

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

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

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 June 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.

Chair Stewart then told the members and audience “per our rules we re-elect a Chairman and Vice Chairman in June” adding “this is my second term and I don’t mind remaining Chairman, I will do it – it is up to you.”

A motion was made/seconded (LaRoche/Monahan) to re-elect Mr. Stewart as Chairman of the Board with all in favor.

When asked Ms. Monahan agreed to being re-elected Vice Chairman.

A motion was made/seconded (Stewart/Laurenitis) to re-elect Ms. Monahan as Vice Chairman of the Board with all in favor.

As an abutter in the case to be heard Chair Stewart recused himself. Vice Chair Monahan (Ms. Monahan) noted the Board had four of its five members in attendance and said “you may postpone this to have a full Board.” James Bianco, Attorney and Agent for the applicant replied “we would like to proceed.” With that said Ms. Monahan read the case as follows:

Case No. 1215 Global Montello Group, Corp. is requesting a Special Exception or Variance to replace, expand and relocate USTs within 1,000 feet of the Contoocook River, as regulated by Chapter 245, Article II, Section 9-B-1 and Chapter 245, Article VI, Section 30 of the zoning ordinance. Reconfigure and reduce the existing developed area in the Wetland Protection Overlay District, as regulated by Chapter 245, Article

III, Section 15 and Chapter 245, Article VI, Section 30 of the zoning ordinance. The properties are located at 111, 113, and 115 Jaffrey Road, Parcel Nos. U021-021-000, U021-022-000, U021-023-000, and U022-001-000 in the Village Commercial District.

After reading the case Ms. Monahan looked around and asked “are there any corrections or changes to the notice?” With none she then asked if the applicant wanted to address both requests at once or separately. Mr. Bianco replied “I thought I would just go through them both. That would be easier. Mr. Bianco then introduced himself as an attorney from Bianco Professional Assn. (Applicant’s Agent, Concord, NH). He also introduced Karen Soucy from his office, Jim Gove of Gove Environmental Services, Inc. (Wetland Scientist, Exeter, NH), Dan Berry of Global Montello Group (Applicant, Waltham, MA) and Huseyin Sevincgil of MHF Design Consultants, Inc. (Civil Engineer, Salem, NH). “We brought the whole team for any questions” he said.

Mr. Bianco then introduced a Power Point presentation about Global Montello Group. He began with *who we are* noting the applicant operates over 50 convenience store and gas stations in New Hampshire with a 75-year success built on working cooperatively with communities and being good neighbors. “We want to be a part of the Peterborough community” he said.

Mr. Bianco reviewed the *proposed project* which consisted of a total redevelopment of the existing Mr. Mike’s located at 113 Grove Street. He told the members the modern and attractive convenience store and gas station would be known as *Alltown*. He took a moment to tell them about their outreach to the Town Administrator, Code Enforcement Officer, Office of Community Development Director, Conservation Commission and Planning Board. He reviewed several changes to the plan after a Preliminary Hearing with the Planning Board May 11, 2015 as well as a Site Visit with the Conservation Commission May 22, 2015.

With the next slide *how do we get there?* Mr. Bianco briefly reviewed the Special Exception and Variance criteria. “In simple terms we want to redevelop a site with a pre-existing nonconformities and as a trade-off for some improvements our underground storage tanks (USTs) will be larger and a bit closer to the Contoocook River” he said. Mr. Sevincgil introduced a color graphic pointing out the delineated wetlands and their buffers. It was noted the USTs would be located about 900 feet from the river.

Mr. Bianco continued with *required criteria* for the request for the redevelopment by pointing out the reduction of 2,700 square feet of pavement within the wetland setbacks. He went on to say all the outbuildings currently in the setbacks would be removed creating less disturbance in the wetland buffer. He told the members the replacement and relocation of the USTs was equally or more appropriate to the zoning district than the current non-conforming use. He described the tanks as double walled with advanced protections and leak detection systems. "Approved by the EPA and the Feds" he said adding "they are more modern and safer."

