

MINUTES  
ZONING BOARD OF ADJUSTMENT  
TOWN OF PETERBOROUGH  
Monday, April 15, 2013 – 7:00 pm  
1 Grove Street, Peterborough, New Hampshire

**Board Present:** Jim Stewart, Sharon Monahan, Bob Lambert, Loretta Laurenitis, and David Sobe

**Staff Present:** Dario Carrara, Code Enforcement Officer and Carol Ogilvie, Director and Laura Norton, Administrative Assistant, Office of Community Development

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The Public Hearing was called to order at 7:00 p.m. Chair Stewart noted “this is a continuation of Case No. 1191, Scott MacKenzie and John Loeb for a Special Exception as regulated by Article VI, Section 245-30 of the zoning ordinance to permit warehousing, distribution, retail facilities, and machine, vehicle and equipment repair. The applicant s are also requesting a Variance as regulated by Article II, Section 245-8 (A) of the zoning ordinance to permit warehousing, distribution, retail facilities, and machine, vehicle and equipment repair. The property is located at 420 Hancock Road, Parcel No. R011-043-200 in the Rural District.

“My name is Jim Stewart and I am the Chair.” He went to introduce the members of the Board. Chair Stewart noted the Public Hearing of April 1, 2013 and a property Site Visit on April 6, 2013 “and with this public hearing hopefully we can go into deliberation and make a decision tonight.”

Chair Stewart then read the Rules of Procedure. He reviewed the process and what had been accomplished in this case so far. He reminded anyone wishing to speak to please state their names and affiliation abutter, agent, concerned citizen) for the record, He concluded by noting if a decision was not reached this evening the case would be continued to a date and time certain.

Chair Stewart noted additional correspondences that had been submitted as well as Ms. Ogilvie’s response to a correspondence by Ms. Von Mertens. All were in receipt of copies.

Chair Stewart asked the applicant if they would like to go ahead and continue “or at least re-summarize.” Silas Little introduced himself and noted he represented Mr. Mackenzie. He noted the Site Visit was instructive in terms of seeing the property, the substantial paved area and the large steel building. He noted the three large bays in an undivided space and the containment system for water and oil. Mr. Loeb was asked to give a brief description of how the former bus depot used the building for a bus and repair facility. He noted the small amount of common office and administration space with storage in the upstairs area. Mr. Little added “I think this is exactly the situation why this building merits a Special Exception and it should be allowed.”

He cited §245-30 and how the applicant was seeking to replace the use of the building as a bus depot with the uses outlines by Mr. MacKenzie with some retail not deviating from the use of the property. He mentioned a similarity to small engine repair shops like Ronnie’s in Jaffrey or Tyler’s Small Engine Repair in Antrim. “There would be retail sales of the types of equipment

he services” said Mr. Little adding “to me the size and the amount of pavement outside speak to why the provision exists in the ordinance to allow these types of use.” He went on to note it was clear that the lot was in the Rural District “but it is not reasonable that this building would ever be used for one of the permitted uses in that district, nor is it reasonable it could morph into any uses permitted by Special Exception given the size of the lot. It is not likely to occur for that building, no excavation operation or drive-in movie theater” he said.

Ms. Monahan reviewed previous Board decisions on the property over the years. Mr. Loeb commented on several questions the Board had including the use of an access road and eventual abandonment of the Route 202 entrance. Mr. Loeb noted the access road was never constructed. Chair Stewart asked if the curb cut on Route 202 was legally conforming to which Mr. Loeb replied “yes.” Chair Stewart then asked “if we grant this does he (Mr. MacKenzie) need to go to the Planning Board for any type of site plan issues?” Ms. Ogilvie replied “that is not clear yet” noting a 2000 square foot trigger for a site plan review. Ms. Monahan asked if the Special Exception request was denied if the Board would go into the Variance criteria. Chair Stewart noted they would. Mr. Little noted he would withdraw his request for a Variance if the Board felt the Special Exception criteria was satisfied. He told the Board that the applicant’s party felt they met the criteria, “we applied for both just in case the Board did not see it the same way.”

