

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, June 5, 2017 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: James Stewart, Loretta Laurenitis, Peggy Leedberg, Peter LaRoche and Seth Chatfield

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 stated June meeting of the ZBA.” He then introduced the Members and Staff, appointing Ms. Laurenitis to sit.

Chair Stewart noted a few housekeeping items to discuss included confirming Ms. Leedberg, Ms. Laurenitis and Mr. LaRoche had completed their oaths to serve with the Town Clerk and the election of a Chairman and Vice Chairman.

A motion was made/seconded (LaRoche/Leedberg) to re-elect Mr. Stewart as the Chairman of the Zoning Board of Adjustment with all in favor. Chair Stewart noted that while his term expires next year and that this would most likely be his last year on the Board (“it is time to move on to other things” he said) he would be happy to continue as Chairman. He then told the members he thought Mr. Chatfield would make a good Vice Chairman. “I would entertain Vice Chairman” replied Mr. Chatfield.

A motion was made/seconded (Stewart/Laurenitis) to elect Mr. Chatfield as Vice Chairman of the Zoning Board of Adjustment with all in favor.

Chair Stewart noted the first case **Case No. 1230 David Labnon** is requesting a Variance to allow Personal Services, Professional Services, and Retail Establishments uses, as regulated by Chapter 245, Article II, Section 7 A, of the zoning ordinance. The property is located at 115 Wilton Road, Parcel No.U019-006-000, in the General Residence District. He told the members Mr. Labnon was still working on a more definitive plan and had again requested a continuance to the July 2017 meeting.

A motion was made/seconded (Stewart/LaRoche) to continue Case No. 1230 to the July 2017 meeting with all in favor.

Chair Stewart read the Rules of Procedure prior to reading the second application:

Case No. 1234 OTEC, LLC is requesting a Variance to construct four parking spaces in the Wetland Protection Overlay Zone, as regulated by Chapter 245, Article III, Section 15, J of the zoning ordinance. The property is located at 129 Wilton Road, Parcel No. U019-005-000, in the General Residence and Rural Districts.

Looking up Chair Stewart asked “are there any corrections or changes to the notice?” With none he asked the applicant to present.

Nathan Chamberlain from Fieldstone Land Consultants, PLLC introduced himself and began with a brief review of the existing conditions and site improvements at the professional medical office. “The building houses a Dentist and an Optometrist who believe there is not sufficient parking on the property to support their operations” he said as he pointed out a small paved parking area in the front of the building and a narrow paved connector road to the gravel-top parking area in the rear of the business. “Right now they are double loading (staff vehicles) back there, it is not good” he said.

Mr. Chamberlain told the members currently staff parks in the back and all patients, walk-ins and deliveries received at the front door. He pointed out the wetland buffer and the existing tree line and noted the proposed improvements in stormwater management, landscaping, lighting and a new town sewer connection. He noted the addition of four parking spaces pointing out they were located in the Wetland Protection Overlay District “which is currently maintain lawn.”

Interjecting that he had driven by the building numerous time and not seen a lot of vehicles Chair Stewart asked “when is it (the parking lot) full?” Mr. Chamberlain noted he did not know “but they would not go to this expense if they did not need it.” He reiterated all traffic to the building is welcomed through the front door “the clients need the parking” he said. When Chair Stewart asked “is it the same use?” Mr. Chamberlain replied “yes.”

Mr. Chatfield inquired about the net gain of parking spaces and a brief discussion of the parking ratio for a building that size. Mr. Carrara replied “it is three spaces per 1000 square feet.” replied Mr. Chamberlain. “How big is the building?” asked Chair Stewart with Mr. Chamberlain replying “8200 square feet.” Ms. Laurenitis

asked “so a total of 34 spaces?” “Yes” replied Mr. Chamberlain. Ms. Laurenitis noted her concern that the building, regardless of what it housed was still in the General Residence Zoning District. A brief discussion about the history of the business (beginning pre-zoning) followed.

