



ZONING BOARD OF ADJUSTMENT
FINAL MINUTES 5/19/2014
APPROVED AT MEETING OF 6/16/14

Present: S. Bogert, **Chair;** S. Perley, **Vice-Chair/Secretary;** M. Foote; K. Geraci; R. Smith

Absent: O. Gibbs, D. Greski

Staff: S. Saunders, **Planning Director;** K. Snow, **Zoning Technician**

S. Bogert welcomed everyone to the May 19th meeting of the Laconia ZBA. He called the meeting to order at 7:10 pm. K. Geraci and R. Smith were seated as full voting members.

MINUTES: The minutes from the April 21, 2014 ZBA meeting were discussed. The motion to accept the minutes was made by S. Perley and seconded by S. Bogert. R. Smith abstained as he was not at the April meeting. The vote was 4-0 in favor of approval.

S. Bogert let the ZBA members and audience know that The Gables made a request that the meeting be postponed due to the 4 member board this evening. There are 5 members in attendance but one member has to recuse himself from the hearing which would not allow the 5 member board.

Motion: S. Perley made the motion to hear **Application # 2012-0025** at the ZBA meeting of June 16. M. Foote seconded. The vote was 3-2. S. Bogert let everyone know this will be placed last on the agenda.

HEARINGS:

Application # 2014-0005
Irwin Automotive

MSL 406-158-30
Messer Street

DR Zone
Variance

The applicant is requesting a variance from 235-28, Table I, Table of Permitted Uses, in order to allow the dealership to use the property to display vehicles in the DR Zone where vehicle dealership, sales and service is not a permitted use.

Applicant: Steve Smith appeared for the application, along with Chris Irwin. He let everyone know the location is on Messer Street, and showed a copy of the plan to the board. He highlighted the area. He said there is lake access across the street. The use of vehicle dealership, sales and service is not permitted in the zone. They want this use under the dealership because it would permits the display of vehicles.

They want to pave a section of the lot and display vehicles. They have some vehicles out there now. They asked DPW for an entrance off of Messer Street and DPW sent them to S. Saunders to discuss this. She let them know that they need the variance, then site plan approval from Planning and also State of NH Shoreland protection as the site abuts the lake.

They had the coal tar issue on this site. DPW went in and did mitigation on the site. As part of the result of the mitigation, there was an activity use put on the site by the NH DES. There was a copy submitted with the board information. This property is restricted to any uses that disturb the subsurface 2 feet down. If you look at the uses, there are a lot permitted on the site. But they all require a structure to operate so even if putting in a slab you need to go below the frost line. Most of the uses permitted run into the use restriction.

S. Smith said there are not many reasonable uses for this site but this use works. He said he had submitted pictures with the packets. There is a Public Service sub-station across the street with the boat access. He said that everything on the West side of Bisson Avenue is currently owned by Irwin Automotive. They own down to the pump station at Strafford St.

The same use restriction exists on the Irwin property, on the Bisson Avenue site. They cannot build there either. Allowing the display area with the parking area on this property permits a reasonable use. No building is required for this and they will make improvements to the property.

S. Perley asked how they will improve the property and S. Smith said they will pave some of it. S. Perley asked how much and S. Smith said they are not sure yet. They have to remain 50 feet from the lake as well as meet lot coverage requirements. They will need site plan review from Planning before they can determine their lot coverage.

The proposed access point will probably be across from the launch area. S. Perley asked if there is access to the site now and was told no. S. Smith said he is aware that the members received an e-mail from Brian Lombard, regarding the RR crossing. S. Perley asked if the property is being used for display now and was told yes. Irwin's thought they could use it. When they asked DPW for the curb cut, they found out they couldn't use it, and that is why they are here.

S. Bogert said that on one of the other transformations this dealership went through, they didn't plant trees. He said he thought this land was talked about then; about being left empty at that point. S. Smith said he was not aware of that and S. Saunders said if the board wants her to she can review the files.

S. Bogert asked if they display cars here how will people safely access the cars and S. Smith said he thinks they would bring the car over to the dealership. They would not cross the RR tracks. S. Bogert said he thought the access point was to bring the vehicles in.

R. Smith said he feels that someone coming out of the dealership would logically walk across and S. Smith said logically but that is being done now by all. This will give them an access point. S. Perley asked if there will be fencing and S. Smith said they have done no design plans yet but Planning will discuss all of that. They need the use approved first.

S. Bogert asked about drainage and S. Smith said they do plan some; they may do swales, but first they need this approval, then the state design approval from DES under hazardous waste division. This have to meet ZBA, Planning, shoreland and DES requirements. S. Perley said it is hard to approve without knowing what they are approving and S. Smith said they are only looking at the use.