Chair Stewart note “that is for Carol Ogilvie, Rodney Bartlett and Dario Carrara to worry about.” He quoted the Rural District definition of §245-8 A (2) *general purpose farm and /or forestry, agriculture, garden or nursery and the selling of products there from.* He asked Mr. Carrara “what does that mean?” adding “is it like an Agway or a Coll’s or more like a farm stand?”

Mr. Carrara replied “that is a good question” as he went on to explain that the regulations “do not address the scope of the use” adding you can sell earth products, gravel, stone and tree products without approval by the town.” He gave the example of a landscape business selling on a small or large scale. Ms. Monahan interjected “I disagree” she said noting the definition in and of itself means “if you grow shrubs, you sell shrubs, if you grow hay, you sell hay.” She added “this is not an agricultural operation. Retail should be incidental to the agriculture proper or livestock.” A brief discussion about site plan issues such as traffic, parking and landscaping followed. The members also talked about the setbacks for the district.

Chair Stewart noted §245-11 B 2 (warehousing and storage) and asked about the secondary or incidental amount of retail “percentage wise.” Mr. Carrara replied “secondary would be less than 50%” adding “the building code typically has a 10% for accessory retail but a lot of zoning regulations use 25% as their number.” He looked at Chair Stewart and said “so to answer your question, between 10 and 50% but it is my understanding the most zoning regulations use the 25% to start.”

Chair Stewart asked Mr. Mackenzie if he intended to repair automobiles with Mr. MacKenzie replying “I try to stay away from fixing cars, but incidentally, we get them. I can tell you I am not interested in the used car business. I specialize in tractors and I want to stay there.” Chair Stewart asked “what kind of tractors?” Mr. MacKenzie replied “farm tractors.” “Will you sell them?” asked Chair Stewart with Mr. MacKenzie replying “if I am allowed to.” Mr. Mackenzie added he had thought about potentially approaching a company such as John Deere to become a

dealer for their products. The discussion turned once again to the percentage of retail space Mr. MacKenzie may be allowed. It was noted the members had the building dimensions and the lot size so they could look at percentages. Mr. Carrara once again asked "if you grant relief you can impose reasonable conditions. It can be 10% or 25%; *you* come up with the numbers. I just ask you be very clear about it."

The members looked at the lot and the dimensions of the building and considered the setbacks the height of the fence and history of the properties that abut the lot. Ms. Laurenitis asked about the aquifer with Mr. Carrara noting "it is in it (like a good portion of the town) but not near the wellhead areas." The concern was with outdoor storage of something like salt where the rain, snow and wind may leach in and cause damage to the aquifer. A brief discussion about §245-14 the Groundwater Protection Overlay District followed, particularly with the storage of wrecked vehicles. Ms. Laurenitis asked "is it too ambiguous?" Ms. Ogilvie replied "that is up to you as a Board to decide." Mr. Loeb reminded the Board that the lot formerly housed 40-50 busses and dealt with waste oil, antifreeze and vehicle fluids. Ms. Laurenitis asked about the parking. Mr. Loeb assured her that provisions to deal with the storage of motor vehicles "has been dealt with in great depth" even before the bus depot was allowed to locate there. He also noted fluid changes would most likely be done inside the building. Chair Stewart interjected "we could condition things like that to mitigate, like for instance the number of cars in a given time frame." Mr. MacKenzie told the Board "I have been in this business 30 years. I know how to clean up an oil or antifreeze spill. Just use an adsorbent and then throw it in the trash." Ms. Monahan noted that the lot was also in the Flood Plain with a brief discussion of the overlay district the lot was under. Ms. Ogilvie noted the Flood plain would not apply in this case as it is restricted to new or substantial improvement to existing structures. She went on to note that the Wetlands restrictions would only apply if Mr. Mackenzie "wanted to get off the existing developed area." "New disturbance" replied Ms. Monahan shaking her head in agreement.