Mr. Berry stood and reviewed the fiberglass double-walled UST history of strength and quality. "They are almost fool-proof" he said.

Ms. Laurenitis asked about the current and projected number of fuel dispensing units as well as the increase in fuel storage capacity (size of tanks). Mr. Sevincgil noted there were currently four pump units with the projected plan also having four. He went on to say the existing capacity of tank storage is 32,000 gallons with projected tank storage of 43,000 gallons (three 12,000 gallon tanks and one 6,000 gallon tank).

Ms. Monahan noted the reduction of 2,700 square feet of pavement at the site. Referencing the Village Commercial District's Lot and Yard Standards she said "to provide recharge and green space no lot may have more than 80% impervious surface" adding "it looks OK but I would like it in the record that this is the case." Mr. Sevincgil calculated approximately 3033 square feet of impervious cover noting "we are well below that" adding "and none of it is within the wetland buffer."

In *summary* Mr. Bianco told the members "all non-conforming features on the site will be greatly reduced and two of the four non-conformities will actually be eliminated." He reiterated that the applicant wanted to achieve as much improvement as possible with the reduction of the remaining non-conformities and be a part of the Peterborough community.

Ms. Laurenitis asked "are the lots merged?" Mr. Sevincgil replied "all the lots are owned by the applicant but there would be a merger, we are just not there yet." When the use of a gas station was questioned Mr. Carrara interjected "all four lots are in the Village Commercial District where a gas station is allowed by right." A brief discussion about traffic followed. "We are making it easier to get in and out while being sensitive to the wetlands" said Mr. Bianco. Ms. Laurenitis asked "will there be more traffic though?" adding "you have the same number of pumps, does

having diesel change anything?” Mr. Sevincgil replied “there is diesel on the property now.” He pointed out the fuel dispensers on the plan and said “they are remaining pretty much the same.”

Ms. Monahan asked about the expansion of the convenience store. Mr. Sevincgil reviewed an aerial photograph of the site and reviewed the plan pointing out the structures (houses, canopies, store, shed, UGTs and parking area and edge of pavement). Ms. Laurenitis asked “is there one entrance?” Mr. Sevincgil replied “yes” with Ms. Soucy interjecting “and we will be extending the sidewalk.” Ms. Monahan asked about a buffer between the merged lot and the Monadnock Plaza. Mr. Sevincgil noted there would be a buffer and the plan would also identify a potential future connection to the Plaza to promote vehicular and pedestrian access between the adjacent lots as required in the Performance Standards of the District. He noted that because the merged lot will abut a residential lot (commercial building with residential on the second floor) to the north they would also create a 30-foot vegetative screening and/or fencing (deemed appropriate by the Planning Board) as required by those same Performance Standards. When Ms. Laurenitis asked about the setback from the road Mr. Sevincgil replied “18 feet.” When Ms. Monahan asked what the front setback for the Village Commercial District was Mr. Sevincgil replied “there is no minimum setback in that District.”

Mr. Leishman asked about the storm water management plan with Mr. Sevincgil noting they had not designed one yet adding “we wanted to get approvals first and if all goes well that would be done through the Planning Board at Site Plan Review.”

Ms. Monahan asked if there any additional questions before noting “I have some environmental questions for Mr. Gove.”

With regards to the wetlands at the rear of the property Ms. Monahan asked if there was a tributary to the Contoocook River. Mr. Gove replied “no” as he got up and pointed out several other finding during his delineation of the wetlands (the formation of a delta, very steep fill slope, forested sections, discovery of Japanese knot wood (a very invasive plant) and the fact that he *could not* find an outlet). He concluded by noting “and while it does not appear to be a wildlife corridor, it does support wildlife.”

