

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, August 1, 2016 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, Loretta Laurenitis, Peter LaRoche and Peggy Leedberg

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

Chair Stewart called the meeting to order at 7:00 p.m. “Good evening” he said “this is the August 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. He noted he would read the request and ask the applicant to present their case. He told the audience that when the applicant was done he would allow questions, comments and concerns for and against the case from the audience and then the Board, if they felt they had all the necessary information would go into deliberation. He appointed Ms. Monahan and Ms. Leedberg to sit and read the first case:

Case No. 1226 Rick Hurst: Requesting a Variance to operate a seasonal, outdoor, retail marketplace, as regulated by Chapter 245, Article II, Section 10.2, Paragraph (C) of the zoning ordinance. The property is located at 375 Jaffrey Road, Parcel No. R003-025-100 in the Business/Industrial District.

Looking up he asked if there were any changes or corrections to the notice. With none Rick Hurst introduced himself and noted he had submitted a plot plan for his request for the seasonal outdoor market located about the parking area of the Whitton Building at 375 Jaffrey Road. He noted the market would operate Tuesdays and Saturdays from the hours of 7:00 am to 2:00 p.m. “There will be no permanent structures” he said adding “and everything will be packed up and removed at the end of each day.”

Mr. Hurst projected a graphic where he pointed out three phases of the market which would accommodate up to 100 vendors in 10 by 10 foot spaces (at maximum capacity). He pointed out Phase I, the existing main parking lot of the building as the main vendor parking and setup area which would accommodate 52 spaces. He also

pointed out expansion areas (Phase II) to the east that would accommodate 18 spaces and (Phase III) accommodating 30 more spaces along US Route 202. He told the members he felt it was (starting) late in the year but he could build the market as time goes on “and have it be a happening thing, good for everyone.”

Chair Stewart asked Mr. Hurst about his experience. Mr. Hurst told him he was quite experienced at running antique markets and he also has a business in the Whitton Building. “What is that?” asked Chair Stewart. Mr. Hurst replied “auctioneer and personal property appraising.” Chair Stewart asked “do you have an antiques market here?” Mr. Hurst replied “no sir, not without permission.” Ms. Monahan asked Mr. Hurst if he has property owner permission with Mr. Hurst replying, “yes, there is a letter in your packet.”

Chair Stewart questioned the need for a Variance noting all the outdoor market places in town. “What is the difference?” he asked. Code Enforcement Officer and ZBA Liaison Dario Carrara (Mr. Carrara) noted the Farmers’ Markets in town have different protections under State law. “That is not the case here,” he said adding “with a Farmers’ Market the property owner or manager must be independent of the vendors.” He told the members the use was not allowed in the Business/Industrial District. “It does allow retail,” he said, “but it has to be incidental to a non-retail business.” A lengthy discussion about incidental and accessory uses followed with definitions read and discussions debated. Mr. Carrara noted a business with 1000 square feet in a building cannot have an incidental or accessory use in excess of 10,000 square feet outside. “The scope is much, much larger than the scope of the business going on inside the building,” he said. Chair Stewart asked about the shop with goods of items outside on US Route 202 (Hidden Treasures). Mr. Carrara replied “that is in the Commercial District” and added “I know we are slicing the ham a little bit thin but retail is allowed in the Commercial District and you can do anything you want” (versus, say the Village Commercial District where no retail displays are allowed outside). “It is a matter of scope,” he concluded. The discussion then turned to the purpose of the zoning regulations in the aforementioned districts with members honing in on their idea of why the regulations read like they did as well as the changes to the regulations over the years. “You cannot catalogue them” said Mr. Carrara adding “property owners want to expand the uses in the Business/Industrial District. We have empty or partially empty buildings and owners want to fill them with things other than industrial uses.”

Chair Stewart asked Mr. Hurst how big his business inside the building was. Mr. Hurst replied “about as big as this room.” Chair Stewart noted the antique car *Cruise Ins* held in the Depot Square area were not marshalled with Ms. Laurenitis noting an antiques

fair had operated for years in the same area. Mr. Carrara replied “I did not approve of disapprove of them. It just took place and now has gone away.” He also reminded the members of the scale of the requested market. “Up to 100 vendors, I had to become educated on this too” he said. Chair Stewart asked about the other businesses in the Whitton building with Mr. Hurst noting a few larger but mostly smaller and varied businesses in the building. Ms. Monahan asked if the market would be year round with Mr. Hurst replying “no, it is seasonal, April to November.” Ms. Laurenitis asked “how large will the booths be?” Mr. Hurst replied “100 square feet” (10 by 10) with Mr. Carrara interjecting “so 100 vendors with 100 square feet is 10,000 square feet, about a quarter of an acre just for the booths.”

Ms. Leedberg noted her concern about parking and where the vendors would be setting up. Mr. Hurst pointed out ample space and areas where patrons could mill about the vendors. He also pointed out specific ways in and out of the area. “I still have concerns” said Ms. Leedberg adding “I see a pedestrian traffic problem.” Chair Stewart told the members he was more concerned with the traffic flow on to the highway. “Not so much the internal space” he said. Mr. LaRoche noted his concern about the proximity of Phase III to the highway and associated safety issue.

Mr. Hurst went on to explain the hierarchy of the antiques market and that the Tuesday market would most likely be dealer to dealer transactions. Referring to the three Phases Chair Stewart asked “is this an all or nothing thing? What if it were just the main area (Phase I) for now?” Mr. Hurst replied “I am open to something like that.” Chair Stewart then asked “how about just one day a week?” Mr. Hurst replied “No, that would be tough.” He went on to reiterate that the Tuesday market would consist of mostly dealers buying and selling from each other. “They would absolutely come on a Tuesday, some people make their living at this,” he said. Chair Stewart asked “what is it you do again?” Mr. Hurst replied “I am an Auctioneer, antique dealer and certified personal private property appraiser.” “Can you define antique?” interjected Ms. Laurenitis. Mr. Hurst replied “over 100 years old” adding “but we also deal with estate items (family china, silver) and people who are downsizing. No new stuff.”

Chair Stewart then asked Mr. Hurst to review the criteria for a Variance. Mr. Hurst read his responses to the five questions on the application. Ms. Monahan interjected Mr. Hurst had indicated *does not apply* to the 5th criteria. “You must meet all five criteria” she said adding “you must come up with something for unnecessary hardship and we must come up with special conditions.” Chair Stewart asked “what is your hardship?” Mr. Hurst replied “I would not be able to do my business.” “Would you have to close?” asked Chair Stewart. Mr. Hurst replied “my business would be harmed.” Chair Stewart then read from the Office of Energy and Planning Handbook

“any loss to the individual which is not outweighed by a gain to the general public is an injustice.” He looked up and asked “so if we deny this where would the justice to the public be?” A brief discussion about retail being permitted, the definitions of *incidental* and *accessory use* and area versus use variances followed. Mr. Carrara concluded the discussion by noting, “you have to understand that the purpose of zoning is to segregate uses. We have done that, now we need to understand the Business/Industrial District was set up many years ago with a lot more industry than we have today. I think the times have changed.” Chair Stewart replied “there are a hundred ways to argue this. It is not accessory and ideally it is not incidental, it is neither.” Mr. Carrara replied “you (the Zoning Board of Adjustment) have full authority. This is just my interpretation.” He went on to note the definition of accessory use included an activity incidental and subordinate to and located on the same premises as the principal use (and) conducted by the same person or their agent.

A motion was made/seconded (Stewart/LaRoche) to go into Deliberation with all in favor. Chair Stewart read the Deliberative Statement.

Deliberation:

“We’ll start with a straw vote” said Chair Stewart, adding, “and I will go first.” He went on to say, “as usual the regulations are vague and ambiguous. Retail is allowed.” Noting the size of the property he said, “I can see myself in favor with some restrictions. This is the first of its kind and I do not like Phase II and III. I think we should approve Phase I with a maximum of vendors, a couple of days a week and see how that goes.” He concluded “I would approve this with conditions.”

Ms. Laurenitis agreed noting “I would approve it with conditions.” Jim added she thought the purpose of saying incidental use “is so no big box store would go out there, this is not like this. It is a limited use of the area which is big and under used.”

Ms. Monahan said “I would approve it.”

Mr. LaRoche said “I would approve it” adding “start with Phase I, come back for Phase II and I am not sure about Phase III with the traffic on the highway.” He noted the Business Industrial District was set up for those types of businesses but times have changed.” He also noted it would provide an opportunity for people to come and sell their wares two days a week.

Ms. Leedberg also agreed with approval of Phase I but noted her concern with the traffic and parking. Chair Stewart noted the 300 plus parking spaces on the lot.

Before voting Ms. Monahan interjected, “will this receive site plan review by the Planning Board?” Chair Stewart and Mr. Carrara both replied “yes.”

A motion was made/seconded (Stewart/Laurenitis) to approve a Variance to operate a seasonal, outdoor, retail marketplace, as regulated by Chapter 245, Article II, Section 10.2, Paragraph (C) of the zoning ordinance with all in favor.

NOTICE OF DECISION

Case Number 1226

August 1, 2016

You are hereby notified that the request of Rick Hurst, for a **Variance** to Chapter 245, Article II, Section 10.2, Paragraph C, of the Zoning Ordinance, to operate a seasonal, outdoor, retail marketplace, on property located at 375 Jaffrey Road, parcel number R003-025-100, in the Business/Industrial District, is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

1. The variance **WILL NOT** be contrary to the public interest because:
Retail is a permitted use in the district and we find it is an extension of an existing antiques business on the premises.
2. The spirit of the ordinance **IS** observed because:
Retail is a permitted use in the district. The parking lot, access, and surrounding area were designed to safely accommodate hundreds of vehicles.
3. Substantial justice **IS** done because:
It will allow the use of an under-utilized parking area. There is no public benefit to deny the variance request with conditions.
4. The values of surrounding properties **ARE NOT** diminished because:
Limited use and hours of operation will not have a substantial impact on the surrounding businesses and is compatible with the Business/Industrial district.
5. Unnecessary hardship
The special conditions of the property are:
 1. The area being approved for the market is substantially setback from the highway and somewhat screened from the highway.

2. The parking area is large and can more than accommodate the proposed use.
 3. The facilitator of the market maintains a business already in the building.
 4. The parking area is currently grossly under-utilized.
- a. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance **WOULD** result in an unnecessary hardship because:
- i. There **IS NOT** a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:
Retail is a use that is allowed in this district. The market is a reasonable extension of a currently existing business on the property.
 - ii. The proposed use **IS** a reasonable one because:
It is an extension of an existing business on the property and will encourage other business.

In granting this variance, the Board imposes the following conditions:

1. The market will be only two days per week.
2. The market will be open to the public only from 7:00 am to 4:00 pm.
3. The market will only be open April to November.
4. Approval is only for Phase one of plans submitted, not to exceed 55 vendors.
5. A Site Plan Review by the Planning Board is required.
6. The facilitator of the market must keep and maintain his auction and antiques business in the building.

Signed,
James Stewart, Chair

Chair Stewart read the second case:

Case No. 1227 Wolf Creek Investments, LLC: Requesting a variance to allow the expanded use of a self-storage facility, as regulated by Chapter 245, Article II, Section 8, Paragraph A of the zoning ordinance. The property is located at 451 Hancock Road, Parcel No. R011-034-000, in the Rural District.

Chair Stewart asked if there were any changes or corrections to the notice. With none he asked the applicant to proceed.

Chad Branon introduced himself as a Civil Engineer with Fieldstone Land Consultants in Milford, New Hampshire. He told the members he represented Don

Burgess of Wolf Creek Investments, LLC and they were seeking a Variance to permit the expansion of a commercial use in the Rural District. “Self-storage and warehousing are not permitted uses in this district and that is why we are here” he said.

Mr. Branon reviewed the logistics of the property (19.7 acres with frontage along Hancock Road (US Route 202), six self-storage buildings comprising 28,100 square feet and originally approved in 1986). He noted the gravel access and fencing along the highway as well as the uplands and the jurisdictional wetlands to the northeast and southeast corner. He told the members the additional buildings would not be any closer to the highway and the buffer along the front of the parcel would remain intact. “This parcel is in the Rural District as well as the Wetland Protection Overlay and Rural Gateway Overlay Zone” adding “the proposed design will improve the storm water management and erosion and sedimentation control on the parcel, essentially improving the water quality leaving the site to surrounding jurisdictional wetland areas.” Pointing out the location of three new infiltration basins he also noted improvements to the paved and gravel areas. “The site is essentially self-contained” he said.

Ms. Monahan asked about a Conditional Use Permit for the wetlands. Mr. Branon cited 235-15 Wetland Protection Overlay Zone: *Permitted Uses and Exemptions* and noted those exemptions included pre-existing storm water management devices, sedimentation and detention basins or ponds. “So no Conditional Use Permit is required” he said.

Mr. Branon went on to tell the members they had met with and walked the site with Conservation Commission representatives who provided a letter of recommendation. He read “regarding the plan to pave the site, existing and future, after discussion members agreed that pavement combined with the three infiltration basins plus spillways will minimize sediment runoff that currently results from existing sand and gravel site surfaces. Existing conditions offer no treatment; sand and gravel is hard pack, allowing little to no infiltration; and winter plowing plus heavy rains likely result in untreated sediment migration off-site.”

Mr. Branon went on to note “regarding the project in the Rural Gateway Overlay Zone, the members noted and endorsed existing low lighting levels at the sheds and recommended the continuation of that policy.” He added “motion sensor switching might further reduce ambient light, but low buildings, hooded down-lights just over the door height and largely shielded from the road by other buildings make the site fairly dark already.” Mr. Branon concluded “regarding

slight incursion of riprap spillway #2 in to the Wetland Protection Overlay Zone, it is noted the town's wetlands zoning ordinance 245-15 J-3c exempts sedimentation/detention basins." In light of her previous question about the Conditional Use Permit Ms. Monahan replied, "oh, there it is."

Chair Stewart asked if there were any questions. Referring to his Staff Report Ms. Monahan asking Mr. Carrara "why do you not consider this not a natural but limited expansion?" Mr. Carrara replied "again it is based on the scope" adding "they have six buildings, if they were increasing by one or two buildings it may be but they are doubling the number of buildings. That is a natural but not limited expansion."

Chair Stewart asked for a brief history of the parcel that was previous owned by Norman Harris. Mr. Carrara explained back then the regulation was *building*, not *use* specific "so here we are."

In closing Mr. Branon reviewed the demand for the storage use. He told the members the owner reported his units are full, that he has a similar business in Jaffrey and those units are full. "There is a need and it services the surrounding area," he said, adding, "typically the user is within a five mile radius of the facility so townspeople are using this site."

The members complimented Mr. Branon on a job well done. A motion was made/seconded (Stewart/LaRoche) to go into Deliberation with all in favor. Chair Stewart read the Deliberative Statement.

Deliberation:

Chair Stewart began with "I have no problem with it, I support it." Ms. Laurenitis agreed noting "I support it." Ms. Monahan also agreed "I support it" she said. Mr. LaRoche said "ditto" and Ms. Leedberg said "yes."

A motion was made/seconded (LaRoche/Leedberg) to approve a variance to allow the expanded use of a self-storage facility, as regulated by Chapter 245, Article II, Section 8, Paragraph A of the zoning ordinance with all in favor.

NOTICE OF DECISION

You are hereby notified that the request of Wolf Creek Investments, LLC, for a **Variance** to Chapter 245, Article II, Section 8, Paragraph A, of the Zoning Ordinance, to allow the expanded use of a self-storage facility, on property located at 451 Hancock Road, parcel number R011-034-000, in the Rural District, is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

1. The variance **WILL NOT** be contrary to the public interest because:

Granting this variance would allow for the productive use of the existing property. Since 1986 the subject property has been used as a self-storage complex. The general public is accustomed to this use on the property and the expansion of the facility will not change the day to day operations on-site and will not result in negative impacts to the surroundings. This proposal is compatible with what has existed on the property for the last 30 years and will not create any problems for the general public. Since this proposal will provide the above while resulting in no negative impacts to the public we believe granting this variance would not be contrary to the public interest.

2. The spirit of the ordinance **IS** observed because:

The proposal for this site is consistent with the surrounding areas and the commercial use of this property has existed since 1986. The expansion of the facility will consist of developing upland areas that surround the existing facility and will improve the drainage on the subject property. When the site was developed back in 1986 there were no requirements for storm water mitigation. As part of the expansion of this project three storm water management areas will be constructed on the site which will essentially capture all of the proposed development as well as the majority of the existing facility. This will result in a significant improvement. This project will also maintain and provide adequate buffers to the neighboring properties. This project will increase the Town tax base, allow a local business to grow and serve the residents of Peterborough and will have no measurable negative impacts to the public. For all of these reasons we believe that granting the variance would observe the spirit of the ordinance.

3. Substantial justice **IS** done because:

Granting this variance would allow a local business to grow and address an increasing local demand. This proposal will result in no negative impacts to the neighborhood as this property has been occupied by a self-storage business (commercial use) since 1986. This project will have no negative impacts on local services and will increase the tax base for the Town. Granting this variance would do substantial justice because it would allow for the productive use of the property, as described above, while providing responsible growth in the community.

4. The values of surrounding properties **ARE NOT** diminished because:
The subject property has been occupied by a self-storage business since 1986 so there would be essentially no change to the neighborhood. The proposed self-storage use on the property will not create any problems for the neighboring properties as self-storage sites are very low traffic generators and this property offers good buffering to the neighboring uses. For all of these reasons we do not believe that the expansion of the commercial use on this property should have any negative impacts on the value of surrounding properties.

5. Unnecessary hardship

- b. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance **WOULD** result in an unnecessary hardship because:

- i. There **IS NOT** a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:
Section 245-8.A of the Peterborough Zoning Ordinance does not permit commercial uses within the Rural District. We do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because this property has been used commercially since 1986. In fact the Peterborough Zoning Board granted a variance on February 3, 1986 (Case #359) permitting the self-storage use on the property. Since this use has existed on the property for over 30 years and this proposal simply consists of expanding that use we believe that this proposal is reasonable and fair. The expansion of the self-storage facility will actually serve as an improvement to the property as the design will incorporate three storm water management areas that will mitigate the existing and proposed improvements to the property. The proposed expansion will not burden local services and will not be a detriment to the surroundings. This proposal will actually increase the Town tax base, be consistent with its surroundings and be consistent with the past 30 years of use on the property while providing a service to the community that is needed. For the reasons outlined above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

- ii. The proposed use **IS** a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- Granting this variance would allow for the productive use of the existing property.
- Since 1986 the subject property has been occupied by a self-storage business and this proposal consists of maintaining that use but expanding to address a local market demand.
- This proposal looks to maintain the office and repair services within the current building and to add self-storage to the property.
- The expansion of the self-storage use on this property will not result in negative impacts to the surroundings.
- The design as proposed will improve the storm water management and erosion and sedimentation control on the subject property. Essentially this proposal will improve the water quality leaving the subject site and entering the surrounding jurisdictional wetland areas.
- The expansion of this site is in response to a public demand and we believe it makes sense for a Town to encourage the growth of a local business.

For all of the reasons we believe that the proposed use is reasonable.

In granting this variance, the Board imposes the following conditions:

1. Substantial compliance to the plans and testimony submitted.

Signed,
James Stewart, Chair

Minutes:

A motion was made/seconded (LaRoche/Leedberg) to approve the Minutes of June 6, 2016, June 8, 2016 and July 6, 2016 as written with all in favor.

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Laura Norton

Adm

ZONING BOARD OF ADJUSTMENT

TOWN OF PETERBOROUGH
Monday, October 3, 2016 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, Loretta Laurenitis, Peter LaRoche and, Seth Chatfield and peter Leischman

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

Chair Stewart called the meeting to order at 7:00 p.m. “Good evening” he said “this is the October 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.

LL ground rule and appoint Sharon

Read te notice then applicant presentation

Board questions ask anytime

Etc.

Audnec name and address

Party to casee

All testimony all questions answeres at close go itno deliberation

1228

GFA Federal record

Chad

Reping gfa

Tina sbraga prs and CEO of gfa

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Gave a birdf presentaito of the project

Phicla of 099 grove

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.8 acree land prior majig flute3

Existing sconitons in por repair

In the villag e and groundwater porteciton zone

Raze the budlign and sit eimprovmetn tht exists pavement walkways including a play gorund area in the back

Then redevelop

New building with associ site mkprivemtn s

New pavement

Walkways

Adequate

Palrkign

Driange light uitl connecitns drice throu

Lay out on e direction pattern in at inter out soutyh of it

Noted the 30-ft buffer

Ot residential

Met with jim

Concept plan made modifications to plan

Developer on south side closest to his house relocated to back of building

Offering additional buffering

Replace his wood stake fencing with a 8 ft high vinyl fence

And 6 foot vinyl fence along the to improve buffering to adjacent properties

Sharon asked about buffering for residential zone up 101 not as ours a business

Needs a state permit through DOT

Submitted latest other

Did the site plan for Jackie

Have an open dialogue

Agree site very restricted on it close prox to intersection

Don't have it yet but no negative permit of feedback

Form them

Sign improvement to town and neighborhood in need of major overhaul and upgrade

Question ?

Leishman noted stumbling with mobile although no problem ask anything about a turning lane.? Chad they have not we work together have open dialogue for snackbar

Chad ask about it

Directly or zero he said that himself

In the review stage

ve by every day what gong on

No easement acquired

It got lost in the shuffle on dev of the site

We have done our due diligence

Also ote th edd across the street

Raod workthat is

Not edthe location and porx to 101 and 202 any off site imkproveimtn required
ned

Any corrections?

Seth 99 grove st? cahd I believe it is 99 seth owner said 90 grove st

Chad

Good evening for the f

Peter why vylan versus wood? Chd homeowner recommended it and a maitn
consideration esp for long term

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landscao;ing planif successful tonight

Note dth eprelilm with p

And staff ona coupld of occations

Pb wanted frnont facing grove stret make accomodations for that”

And land scaping on the propeety lien

Peter 8 ft standout

Seth intercom 24 hrs a day or teller interface with customers during day

Lin the back?

LI hours? For intercom system to be used

Ceo not set and subject to change typical bus 830 900 am mon to saty open
7:00 one dya a week

Purely for the driveup atm no sound attached

Tina

Not loud verfiant and sensitive on how sound travels customer confid

Sharon

Gfa leasing ? tina purchaseing it

Seth at antoher lcoaiton in town k

2012 monadncok bank neighbor a few yearws mon plaza

Not condusive foruoru ability for driveup

And ATM we have a walk up

Committed her efor lng term provide the services they except for the fin intstiutio

Seth have been opae

DI anerating ?yes with it veingthe number one complaint “ tin a

No other ques tiosn

Go thru the criteria

Lla lto of information very helpful

inistrative Assistant