

ZONING BOARD OF ADJUSTMENT  
TOWN OF PETERBOROUGH  
Wednesday, July 6, 2016 – 7:00 p.m.  
1 Grove Street, Peterborough, New Hampshire

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

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 July stated meeting of the Zoning Board of Adjustment.” He went on to introduce the members of the Board and announced for the first case that he and Mr. LaRoche have recused themselves.

Vice Chair Laurenitis (Ms. Laurenitis) read the Rules of Procedure and the general ground rules of the meeting (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. She concluded by noting anyone interested in speaking about the case please state their name, address, and relationship (abutter, agent, concerned citizen) for the record. She then appointed Ms. Leedberg and Ms. Monahan to sit.

**“Case No. 1225 Jacqueline Goohs: Requesting a Variance to allow a retail use of the property, as regulated by Chapter 245, Article II, Section 6, Paragraph (A) and Chapter 245, Article II, Section 8, Paragraph (A) of the zoning ordinance (**and**) reduce the front building setback to 15 feet and the side building setback to 15 feet, as regulated by Chapter 245, Article II, Section 6, Paragraph (B) (3), and Chapter 245, Article II, Section 8, Paragraph (D) (2) of the zoning ordinance. The property is located at 139 Wilton Road, Parcel No. U019-003-000 in the Family and Rural Districts.”**

When done she looked up and asked “are there any changes or corrections to the notice? Ms. Monahan noted the ordinance specification was incorrect. “Under 245 II

6(B)(3), it should be Paragraph (2) not (3)” she said. Ms. Monahan also asked if the retail use of the property could be changed. After a brief discussion it was noted that the request was for more of a retail conversion to a mixed use of retail and residential. Mr. Chatfield suggested the notice change “retail use of” to “retail use *on*” as the applicant was not asking for a total conversion.

After a brief discussion as to whether or not the notice was clear the members agreed to make both changes.

Will Phillips introduced himself as an Attorney present on behalf of Ms. Goohs. He began by confirming the application was a proposal for mixed use. “This is a small swelling, 38 by 24 feet with a 14 by 21 foot attached garage” he said as he distributed what he called an exhibit packet to the members. Mr. Phillips went on to say “the immediate plan is to convert the existing garage into a small retail space” (a total of 294 square feet) “where Ms. Goohs will sell Italian ice and other confections as well as children’s toys, clothing and other gifts.” He told the members their second request for a Variance was for a second phase of construction would include building a barn to the easterly side of the existing residence for potential retail space in the future. “This barn will encroach *no more* than 15 feet in the front setback” (which is 30 feet in the Family District) he said. Mr. Phillips also noted the lot would need to be surveyed adding “we will get all those things done for Site Plan Review so that we will be able to move on.”

About this time the members realized they had not seen the information presented to them in the exhibit packet prior to the start of the meeting “This was not included in our packets” said Ms. Laurenitis. Mr. Phillips noted what he distributed was additional information for the request. “If it is incongruent to the notice or application we can continue the hearing and repost” he said adding “but you will not find anything presented here that is not rooted in the original application.”

Mr. Phillips presented graphics of the property and project plan, photographs of abutting and adjacent commercial businesses (Twin Elm Farm, The Black Swan, an Optometrist Office and an Embroidery Shop) as well as the Divine Mercy Catholic Church and Robin Hill Farm, a group home serving traumatic brain injured individuals. He also pointed out the proximity of the Shoreland Conservation Buffer noting “that is why the barn is being built out in the front.”

Mr. Phillips reiterated the retail (toys, educational supplies, confections, and clothing) as well as the residential (Ms. Goohs’ parents would rent the house) aspects of the property. He pointed out 5 retail and 2 residential parking spaces on

the lot. He noted an impact statement from local realtor that stated in her professional opinion she did not believe the property would receive a reasonable investment return going forward as it was limited to residential use only.

A brief discussion about the neighborhood (most of which was a mix of commercial and residential). Ms. Laurenitis noted her concern about the impact of an approval “being the opposite of what zoning was meant to avoid.” When she asked if the home would be a strictly residential use Mr. Phillips replied “strictly residential.” When Mr. Leishman asked who currently owned the house it was noted that the property owner was Mark Robinson, not Jacqueline Goohs.

Mr. Phillips concluded with a review of their request for two Variances. He reminded the members of the current status of the neighborhood and that Site Plan Review (which would require a survey and delineation of the wetlands) would answer any questions they might have in the future. He reiterated the request of a maximum of 15 feet in the setback “when it can be as little as 5 feet” he said. “But you are not sure, there are no specific boundaries before the Board” interjected Mr. Leishman who also noted his confusion about recent ZBA denials for similar requests. A brief discussion about the denied applications followed and it was determined that prior requests were for commercial uses only “not mixed use” said Mr. Phillips. This sparked a brief discussion about the Family District in general and how it encourages residential dwelling. “Application of the ordinance here does not do that” said Ms. Laurenitis. Mr. Phillips noted an impact statement from a local realtor who stated “if anything the property will wither and die as a residential use.” He noted the property was not desirable and any realtor would have a hard time selling it without it being improved and brought into consistency with the rest of the neighborhood. “It is a simple decision” he said “the area around the lot is not a family area anymore. It is not a place you would want to bring up your family.”

