

**GREENLAND ZONING BOARD  
PUBLIC HEARING**

**WEDNESDAY, March 3, 2010**

**Members Present:** Mr. Chris Halligan, Chair  
Ms. Liz Cummings, Vice Chair  
Mr. Don Arsenault  
Mr. Sean Conner  
Mr. Ron Gross, Alternate

**Staff:** Ms. Amy Leonard, Secretary

Chairman Halligan opened the public hearing of the Greenland Zoning Board of Adjustment at 7:00 P.M. and a roll call was taken. He announced the procedures of the Zoning Board of Adjustment and stated they had a quorum. Mr. Halligan noted the meeting was being recorded and the minutes would be available to the public when completed. He stated tonight's meeting is a rehearing of the 445 Portsmouth Avenue's October 20, 2009 hearing; wherein the Board denied the application for an appeal from an administrative decision and a use variance. On November 17, 2009, the Board granted the same applicant a rehearing of those items. The area variances that were not originally heard due to the denials, would be considered after the rehearing vote, depending on those votes.

**Public Hearing**

**1. Rehearing of Appeal from an Administrative Decision, 445 Portsmouth Avenue, Owner/ Applicant: 445 Ports Ave, LLC-Gary Bourassa, (Map U4, Lot 27).** Applicant is appealing an administrative decision from Article III, Section 3.5.1 of the zoning ordinance: Interpretation of permitted uses in the Commercial Zone, including "Business Services" and other uses.

David Brown, attorney from Colliander, Field & Brown, and Steve Oles, MSC Civil Engineers, representing the applicant, Gary Bourassa, who is the sole member/owner of 445 Portsmouth Ave., LLC, approached the Board and resubmitted the site plan (attachment 1) showing the proposed project, stating nothing has changed. Mr. Brown reminded the Board that the purpose of this project is to move the business's contractor facility to the property. He noted this would be an auxiliary facility, not the main facility, which would include parking of trucks in the rear and storage of related equipment on the west side of the property, together with use of the first floor bays for vehicles and to continue the upstairs residential apartment use. He stated since the October meeting, he has taken photos of other commercial uses around Town and believes this is a reasonable commercial use for the site and a low intensity one, when compared with other allowed uses, which could have much more vehicular traffic in and out of the site all day long. The trucks would be used principally for paving and would leave in the morning and return in the evening. Mr. Brown submitted an exhibit list, (attachment 2), dated March 3, 2010. He noted the first 5 items were the same that had been submitted at the October meeting, but items 6 - 10 were new materials. These new items included: site line plan,

photographs of the surrounding neighborhood and other truck/storage examples in the Town's commercial zone, records regarding prior uses/permits for the property (including: fire station, vending machine service business, garage for bus sales and service, storage and repair business, cemetery monument/vault stone work business, garage, and apartment), work sheets to address the administrative appeal and variance criteria and a support letter from the closest abutter, Don Cook. Mr. Brown felt that the pictures submitted showed that this proposal does not differ from other various business and would fit well in the commercial district. He also submitted Requests for Findings and Rulings (attachment 3) and proceeded to review that document, which included Mr. Brown's argument regarding why the appeal should be granted.

After the presentation, Chair Halligan opened the hearing for public comments. Chip Hussey, 437 Portsmouth Avenue, stated he understood the proposal and had no objections. Leroy Syphers, 407 Portsmouth Avenue, stated he is a direct abutter and is in favor of the proposal. Tim Collins, 100 Winnicut Road, also stated he was in favor of the proposal. Donald Cook, 449 Portsmouth Avenue, stated he is a direct abutter and is in favor of the proposal as well. Hearing no other comments, the hearing was closed and the following motion was made:

**Motion 1: Don Arsenault moved to grant the applicant's request for an appeal from an administrative decision from Article III, Section 3.5.1 of the zoning ordinance for Map U4, Lot 27. Ron Gross seconded the motion.**

Mr. Arsenault felt the Building Inspector overlooked the fact that this business could have been under the professional service business as being similar to a landscaping, remodeling business, etc. He felt it was a use that is acceptable under the commercial zoning. Mr. Gross stated he agreed with Mr. Arsenault and voted that way in October. Ms. Cummings disagreed. She explained that what she looks at is that the Building Inspector reviewed the building permit application and found it was not an acceptable use under the guidelines of the Town's ordinance. She did not feel it was similar to a landscaping business. Mr. Conner felt the applicant made a logical and common sense argument that it does fit under a professional or business services use. He feels the business would fit into the neighborhood. After the discussion, a vote was taken on Motion 1.