Ms. Monahan than asked about the fact that the plan was to take the current USTs out of the wetland buffer (but) moving them 125 feet closer to the river. Mr. Gove replied it was closer to the river “but we are getting them away for the nearest

resource.” He also reiterated the new tanks would be double-walled and closely monitored. He concluded by saying “we are taking pavement and tanks further away from a functioning wetland. A protection that is ultimately measureable.”

Ms. Laurenitis asked about retention ponds with Mr. Gove noting they would exist but that they had not yet been designed. Ms. Laurenitis then complimented the applicant and their team. “You have done a great job with this” she said. Citing the Conservation Commission’s report Ms. Monahan asked “so you have nothing against the ConCom recommendations?” Mr. Gove replied “no” adding “I think they did a wonderful job.”

After a brief discussion about the hydrology of the soil and the stabilization of the delta Mr. Leishman asked about the impervious surfaces. Mr. Gove noted it was difficult when dealing with gasoline and the potential for spills. “With fuel storage and dispensing porous pavement is not suggested as an appropriate use” he said.

With no additional questions from the Board Ms. Monahan asked if any in the audience would like to speak. James Stewart introduced himself and complimented the applicant and their team. “I am an abutter to the north and it seems like you did a really good job of addressing all the questions” he said. He noted the setback from the Contoocook River adding “but it is already an existing facility. I support this as a resident.” Mr. Bianco stood and said “thank you, we tried to listen and make it better. You have a beautiful town. The current facility is not beautiful, it is antiquated. The new facility will look much better and be more functional to the community while being sensitive to the wetlands. This is the charge of our client.”

Ms. Monahan then briefly reviewed the Special Exception criteria. It was noted that an administrative review of the plan was completed when it was first received by the Code Enforcement Officer (for zoning compliance) and the Director of the Office of Community Development (for site plan compliance). From that review came the Administrative Decision that the applicant apply for the two Special Exceptions. Mr. Carrara noted that once the applicant had presented their *Preliminary Review for Site Plan* to the Planning Board and they received modified plans two days later “a lot of our concerns went away.” He added “and for the record, pertaining to the underground storage tanks, that the State DES requires a 75-foot setback to open surface water, the 1000-foot setback is a town regulation and only exists in the Village Commercial District.” He went on to say “and there are two other facilities that do not have to meet the setback. One is in the General Residence District and the other is in the Downtown Commercial District.”

Mr. Leishman asked why a Variance was not being requested. A brief discussion about the request, non-conformities and the Village Commercial District followed with Mr. Leishman making an argument for a Variance for the expansion and relocation of the USTs.

A motion was made/seconded (Leishman/Laurenitis) to close the public hearing and move into deliberation with all in favor.

Deliberation

Ms. Monahan read the deliberative statement.

Ms. Laurenitis began by noting “I think they have done a really good job. They involved the town offices and the public. This is a unique piece of property and I am supportive.”

Mr. Leishman looked over and said “I agree but I still think it requires a Variance.” He went on to say “if you read the Variance criteria and the abundance of caution they have incorporated it is iron clad.” Mr. Leishman went on to say “this is appropriate as a Variance without a Special Exception mucking up the water” adding “otherwise you have a nonconforming use to another nonconforming use +1 if you will.”

Mr. LaRoche continued by noting “I support it and if the Town Attorney advises it let it rest on his shoulders.” Mr. Carrara interjected “I don’t think Town Counsel advised it, Counsel did acknowledge that it is a pre-existing use of the property and a Variance was too high of a hurdle to jump over, given that the Special Exception covers enlargements, but you as a Board have the authority to disagree.”

Mr. Leishman repeated “I would support a Variance, a Variance locks it up, they meet the criteria and it is iron-clad.” He reiterated “they have a 2,700-square foot reduction of pervious surface and moved three tanks closer to (Route) 202. It makes sense to me but the 1000-foot setback is a town zoning ordinance, it may seem arbitrary but you need the Variance for a zoning ordinance.”