M. Foote asked if there will be plantings to mitigate the drainage and S. Smith said he assumes so but they must meet with them to discuss that. He said that is the purpose of the treatment swales as they can't go too deep with any plantings.

S. Bogert asked if they will do a sign and S. Smith said he is not sure but would have to meet the requirements. K. Snow said they had a sign here in the past. S. Bogert said he feels this is creating issues, as he feels it is a new car lot.

S. Bogert said they can't do much here because of the coal tar issue. It is reasonable to allow this request to make this use permitted as it is doable, and is consistent with the use there now.

S. Bogert said he feels we are opening the door to this zone to allow a non-permitted use. If this is ever sold, it has a car lot on it, which goes with the property. He said we must approach this with all eyes open.

S. Smith said this is a perfect hardship, because it is a hardship in the land based on what is there. That is difficult to overcome. Even if they sold the property, it would be hard for the next owner to put any business here without doing a structure of some sort. This use requires none.

Public: No one spoke for or against the application.

S. Perley read the letter from Brian Lombard into the record as he requested.

Kris

Thanks for the info this morning.

I request that you ask Irwin how they will access the property. They do not have an approved crossing across the State Railroad Corridor. The planked crossing that is there was temporary and was used by PSNH when they had to do some transmission line work. They were supposed to remove it but never did. Irwin cannot use it to access the lot on the Messer Street side of the tracks because they do not have a legal right to cross State property. We have had trouble in the past with Irwin encroaching onto State property by parking vehicles too close to the tracks. We want to make sure they do not create an unsafe condition for the railroad.

If you grant their request, they will need to move the vehicles via Messer Street or obtain approval from the Department of Transportation for a legal crossing across the railroad corridor.

I request that you read this email at the Hearing since I will be unable to attend.

Please let me know if you need more information.

Brian

Brian Lombard, PE
Railroad Operations Engineer
NH Department of Transportation
Bureau of Rail & Transit
PO Box 483
Concord, NH 03302
603-271-3465

S. Smith said he spoke with them after receiving a copy of the memo, and he sent a follow up e-mail to the board as well. They will submit plans to the railroad for comments and will work with them on any issues.

R. Smith asked if they are paying taxes on this property and was told yes.

S. Bogert clarifies that they are doing this as part of dealership, so it is all under that umbrella. He asked if any new signage would go with their current square footage and S. Saunders said each lot is looked at differently under the signs. She said where there is no building, they get the maximum, which is 96 square feet. However she added that the total number of signs is determined per business. S. Bogert said he feels this is another car lot, not a display area. A display area would not have a sign, but a sales lot would. S. Saunders said that is all included in this use; it is all one and the same. She clarified the question; is S. Bogert asking what happens if a business crosses several lots.

S. Bogert asked if the property is sold, as it sits now - if someone wants to put a car lot there - it would be the same as what we are doing tonight and was told yes by S. Saunders. R. Smith pointed out that any sign could not be a big sign because of the footings.

S. Perley asked about the condition that S. Bogert mentioned earlier and S. Bogert said he is sure it was not a condition, but was said verbally. S. Saunders said if the board feels strongly, she can research it and report back at the next meeting. S. Bogert said he doesn't feel it makes a difference, as he is pretty sure it was verbal the more he thinks about it.

S. Bogert closed the hearing to the public and brought the hearing back to the board.

Board: M. Foote said he understands this is a tight lot; he understands that taxes are being paid on it and agrees that this is a reasonable use but said he is unsure of the paving and how it will sheet into the water. He said he wants to see the design. S. Bogert said he understands but design is not the responsibility of this board.

S. Perley said that the Planning Board and the State of NH will be looking at this. People can either look at cars or the electrical substation which is located in the area. There is no room to grow. S. Bogert said he has seen a flag here for years, and wasn't sure why, but now understands why the lot was not used. He said that the Planning Board will look at parking and drainage. Shoreland will look at drainage as well, as the State will review. He said he feels the lot will look more presentable as they will fix it up to display new cars. There are no trees now, and they won't plant any.

Motion: S. Perley moved the approve Application # 2014-0005 in order to allow the use of vehicle dealership, sales and service on the lot.

The use won't be contrary to public interest. The area is already surrounded by a car dealership so this is a continuation of the already existing use. This doesn't violate our basic zoning objectives and won't hurt the rights of others.

The spirit of the ordinance is observed. This doesn't alter the character of the neighborhood as it is already a car dealership and this is a continuation of the use.

Substantial justice is done as the benefit to the applicant outweighs any negatives to the general public. This use is consistent with the current use so there is no harm to residents in the neighborhood.

The value of surrounding properties are not diminished as the use currently exists and this will have no affect to adjacent properties.

Literal enforcement of the provision of the ordinance would result in an unnecessary hardship as the Messer Street site has been identified as one with coal tar issues and there is a restriction placed upon the use. The proposed use is of low impact and requires no buildings. This doesn't alter the character of the neighborhood or hinder public health, safety or welfare.

S. Bogert asked if we can make it a condition of approval that the Planning Board has to approve this.

S. Saunders said this is over 5000 square feet of parking lot so they will have to go before Planning. If under 5000 square feet of paving the proposal goes before MSP. S. Bogert said whichever is appropriate. If this doesn't get approval by the proper board, then the variance dies.

S. Perley added that Planning Board or other appropriate approval must be granted within one year of this approval or the variance dies.

M. Foote seconded, and all voted in favor, 5-0.

Additional conditions of approval are as follows:

- 1) This is subject to approval by the Planning Board or appropriate board within one year of this approval or the variance dies.
- 2) The property is subject to receiving all appropriate shoreland permits.

Application # 2014-0006
R. MacRae

MSL 224-248-3
469 Weirs Blvd

CR Zone
Variance

The applicant is requesting a variance from 235-35 (B), side and rear setbacks, in order to erect a garage. Side setback infringements range from 0 – 5' and the rear infringement is 5'.

Applicant: Alan MacRae appeared, representing his son, Ryan, who is a Merchant Marine and unable to be here this evening. He said that Ryan has owned the property for almost 3 years. His hobby is collecting cars,

and he has 4. He wants the garage to store the cars appropriately but would have set back issues in the side and rear of the property.

S. Perley said she drove by and asked for clarification on the site layout, which was explained to the board.

Alan MacRae said there is a parking apron there now which is approximately 24 feet wide. S. Bogert looked the site up on Google Earth, and shared it with the board. A. MacRae explained the layout and the setbacks. He said R. MacRae wants to attach it to the house via a mudroom. S. Perley said that the garage is bigger than the house and A. MacRae said he has 4 cars. S. Perley clarified that this will be a one-story garage with no living space and was told yes.

Public: No one spoke for or against the proposal.

Board: The board had no further questions. A. MacRae said his son notified abutters and talked with all of them first before deciding to do this and there are no problems with them.

S. Bogert closed the hearing to the public.

S. Perley said she has no problems as long as this is just for a garage.

Motion: R. Smith moved to approve the application. The proposal won't be contrary to public interest. This could actually improve the site as the 4 cars would be housed within a structure which makes for a more appealing view.

The spirit of the ordinance is observed as the property owner is attempting to respect the existing boundary lines and is using the property as best he can to maintain the rights of the abutters.

Substantial justice is done as the structure will be a 4 car garage, connected to the house, and it cannot be converted or expanded to living quarters.

Surrounding property values will not be diminished as this will mimic similar use as other properties and keep vehicles out of sight.

No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. The applicant is trying to make use of the property and is attempting to make the most of the situation. They cannot move the garage forward due to the ROW situated on the lot next door so this is the best layout that can be made that provides safe, secure storage of the vehicles. Due to the orientation of the existing structure they cannot maintain the proper rear setback as it would infringe upon the ROW. This layout proves the best area to store the vehicles due to the restraints of the property and location of the current house.

The use is a reasonable one as a garage is a permitted use and many of the neighboring properties currently have one.

The board also added the additional conditions:

- 1) This addition is to be a garage only, with no living space.
- 2) It is subject to all shoreland approvals.
- 3) If anything besides a garage is ever proposed the applicant must return to the board for approvals.

S. Perley seconded the motion and all voted in favor of approval, 5-0.

Application # 2014-0007
S. Monahan

MSL 145-236-28
16 Weeks Street

CR Zone
Variance

The applicant is requesting a variance from 235-35 (A), front setback, in order to increase the size of the front porch into the setback by 1.5'.

Applicant: Sean Monahan appeared for the application. He said that all of the lots located here are very tight. He said the board members should have received an e-mail from Paul Moynihan on this issue. There was a question on the road. All of the yards here are small, and some are right on the road. They found out that the road was pushed out 18 feet from where they thought it was so they now have an 18 foot frontage.

He has a very small front porch with a small table. He wants to take the existing porch and bump it out just where the table sits, which will be about 5 feet. S. Perley asked if they would only be doing this on one side of the house and was told yes, and they plan to use the same materials so it won't be very visible. This won't be covered. The middle pole will be removed. From the left side, the rail starts about 5 ft to the short pole by barrel. The picture they provided doesn't show the front where it is now.

S. Perley said she went there today, and wondered what is going on in front of the house and S. Monahan said the City put hay down for the winter. He is hoping that they will get this done in the next few weeks, so they can do the porch and landscaping. They like flowers. They will have more frontage than 90% of people here. The house is on the corner of Baker, with the bump out on the opposite side.

S. Perley asked about the property on the other side and was told she is now in the same situation, and she will be extending her fence out to the street. S. Saunders said there is no impact to the ROW per DPW. S. Monahan said people are driving over the neighbor's lawn and his. That is why the hay is there.