A brief comparison of the abutting property (Commerce Park) as well as the requested use being equally or more appropriate to the zoning district followed. Ms. Monahan noted she felt the request should be for a Variance, not a Special Exception "I don't think he is trying to become more conforming with the Rural District" she said. Mr. Little interjected "It is equal to a bus depot" with Ms. Monahan replying "I am just saying I am not comfortable looking at this when it literally says "equal or more appropriate to the zoning district." Mr. Little replied "and the rest of that is appropriate to the existing nonconforming use" pointing out the *nature* of the use, not the *number* of uses. He noted the nature of the use that existed and is there now if you will is a bus depot, with buses and bus drivers in and out, with repairs and fluid changes and refueling of vehicles is the nature of what the Mr. MacKenzie is asking for (warehousing, distribution, retail and machine and vehicle repair). "Things like that" he said. Mr. MacKenzie concluded "and there will be substantially less traffic impact to that area of (Route) 202."

Chair Stewart noted Ms. Monahan had raised a good point with the language of the ordinance and the members briefly discussed the preexisting uses. Ms. Laurenitis interjected "it is now open to retail use, that to me says it is *now* retail, incidental retail is a different use." She went on to note there was no verification that the former bus depot sold busses, "that throws it out of Special Exception (parameters)" she said.

Chair Stewart noted the Board would have to go through and decide if this use is equally or more appropriate than the bus depot and if it is was, any impacts must be identified. "Let's go through the Variance criteria. If it meets the criteria we vote for it if not, we vote against it" he said. Ms. Monahan immediately replied "the applicant did not address the Variance criteria." Mr. Little interjected "there was an application for both (Variance and Special Exception) and it was noticed that way." A brief review of the criteria followed.

Chair Stewart did a quick round up and noted several facts about the lot. He reviewed the facts that access and signage were appropriate, there was an existing fence, there would be no changes in drainage or landscaping and there would be little or no pedestrian traffic and the site would have no impact on any undeveloped areas on the site. He reviewed the lighting and concluded "essentially by reviewing the criteria we have a use that has no changes to any of these items."

Mr. Little agreed and added "there is also no adverse impact on abutting properties, noting the Keenan storage area to the north and the current bus depot to the south. The activity type is admittedly different but we are proposing a small business facility with no changes, the building is what it is."

Ms. Von Mertens noted that while she had no issue with what was being applied for she did note her concern for the retail. "My understanding is that it is incidental to the primary use, so tractors..." she said. She concluded with repairs and resale of parts would be incidental." Ms. Von Mertens also noted the gateway location. "These are our doors; we need to think about the visuals." She mentioned the concepts of the Master Plan and the general vision of the gateway is important." Ms. Von Mertens concluded by noting the north gateway is a nice one. "It is not developed so the corridor is nicely paid attention to and should be honored." A brief discussion about the setback and screening followed.

Ms. Laurenitis asked about a prior Notice of Decision (1996) for a Special Exception for parking. Mr. Little explained the request had been for a culvert and a swale "it never happened" he said adding "over time the lot has morphed into what it is today."

Andy Peterson stood and reiterated "the building is without a doubt a creation of the Peterborough zoning process." He pointed out the property on a projected graphic and noting the screening. "I implore the Board to take advantage of this opportunity and approve the application before you. This is a use needed in the town and this building needs a reasonable use. This is someone who will use it within those reasonable conditions to assure the ongoing gateway quality."

Mr. Peterson went on to address the retail issue. "We understand your concern" he said and asked the members to look at what was done there and allow this applicant a reasonable use that may be conducted in a successful way. He noted selling a snow blower may be economically feasible for the owner as well as the purchaser. "It is a benefit to the community; it is not a bad thing. That is the opportunity before you" he said. He concluded by reminding the members "remember this is not a gas station, it is not above an aquifer and proper storage and elimination of waste will be strictly maintained, this is where the commercial areas are."

A very brief discussion about towing and parking on the lot as well as in the bay area followed. A motion was made/seconded (Stewart/Lambert) to close the public hearing and go in to deliberation with all in favor.