Ms. Monahan asked for clarification on the difference between a Special Exception and a Variance. “I am leaning towards a Variance as well” she said. It was noted that both a Special Exception and a Variance go with the land. Mr. Leishman noted the replies to the variance criteria for the applicant and said “we could include their

language verbatim.” After a bit more discussion the members agreed to apply a Special Exception request to the reconfigure and reduction of existing developed areas in the Wetland Protections Overlay District and a Variance to the request to replace, expand and relocated Underground Storage Tanks within 1,000 feet of the Contoocook River. “This closes the gate down the road as far as protection goes for them” said Mr. Leishman.

Special Exception:

A motion was made/seconded (Monahan/Leishman) to approve a Special Exception to reconfigure and reduce the existing developed area in the Wetland Protections Overlay District, as regulated by Chapter 245, Article III, Section 15 and Chapter 245, Article VI, Section 30 of the zoning ordinance with all in favor.

NOTICE OF DECISION

Case Number 1215

June 1, 2015

You are hereby notified that the request of Global Montello Group Corporation, for a **Special Exception** to reconfigure and reduce the existing developed area in the Wetland Protection Overlay District, as regulated by Chapter 245, Article III, Section 15 and Chapter 245, Article VI, Section 30 of the zoning ordinance on property located at 111, 113, and 115 Jaffrey Road, parcel identification numbers U021-021-000, U021-022-000, U021-023-000, and U022-001-000 is hereby **GRANTED**.

The Board finds that the general special exception criteria have been met:

1. Location- The site location is the same as the existing gas station use.
 - a. Adequate water, sewerage and drainage for the site will be the same, or improved, and therefore presents no special public problems.
 - b. The site accommodates the project without substantial environmental damage. Wetland setbacks become more conforming under the proposal, and storm water facilities proposed as part of the project will greatly benefit the wetland.
 - c. The use and location results in minimal risk to air, land or water resources because of planned processes, or unplanned contingencies. The use is the same as the existing site, however, modern fueling facilities are far superior to previous designs, incorporating double-wall underground storage tanks, advanced leak detection and alarms and improved materials. In addition, the proposal increases the distance between fueling apparatus and the existing wetlands to eliminate some existing setback intrusions.

- d. The land does not have special qualities that make the land suited for other uses such as agriculture.
- e. Adjoining premises shall be greatly benefited by redevelopment of the crowded, aging existing site into one that is more compliant with the zoning ordinance.
2. Activity type and mix (the use of the property is consistent with zoning)
3. Visual consequences (greatly improved from current site)
 - a. Views from public ways are improved by landscaping, architecture, open space, and appropriate lighting.
 - b. The site arrangement places parking to the side and rear of the building and incorporates landscaping to minimize the visibility of parking areas.
 - c. Architectural scale is in keeping with surrounding buildings.
4. Access (greatly improved from current site)
 - a. Access is improved because of the modernization of the site layout, increased parking, and driveway configuration.
 - b. Pedestrian and vehicular movements are safer, and designed not to impact abutters.
5. Process
 - a. The project was developed in consultation with the community development department, the Conservation Commission, and the Planning Board, and has been substantially modified in order to accommodate feedback from these groups.
 - b. No negative effects, in comparison to the existing site, are expected.

The Board finds that the specific special exception criteria have been met:

1. The proposed development in the wetland buffer is equally or more appropriate to the zoning district than the existing nonconforming use.
2. The non-conforming use has not ceased for any reason for a period of 1 year or more within the three years preceding the application.

In granting the special exception, the Board imposes the following conditions:

1. The recommendations of the May 21 and May 22, 2015 Conservation Commission meetings for impacts to the WOPD be considered.
2. The work and project be in substantial compliance with the preliminary site plans presented, dated May 20, 2015.

Variance:

A Motion was made/seconded (LaRoche/Monahan) to approve a Variance to replace, expand and relocated Underground Storage Tanks within 1,000 feet of the Contoocook River as regulated by Chapter 245, Article II, Section 9-B-1 and Chapter 245, Article VI, Section 30 of the zoning ordinance with all in favor.