**There was a vote taken on Motion 1 with 3 being in favor and 2 against (L. Cummings, C. Halligan). MOTION CARRIED.**

a). **Rehearing of Request for a Use Variance, 445 Portsmouth Avenue, Owner/Applicant: 445 Ports Ave, LLC-Gary Bourassa, (Map U4, Lot 27).** Applicant is requesting a use variance from Article III, Section 3.5.1 of the zoning ordinance: The applicant proposes to operate a contractor facility with truck parking and related equipment storage in Commercial Zone.

This request was not needed, due to the administrative appeal being granted. Mr. Brown noted the applicant wished to withdraw the request.

**b). Public Hearing for Request for an Area Variance, 445 Portsmouth Avenue, Owner/Applicant: 445 Ports Ave, LLC-Gary Bourassa, (Map U4, Lot 27).** Applicant is requesting an area variance from Article IV, Table 4.2, Section J of the zoning ordinance: Open Space of 48% where 60% is required.

Mr. Brown stated this request for an area variance, relates to the storage area on the west side of the property and showed the Board the location on the site plan. He indicated the applicant will grate that area for the storage of vehicles, but it will remain gravel or grass. He noted the area would not be visible to the public because it is set back and will be screened with a stockade fence on all sides. Mr. Brown proceeded to review the five criteria: 1. Granting the variance would not be contrary to the public interest because: only a 12% variance is needed. About a 300 square feet area is still open with gravel and/or grass. There is no structures or impervious surfaces. The area is not visible to the public and will have no affect on the neighborhood. Nearly half (48%) of the lot is still open. 2. The spirit of the ordinance would be observed because: it is a small area, set back and not close to the street. The closest abutter (Don Cook) is in support of the proposal and the area is still open to the sky. 3. Granting the variance would do substantial justice because: it is a small, reasonable request to assist a reasonable use of the property and is smaller than other businesses in the commercial zone. 4. For the following reasons, the values of the surrounding properties would not be diminished: An expert opinion letter was provided as item 3 in the exhibit list from a realtor, it's common sense - too small of an issue and the closest abutter (Don Cook) is in support of the proposal. 5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: a. there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because: (Boccia Test (area) was used and still applies, due to the original application date) 1. The variance needed to enable the use; the extra area for storage is small but essential, the special conditions of the property are: narrow lot, old fire station and narrow envelope. 2. No other reasonable, feasible means; this is the only feasible spot on the lot. For those reasons, Mr. Brown feels the applicant meets all the required criteria.

Chair Halligan opened the hearing for public comments. Don Cook, 449 Portsmouth Avenue, stated he was in favor of this request as it is an insignificant amount of space and it will not upset the surface, as the property is very dry in that area. Darren Collins, 80 Winnicut Road, stated he too was in favor of this request. Hearing no other comments, the hearing was closed and the following motion was made:

**Motion 2: Don Arsenault moved to grant the area variance for 445 Portsmouth Avenue, Map U4, Lot 27, of 48% open space, where 60% is required. Ron Gross seconded the motion.**

Mr. Arsenault referred to the Packard project and stated the open space requirement changed during that time and felt it was too restrictive and should be changed back. Mr. Gross stated the open space on the property is currently at 52% and the applicant is only bringing it down to 48% and felt it was a small decrease. He did not feel gravel should

be considered impervious. Ms. Cummings noted Don Cook is not the only abutter; there is another one who is very much against this proposal and has submitted letters concerning open space, setbacks and the whole plan. She felt the applicant could store their vehicles elsewhere on the property and/or reduce the parking area and stated variances run with the property forever. Ms. Cummings noted if this is granted, the next owner of the property could build on this area. She stated the voters of the Town agreed to 60% open space and felt this Board should uphold their vote. She did not feel the applicant sufficiently proved the hardship criteria for this lot. Mr. Conner stated if the Board gets concerned with future owners/tenants, it would paralyze all variances and none would be granted. He felt relief should be granted based on each applicant, not what may happen in the future. Ms. Cummings stated a variance should be granted only if there are no other options. Mr. Halligan agreed with Ms. Cummings on the fact that the applicant did not sufficiently prove the hardship criteria for this property. After the discussion, a vote was taken on Motion 2.

**There was a vote on Motion 2 with 3 being in favor and 2 against (L. Cummings, C. Halligan). MOTION CARRIED.**

**c). Public Hearing for Request for an Area Variance, 445 Portsmouth Avenue, Owner/Applicant: 445 Ports Ave, LLC-Gary Bourassa, (Map U4, Lot 27).** Applicant is requesting an area variance from Article IV, Table 4.2, Section F of the zoning ordinance: Side-yard setback of 5' where 50' is required.

Mr. Brown noted that at the October meeting, it had been decided that the required side-yard setback is 20', not 50' as is written on the agenda. The Board agreed with Mr. Brown. There was discussion regarding if the applicant actually lowered the fence to 6', it would not be considered a structure, therefore this request would not be needed.

At 8:03 P.M., the Board took a 5-minute break in order for the applicant to speak to his representatives about lowering the height of the fence. The hearing reconvened at 8:10 P.M.

Mr. Brown stated that by reducing the fence height to 6' or less, everyone agreed and understood that the area variance would not be needed and the applicant wished to withdraw the request. He proceeded to submit a handwritten addendum to the area variance request plan (attachment 4) stating such. With that said, the following motion was made:

**Motion 3: Lizbeth Cummings moved that based on the change of the fence height around the storage area on the location plan, to 6' or less, the fence would not be considered a structure; therefore the applicant no longer needs the requested area variance to the side-yard setback. Don Arsenault seconded the motion. All were in favor with a vote of 5 for and 0 against. MOTION CARRIED.**

Note: Ms. Leonard submitted hand-written notices of decision to Mr. Brown, but stated a more formal letter would follow.

**2. Any business that may legally come before the Board but does not call for public hearing, including: review of previous meeting minutes, consideration of their approval, consideration of timely-filed motions for rehearing, and consideration of further motions.**

The Board reviewed the minutes of October 20, 2009. There were no suggested changes made to the minutes and the following motion was made:

**Motion 4: Lizbeth Cummings moved to approve the minutes of October 20, 2009 as presented and Don Arsenault seconded the motion. There was a vote of 4 in favor and 1 abstained (S. Conner). MOTION CARRIED.**

The Board reviewed the minutes of November 17, 2009. There were no suggested changes made to the minutes and the following motion was made:

**Motion 5: Lizbeth Cummings moved to approve the minutes of November 17, 2009 as presented and Don Arsenault seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.**

The Board announced they would not meet on March 16, 2010, due to the fact that no applications had been submitted for consideration. Being no further business, the meeting was adjourned at 8:18 P.M.

**Motion 6: Chris Halligan moved to adjourn the meeting at 8:18 P.M. and Don Arsenault seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.**

Recorded, transcribed and typed by:

Amy Leonard  
Secretary, Zoning Board of Adjustment

Attachments:

1. Site Plan, re: 445 Portsmouth Ave., LLC
2. Exhibit List, re: 445 Portsmouth Ave., LLC
3. Requests for Findings and Rulings
4. Addendum to the area variance request plan, dated 3/3/10
5. Agenda, dated 3/3/10

Approved by the Greenland Zoning Board on April 20, 2010.