

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, May 26, 2020

DRAFT

- Call to Order:** Chair Matt Morton called the May 26, 2020 meeting at 4:00 p.m.
- Present:** Chair Matt Morton, Vice-Chair Ralph Estes; John Frink; Meredith Hoyt (arrived at 4:30 p.m.); Cathy Latchaw; Edna Mosher; Alternate Board member, Will Gilbert; Town Planner, John Krebs and Jane Kendall, Recorder
- Public Guests:** Attorney Kevin Baum; Jack McFee with TFMoran; Attorney Chris Mulligan; Mark Phillips; Planning Board Chair, Denis Hebert

Minutes: *Edna Mosher moved to approve the Minutes for the September 30, 2019 meeting with corrections as noted. Cathy Latchaw seconded, and the motion passed with all in favor except for John Frink who abstained.*

I) Public Hearings:

- A) Request by **Newington Falls, LLC** for a variance from Article III, Section 8 to allow a 30+- foot setback where 50 feet is required for parking on property located at **River Road and Shattuck Way, Tax Map 13, Lot 6-A.**

The applicant's legal counsel, Attorney Kevin Baum stated that the proposal was to allow the parking lot to be inside the setback buffer 30 feet from Shattuck Way instead of the required 50 feet in order to avoid the wetlands buffer. He added that there would be 12 feet between the edge of the pavement and the edge of the lot, which came to 42 feet.

Attorney Baum added that they were proposing robust landscaping of six trees and shrubbery to conceal the parking lot and the proposed medical building from Shattuck way to meet the intent of the buffer.

Attorney Baum stated that this would be the first office proposal that was consistent with the amended Office District for this area that was described in the Master Plan. Attorney Baum presented a memorandum with aerial photos showing a number of other buildings on Shattuck Way that were similar or closer to their proposal.

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Attorney Baum said plans might change slightly after discussions with the Planning Board, but this was the first step before a preliminary review that they were hoping to schedule with the Planning Board next month.

Town Planner, John Krebs said he didn't want to schedule the Planning Board meeting until they knew the Zoning Board of Adjustment's decision.

Board member, John Frink said he recalled that the lot was too wet for an affordable housing proposal, but had been used as the laydown area for Eversource's transmission expansion project through town. Mr. Frink asked if they had received assurances that the stockpiles of dirt were not contaminated with PFA's. Attorney Baum said his client did environmental due diligence to the satisfaction of his lender.

Mr. Frink asked if it was the same owner as the Storage Barn, and Attorney Baum replied that it was. Mr. Frink commented that Mr. Phillips had been cited for encroachment on the wetlands, and asked if they had received approval from the Department of Environmental Services (DES), and the Conservation Commission.

Property owner, Mark Phillips responded that he had purchased the property from Eversource prior to their using it for a laydown area. He said the topsoil was stripped off the property and stockpiled, but turfologist, Fred Cameron found that the soil was insufficient, so he met with Eversource and their contractors agreed to remove and replace the soil with enough loam to seed.

Mr. Phillips went on to say that there had been two different wetlands delineations over the past year, and his wetlands scientist, Jim Gove of Gove Environmental, Town wetlands consultant, Mark West of West Environmental, and DES all agreed on two detention basins built with specifications.

Chair Morton said he understood all soil brought in from Great Bay was screened and monitored. Mr. Frink said there were a lot of PFA saturated soils from his property, but they became contaminant free after they dried out.

Board member, Edna Mosher commented that the plan and driveway looked good, and she thought it was a good use of the site.

Edna Mosher moved to grant the Request by Newington Falls, LLC for a variance from Article III, Section 8 to allow a 30+- foot setback where 50 feet is required for parking on property located at River Road and Shattuck Way, Tax Map 13, Lot 6-A as presented and advertised. Cathy Latchaw seconded the motion.

Mr. Frink reviewed the criteria for granting the request, stating that it would not diminish surrounding property values, and was in keeping with a number of other properties on Shattuck Way that had parking within 50 feet of Shattuck Way

Mr. Frink went on to say that the medical office proposal would enhance the surrounding community with services, improved aesthetics and increased jobs.

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Mr. Frink added that denying the request would result in an unnecessary hardship because it was a lot that was impacted with wetlands, and the request was a response to the applicant's concern for the environment.

Lastly, Mr. Frink said that substantial justice would be done as the property had already been transformed, and there would be little impact from the development.

The motion carried and all were in favor.

- B) A request by **117 Gosling Road, LLC** for a use variance from Article III to permit a dog daycare usage, and a variance from Article 9, Section 7 to permit a retaining wall and fencing within the wetland setback on property located at **117 Gosling Road Tax Map 28, Lot 2.**

The applicant's legal counsel, Attorney Christopher Mulligan, from Bosen and Associates appeared before the Board to represent 117 Gosling, LLC and their tenant, Play All Day dog care.

Attorney Mulligan noted that the Newington Zoning Ordinance was a permissive ordinance listing allowable uses such as office, retail, research light manufacturing, hotels, motels, conference facilities, storage facilities, and daycare, which were similar in nature to dog daycare that was not specifically listed as permitted so that was the reason for their request.

Attorney Mulligan stated that they were proposing to convert the existing facility that already had indoor recreation uses. Attorney Mulligan said they did not have any plans for exterior changes beyond installing small outdoor dog runs.

Attorney Mulligan stated that Play All Day operated five facilities on the Seacoast, and the Portsmouth facility would move their operation to Newington if approved. Attorney Mulligan added that Play All Day had another facility in a residential area in Hampton, and there were no issues with the abutting residents.

Attorney Mulligan said dogs barked when left alone, but the facility would be fully staffed, so there would be little barking.

Attorney Mulligan said all solid waste was collected and removed by a private operation daily, and the outside run had a layer of stone, sand, and mulch for filtration.

Vice-Chair Estes asked if the dogs would be boarded overnight, and Attorney Mulligan replied that they would not.

Attorney Mulligan stated that the nonconforming building sat within the wetlands setback, and the retaining wall and fencing would also be within the wetlands buffer. Attorney Mulligan added that Eversource had an easement over the area so they also might need their approval.

(Board member, Meredith Hoyt arrived at 4:30 p.m. at this point in the meeting.)

Ms. Mosher commented that she had experience with dog day care facilities, and that dogs did bark, but she didn't think any abutters would object. Ms. Mosher said she

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was concerned with an owner taking a large dog out of a parked car with a daycare nearby, however. Attorney Mulligan responded that the dog day care, and the child day care were on opposite ends of two separate buildings.

Ms. Mosher said she was concerned there wouldn't be sufficient parking for the employees, and the chaos of 80-100 clients dropping off dogs. Attorney Mulligan said parking for employees was at back.

Ms. Mosher said she would like to see the site occupied, but she had a hard time knowing doggy day care. Attorney Mulligan responded that there were similar uses such as bowling alleys, skating rinks, and places of worship were allowed, and were more intensive.

Ms. Mosher asked if there would be an exterior play area. Attorney Mulligan replied that there would be a fenced area at the back, accessed from the interior.

Chair Morton commented that he was concerned with dog the odor of dog urine building up in the mulch. Attorney Mulligan responded that a full environmental study had been done on their Exeter site, and there was no issue.

Chair Morton asked if they were removing the brush on the side of the building. Attorney Mulligan agreed, and said they might need to remove the brush to put the dog run in, and do some landscaping so they would go before the Conservation Commission. Attorney Mulligan added that Mark Jacobs said he thought a lot of fill had been added over the years, and there was a lot of non-native growth, including invasive autumn olive, multiflora rose, and purple loosestrife.

Mr. Frink asked about the GSP abutter to the east. Attorney Mulligan said a notice had been sent to the utility easement. Chair Morton noted that it was just a field with a lot of lumber stored at this time.

Mr. Frink asked about the setbacks for the retaining wall. Attorney Mulligan said the setbacks would depend on the size of the wetlands, but assuming the wetlands were greater than 3,000 square feet and contiguous, a minimum of a 100 foot setback was required, but the non-conforming building was already in the setback, and the fence would be at just 10 feet away at the closest point, and the retaining wall at the rear of the building would also be in the setback, but further away.

Planning Board Chair, Denis Hebert said he thought there was prime wetlands at the back.

Mr. Frink asked if the property owner owned this building, and the abutting building. Attorney Mulligan said he was not, but they received relief for the retaining wall last year.

Mr. Frink asked if they were putting in impervious pavement. Attorney Mulligan replied that they intended to have it done in next eight to ten months, including grading a portion of the access road and retaining wall, but they would return if they needed additional time.

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Mr. Krebs said he was not aware that site improvements had not been done since approved last year, but he thought the Planning Board should do another site review for this use. Attorney Mulligan asked if they could do an administrative review. Mr. Krebs said the zoning officer should have done the review, but the Planning Board could do a quick review. Mr. Hebert said the owner went before the Planning Board for parking, and the retaining wall, and he just thought this was a use variance, and didn't know there would be a dog run and fencing installed.

Chair Morton said he was also concerned with urine leaching into the wetlands. Attorney Mulligan said they could get environmental approval.

Ms. Mosher asked for an explanation of the urine filtration. Attorney Mulligan said they would put down a layer of gravel, sand and bark. Ms. Mosher asked if there were drains inside for occurrences of urination inside, and Attorney Mulligan said he didn't know.

Ms. Mosher asked if the Board could approve the use and fence with a condition environmental review, and Planning Board site approval. Chair Morton noted that they were on timeline.

Mr. Hebert said he was concerned with setting a precedence for other developers, and wanted to know what their hardship was. Attorney Mulligan replied that they were trying to utilize the existing environment on a non-conforming site where the hardship was a building that already violated the setback, and the reasonable use was not allowed anywhere. Mr. Krebs pointed out that the lot was already heavily developed and paved, next to a wetland, & much of the pavement would be removed and replaced with mulch.

Chair Morton said the Board could only deny the request based on this business then, and he was okay with the dog daycare.

Ralph Estes moved to grant the request by 117 Gosling Road, LLC for a use variance from Article III to permit a dog daycare usage. Edna Mosher seconded, and the motion passed 4-1 with Matt Morton, Ralph Estes. Meredith Hoyt and Cathy Latchaw voting in favor, and John Frink opposing.

Edna Mosher moved to grant the request by 117 Gosling Road, LLC for a use variance from Article 9, Section 7 to permit a retaining wall and fencing within the wetland setback on property located at 117 Gosling Road Tax Map 28, Lot upon site review of the Planning Board. Cathy Latchaw seconded Mosher seconded, and the motion passed 4-1 with Matt Morton, Ralph Estes. Meredith Hoyt and Cathy Latchaw voting in favor, and John Frink opposing.

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II) Discussions

A brief discussion ensued regarding enforcement, and conducting public hearings indoors or outdoors with large numbers of people during the COVID epidemic.

Adjournment: *Edna Mosher moved to adjourn, and Cathy Latchaw seconded. The motion passed, and the meeting adjourned at 5:10 p.m.*

Next Meeting: TBD

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