

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Wednesday, January 17, 2018

- Call to Order:** Chair Matt Morton called the January 18, 2018 meeting at 6:30 p.m.
- Present:** Chair Matt Morton, Ralph Estes; John Frink; Edna Mosher; Jim Weiner; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Brandon Arsenault, Cathy Latchaw
- Public Guests:** Tracy Gesel, with MC Sign Company; Mike Leary with Sundance Sign; Ken and Doug Anderson with Pickering Riverside Marine; Attorney Kevin Baum, Steve Haight with New England Civil Works; Paul Reardon; Denis Hebert; Mike Marconi

Minutes: *Edna Mosher moved to approve the Minutes for the July 17, 2017 meeting with corrections as noted. Jim Weiner seconded, and all were in favor.*

1) Public Hearings:

- A) A request by **PetSmart, LLC**, regarding their site located at 45 Gosling Road, Tax Map 34, Lot 3 for a variance from Article X, Section 4 of the Newington Zoning Ordinance to allow 530.9 s.f. of signage where 225 s.f. was allowed.

Chair Marconi noted that there had been a previous statement by the Crossing Mall property management, Aleisha Busconi with KeyPoint Partners on page 5 of the July 17, 2017 Minutes that they had no plans for a sign facing Spaulding Turnpike, Route 16, but now they were requesting such a sign.

Tracy Gesel, with MC Sign Company appeared before the Board and presented sight photos of their sign proposals and surrounding businesses for comparison of sizes to show that their proposals were consistent with Dick's Sporting Goods, Barnes and Noble at 215 square feet on the front and another 215 square feet on the side, Best Buy at 500 square feet and.

Board member, John Frink commented that Zoning Ordinance Article 10, which was revised in 2017 listed only 200 square feet of permitted signage so he wondered if something had changed, otherwise the other stores would have required a variance. Chair Morton replied that he didn't recall any requests for variances from the other

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stores. Ms. Gesel stated that she believed Barnes and Noble had requested a variance for their signage. Board member, Ralph Estes said he would like a copy of the Barnes and Noble variance with the dates to have been included in the proposal.

Discussion ensued regarding dimensions on the sign proposals. Ms. Gesel showed drawings of a prototype store with standard 54" lettering on the primary signs and 10" on the secondary signs.

Ms. Gesel stated that they were setback 700 feet from Gosling Road and their primary reason for one of the requests for relief was that there was a lot of greenery from trees blocking visibility from the road.

Ms. Gesel stated that they were requesting sign on their western elevation so that travelers on the Spaulding Turnpike could see their sign while traveling at 55 miles per hour.

Board member, Ralph Estes asked if they would cut any trees at the back to make their sign visible to vehicles traveling on the highway and Ms. Gesel said she hoped they would cut a few.

Board member, Edna Mosher commented that the signage for the PetSmart in North Conway didn't appear as large. Ms. Gesel replied that their company had not built those signs. Mike Leary from Sundance Sign who was working with MC added that the PetSmart in North Conway was closer to the road and the traffic went 20- 25 miles per hour.

Ms. Mosher commented that she understood why a business would want a sign facing the Spaulding Turnpike to inform drivers that they were there. She asked if the sign would be mounted directly to the building and Ms. Gesel replied that they would be mounted on the building.

Ms. Mosher stated that it was well know that she didn't like signs, but she noted that the signs along Woodbury Avenue between Walmart and the Crossings Mall were also large, however she opposed the proposed signs of a cat and dog because she was against pet mills and she thought it might suggest that they could be purchased there, which she understood that they could not. Ms. Gesel replied that PetSmart partnered with local humane societies and periodically set up adoption events, however.

Board member, Jim Weiner said he didn't see any difference with a sign in their window than Market Basket putting up a sign for food they were selling, but he did have an issue with the oversized signs. Ms. Gesel stated that the vinyl prints of animals would be set in frames, but they didn't have any lettering.

Town Planner, Gerald Coogan asked if the pet pictures were considered signs elsewhere and Ms. Gesel said some jurisdictions considered them signs and others didn't. Mr. Leary replied that the Town building inspectors, John Stowell, Charlie Smart and Kevin Kelly all said that photos would be considered art because there was no lettering.

Ms. Mosher commented that the proposal for all the signs exceeded the allowance and that she was opposed to dog and cat posters because she felt it

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detracted from the uniformity of the mall. She asked if eliminating the dog and cat posters to reduce excess signage would cause hardship for the applicant. Ms. Gesel replied that they would be willing to let them go.

Chair Morton commented that some signs were necessary to help patrons find businesses, but a former Selectmen had lost his battle regarding signs on Woodbury Avenue and now they seemed out of control and, so he agreed that it would be a better to leave the cat and dog posters off the building.

Mr. Weiner asked if the third sign would be critical and Mr. Leary said the sign facing the parking lot would be most critical. Chair Morton noted that it was a large building.

Chair Morton opened comments up to the public.

Ann Beebe of Patterson Lane stated she didn't know why they needed a larger sign for someone driving by as if that would cause them to swing in. Ms. Mosher agreed that many people used GPS's to find their destinations. Mr. Weiner replied that many drivers going past the malls wouldn't necessarily know a new store was there until they saw the sign. Ms. Beebe commented that would suggest that every new business would get a bigger sign, but after a while they wouldn't be a new business anymore.

Discussion continued regarding dimensions of the proposed signs and what was allowed. Ms. Gesel stated that their calculations were a result of measuring as if the lettering was framed, but there was a lot of curved signage with empty space. Mr. Weiner agreed that the dimensions would be less if they measured individual letters. Ms. Gesel stated that the sign with 54-inch letters would be reduced to 87.9 square feet if they only measured the letters.

Chair Morton asked if they would be able to create a sign with smaller letters. Ms. Gesel replied that the next sized letters would be 48 inches, which would make the outside dimensions 100 square feet and only 70 square feet if they only measured the letters.

Mr. Coogan stated that 88 square feet was within regulations for the front sign. Ms. Gesel replied that the sign would also be 88 square feet with 54-inch letters as well. Chair Morton asked if the applicant if they would accept using 48" letters for the side sign to meet the requirements and Ms. Gesel said they would.

Chair Morton moved that the request by PetSmart, LLC, for a variance from Article X, Section 4 of the Newington Zoning Ordinance to allow 530.9 s.f. of signage where 225 s.f. was allowed regarding their site located at 45 Gosling Road, Tax Map 34, Lot 3 was no longer needed so long as they changed the lettering on the side signs to 48 inches, used 54-inch letter for the front, eliminated their proposal for artwork at the front and updated their sign permit with the building inspector. Ralph Estes seconded the motion, and all were in favor.

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- B) A request by **Riverside Pickering Marine Construction, Inc.** regarding their property located at 34 Patterson Lane, Tax Map 19, Lot 6 for (4) variances from:
- 1) Article VI, Section 1 to expand a non-conforming structure
 - 2) Article IV, Section 10 to allow more than one building on a single lot
 - 3) Article VII, Table VI-1 to permit construction of a 5,400 s.f. addition
 - 4) Article VII, Section 1, to permit construction of a 4,800 s.f. accessory storage building

Attorney Kevin Baum appeared before the Board along with his clients, Ken and Doug Anderson with Pickering Riverside Marine and Steve Haight with New England Civil Works.

Chair Morton announced that he had recommended that members of his family hire the head of Attorney Baum's legal firm, Hoefle, Phoenix, Gormley and Roberts for some of their business. He said he would not vote on the request unless there was a tie and asked Board members if that was acceptable. All the Board members agreed.

Attorney Baum stated that the applicants were currently operating some aspects of their business at the proposed site, which was under agreement with the owner, Patterson Lane, LLC owned by Keith Frizzell.

Mr. Frink asked if Mr. Frizzell's two lots, one in the Industrial zone and one in the Residential zone were merged. Mr. Coogan replied that the first site plan for Patterson Lane, LLC was approved for two merged lots, but then they returned to the Planning Board with a request to separate them and they were now separate lots.

Attorney Baum stated that the applicants were proposing to add a story on to the existing building, add an attached shop to the rear, and a separate, single story 4,800 square foot storage building on the lot.

Attorney Baum stated that the 2.8-acre Office zone lot was long and narrow lot and bounded by Industrial zone use at the back and Residential zone to the side. He said the goal was to maximize the lot by putting everything in line with the existing single story non-conforming building while keeping setbacks, but there was a jet fuel line, pipeline, and sewer easement on the side of the lot that created a sizeable buffer.

Mr. Frink asked about the wetlands and Steve Haight with Civil Works New England stated that there were several wetlands areas on the south side with a drainage ditch. He said Newington Energy owned an abutting parcel that had wetlands.

Chair Morton asked if the Conservation Commission had signed off on the Department of Environmental Service (DES) Wetlands Permit. Attorney Baum said would go with existing granted permits from the previous proposal. Mr. Haight said there was a permit for filling the wetlands and they were proposing the same detention pond at the front as the previous proposal.

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Mr. Weiner asked about tree plantings and Mr. Haight pointed out both the existing trees and the proposed trees on their plan based on a conceptual discussion, but said plantings were not a concern for the Zoning Board.

Mr. Weiner asked if they could purchase some space on the abutting lot to move trees to the residential side, so the building could be moved to increase the setbacks. Mr. Haight replied that the 50-foot buffer was there no matter where the trees were, and they had nothing to do with the residential parcel.

Mr. Haight stated that they were proposing to put gravel in at the back-laydown area and remove paving in the front which would help drainage.

Attorney Baum stated that they had received a letter from all the residents of Patterson Lane, but not all the abutters. Direct abutter, Ann Beebe of Patterson Lane replied that she had not seen or signed any letter and would like to know who signed it. Paul Reardon, also of Patterson Lane stated that the majority of Patterson Lane residents were opposed to the proposal. Attorney Baum replied that the letter was part of the application, and apologized for any misunderstanding.

Mr. Reardon said he also recalled the Planning Board denying proposals because of safety concerns for truck traffic on the narrow lane. Ms. Mosher asked if there would be any traffic going down Patterson Lane and Mr. Haight replied that their traffic would only bring deliveries in and out of the site and not beyond. Ken Anderson stated that deliveries would involve wood and floats and ramps for assembly that would be done inside, then stacked outside before being shipped down Shattuck Way to their launch on Shaftmaster Lane.

Mr. Weiner asked if the fences around the lot would have slats and if anything would be visible above the second story would be visible. Mr. Haight replied that the ten-foot-tall fence would slats that would conceal their storage. Mr. Haight added that their site on the Piscataqua River was where they would keep their large equipment and this site was only for building floats. Ken Anderson stated that they had a couple of small boom trucks and two service vans, which might be taller than 10 feet, but that was all.

Mr. Weiner asked about the repair of large equipment on the site. Mr. Haight stated that they might store equipment outside for short term until it was brought inside the building for repair, but the applicant would want to return it to their other site for use.

Ms. Mosher asked if the fence was 50 feet from the lot line and Mr. Haight replied that it was on one side. Attorney Baum stated that the fence didn't have to meet the 50-foot setback, but it was setback on the residential side to address the Planning Board concerns out of consideration.

Ms. Mosher asked why they wanted to go through all these variances rather than purchase one of Eversource lots that was for sale alone Shattuck way. Mr. Haight replied that the proximity to their Shaftmaster site and access to Shattuck Way would allow them to consolidate operations and business in Newington at a more reasonable cost. He added that no other businesses had made an offer for this narrow lot.

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Ms. Mosher asked if there was any way to attach the buildings. Mr. Haight replied that they could, but their design created a visual break for parking and some landscaping.

Mr. Frink commented that it was an unusual lot and considering other uses that might be proposed, there were no fumes generated or storage of chemicals, the applicant had gone a long way to make the lot visually appealing.

Chair Morton agreed that Patterson Lane, LLC's original proposal was for a business that would bring tractor trailers in day and night. He said Newington was looking for more business and this company did quality work, which would be good for Newington. He added that they had lined the buildings up so that they weren't scattered everywhere to make the site appealing.

Paul Reardon commented that he had attended meetings for proposals three times in the last two years and expressed concern that eleven out of twelve test pits that were done in 2015 were shown to have high water levels below the surface. Ms. Beebe noted that the second building would be on a slab. Chair Morton added that there should be any problem as they weren't putting in a basement.

Mr. Reardon commented that environmental issues should be considered as anything that went into the wetlands eventually flowed to the river. Mr. Weiner asked Mr. Reardon for specifics regarding environmental risks. Mr. Reardon replied that fuel, oils and other hazardous materials might be dumped.

Ken Anderson replied that their operation would only be using power drills and tools on marine grade wood and using normal oils and filters to perform general maintenance for their industrial application. He said the materials would be no different than what might be in any basement or garage in someone's home, keeping in mind that they would be required to have permits and containment systems or double wall tanks for fills. Mr. Haight added that they would be required to make MSDS sheets available if they stored any hazardous chemicals.

Mr. Weiner agreed that it would be no different that oil tanks for heating fuel in people's homes. Mr. Anderson said their building would use natural gas and city water and sewer.

Attorney Baum commented that they were happy to answer questions about the business use, but reminded everyone that the lot was zoned for this use and they were only seeking relief for the side setback.

Ms. Beebe said she had attended the Planning Board meetings regarding uses for the site and didn't recall discussion about a second story and additional buildings being allowed. Mr. Haight replied that they had only gone before the Planning Board with a preliminary plan for this operation and were told that storage trailers were not allowed so the additional building was for storage and to keep the sight clean looking.

Ms. Mosher asked which building would have the second floor and if there was any way to move the building to meet setbacks. Mr. Haight replied that they were trying

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to redevelop the existing site to utilize the space in a cost-effective manner and the second story would be over the existing building and the existing loading dock area.

Ms. Mosher commented that the residential lot would eventually sell, and a large house would be built there where owners wouldn't want to look at their docks. She asked if they would plant trees as a screen. Mr. Haight replied that site review was the purview of the Planning Board, but anyone purchasing a residential lot should be aware that they were beside the Industrial zone. He added that this was a sun up to sun down operation with minimal security lights on the building. Ms. Beebe stated that she was used to the lights from Newington energy, but hoped that the slats in the chain link fence would deter the lights from shining into her bedroom.

Mr. Reardon expressed concern that there was no emergency exit for residents if heavy equipment hit the natural gas pumping station on the corner of Shattuck Way and Patterson Lane. Chair Morton replied that no one could predict whether the pumping station would ever be hit or if anything else would happen, but industrial use was allowed in this site along with the surrounding area.

Mr. Reardon commented that the Planning Board had heard two proposals before and had denied them because it was a non-conforming lot. Mr. Coogan replied that another company's expansion proposal with the merger of two lots had been approved by the Planning Board, and Riverside Pickering only went to the Planning Board once for preliminary concept, another company was approved. MS. Mosher stated that one hearing was for another applicant and use and the other had been a preliminary hearing. Mr. Frink commented that the Planning Board would send a non-conforming application to the ZBA for consideration as they had done Chair Morton agreed that the ZBA addressed the criteria for consideration and then the applicant returned to the Planning Board for site review.

Mr. Frink commented that putting together docks seemed less hazardous than other possibilities. Mr. Estes agreed that this was the least invasive and most reasonable proposal that the Board had seen.

Mr. Coogan asked Attorney Baum to summarize each of the requests.

Attorney Baum stated that it was up to the Board to decide whether the first request for the storage building would be granted as an accessory building or an additional principal building.

Attorney Baum stated that the second story on the existing building was considered an expansion of a non-conforming use, but it used they were using the same footprint, so they were not encroaching on the setbacks any further.

Attorney Baum stated that their request to allow the construction of a shop addition at the rear and the accessory building was to keep the expansion in line with the existing building.

