

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – November 25, 2013

- Call to Order:** Chair Matt Morton called the November 25, 2013 meeting at 6:30 PM.
- Present:** Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Planning Board Rep, Justin Richardson; Town Planner, Tom Morgan; and Jane Kendall, Recorder
- Absent:** Alternate, Justin Flynn
- Public Guests:** Paul Bogan with Sea-3; Steve Haight with Haight Engineering; Attorney Alec McEachren; Linn Libel with Appledore Marine; Ted Reed with Sprague Energy; Attorney Bernie Pellet; Brian Short Denis Hebert; Rick and Doreen Stern; Joey Cresta with the "Portsmouth Herald"

Minutes: *Ted Connors moved to **accept** the Minutes of the **September 30, 2013** meeting. Ralph Estes seconded the motion, and **all members voted in favor.***

Public Hearings:

1) Request by **Sea-3, Inc.** for the following variances from the Zoning Ordinance in regards to property located at **190 Shattuck Way**, Tax Map 14, Lot 2 and Map 20, Lot 13.

A) Administrative appeal of a decision by the Town Planner who determined that a variance from Articles VI & XIII is required in order to expand a conforming use on lots with no frontage on a public right of way.

B) Variance from Articles VI & XIII in order to expand a conforming use on lots with no frontage on a public right of way.

C) Variance from Article VI in order to allow the installation of a pipe 27 feet from the rear property line on Lot 20-13 where the ordinance requires a minimum setback of 50 feet.

D) Variance from Article VI in order to allow the installation of a pipe 11 feet from the front property line on Lot 14-2 where the ordinance requires a minimum setback of 75 feet.

Paul Bogan, Vice President of Operations for Sea-3, Inc. presented a brief review of their Liquid Petroleum Gas (LPG) import business for the past 38 years, and their

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proposal to convert to export in response to higher prices from foreign suppliers and decreased domestic prices. Mr. Bogan said they would bring the domestic product in by railroad, unload it into ambient storage tanks, process the product through a drying tower and chilling unit, before shipping it out overseas, or trucking to the local New England market.

Attorney Alec McEachren reviewed the plan, and requests for variances.

Questions regarding access and frontage arose from Board members, and Mr. Bogan said the fire chief determined the main travel lane and the Planning Board approved the frontage.

Justin Richardson and Attorney McEachren discussed the interpretation of administrative appeal and the expansion between conformity and non-conformity lots. Mr. Richardson said he thought RSA 674:41 required that they would need to request a building permit and be denied before they could request an administrative appeal. Town Planner, Tom Morgan said he wasn't sure the RSA would apply if the applicant were proposing a variance for pipes, but not a building. Mr. Richardson said he was concerned with granting a variance for two separate parcels where one parcel could be sold to a separate entity at a later date. Mr. Bogan said it would not be possible to merge the two lots because of the railroad separating them, but they were connected by electronics, and the two sides couldn't work without one another so he assured the Board that with 10-15 million dollars invested, they had no intentions of selling either parcel, but if they ever did they would strip the property of all their equipment. Mr. Morgan said the Planning Board could better address the issue. Planning Board Chair, Denis Hebert agreed that the two properties couldn't operate separately, and there should be a condition of approval that they not be separated.

Ralph Estes asked if the EPA and the fire chief had approved their plan, and Mr. Bogan said the fire chief had given preliminary approval and they would apply to the State and the Federal Government to meet NFPA58 requirements.

*Justin Richardson moved to **deny** without prejudice the request as presented and advertised for an administrative appeal of a decision by the Town Planner who determined that a variance from Articles VI & XIII is required in order to expand a conforming use on lots with no frontage on a public right of way. John Frink seconded, and the motion passed, 3-1 with Ralph Estes opposing.*

*Ted Connors to **grant** the petition as presented and advertised for:*

B) Variance from Articles VI & XIII in order to expand a conforming use on lots with no frontage on a public right of way pending the applicant pass NFPA58 requirements,

C) Variance from Article VI in order to allow the installation of a pipe 27 feet from the rear property line on Lot 20-13 where the ordinance requires a minimum setback of 50 feet, and

D) Variance from Article VI in order to allow the installation of a pipe 11 feet from the front property line on Lot 14-2 where the ordinance requires a minimum setback of 75 feet subject to the condition that the two lots be maintained in common ownership.

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*Ralph Estes seconded the motion. **The petition was granted unanimously** for the following reasons:*

- That there will be no looming structures and granting the variances will not be contrary to the public interest
- That granting the variance will be in the spirit of the ordinance
- That substantial justice would be served by granting and there would be no gain to the public in denying these variances because the present applicant was already operating in the setbacks, and there would be a benefit to the economy
- The value of surrounding properties will not be adversely impacted, and it will improve the railroad lines and will enhance service in the industrial area, and truck transportation
- The presence of the railroad line creates a hardship for the applicant

Mr. Morgan said the applicant might need to return for an appeal. Mr. Richardson said that would depend on the building inspector's interpretation of the process.

2) Request by **Sprague Operating Resources, LLC** for the following relief from the Zoning Ordinance in order to replace their access trestle at **372 Shattuck Way**, Tax Map 7, Lot 14.

A) Variance from Article X Section 4A to alter the surface configuration of a tidal river.

B) Special Exception pursuant to Article X Section 4C to allow construction in a wetland.

Ted Reed with Sprague and Linn Libel from Appledore Marine said they would be replacing the access trestle that was built in 1959. He said they would be replacing the "H" beam pilings with round cement pilings, and the new trestle could withstand 30,000 lbs of weight.

Mr. Reed said they requested and received a recommendation for their DES application from the Conservation Commission the week before. Mr. Reed said because of their location along a tributary they were under Coast Guard regulations instead of the State's stricter regulations for lakes, but they would adhere to the stricter guidelines.

John Frink asked how the cement pilings would withstand the rigors of salt water, and Mr. Reed said it would be coated with epoxy.

*John Frink made a motion to **grant** the petition as presented and advertised for a variance from Article X Section 4A to alter the surface configuration of a tidal river contingent upon the Army Corp of Engineers and DES application approvals. Justin Richardson seconded and **the petition was granted unanimously**.*

*Ted Connors made a motion to **grant** the petition as presented and advertised for a Special Exception pursuant to Article X Section 4C to allow construction in a wetland. Ralph Estes seconded and **the petition was granted unanimously**.*

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3) Request by the **Short Family Limited Partnership** for the following variances from the Zoning Ordinance for property located at **399 Shattuck Way**, Tax Map 7, Lot 16.

A) Variance from Article V Section 2 to allow a gasoline station and convenience store in the Office Zone where such uses are not permitted.

B) Variance from Article VI to allow a 28-foot front yard setback where the ordinance requires a minimum setback of 30 feet.

C) Variance from Article VI to allow a 6-foot side yard setback where the ordinance requires a minimum setback of 30 feet.

D) Variance from Article VI to allow an 8-foot rear yard setback where the ordinance requires a minimum setback of 30 feet.

E) Variance from Article VI to allow to allow construction on an 89,853 square foot lot in a zone where the minimum lot size is 120,000 square feet.

F) Variance from Article X Section 6 to allow no wetland buffers where the ordinance requires a 25-foot buffer.

G) Variance from Article X Section 7 to allow no wetlands setback where the ordinance requires a 100-foot setback.

Attorney Bernie Pelech appeared before the Board representing the Short Family Limited Partnership who was asking for a series of variances (B thru G above) based on approval of the first request (Variance A above) to allow a gasoline station and convenience store be permitted in the Office Zone. Attorney Pelech said the property had been listed with Kane Realty for the past ten years and stated that they were not able to find any buyers who were interested in building office space, and the only offer they had received was for a gas station. Attorney Pelech said there were many changes coming to the area as a result of the Spaulding Turnpike Expansion project. He stated that he had spoken to Joe Mitchell of Mitchell's Gulf on Nimble Hill Road and Mr. Mitchell was in favor of another gas station. He said they would have no need for the other variances if the first variance wasn't granted.

Attorney Pelech said there was only a limited area on the parcel that would be buildable. Mr. Richardson asked how they came up with continuous wetlands, and Attorney Pelech said they had a wetlands analysis conducted by Sandpiper Environmental. He showed the drainage running in the culvert under Shattuck Way to the river. Attorney Pelech said if the variance was granted they intended to fill in the wetlands permanently because he said the culvert was improperly graded and the water didn't run toward the river, but backed up and created a wetlands. He said they talked with the State and they had no problem with that.

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Mr. Richardson questioned prior approvals, and said he would be hesitant to approve the request without knowing more about the wetlands, and a gas station would have a greater impact than an office building. Mr. Richardson cited Pelech's assertion that the DOT could also offer them more land in the future, hence the area could be used for more than a gas station. Chairman Morton said the area was very congested with traffic, especially around 4 p.m. He said they would also need traffic impact studies. Attorney Pelech said they had traffic studies.

Doreen Stern of Shattuck Way said she wouldn't be opposed to new building in the location, but she would be opposed to a gas station because the Great Bay estuary didn't need any additional pollutants. Attorney Pelech said Sprague and the propane terminal were already there and were contributors.

Mr. Morgan cited examples of office and light industrial uses in the vicinity of Exit 4, such as Eastern Ball Bearings off Nimble Hill Road, the Mooney building, Todd Addleman's light manufacturing building on 521 Shattuck Way, Mr. Addleman's approval for two office buildings nearby, and the Portsmouth Sign Company's new facility at 19 Nimble Hill Road. These buildings indicate that uses other than a gas station are feasible in this part of town.

Ralph Estes moved to deny the request as presented and advertised for a Variance from Article V Section 2 to allow a gasoline station and convenience store in the Office Zone where such uses are not permitted (Variance A), and John Frink seconded. The board voted to deny Variance A unanimously for the following reasons:

- Granting the request would be contrary to the public interest because the heavy volume of traffic known to the area at this time could be a problem, and more land could be added at a later date, which would improve development opportunities;
- It is not in the spirit of the ordinance because there are indications of other permitted uses allowed in the vicinity of Exit 4;
- Substantial justice would not be served by granting, and there would be no gain to the public by arbitrarily allowing these variances, while requiring others to adhere to the ordinance;
- Granting the use of a gasoline station in this area could harm the value of surrounding properties;
- A hardship may exist due to limited space addressed by Variance requests B thru G, but not due to uses permitted by the Zoning Ordinance (Variance A).

Pursuant to the applicant's request, the board took no action on Variance requests B–G.

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4) Request by **Lam Brothers Partnership** to utilize property at **21 River Road**, Tax Map 19, Lot 4, for residential, office, sales or service use in the Office Zone where residential use is prohibited by Article V Section 2 of the Zoning Ordinance.

The applicants advised via email that they wish to withdraw the above-mentioned petition.

Adjournment: *John Frink motioned to adjourn, and Ralph Estes seconded. All were in favor, and the meeting adjourned at 8:45 p.m.*

Respectfully
Submitted by: Jane K. Kendall, Recording Secretary