Chair Stewart read a statement regarding the deliberative session that defined the hearing as closed with no additional testimony from the applicant or the public being heard. "But the Board may request additional information at its discretion," he said. He called for a straw poll and began with "first thing we will discuss is the Special Exception" adding "I think what they are asking for is reasonable. I do believe this use is equally or more appropriate to the zoning district with less impact." Chair Stewart went on to note the he would like to see conditions on what is incidental retail and the storage tank. "I personally think they have met all the criteria" concluding "I would support it."

Chair looked to Ms. Monahan and asked "Vice Chair?" Ms. Monahan replied "my feeling is that it should be a Variance request, I am not comfortable with a Special Exception. They are proposing an expansion of a non-conforming use, which is not a Special Exception request." She went on to note "he has added retail, it is not the same thing." She noted a request for six items in the application (warehousing, distribution, retail facilities, and machine, vehicle and equipment repair) "and I would only be comfortable allowing three (auto repair, towing and machine (small engine) repair." She said she was not comfortable with "the other vague uses" and concluded with "I feel retail is an expansion, the bus company did not do retail. That is my opinion."

Mr. Sobe noted he was comfortable with everything but the retail and asked "can we control that to some extent?" Chair Stewart asked "how? percentage? what?" Mr. Sobe replied "there is a difference when you talk about outdoors, the decision widens." Chair Stewart asked him "do you want to see product outside? Mr. Sobe replied that would be acceptable "outside is fine, just not out front." Chair Stewart asked "out back?" Mr. Sobe replied "that would be OK." Chair Stewart noted "I agree." Mr. Sobe concluded "his primary activity is repairs. Would having retail open the door for an expansion of that retail and become more than any of us anticipated?" Chair Stewart asked him "do you feel the Board can restrict it to mitigate your concerns?" Mr. Sobe replied "I am not sure" adding "there is a lot of ambiguity of what the retail would be."

Ms. Laurenitis agreed noting "my main concern is the retail" adding "what may become a tractor dealership is not just incidental to the business." Chair Stewart replied "we can condition that." Ms. Laurenitis noted she understood Mr. MacKenzie's position noting "if I were in his shoes I would also want to be able to open things up." Mr. Lambert noted Mr. MacKenzie would be ordering parts for car repairs and stated "that is retail right?" He went on to note it would be a hardship if the Board did not allow retail.

Ms. Monahan asked "should we do this as a Special Exception?" Chair Stewart replied "I see it as a special Exception." Ms. Laurenitis interjected "I don't think it meets the criteria." Chair Stewart replied "then *you* can vote against it." Ms. Laurenitis replied back "*I* will. It is a different use when you talk retail." Chair Stewart looked at her and said "yes it is a different use but is it an equal or more appropriate to the District?" He added "vehicle repair and a garage were not allowed in the rural district so is it an equal or more appropriate use?" Ms. Laurenitis noted "it is different adding retail. That is different." Chair Stewart added "we have a motion." Ms.

Monahan replied “no, not yet, we do not.” Chair Stewart made a motion to approve the Special Exception which was seconded by Mr. Lambert. Mr. Sobe, Mr. Lambert and Chair Stewart were in favor, Ms. Monahan and Ms. Laurenitis were opposed.

The members moved to drafting their Decision. It was noted the application was a broad one with Mr. Little noting “we made a broad application but you are not stuck with yes or no, you may grant less than what was applied for. The Board can grant in its wisdom.”

Mr. Carrara requested the Board be as specific as possible with their conditions so that enforcement (as previously discussed) can in fact be regulated.

Mr. Carrara noted “enforcement is difficult with things that are obscure.” Some members struggled with the definitions of warehousing, distribution and retail facilities. Ms. Monahan noted “what they wrote and what they are asking for in person is different. I think we need clarity.” After a brief discussion Ms. Ogilvie interjected “you may want to reword that to say warehousing, distribution and retail facilities *associated with* machine, vehicle and equipment repair.” It gives you some parameters” she said.

Continuation of this Public Hearing was scheduled for Tuesday, April 16, 2013 at 5:00 p.m. The meeting adjourned at 10:10 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant

**Approved as written May 6, 2013**