Mr. Chamberlain reiterated the improvements to the site adding they’d met with the Conservation Commission, receiving their endorsement. He pointed out a rain garden and addition of a new swale and infill basin for stormwater management. “Right now stormwater sheet flows into the brook. The improvements will intercept the runoff and recharge it into the ground after being treated. This is a vast improvement to what is there now” he said. When a member asked about the total square footage of the buffer area affected Mr. Chamberlain replied “480 square feet of the buffer.” Ms. Leedberg asked “is it any closer to Wilton Road?” Mr. Chamberlain replied “no.” After a brief review of the landscape plan Mr. Chamberlain read the Variance Criteria for the Board.

Ms. Leedberg then asked for clarification on the Section of the ordinance stating the notice referred to 245-15 J but the written criteria referred to 245-15 K. Ms. Laurenitis agreed adding “245-15 K is for Conditional Use Permits.” It was noted the Section would be changed to reflect Section 245-15 J.

When finished Ms. Laurenitis asked if the request for the four parking spaces did not intrude into the Wetland Buffer “would the stormwater management plan continue as planned?” “Yes” replied Mr. Chamberlain. She also mentioned specific wording in the criteria read that referring to an increase in the local tax base. “What does that mean? she asked. Mr. Chamberlain noted the proposed changes would increase the value of the building and lot thus increasing the taxes paid on it. “I think that is kind of irrelevant to this” replied Ms. Laurenitis. She also noted her concern about the number of parking spaces. “You are not in the Commercial District” she said. Mr. Chamberlain replied “we are not but everything around us is commercial.” Ms. Laurenitis noted “but it is so much more than what is required for an 8000 square foot building.” Mr. Chamberlain reiterated “there is not enough parking there currently.” “What is that based on?” asked Ms. Laurenitis with Mr. Chamberlain replying “it is based on what the applicant has told us.” Ms. Laurenitis also had a question regarding total number of employees.

Code Enforcement Officer Dario Carrara interjected that historically the building was fully used but not to its capacity. He noted a recent increase in the density of the business with an expansion in service “so they are doing more in the same

work space. “You have the eye doctor on the right and the dentist on the left” he said. The members briefly discussed the ratio of parking to the square footage of the building. Mr. Carrara reiterated “we require three (spaces per 1000 square feet) but that is the minimum and I don’t believe that regulation has been updated in some time.” Mr. LaRoche confirmed “so that is the minimum not the maximum.”

A motion was made/seconded (Stewart/Leedberg) to close the public hearing and go into deliberation with all in favor. Chair Stewart read the Deliberation Statement.

Deliberation:

Chair Stewart began with a straw poll. He reiterated he had not seen a lot of traffic in and out of the building “but it is not a huge impact on the buffer either.” He noted he would be in favor.

Ms. Laurenitis noted she was ambivalent about the request. “It is not in the Commercial Zone although I know there are a ton of commercial uses around it” she said. She went on to say “and the ConCom feels it would be an improvement over what is there now so I will weight that over my dislike of the expansion of parking and vote yes.”

Ms. Leedberg said “in the best of all possible worlds I would say cut two (parking spots) but I am not going to do that.”

Mr. Chatfield noted he was also ambivalent about the request. Noting that he too, had rarely seen a lot of traffic in and out of the lot (“9 out of 10 time I go by it is empty”) and questioned the need for four additional spots in the wetland buffer. “It is not in the spirit of the ordinance but I also see how it would improve things.” He went on to say “it looks like we are getting the improvement with or without the additional parking spaces.”

A brief discussion on the intent to improve the stormwater runoff followed with Mr. Chamberlain noting if the four spaces did not exist in the buffer the plan may improvements would happen regardless. Mr. Chamberlain apologized for his earlier mistake noting he misunderstood and while the rain garden would remain the swale would not be on the plan if the additional parking spaces were not approved.

Mr. Chatfield concluded his vote by noting “I don’t want to see a Peterborough business hurt and it improves the water shed so I am inclined to vote for it.”

Mr. LaRoche agreed noting “this precedes zoning and it is a good is a good improvement, I am for it.”