S. Monahan said that one neighbor on the street held the project up when the City was doing the water main. He had pictures from when his grandparents owned the property and found a discrepancy. He has talked to Paul Moynihan who said they won't be taking this right to the street. S. Saunders went over the e-mail from DPW and she explained the map and colors.

S. Bogert asked for clarification and S. Monahan said they had it surveyed, and showed the lot line was further out. S. Bogert said the paperwork they have shows that the house sits over the property line now.

S. Monahan said he will not give the City the easement to put the asphalt down if this gets continued and was told he needs a surveyed copy.

He asked if the porch is already off of the property, and no one complains about it now, what is the big deal and S. Bogert said the documents provided show the porch is extended over the property line. S. Saunders said that P. Moynihan said the ownership is unclear.

S. Bogert said they have to deny this or continue the hearing so he can give the board the appropriate documentation showing that they own the land the porch will be built on.

S. Monahan said that the City did not want to go to the expense of surveying this. The neighbor got the survey (the one with the water main). The City moved the road. They didn't want to go through the expense of doing the survey so they just went ahead and moved the road. M. Foote said the property is unclaimed and he must show title for it.

S. Bogert let the applicant know what is needed before they can continue further with the application. He must provide the proper documentation that shows he owns the land.

Motion: S. Bogert moved to continue the hearing until the proper documentation is provided to the ZBA. M. Foote seconded, and all voted in favor of continuing, 5-0.

HEARING: UPON REMAND FROM THE SUPERIOR COURT

Application # 2012-0025

MSL # 244-430-32

RS Zone

The Gables on Paugus Bay Condo Assoc

Davidson Drive

Variance

The applicant is requesting a variance from the 1988 Zoning Ordinance, Section 14.45 (b) (3), Lot Coverage, to allow the coverage to increase from a minimum of 20% to a minimum of 30%.

(See vote at beginning of minutes. Continued until the June 16, 2014 hearing)

OTHER BUSINESS: Master Plan: S. Saunders let the ZBA members know that the City is starting the Master Plan re-write process and is putting together an advisory team. We need 2 members from the ZBA to serve on the committee. S. Saunders said that S. Perley already said she would. S. Bogert asked what the time frame is, and S. Saunders said at the end of the work day, but not evening, probably in the 4-6 time range. M. Foote said he would like to participate in the process.

S. Perley asked what we are dealing with on the Gables and S. Saunders said they are back before the ZBA because of the court order so they can better explain and the board can make a better decision. S. Bogert asked if this should be a new application and was told no, they make the application based on the criteria. Legal said we need to make an adjustment on the information provided. The court said that where the information was not provided, the board filled gaps with our own assumptions. S. Bogert clarified that we were remanded by the judge to not rehear but to review the decision and reformulate our decision and S. Saunders said no. Because we made assumptions, we must give the applicant time to reargue.

S. Perley read the article from the Citizen. S. Saunders said the applicant provided supplemental information to us. He did not submit this the first time.

We will provide copies to the board of the previous information that had been submitted.

M. Foote let the ZBA members know that he now has a relationship with one of the lawyers involved in the case. He said he doesn't feel this affects his decision. He was asked if he would see any financial gain from the Gables and he said no. The other board members said they don't feel this is an issue, and he did not have to recuse himself.

S. Perley asked if we should schedule a special meeting for just them, as testimony will be lengthy, and was told no. The meeting will end at 10 as scheduled.

S. Bogert said he now has a different problem involving the board make up. He asked if we should give the applicant the opportunity to wait if the 5 members are not available. He said this creates a problem on several levels. If the State says a quorum is 3 and we can hear an application, and the members are here giving their time and effort to do this, and the public shows up, should we hear it. The general public is not notified for a re-hearing so sometimes are not sure when to show up. These are regulations that the board can change and he wonders if we should. Do we change this to state if we have at least the 3 member quorum, we go ahead and hear it, or do we continue allowing them to move it until the full 5 are available? If it is moved then it is upon the applicant to have to re-notify the public on the hearing at their expense.

S. Saunders said if it is stated in the regulations, we currently have to honor their request to be moved. If it is not, we can go ahead and hear it. S. Saunders said we do this as a courtesy to city residents so they have a full board but if we offer the courtesy to them, we could make them re-notify the abutters. K. Geraci said she agrees that it makes sense to offer them the continuance but to request that they re-notice abutters at their own expense.

S. Perley said she agrees and that is a simple change we can make to the ZBA regulations.

ADJOURNMENT: R. Smith moved to adjourn with the second by M. Foote. All voted in favor and the meeting adjourned at 8:30 pm.

RRESPECTFULLY SUBMITTED:

KRISTINE Y. SNOW
ZONING TECHNICIAN