

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Monday October 19, 2023

Call to Order: Chair Jennifer Weiner called the October 19, 2023, meeting at 6:33 p.m.

Present: Board members: Planning Board Representative, and Vice-Chair Peter Welch; Board members, Bob Byrnes; John Frink; Emily Savinelli; Alternate Board members, Roger Dieker; Derick Willson Meghann Wayss; Town Planner John Krebs and Recording Secretary Jane Kendall

Public Guests: Board Counsel, Attorney Keriann Roman; Jim Teetzle, CEO Wilcox Industries; John Bernier, President of Bernier Construction; Bill and Gregsak of Gregsak and Son Engineering; Attorney Nathan Fenesy; Town engineering consultant, Eric Weinrieb, Principal P.E. with Altus Engineering. Newington Fire Chief, EJ Hoyt

I) Non-Public Meeting with Legal Counsel

Board members met with Board Counsel, Attorney Keriann Roman prior to the public meeting.

Chair Weiner read through the rules of procedure and conduct for the public meeting.

II) Public Hearings

- A) Continuation on proposed amendments to **Zoning Board of Adjustment of Rules of Procedures**

Chair Weiner announced that this item would be moved to the end of meeting.

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- B) Variance request by **20 Piscataqua Drive, LLC** for relief from Article VII to construct a one-story parking garage 6 feet from the property line where 75 feet was required, and 6 feet from the front property line where 30 feet was required to park an additional 309 vehicles on property located at **25 Piscataqua Drive, Tax Map 27, Lot 2.**

Chair Weiner announced that the applicant would present their application, and then the Board could address questions to members of technical review that were present.

Nick Gregsak with Gregsak and Sons presented their plan for a parking garage on a new parcel abutting Wilcox Industries on the corner of Piscataqua Drive Avenue and Woodbury Avenue, and their request for relief from the side and front setbacks.

Town Planner, John Krebs said the property was heavily encumbered by easements. N. Gregsak stated that they had worked out electric and gas easements, and showed the electric easement and the gas easements that ran between the two parcels that necessitated the odd configuration of the garage. G. Gregsak noted that the water line had been abandoned.

Bill Gregsak with Gregsak and Sons said there would be additional floors to the manufacturing site that would require over 600 new parking spaces. B. Gregsak said the parking garage would meet parking requirements for the growing business, and the two buildings would be connected by a walking bridge.

B. Gregsak said the garage was being built into a hill, and they were proposing to level the site to make the parking garage at same level of abutting parking, with a ramp down to get to the lower level.

Jim Teetzle, CEO of Wilcox Industries said parking for the current building didn't meet Town parking requirements, and the garage size was limited due to the easements.

Mr. Teetzle noted that they had received approval for another design that would cost \$11,000,000, so this was more economical.

Mr. Teetzle said they would hire a landscape architect to create a nice appearance surrounding the site on Woodbury Avenue and Piscataqua Drive, but would wait for the variance before pursuing.

Mr. Teetzle added that they did a traffic study, and received a letter from the gas company about the easement.

Mr. Teetzle said they were considering whether it would be affordable to put electric lines underground. Mr. Krebs noted that underground electric lines wouldn't change easement, however.

Mr. Teetzle went on to say that they would install security fencing around the property line whether they were granted the variance or not, and would build fencing into the walls of the garage. Mr. Krebs noted that security fencing was a Department of Defense requirement.

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Chair Weiner asked that they speak to five criteria for granting the variance.

B.Gregsak said the value of the surrounding properties would not be diminished because the use of the property would remain same, and all abutters were businesses.

B.Gregsak said there would be a benefit to the public interest because it would allow them to have parking for additional employees.

B.Gregsak added that denial of the variance would prevent the existing business from expanding on the property where it is located.

from meeting the parking requirements,

B.Gregsak went on to say that granting the variance would do substantial justice by allowing Wilcox Industries to grow and hire more employees as needed.

B.Gregsak said that the proposed use was not contrary to the spirit of the Ordinance because overall use of the parcel would remain the same.

Chair Weiner opened comments to the public.

Attorney Nathan Fenesy representing abutter GSP Newington located at the top side of the plan. Attorney Fenesy stated that he had just obtained a copy of the plan from the Town planner, but there had been no outreach from the applicant.

Attorney Fenesy said there may have been prior approval for a different parking plan, but his client had concerns with overhead electric lines, and construction right up to the property lines, and the possibility of going onto their property during construction.

Mr. Teetzle responded that only a small amount of the parcel would be affected by the electric easements because they wouldn't be able to build on the easement right-of-way. Mr. Teetzle added that they had been very respectful of accessing their previous construction from their own property.

Mr. Teetzle said the top floor of parking garage would be at the same grade as the existing hill, and they would do extensive landscaping to improve the view.

Chair Weiner opened questions to the Board.

Board member, Bob Byrnes asked how many spaces were required, and B.Gregsak replied that 1,271 were shown on the plan. Mr. Krebs added that they might need more than 1271 because industrial use was different than retail, so the Planning Board relied on applicants to inform them of their needs based on employees and shifts.

Mr. Byrnes asked what their snow removal plan was considering they were proposing 99% lot coverage. B.Gregsak noted that there wouldn't be snow in the lower level of the garage. Mr. Teetzle said they could store snow in parking spaces that they weren't utilizing if necessary as he would prefer not to truck snow out.

Mr. Teetzle added that they needed to consider that although they were adding another 65,000 square feet of manufacturing space, their parking needs weren't based entirely based on floor space considering that there might only be one employee running a large machine that was as long as the Town Hall.

Mr. Teetzle went on to say that they could require 1200 parking spaces to accommodate a surge of parking for 600 employees leaving and entering during a shift change, but not all employees changed shifts at the same time in actuality.

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Planning Board representative and Vice-Chair Peter Welch said the elevation didn't appear to be at ground level of the existing grade. Mr. Teetzle responded that the grade tapered down, and the grade would be utilized for the basement of the garage.

Vice-Chair Welch asked what the height of the building from Woodbury Avenue's existing pavement would be. B.Gregsak replied that it would be 12 feet.

Vice-Chair Welch asked if they could reduce parking spaces to adjust to the change of shift so they wouldn't need a variance. Mr. Teetzle said he was hoping to build to the property line as they did previously to accommodate future growth because this would be their only opportunity to do so.

Mr. Teetzle said Wilcox Industries always tried to be a good neighbor to Newington, and had built the road to the Newington Wastewater Treatment facility for over \$1,500,000.

Board member, John Frink said it had occurred to him that Woodbury Avenue had become wider over the years, making the property line closer to the edge of pavement.

Mr. Frink noted that it appeared that the edge of the parking lot would meet the edge of pavement on Woodbury Avenue, and said he was concerned with snow removal on a major public road.

Mr. Frink also pointed out that the treatment swale for Woodbury Avenue was not noted on the plan, and the property line and utility pole appeared set back slightly from the swale in the public right-of-way. B.Gregsak responded that the utility poles were on their property or on the line.

Mr. Teetzle responded that they would have to pave around or orient parking islands around the utility poles so no one would drive around them.

Mr. Krebs said the edge of the right-of-way to the pavement was approximately eight and ten feet.

Mr. Frink asked if they had an option to purchase the property across the street. Mr. Teetzle replied that John Kane owned the property, and they had leased the lot for parking for a time before they purchased this property, and that was why they put in a crosswalk and signage on Piscataqua Drive.

Vice-Chair Welch asked Town engineering consultant, Eric Weinrieb with Altus Engineering if pavement along Piscataqua Drive was shown correctly. Mr. Weinrieb said deceleration lane shown on Piscataqua Drive with stacking lane to be constructed in the right-of-way to allow cars to stack to go through security.

Vice-Chair Welch said he thought the stacking of traffic entering would be on their property. Mr. Krebs responded that he hadn't seen the traffic study, but imagined vehicles would come in from both Shattuck Way and Woodbury Avenue, so the 500 trips would be spread over three different entrances. Mr. Krebs said GP does stack freight trucks on occasion, and its businesses were growing so it was a busy corner for the industrial corridor.

Mr. Teetzle said didn't think there would be stacking.

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Board member Emily Savinelli asked how they arrived at the need for 1271 spaces proposed if they said they would have unused spaces for snow storage. Mr. Teetzle replied that was the number they needed to meet the parking regulation, but not the number needed for employee parking. Mr. Krebs added that there was a regulation guideline that was in their interest to meet, but they did have sufficient parking because of the uniqueness of their business.

Ms. Savinelli asked if they could make the parking garage higher to meet the dimensional setback requirements. Mr. Teetzle replied that a 4-story parking garage for 240 spaces would cost \$11,000,000 to build. Mr. Teetzle said they were proposing a one-story garage to utilize space, so they wouldn't have to move somewhere else.

Alternate Board member Derick Willson asked if there would be an opportunity to put solar panels on top of garage. Mr. Teetzle replied that he was not sure what the Planning Board would say, but they were looking at working solar panels into the structure of the first-floor canopy that wouldn't be very visible from road, and would help melt snow.

Mr. Byrnes asked how many parking spaces were needed for employees when fully built. Mr. Teetzle said currently there were almost 400 employees, and he could see growing 600-650 employees with an overlap of spaces needed during shift changes.

Mr. Byrnes said it sounded as if they were proposing twice the number of parking spaces needed, and some would not be utilized. Mr. Teetzle responded that their parking did not meet the regulation in relation to the size of their building, but the Town had given them a variance on parking concentration in the past. Mr. Teetzle went on to say that they wanted to be sure that there was sufficient parking for employee growth, and in relation to the building size should they sell the building space, so they wouldn't have to return with another request for relief.

Mr. Byrnes pointed out that they wouldn't have room for snow storage if they built up to the property lines and reached parking capacity.

Chair Weiner asked about fire safety and security with only one egress at the lower parking level. Newington Fire Chief, EJ Hoyt replied that they would have to comply with regulatory codes, adding that the Fire Department would only hand carry, and wouldn't bring any vehicles into the garage.

Chair Weiner asked if there might be a greater risk of accidents from the entrance being so close to the roads. Chief Hoyt replied that he didn't think so. Mr. Teetzle added that they were 12 feet from Woodbury Avenue.

Chair Weiner asked what they would do if the Town needed to do any utility work within the six foot right of way. Mr. Krebs replied that the Town didn't have any maintenance easements across the property.

Chair Weiner asked if there might be any other unintended consequences with the six-foot setback if the property was sold and redeveloped. Mr. Teetzle replied that the TD Bank building was already built, and GPS owned an empty lot behind with an

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easement between them where they couldn't build, or come within 50 feet of the property line, so buildable space was very limited.

Chair Weiner asked Mr. Weinrieb if there was space on the lot to build a multilevel garage within the setbacks on the lot. Mr. Weinrieb said he viewed the structure as a parking deck with a ramp going to another flat parking surface below, but he could foresee them adding another level.

Mr. Frink wondered if the surrounding property values would be diminished from additional runoff to the abutting properties. Mr. Weinrieb said there were mechanisms to ensure that runoff wouldn't affect abutters. Mr. Weinrieb said they would be required to obtain an Alteration of Terrain (AoT) Permit, and comply to mitigate and treat drainage for their site review because they would be disturbing more than 100,000 square feet, and if the treatment could be below the parking garage or on the easements.

Peter Welch moved to close the public hearing. Bob Byrnes seconded, and all were in favor.

Chair Weiner asked Alternate Board members, Roger Dieker, Meghann Wayss, and Derick Willson to step down as full Board members went through deliberations.

Chair Weiner asked the Board to review the criteria, beginning with whether granting the variance request would be contrary to the public interest, alter the essential character of the neighborhood, or threaten the public health, safety, or welfare.

Vice-Chair Welch said he felt that the proposal was over built for the lot.

Ms. Savinelli said she was concerned that building something that close to lot line would affect the essential character that had been established in the zoning.

Chair Weiner said she also shared a concern that they were proposing a building that large.

Mr. Byrnes added that they had to consider future development for the abutting TD Bank lot as well.

Chair Weiner asked if the spirit of the Ordinance would still be observed by granting the variance.

Attorney Roman reminded the Board to look at the Ordinance objectives and purpose of dimensional requirements in the specific ordinance.

Chair Weiner read through the Ordinance, and said she thought granting the request to go from a 75 foot and 30-foot setback requirement to six feet was drastic, and did not support the spirit of the Ordinance.

Mr. Byrnes agreed that the proposal was overpowering.

Chair Weiner asked if substantial justice would be done, and to consider if any gain to the public would outweigh loss to the applicant.

Mr. Byrnes said he was not sure the applicant would lose anything from denial because the Planning Board was not hard and fast on spaces required; and therefore,

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he thought it reasonable to follow a parking plan that would not encroach the dimensional setbacks.

Ms. Savinelli agreed, adding that they needed a balanced approach to the application without speculation on future of businesses going in, or considering what abutters may lose in the future.

Vice-Chair Welch commented that the loss would be if Wilcox had to leave their location, as opposed to the loss of setbacks.

Chair Weiner asked if the proposal would diminish the value of surrounding properties.

Vice-Chair Welch said he was afraid building a structure up to the property lines on the corner of Woodbury Avenue and Piscataqua Drive would give the appearance of a fort in comparison to the abutting businesses, including a newly proposed hotel on Woodbury Avenue.

Mr. Frink agreed, saying the Town had done a lot for Wilcox, but this was too much.

Chair Weiner asked if fair and substantial justice would be served by granting the variance, and if the proposed use was reasonable.

Chair Weiner noted that the question of unnecessary hardship was based on the uniqueness of the specific property, and not to the area in general.

Attorney Roman added that the Board needed to consider the special conditions of the property.

Mr. Frink noted that the lot was too small. Chair Weiner responded that the lot was standard for Woodbury Avenue, and she didn't think the size of the lot was a special condition that warranted granting the variance request. Ms. Savinelli agreed.

Attorney Roman recommended that the Board consider the purpose of the Ordinance, and whether there was a fair and substantial relationship applied to the request.

Mr. Frink said he didn't believe the proposal was in keeping with other industrial lot uses.

Attorney Roman asked the Board to consider whether the proposed use was reasonable, and Chair Weiner replied that the garage was reasonable, but the size and scope was not.

Mr. Teetzle commented that the last ten foot high, and two- to three-foot-thick security fence they installed cost \$1,000,000, so it would be cheaper to put it up against the garage structure. Mr. Teetzle stated that there was going to be security fence on the property line around the entire parcel at the same height as the current fence whether they granted this variance or not.

Vice-Chair Welch asked if the existing fence was on the property line. Mr. Teetzle replied that it was on Wilcox Way, but it might be in a foot or so within the six feet of the property line.

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Chair Weiner asked for a raise of hands on a straw vote to support granting the variance, and no hands were raised.

Mr. Teetzle said they could withdraw the application because they couldn't return with a similar variance.

Mr. Teetzle asked the Board if there might be something more acceptable to reorganize parking garage proposal. Board counsel, Attorney Keriann Roman replied that the Board could only talk about their greatest concerns with the size, and closeness to TD Bank without engineering for the applicant.

Mr. Byrnes said they should return with a parking proposal that was closer to meeting the setbacks requirements. Mr. Teetzle responded that he would be concerned with returning for a variance request that would still be rejected, adding that building parking garage with only 1,000 spaces that was closer to meeting the setbacks would cost them less.

Attorney Roman agreed that the Board had an obligation to help the applicant, but they needed to be careful about prejudging because they wouldn't want the applicant to shrink the building, and then be concerned that the Zoning Board of Adjustment (ZBA) would still not approve their next request.

Chair Weiner commented that it was not as if they couldn't build to comply with ordinance so.

Chair Weiner said she was concerned for the abutters. Mr. Krebs said GPS, the abutter toward the back was protected by a large easement, and TD Bank, the other abutter not present. Mr. Weinrieb commented that TD Bank was so large that there would be no way of knowing who received the public notice.

Vice-Chair Welch said it appeared that they would lose 10% of the proposed parking spaces if met they the 75-foot setback, so he didn't see it as a big loss to be concerned over.

Mr. Frink said he was concerned with drainage, and the impact maintenance on Woodbury Avenue.

Mr. Frink said Woodbury Avenue was like a limited access highway, and the setback was needed for maintenance and safety, adding that building right up to the property line would appear inconsistent in appearance along Woodbury Avenue.

Attorney Roman noted that front setbacks were established to be larger for that reason.

Mr. Teetzle thanked for consideration and will review.

Mr. Krebs commented that it might make sense to have a joint meeting with the Planning Board to determine their current parking needs, as well as their concern if they needed to move or sell. Chair Weiner responded that she was not comfortable with a joint meeting, but they could discuss it further later.

Mr. Teetzle stated that they had government contracts, and would go before the Planning Board to go through the building regulations, and be sure they would have enough parking before they tore down their single-story building and replaced it with three stories. Mr. Krebs asked the Planning Board representative, Vice-Chair Welch

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about approval of Subcom's net loss of parking. Vice-Chair Welch said he didn't think compliance would be unreasonable at a 10% loss. Mr. Teetzle reiterated that his concern was if they had to move, and sell the property.

Vice-Chair Welch said not he was not concerned with needing that large a space for office use. Attorney Roman said they would need to request a change for office use, and the Planning Board could work that through.

Mr. Krebs asked for letter withdrawing the application.

Emily Savinelli moved to close the public hearing. John Frink seconded, and all were in favor.

(Chief Hoyt, Bill and Nick Gregsak, Mr. Weinrieb, and Mr. Teetzle all left at this point in the meeting at 8:49 p.m.)

Minutes: *Peter Welch moved to approve the Minutes for the August 17, 2023, meeting with corrections as noted. Bob Byrnes seconded, and all were in favor with Emily Savinelli abstaining.*

II) Public Hearings

A) Continuation on proposed amendments to Zoning Board of Adjustment Rules of Procedures

This item was delayed to hear the previous item first.

Attorney Roman went through the updates as previously discussed in the previous meeting.

Attorney Roman said that they were required to do two public readings to amend the rules before a motion to approve, and sign.

John Frink moved to adopt the changes to the ZBA Rules of Procedure. Bob Byrnes seconded, and all were in favor.

Chair Weiner noted that worth to review since not changed since 1989.

III) Other Business

Ms. Savinelli asked if ZBA records were kept in the planning office. Mr. Krebs replied that they were kept in the vault.

Ms. Savinelli said she was concerned with access and auditing. Mr. Krebs said it was common for developers or realtors to request files, but they would sit in Town Hall

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in preparation of Planning Board, but ZBA files were rarely requested. Mr. Krebs added that it was easier and more thorough to review printed minutes that went back for decades.

Mr. Frink asked if they could digitize the records. Mr. Krebs said it was easier to review printed files or minutes, and cumbersome for the staff to email digital records. Mr. Krebs said he was also not sure how long floppy disks or thumb drives lasted.

Adjournment: *Vice-Chair Welch moved to adjourn the meeting. es seconded the motion and the meeting adjourned at 9:04 p.m.*

Next Meeting: TBA as needed

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

These Minutes were approved and adopted at the January 11, 2024 Zoning Board of Adjustment Meeting.