

Town of Newington, NH  
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – November 12, 2014

- Call to Order:** Chair Matt Morton called the November 12, 2014 meeting at 6:30 PM.
- Present:** Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Jim Weiner; Planning Board Representative, Justin Richardson; Town Planner, Tom Morgan; and Jane Kendall, Recorder
- Public Guests:** Attorney Chris Mulligan; Dan and Pam Jenison; Derek Ducette; David Choate; Cindy Lyons and Jim Fabrizio; Mike Marconi; Rick Stern

1) **Public Hearings:** Request by 25 Nimble Hill Road LLC and NH1 Motorplex LLC for a variance from Article V of the Zoning Ordinance in order to permit an indoor electric go-kart operation in the Office Zone. The property is situated at 25 Nimble Hill Road, Tax Map 12, Lot 16.

*(Chairman Morton initially asked Planning Board Vice-Chair, Mike Marconi to sit on the Board as until Planning Board representative, Justin Richardson arrived at 6:35 p.m.)*

Attorney Chris Mulligan appeared before the Board on behalf of his clients NH1 Motorplex LLC with Dan and Pam Jenison and Derek Ducette. Attorney Mulligan said the Board had participated in a site walk. He said they were seeking a variance to facilitate a go-kart facility in the Office Zone in a section of the former Thermo Fisher plant that was site that was currently dormant. He said they were proposing a change of use for an electric go-kart operation on an indoor track for adults and children of an appropriate age. He said the karts would be run by a remote governor system to control the speeds and had a safety record nationwide. He said they were also proposing private conference space, but would have no independent food services except vending foods and no alcohol on premises.

Attorney Mulligan proceeded to review the criteria for granting the variance. He said it would not be contrary to the public interest and granting would be in the spirit of the Ordinance as there would be no exterior changes to the site except a sign so it would not alter the essential character of the surrounding community. He said permitted uses in the Office Zone included hotels, hospitals, medical clinics and schools, but there were few windows for suitable office use. He said this use would not impact the public health, safety or welfare because it did not involve any fumes, gas, noise or cause any environmental issues.

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Attorney Mulligan said substantial justice would be served and there would be no gain to the public in denying the request because there would be no benefit to leave the property as it was because the manufacturing use was mostly gone and the clearance heights were not sufficient for most warehouse uses any longer. He said landlords would not reinvest in the property and a prolonged state of dormancy would cause a degradation of the site. He said it would be to everyone's advantage for the Town to promote adaptive uses when considering creative uses that had not been used before.

Attorney Mulligan said the value of surrounding properties would not be adversely affected because there would be no outward changes except for the addition of a sign. He said the proposed facility would be clean, would not generate noise or environmental issues, would not create a traffic burden in excess of any other permitted uses such as conference centers, homes for the developmentally disabled, hospitals or hotels.

Attorney Mulligan said the applicant would suffer a hardship due to the special circumstances that would prevent the proper enjoyment under the terms of the Zoning Ordinance because it could not be refitted into a hospital or hotel and it was not appropriate for manufacturing or warehouse use because the manufacturing facility had been stripped. He said the 13-acre parcel abutted the Spaulding Turnpike, but there was no direct access from the turnpike. He said this tenant was proposing to invest \$700,000 into the interior and it would be difficult to find a tenant willing to make a similar investment and most any tenant would require a variance. He said there was no fair and substantial relationship between the general purposes of the ordinance that encouraged safe pedestrian access from the Office Zone and the special application of that provision to the property. He said the adaptive reuse concept proposed was a reasonable one and there was no reason not to grant the variance.

Board member, Jim Weiner asked Town Planner, Tom Morgan to go through the rationale for the allowed uses in the Office Zone and Mr. Morgan said it went back to late 1980's and early 1990's when the Commercial Zone was extended north of Wal-Mart because of retail growth and to encourage better wages than retail was providing. He said the change was passed at the March 1994 Town Meeting.

Mr. Richardson said the applicant appeared before the Planning Board on November 10, 2014 and they were concerned with overnight uses and large gatherings. He added that not all office space had to be within walking distance of restaurants.

Mr. Estes asked if the applicant intended to have a long-term lease and Attorney Mulligan said they were as they would be investing \$700,000. Mr. Estes asked about the Thermo Fisher use on the location and Mr. David Choate, the broker for 25 Nimble Hill Road LLC said they had moved their manufacturing to North Carolina and were only doing service on the site now. He said the other tenants were at will and would have to move or move out to accommodate this applicant.

Mr. Estes asked what the hours of operation would be and Attorney Mulligan said the hours of operation would be noon to 10 p.m. on Monday through Friday, 11 a.m. to 11 p.m. on Friday and Saturday and 11 a.m. to 8 p.m. on Sundays.

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Board member, Ted Connors asked how many people they expected a day and Mr. Derek Ducette said they could run a maximum of 56 carts an hour, but they anticipated running at 50-60% of that capacity.

Mr. Weiner said he was familiar with current office space expectations. He said office use was the spirit and intent of the Ordinance that was voted on at Town Meeting and he believed the space could still become office space.

Mr. Weiner also commented that there was a gasoline powered go-kart track where he used to live in Massachusetts and there were a lot of problems with intoxication that required a police presence and many people didn't want to expose their kids exposed to that element. Attorney Mulligan said it was a leap to think his client would not care about drug use in the facility as they were proposing to invest \$700,000 to build a respectful facility to attract families. He said if anything, they would want to police and protect the facility from damages. Mr. Weiner said the facility would bring in an element that they might not be controllable, which would demand extra municipal services for police coverage. Mr. Ducette said he toured the closest operation in New Jersey and in their two years they had only called the ambulance twice and police once.