NOTICE OF DECISION

Case Number 1215

June 1, 2015

You are hereby notified that the request of Global Montello Group Corporation, for a **Variance** to replace, expand and relocate Underground Storage Tanks (USTs) within 1,000 feet of the Contoocook River, as regulated by Chapter 245, Article II, Section 9-B-1 of the zoning ordinance on property located at 111, 113, and 115 Jaffrey Road, parcel identification numbers U021-021-000, U021-022-000, U021-023-000, and U022-001-000 is hereby **GRANTED**.

1. Granting the variance would not be contrary to the public interest because: the variance will allow the existing crowded, aging and inefficient site to be redeveloped in a manner that is more consistent with the Village Commercial District, including landscaping, green space, pedestrian access, bike racks, improved architecture, improved storm water management, modernization of the underground fuel storage tanks, and improved vehicular traffic flow, all of which are strongly in the public interest. After redevelopment, encroachment upon the wetland that is presently approximately 15 feet back from the wetland will be enlarged to 18 feet, and be reduced in scope. Moreover, the proposal would have no negative impact on wetland values, habitat, water quality, or the environment, and is expected to improve these features through effective storm water management.
2. The spirit of the ordinance is observed because: the redevelopment of the site will be undertaken in a manner that protects the integrity of the abutting wetland area, improves storm water management, and results in a greater setback from the wetland.
3. Substantial justice is done because: the variance will allow the applicant to reasonably redevelop the site in a manner that is both economically feasible, as well as substantially in the public interest, creating a more attractive site in keeping with the Village Commercial District, with green space, sidewalks, replacement and modernization of the underground tanks, and the like. Moreover, denying the variance would be an injustice to the applicant and the community, by essentially compelling the continuation of the existing, crowded and inefficient site, and wetland encroachments.
4. The values of surrounding properties are not diminished because: the redeveloped site will be far more attractive than the existing site and in keeping with the standards in the Village Commercial District, including pedestrian access, green space, and other features which will clearly improve property values over the existing conditions.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship in that:
 - a. The site has been used as a gasoline station for approximately 30 years, and could lawfully continue in its current configuration, however, that configuration is

inconsistent with the standards of the Village Commercial District, and is crowded, inefficient, lacks landscaping and green space. The property consists of four parcels, which together constitute approximately 6.35 acres, however, the site is divided by a substantial area of wetland that leaves only a small buildable area of approximately 1 acre for development.

- i. Owing to these special conditions, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property because: the specific application of the wetland setback to this property prevents redevelopment in a manner that would lessen encroachments, improve storm water management, and protect the wetland area from existing impacts. Since that result is wholly contrary to the general public purpose of protecting the integrity of wetland, no fair and substantial relationship exists between the general purpose and the specific application. Moreover, specific application of the wetland setback to this site undermines the general public purpose of the Village Commercial District ordinance to encourage harmonious development consistent with the character of Peterborough.
 - ii. And the proposed use is a reasonable one since: the proposed use is a pre-existing lawful use that could continue indefinitely, and the redevelopment of the site is substantially in the public interest for all the reasons stated herein.
- b. In addition, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and the variance is therefore necessary to enable a reasonable use of it.
- i. The special conditions of the property that make the variance necessary in order to make reasonable use of it consist of the narrow buildable envelop between Grove Street and the wetland setback, which is substantially narrower than the nearby properties. This narrow area does not permit redevelopment that meets with other requirements of the Village Commercial District without a variance to allow a reduced wetland impact, and continued operation as a gas station within 1,000 feet of the Contoocook River.

In granting the variance, the Board imposed the following conditions:

1. Be in substantial compliance with the preliminary site plans presented, dated May 20, 2015.

Signed,

Sharon Monahan, Vice-Chair

Minutes:

A motion was made/seconded (LaRoche/Laurenitis) to approve the Minutes of May 4, 2015 as written with all in favor.

The meeting adjourned at 8:10 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant