

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Monday, April 15, 2019

- Call to Order:** Vice-Chair Ralph Estes called the April 15, 2019 meeting at 6:30 p.m.
- Present:** Vice-Chair Ralph Estes; John Frink; Cathy Latchaw; Edna Mosher, Meredith Hoyt; Town Planner Gerald Coogan and Jane Kendall, Recorder
- Absent:** Brandon Arsenault; Matt Morton
- Public Guests:** Bill Marple; Attorney Chris Mulligan; Alex Ross with Ross Engineering; Denis Hebert

1) Public Hearing: A request by 117 Gosling Road, LLC for a variance from Article VII, Table VI-1 to allow a 38 foot setback where 75 feet was required, and a side yard setback of zero feet where 30 feet was required, and variance from Article VI, Section 1 to permit the expansion or modification of an existing non-conforming property so that the applicant can add parking and drainage improvements to on property located at 105-117 Gosling Road Tax Map 28, Lot 2.

Vice-Chair Estes announced that he would be chairing the meeting in Chair Matt Morton's absence.

The applicant's counsel, Attorney Chris Mulligan stated that the applicant was requesting a variance to upgrade the building, parking and site. Attorney Mulligan said the structure was intact, but in need of renovations. He said the site was bordered by wetlands and the goal was to increase on-site parking and drainage.

Attorney Mulligan said the plan involved replacing 6,000 square feet of impervious pavement with pervious parking at the rear of the building, and to shrink the green space similar to what was done on the abutting property to increase the parking in the front, and create a travel aisle.

Attorney Mulligan said they were also proposing to upgrade the the western side of the site with grading, the access road to the Newington Waste Water Treatment Plant on the easement that ran through their property, and build a retaining road to the eastern side of the road.

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Board member, John Frink asked if the entire easement was on the applicant's property, and Attorney Mulligan replied that it was, and that the retaining wall would be on their property line, so they were requesting a variance for a zero-foot setback.

Mr. Frink asked what the purpose of the retaining wall was, and Alex Ross with Ross Engineering replied that the building was at a lower grade, so they were grading to make the entry way more gradual.

Mr. Ross stated that the easement for the road was 20 feet wide, and that they had no plan to discontinue the access. He said they talked with Newington Waste Water Treatment plant, Manager, Denis Messier who was in favor of the improvements.

Vice-Chair Estes asked how they would create parking on the side of the building, and Mr. Ross replied that they would dig down to the building level. Vice-Chair Estes commented that he didn't see anything about dropping the road level in the packet. Attorney Mulligan replied that he didn't think they needed a variance to do road work.

Mr. Frink asked if they had any discussion with the Town regarding the extension of Shattuck Way to Gosling Road, and access to the waste water treatment plant. Mr. Ross replied that they had not.

Mr. Ross said they had also talked with the fire chief who said he didn't like the current setup and liked the improved fire lane. Ms. Mosher commented that the parallel parking along the easement surprised her because the passing of fire vehicles seemed constricted.

Ms. Mosher asked why they needed parking on the west side along the access road, and Attorney Mulligan replied that the current parking was deficient of the 75 spaces that was required. Attorney Mulligan said the building structure complied with the Ordinance, but their parking did not comply, so they were requesting a variance to allow more parking and a driving aisle in the front that was similar what the Zoning Board approved in 1984 to accommodate the abutter's property.

Mr. Frink asked about the wetlands and drainage ditch. Mr. Ross replied that there was a large culvert on Gosling Road. Mr. Ross stated that their soil scientist flagged the wetlands surrounding the back and side of the building and they planned on doing drainage work to protect the wetlands. He added that the pervious pavement was closer to the wetlands at the back would allow rainfall and snow melt to drain, He said it would be used for employee parking and loading, and although it was not as durable, more protection from traffic and salting would cause less runoff to the nearby wetlands. Ms. Mosher agreed that the area needed improving and that protecting the wetlands was important.

Ms. Mosher asked if the applicant had a proposed use, and the applicant, Bill Marple replied that they did not, but that they were looking to accommodate a potential fabricating or retail use that would need shipping space.

Mr. Frink asked if plan on having multiple use tenants, and Mr. Marple replied that they had ever since it changed from a Sears storage building. He said currently some portions were occupied and some were empty.

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Mr. Frink asked how many feet the easement was from the edge of building, and Mr. Ross replied that the road was 20 feet wide and there was an additional 14 feet to the edge of the building.

Mr. Frink asked if the 20' easement was a fixed location. Attorney Mulligan said his understanding was that it was not fixed, but it was clear that the Town had a 20-foot access easement.

Vice-Chair Estes asked who maintained the road, and Attorney Mulligan said it was not clear that it was only the Town's responsibility, but he believed it would be a shared arrangement for both to use.

Ms. Mosher asked what the property owner's rights were regarding the easement, and Attorney Mulligan replied that they had the same rights so long as they didn't constrict the easement owner's access. Planning Board Chair Denis Hebert commented that would depend on how the easement was written.

Mr. Hebert asked that they check the easement to determine its location. Mr. Ross replied that it was not clear where the easement was, but they could make conditions to be sure that 20 feet was clear for access to the Town's waste water treatment plant.

Town Planner, Gerald Coogan said he had a copy of a letter from Mr. Marple's father with no date that said that the property owners use would not inconvenience the Town, and that they would agree to upgrade the easement at no cost to the Town, except for any damage caused by the Town. Attorney Mulligan responded that the letter protected both parties.

Attorney Mulligan commented that some easements could be moved within reason if a fixed location wasn't specified, and they were only talking about moving it a foot to accommodate a retaining wall.

Mr. Hebert also expressed concern that the grading didn't reduce the coverage of the sewer line going along the road too low, or that the retaining wall be built over it.

Ms. Mosher said she understand the concern for maintaining the retaining wall, however Mr. Frink said suggested that an approval would include a condition on the placement of the retaining wall.

Ms. Mosher asked why they needed the retaining wall, and Mr. Ross replied that it was to make the approach more gradual.

Mr. Frink asked if the retaining wall would be at grade with the abutting property, and if it might affect them. Mr. Ross replied that the grassed area was higher than the side area, but that they would do a review, and work with the abutter on the construction.

Mr. Hebert asked if there was anything to stop the abutter from driving over the retaining wall. Mr. Ross said they would have to drive over eight feet of lawn, but they could put in a little guard rail for the parking lot.

Mr. Ross stated that he also reviewed the sewer manhole with Mr. Messier who didn't see any issue with altering the grade and putting in a small, narrow retaining wall, but would review it further with the Department of Public Works and the Planning Board. He added that they had plenty of room if they needed to shift the retaining wall.

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Mr. Frink suggested that it wasn't the Zoning Board's role to get into the details of a retaining wall, and that they should stay away from mechanics of the construction, but they could make a condition that there would be no adverse effect to the Town's access easement. Mr. Coogan agreed that the engineer would present the plan to Mr. Messier and the agreement would be presented to the Planning Board.

Mr. Coogan informed the Board that the New Hampshire State Legislature had recently added a requirement to RSA 674:33, I(c) that the zoning board shall vote on the use one voting method and do so consistently. Mr. Coogan suggested that the Board reach a consensus on each criterion, and then vote to approve or disapprove each request.

Cathy Latchaw moved to grant the request by 117 Gosling Road, LLC for a variance from Article VII, Table VI-1 to allow a 38-foot setback where 75 feet was required on property located at 105-117 Gosling Road Tax Map 28, Lot 2 as presented and advertised. Edna Mosher seconded the motion.

In reviewing the five criteria, Mr. Frink noted that granting the variance to allow a setback for pervious pavement in the back would not be contrary to the public interest. Ms. Mosher added that it would be in the public interest to improve the appearance of the parking lot.

Ms. Mosher stated that it would not be contrary to the spirit of the ordinance, and substantial justice would be done by granting the variance.

Mr. Frink noted that there was enough comparison to abutting properties on the Newington side of Gosling Road to agree that it would improve the surrounding property values, and that to deny the variance would create a hardship to the applicant.

Board members agreed that each of the criteria would be met.

The motion carried, and all were in favor.

John Frink said moved to grant the request by 117 Gosling Road, LLC for a variance from Article VI, Section 1 to permit the expansion or modification of an existing non-conforming property so that the applicant can add parking and drainage improvements to on property located at 105-117 Gosling Road Tax Map 28, Lot 2 as presented and advertised. Meredith Hoyt seconded the motion with the condition that there would be no adverse effect to the Town's access easement to the Newington Waste Water Treatment plant.

In reviewing the five criteria, Mr. Frink noted that granting the variance would not be contrary to the public interest because it would improve the existing right-of-way.

Mr. Frink said the spirit of the ordinance was observed as the access was serving a municipal service for the town, and substantial justice would be served.

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Mr. Frink said granting the variance would not diminish the value of surrounding properties, and depriving the applicant would result in a hardship. All Board members agreed that the request met all the criteria.

The motion carried and all were in favor.

Minutes: *The Minutes for the October 1, 2018 were not included in the packets for Board members to review, so no motion to approve was made.*

Adjournment: *Cathy Latchaw moved to adjourn. Edna Mosher seconded the motion and the meeting adjourned at 7:30 p.m.*

Next Meeting: TBD

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

DRAFT