A motion was made/seconded (Stewart/Leedberg) to approve the Variance to construct four parking spaces in the Wetland Protection Overlay Zone, as regulated by Chapter 245, Article III, Section 15, J of the zoning ordinance. The property is located at 129 Wilton Road, Parcel No. U019-005-000, in the General Residence and Rural Districts with all in favor.

In closing Chair Stewart noted for the record that the correct criteria template had not been used and asked Mr. Chamberlain to inform Mr. Branon.

Minutes: Continued

The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant

NOTICE OF DECISION

Case Number 1234

June 5, 2017

You are hereby notified that the request of OTEC, LLC, for a **Variance** to Chapter 245, Article III, Section 15, J of the Zoning Ordinance, to construct four parking spaces in the Wetland Protection Overlay Zone, on property located at 129 Wilton Road, parcel number U019-005-000, in the General Residence and Rural Districts, 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. Currently the parking on site is not adequate to service the employees and customers that are associated with the two medical offices that occupy the subject property. The customers that visit these businesses need to park in the front parking lot as this is where the main entrance is to both businesses. The

number of parking spaces designed for on-site was based on both business operations and the clientele that they experience on a day-to-day basis. This variance would allow for the customer parking to be provided in the front parking lot, would allow for the site to meet all handicap parking requirements and ADA compliance and would allow both businesses to best service the general public. This project has been designed to meet all current building codes and standard engineering practices and will be compatible with the surroundings. For all of these reasons we believe this proposal will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. Therefore, 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 in our opinion consistent with the surround areas and will provide for a significant improvement to the subject property. The site has been designed to mitigate the proposed site alterations and will actually result in improvements to the WPOZ due to the new storm water management system. Since the basis of this ordinance is to protect the functions and values of the WPOZ and this project will provide improvements over what exists today, we believe this proposal certainly observes the spirit and intent of the ordinance. This proposal will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of 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 two local businesses to remain in town and service the community while having no negative impacts to the surroundings. 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. We concur with the Conservation Commissions opinion that this project will result in significant improvements to the WPOZ. We believe that a denial of this variance request would be an injustice to the applicant as there would be no apparent gain to the general public.

4. The values of surrounding properties **ARE NOT** diminished because:

This project would have no negative impacts on the neighboring property values. Proposed site modifications are improvements to the current conditions. There will be additional landscaping, conforming site lighting and this project includes a storm water management plan that will provide significant improvements over what currently exists. The granting of this variance will allow the two medical practices to remain on site resulting in essentially no change from what currently

exists.

5. Literal enforcement of the provisions of the ordinance **WOULD NOT** results in unnecessary hardship because:

(a) For purposes of this subparagraph, “unnecessary hardship” means that special conditions of the property distinguish it from other properties in the area; **These special conditions include:**

1. The position of the existing 8,200 SF building and existing parking configuration on the property
2. The existence of a steep slope at the rear of the site.

- 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 that provision to the property because:

Section 245-15, J does not permit the construction of parking in the WPOZ area. The site has been designed in the best way possible to provide additional parking on the subject site. This design is ultimately driven by the existing features on the property. Customer parking cannot be provided at the rear of the site as this location is at the basement level when the business is on the first floor level. For this reason all customer parking needs to be provided in the front parking lot and the employee parking will be in the rear parking lot. The site has been designed so that there are actually improvements to the WPOZ area and there will be no loss in the functions or values of the WPOZ (buffer area). Since this project has been designed to offer improvements over what currently exists we do not believe there is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of that provision to the property.

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

- The proposed development of the property will result in a significant improvement to the property and the surrounds.
- The proposal will not alter the character of the neighborhood or threaten the health, safety or general welfare of the public.
- The proposed site improvements will not result in negative impacts to the surroundings and will actually result in improvements over what exists now.
- The design as proposed will improve the storm water

management and erosion and sedimentation control on the subject property.

- Granting this variance would allow for the productive use of the existing property.

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

1. Substantial compliance to plans submitted, dated April 10, 2017, Revised May 3, 2017.

Signed,

James Stewart, Chair