Mr. Frink expressed concern for other tenants in the building and changing the character of the area. Discussion ensued regarding other possible sites throughout the state. Mr. Choate said there were no other sites with adequate site. He added that the market, including Pease Development was running with a 15% vacancy right now.

Mr. Richardson commented that the definition of hardship considered the distinguishing characteristics of the property and not the marketplace. Attorney Mulligan said the special conditions was not with the land, but the existing building that was built over 20 years before and was no longer suitable for its original purpose or the zoning, however he agreed that it wasn't a matter of go-karts or nothing.

Ms. Cindy Lyons of Shattuck Way said she was a direct abutter and had concerns with the impact on the residential environment as a result of lights and noise from increased traffic and patrons in the parking lot six nights a week. She said she was concerned with setting precedence by allowing public amusement in the Office Zone and added that the disposal of food from patrons and catering and conferences would increase the presence of wildlife around the dumpsters.

Mr. Rick Stern of Shattuck Way said he was also concerned with additional traffic, especially during commuting hours and the large fuel trucks that traveled down Shattuck Way at night. He said Office Zoning was established to avoid additional heavy traffic from the Commercial Zone on other side of Town

Mr. Jim Fabrizio of Shattuck Way said he understood it was a nice building for what they wanted, but there was no need to change the use because they already had at-will tenants that would be thrown out. He said the current tenants left the building earlier in the day during the work week and there was no problem, but this would invite trouble requiring the police regardless of their intentions

Mr. Richardson said the chief of police had once told him that the presence of Wal-Mart alone required an additional full-time police officer and wondered what the results would be from this kind of operation. Mr. Morgan said a detailed fiscal analysis was done at one time from data collected from the police and fire departments and

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although the malls paid a lot in taxes, the cost to municipal services for bounced checks, fender benders and shop lifting caused them to break even. He said in comparison, the Industrial Zone required few services.

Mr. Richardson added that they heard from residential abutters that said they would not have moved into the neighborhood if they had known amusement use would be allowed with patrons coming out late in the evening, which was a consideration toward the value of surrounding properties. Attorney Mulligan said the patrons would be staggered instead of large shifts entering and exiting. Ms. Lyons said they could already hear generators despite the sea of asphalt around the building, which was low so noise traveled so the parked patrons would be loud.

Mr. Fabrizio said although the police chased them out quickly, they were able to hear people gathering at the parking lot for Eastern Bearing across the street in the summer so he imagined it would be worse with an amusement facility next door.

Chair Morton said some people had expressed interest, but he thought it was the wrong location because of the noise, increased traffic and policing required.

*Jim Weiner moved to **deny** the request by 25 Nimble Hill Road LLC and NH1 Motorplex LLC for a variance from Article V of the Zoning Ordinance in order to permit an indoor electric go-kart operation at 25 Nimble Hill Road, Tax Map 12, Lot located in the Office Zone. Ralph Estes seconded the motion.*

Mr. Richardson reviewed the criteria, noting that it would be contrary to the public interest and not in the spirit of the Ordinance, which was to encourage low intensity hours, use and traffic. He said even with three shifts of light manufacturing, people would be eager to go home and not fool around in the parking lot. Mr. Frink added that the intent of the Ordinance was not to impact surrounding properties and being near a restaurant was not the main point.

Mr. Richardson said it was unfortunate that some manufacturing features were stripped out of the building, but that would not prohibit something else from going in. He pointed out that a previously derelict building down the street had been converted into light manufacturing and another warehouse at Pease had changed hands a few times before the successful Sig Sauer enterprise moved in so some things developed over time so it couldn't be said that denying this proposal would do harm to the landlord.

Mr. Richardson said even a Chuck E Cheese would have an impact on surrounding residential properties. Mr. Weiner agreed, saying increased noise from a party continuing in the parking after the 11 p.m. closing could have an affect on property values.

Mr. Estes said he didn't see any hardship to the landlord except a low ceiling, which might not work for some tenants, but could still work for others. Mr. Richardson added that there were still a lot of other possibilities on approved uses.

*The motion to **deny** the request **passed** unanimously.*

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2) **Request for Rehearing:** Bruce Belanger re: property at the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lot 11-2

Mr. Richardson who served as a representative for the Planning Board and Mr. Weiner who also served on the Conservation Commission that voted against the proposal, recused themselves.

Chair Morton opened the discussion up for comment. Mr. Frink said he thought the Board should rehear the proposal and that it was important that everyone studied the Ordinances carefully before considering requests. Mr. Connors agreed.

*John Frink moved to **rehear** the request for a Special Exception by Bruce Belanger regarding property at the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lot 11-2. Ted Connors seconded the motion and all were in favor.*

Mr. Richardson asked if they would be starting over and if they would renotice. Mr. Morgan said they would be starting over, but it was recommended that the hearing be held within 30 days. Attorney Mulligan agreed the sooner better.

Mr. Richardson and Mr. Weiner said they would have to recuse themselves from voting, but Mr. Richardson said his presence would still count for a quorum.

Chair Morton set the date for the rehearing to Wednesday, December 10, 2014.

**Adjournment:** *Ralph Estes motioned to adjourn and Ted Connors seconded. All were in favor, and the meeting adjourned at 8 p.m.*

**Next Meeting:** Wednesday, December 10, 2014

**Respectfully  
Submitted by:** Jane K. Kendall, Recording Secretary