Attorney Baum said he understood the residents' concerns, but this industrial use was in the Industrial zone and that was why it was pushed as far as possible from the

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Residential zone. He said they were asking for relief from the Ordinance because existing circumstances restricted the allowed uses.

Ralph Estes moved to accept the request by Riverside Pickering Marine Construction, Inc. regarding their property located at 34 Patterson Lane, Tax Map 19, Lot 6 for a variance from Article VI, Section 1 to expand a non-conforming structure. Jim Weiner seconded the motion.

Jim Weiner reviewed the criteria for granting the relief, noting that the request was not contrary to the overall public interest, the spirit of the Ordinance was observed, and substantial justice would be done to allow the business proposal, Mr. Weiner said the value of the surrounding industrial businesses would not be diminished and the applicant was improving the site. Mr. Weiner stated that denying the request would result in an unnecessary hardship for the owner of the property and business.

All were in favor and the motion passed.

Jim Weiner moved to accept the request by Riverside Pickering Marine Construction, Inc. regarding their property located at 34 Patterson Lane, Tax Map 19, Lot 6 for a variance from Article IV, Section 10, to allow more than one building on a single lot. Edna Mosher seconded the motion.

Mr. Frink asked whether everyone thought that the storage building was an accessory to the principle building or another principle building. Mr. Coogan replied that the 5,400 square feet addition was larger than the 4,200-square foot storage building, but he thought the Board could consider whether one building or both buildings were the principle building. He added a variance to allow two principles would be created into a separate business later. Mr. Frink commented that a change of use would be required to allow two businesses.

Edna Mosher reviewed the criteria for granting the relief, noting that the request was not contrary to the public interest, the spirit of the Ordinance would be observed, substantial just would be done, the value of surrounding properties would not be diminished, and literal enforcement of the Ordinance would result in an unnecessary hardship.

All were in favor and the motion passed.

Jim Weiner moved to accept the request by Riverside Pickering Marine Construction, Inc. regarding their property located at 34 Patterson Lane, Tax Map 19, Lot 6 for a variance from Article VII, Table VI-1, to permit construction of a 5,400 s.f. addition. Edna Mosher seconded the motion.

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Chair Morton commented that the addition was necessary and not out of line for their business and it would be up to the Planning Board to review the specifics.

Edna Mosher reviewed the criteria for granting the relief, noting that the request was not contrary to the public interest or spirit of the Ordinance. She said the value of surrounding properties would not be diminished and substantial justice would be done in granting the request, adding that literal adherence to the Ordinance would result in an unnecessary hardship.

All were in favor and the motion passed.

Jim Weiner moved to accept the request by Riverside Pickering Marine Construction, Inc. regarding their property located at 34 Patterson Lane, Tax Map 19, Lot 6 for a variance from Article VII, Section 1, to permit construction of a 4,800 s.f. accessory storage building. Ralph Estes seconded the motion.

Jim Weiner reviewed the criteria for granting the relief, noting that the request was not contrary to the public interest as shown by the previous variance. He said the spirit of the Ordinance was observed as noted by the discussion and that substantial justice would be done. He said the value of the surrounding properties would not be diminished because the proposal was appropriate in the Industrial zone, and literal enforcement would result in an unnecessary hardship.

All were in favor and the motion passed.

Planning Board Chair, Denis Hebert commented that he didn't understand the variance request to accept the storage building as another principal building instead of an accessory building considering that it was one business. Attorney Baum replied that an accessory was considered incidental and insubordinate, but the question was whether it was incidental and subordinate to the principal building.

Mr. Frink commented that the concern was that a variance went with the property and if the property was sold then two principle buildings could be eligible for two separate businesses in the future. Attorney Baum replied that they had asked for two primary buildings, not two primary uses for two diff businesses. He said they had not been granted a variance for use and a future owner would not be allowed to expand the use without the ZBA and/or the Planning Board's approval.

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Adjournment: *Edna Mosher moved to adjourn. Jim Weiner seconded the motion and the meeting adjourned at 7:40 p.m.*

Next Meeting: TBD

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

DRAFT