Mr. Phillips then reviewed each of the Variance Criteria, one at a time. Ms. Leedberg noted the criteria he reviewed did not completely reflect what was in their packet (received prior to a meeting for member review).

Mr. Phillips explained his review consisted of changes to the written documents they received in the form of additional information and again told the members if they thought any portion was incongruent to the notice or application they could continue the hearing and repost. He reiterated “you will not find anything presented here that is not rooted in the original application.” Ms. Laurenitis concurred with Ms. Leedberg noting “I like having it all before me ahead of time.”

Mr. Phillips replied “this is a legal argument that is consistent with what the application has on it.” After completing the criteria Mr. Phillips concluded “a mixed commercial use is harmonious with the things around it.” He described the lot with a post WWII era home as not doing anything but getting older and more run down. “This is the most appropriate use of the land, it is consistent with others around it.. You should allow this.”

*Deliberation:*

As Vice Chairman Ms. Laurenitis began with her concerns of re-zoning the Family District one property at a time. She noted several single family home in the area and ultimately said she would vote against the approval. Mr. Leishman was in agreement. In defense of the approval was Ms. Monahan, Ms. Leedberg and Mr. Chatfield. The members discussed their individual thoughts, concerns and opinions for the next 25 minutes before a motion was made:

Motion was made/seconded (Monahan/Leedberg) to approve the request For a Variance to allow a retail use of the property, as regulated by Chapter 245, Article II, Section 6, Paragraph (A) and Chapter 245, Article II, Section 8, Paragraph (A) of the zoning ordinance (**and**) reduce the front building setback to 15 feet and the side building setback to 15 feet, as regulated by Chapter 245, Article II, Section 6, Paragraph (B) (2), and Chapter 245, Article II, Section 8, Paragraph (D) (2) of the zoning ordinance. The property is located at 139 Wilton Road, Parcel No. U019-003-000 in the Family and Rural Districts.”

Ms. Monahan, Mr. Chatfield and Ms. Leedberg were in favor. Ms. Laurenitis and Mr. Leishman were opposed.

**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.

This case was continued to the August 1, 2016 ZBA Meeting.

The meeting adjourned at 9:40 p.m.

Respectfully submitted,

Laura Norton  
Administrative Assistant

## NOTICE OF DECISION

Case Number 1225

July 6, 2016

You are hereby notified that the request of Jacqueline A Goohs, for a **Variance** to Chapter 245, Article II, Section 6, Paragraph A and Section 8, Paragraph A, of the Zoning Ordinance, to allow a retail business use on the property located at 139 Wilton Road, parcel number U019-003-000, in the Family and Rural Districts, is hereby **GRANTED**.

You are hereby notified that the request of Jacqueline A Goohs, for a **Variance** to Chapter 245, Article II, Section 6, Paragraph B 2 and Section 8, Paragraph D 2, of the Zoning Ordinance, to reduce the front building setback to 15' on property located at 139 Wilton Road, parcel number U019-003-000, in the Family 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:  
The proposed mixed residential and retail use of the property is consistent with existing mixed and commercial use on neighboring properties.
2. The spirit of the ordinance **IS** observed because:  
The residential use of the property will continue, and preserve the value of the land and buildings.
3. Substantial justice **IS** done because:  
It will allow the property owner to maintain residential use and conduct business on the property.
4. The values of surrounding properties **ARE NOT** diminished because:  
Mixed use properties already exist in the neighborhood.
5. Unnecessary hardship  
Special conditions of this property are:

- The Shoreland Conservation district along the property limits the area of development.
  - It is a single family residence in an area that is predominately mixed use.
  - The existing leach field limits the area of development.
- 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:  
Strict application of the ordinance by restricting it to an exclusively residential use does not alter the existing mixed use character of the neighborhood.
  - ii. The proposed use **IS** a reasonable one because:  
It retains residential use.

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

1. The front building setback pertains exclusively to the proposed addition and is limited to no less than 15'.
2. A residential use shall continue on the property.
3. The retail business will be for children's toys, clothing, and related items, and specialty confections.
4. The retail business may only operate within the hours of 9:00am and 9:00pm.
5. The plans will be in substantial compliance with the testimony and exhibits presented.

Signed,

Loretta Laurenitis, Vice-Chair

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected

thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.