments made and noted the discussion with the Police Chief who “brought up safety first” adding “that is where I am at. It is a difficult situation but I think there are alternatives.”

Mr. LaRoche looked at the Chairman and said “well I don’t quite agree with all of your concerns” adding “there are more than 30 spaces that people back out of now and there will still be the same amount of people parking on the campus.” Mr. LaRoche did agree that there were other spots where parking could be considered.”

**A motion was made/seconded (Stewart/Leishman) to deny the request for a Variance for reconfiguration of a parking lot that would allow vehicles backing out onto a public way with Chair Stewart, Ms. Monahan, Mr. Leishman and Mr. Sobe in favor and Mr. LaRoche opposed.**

**Minutes:**

A motion was made/seconded (Stewart/Sobe) to approve the Minutes of December 1, 2014 with correction of typos with all in favor.

**Review of Revised ZBA Application Form:**

The members reviewed the draft form that the Chairman had compiled using their existing form and portions of an application form from Amherst and Hanover, New Hampshire.

The members spent time reviewing the draft with Ms. Monahan adamant that the location of any wetlands shall be shown on the plan (flagging the wetlands *is* delineation” she said) with a written report from the Conservation Committee prior to the meeting night. Chair Stewart noted “this has always been in the application and is part of our procedure.” Ms. Monahan added “and it is the law, applications must have the wetlands delineated. It is not an option, we don’t need a report, we need a delineation by a wetland scientist as well as the report from the ConCom.”

Chair Stewart interjected “I really cannot think of a case when the ConCom has not been asked to provide their opinion.” Ms. Monahan replied “well we need to address it” adding “some applicants will only do this once in a lifetime and they need guidance. They need to be informed that the ConCom needs to get involved.”

The members reviewed the application requirements for Variance, Special Exception, Administrative Appeal, Equitable Waive and Fees. Mr. Lambert asked why the fee schedule was on the very last page with Chair Stewart suggesting a reference to the fee schedule such as “in accordance with the fee schedule located on page X.” Mr. Sobe suggested they use “real numbers, not roman numerals.” Mr. Carrara asked for clarification on a property owner’s letter of authorization and a brief discussion about actual versus electronic signatures as well as notarized permission followed. The members discussed the many agents that may be involved (owner, primary contact, agent, representative, attorney etc.) with Chair Stewart noting he felt strongly that regardless of the contacts the property owner’s signature should be on the application. He referred to last-minute or electronic owner authorizations for cases noting “I don’t like the way we have been doing it.” The members briefly discussed various electronic signature technologies as well as the Amherst application form including owner permission to visit the property. Chair Stewart reiterated he would get the updated draft out to town counsel for review and then to the members “so we can have a public hearing on it in February.”

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant