



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, September 19, 2017 – 7:00 p.m. – Town Hall Conference Room

Members Present: George Baryames, Liz Cummings, Steve Gerrato, John Samonas

Members Absent: Leonard Schwab

Staff: Jim Marchese – Building Inspector

Chair Samonas opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present and the meeting was being recorded.

1. Special Exception

9 Alden Avenue – Commercial B Zone (Map R20, Lot 40)

Owner: Autumn Pond Realty Trust

Applicant: Stephen Philbrick, Revolution Detailing LLC

The applicant is requesting a Special Exception to open an auto detailing business in Autumn Pond Park. The requested use is not allowed in the Commercial B District as stated in the Greenland Zoning Ordinance, Article III – Establishment of Districts and Uses, Section 3.6 – Table of Uses, Subsection 'L' – Motor Vehicles, Item 3 – Motor Vehicle Washing Facility.

Jeremy Boucher, owner, addressed the Board. Also present was Stephen Philbrick, co-owner. They expect to have no more than three vehicles per week in the shop. There is also a mobile side of the business. The shop will also be used for storage for the mobile side (chemicals, materials, etc.). High end work (paint protection, films, tinting) will be done in this shop because they are longer processes.

Chair Samonas clarified that they don't own the property and are tenants. He explained that Autumn Pond Park is the group of commercial/industrial condos across from the Mercedes dealership on Rt. 33. The unit is 1200 sq. ft.; there is access from the front and rear (door in the front and garage door in the rear). Chair Samonas questioned the use of a lift. J. Boucher responded that if a lift was used, it would be a small hydraulic floor lift. Chair Samonas asked the extent of the washing. Windows would be cleaned for tinting; however, vehicles would need to be decontaminated for high end work (paint protection). Chair Samonas asked J. Marchese if vehicle washing was the issue. J. Marchese responded that it was retail in a commercial area.

Hours of operation would be 9:00 a.m. to 5:00 p.m., Monday through Saturday. The mobile side operates seven days per week. Items that are not bio-degradable are a tire acid that's slightly caustic; a SDS sheet will be provided. There is not a floor drain; everything will be done on a reclaim mat, including washing vehicles. J. Boucher explained that a reclaim mat has 6" sides and can be rolled out. It's a 70mm thick polyethylene type material. It will capture up to 45 gallons of water and has a pump.

They have a 300 gallon water tank that will be used for bringing water to sites. Their plan is to reclaim and dispose of waste water as necessary. There are waste water plant locations in Portsmouth and possibly in Durham. State approval for vehicle washing is not required because they will be reclaiming and disposing properly; they will be in compliance with the State and DES as well as EPA regulations.

Chair Samonas opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board. J. Boucher explained they chose this location to be closer to Portsmouth and it's a main drag. They'd like to expand into the Seacoast area. The mobile unit is based in Manchester, but would be moving to this location.

Chemicals used on site are not flammable. They will need to have a fire cabinet and fire extinguishers. Chemicals will be stored in the fire cabinet. Typically they only use degreasers; other items they use are bio-degradable and nothing needs serious ventilation. Lacquer thinner may be used occasionally. There are two mobile units during boat season; one in the off season. The mobile unit is a pickup truck and will be parked at an owner's house.

S. Gerrato was concerned about the impact on the wetlands. J. Boucher stated their unit is 45' from the wetlands and there is a berm. He didn't anticipate any run-off into the wetlands; at any time there wouldn't be enough dangerous chemicals to harm the wetlands.

The standard detailing package is complete in 4 to 5 hours; all work is done inside. There will be no spraying of materials applied; they do not paint vehicles. A 300 gallon tank will be on site; waste water will be pumped into that tank. The three owners are the employees. Alden Avenue will be their first location; they will be advertising. Other businesses at Autumn Pond Park include car mechanics, a paint spray booth, pet crematorium, and soap manufacturing facility.

L. Cummings questioned why the application was for a Special Exception because it was not a permitted use; it should have been a Variance. J. Marchese responded he saw it as a need for a Special Exception. L. Cummings stated that there are businesses in Autumn Pond that can contaminate the wetlands; hopefully, there were berms around the facility to protect the wetlands. She heard nothing that would pose a detriment or harm and prohibit the approval of a Special Exception, with the exception of storing waste in 55 gallon drums. S. Gerrato felt it would be too dangerous for the wetlands to grant a Special Exception. He felt this type of business would be an extreme danger to the wetlands in that area. G. Baryames had the same concern as S. Gerrato: the facility wasn't built or designed for washing vehicles inside. He questioned how well the mat would work and was concerned with the soap breaking down oils, leaking out and harming the environment.

Chair Samonas didn't consider their use a car wash; there were more extreme problems at Autumn Pond. Their business was not an extreme use or danger. He was concerned about leach fields, and soaps, oil and grease going into the wetlands. However, he felt what they proposed was a mild use.

MOTION: S. Gerrato moved to not grant a Special Exception. Second – G. Baryames

DISCUSSION: S. Gerrato stated that nothing goes as smoothly as planned. Anything could happen with the reclaim mat causing it to leak; there was a lot of room for mistakes, and the Town didn't want those mistakes. G. Baryames added that it's clearly stated in the Zoning Ordinance that motor vehicle washing at this facility was not allowed; he felt it should have been a Variance. He didn't see the hardship because there were other locations for this type of business. It was noted that hardship is not a requirement for a Special Exception. L. Cummings stated she didn't consider it a car wash; it was a

light business and more of a Special Exception. She understood the protection of wetlands, but a Special Exception is a permitted use with certain conditions. The applicant has sufficiently explained that he will take due care. It was not for the Zoning Board to judge whether or not a building should be so close to the wetlands. L. Cummings didn't see this as a dangerous, severe thing.

S. Philbrick stated that the detail industry has been bogged down by EPA regulations due to car washing. They are required to do prep work that is much bigger than the scope of what they are doing. They're trying to do things the right way. He stated that they wouldn't wash cars on site if that was the issue. They can, and will, continue to be a mobile company and wash cars off site. A larger job with no run-off could be done at this location.

S. Gerrato withdrew his motion to deny the Special Exception.

MOTION: S. Gerrato moved to grant the Special Exception contingent on vehicles not being washed on site. Second – G. Baryames; all in favor. MOTION CARRIED

2. Request for a Variance

47 Bayside Road – Residential Zone (Map R17, Lot 8)

Owners/Applicants: Joe and Amy Bruno

The owners/applicants are requesting a Variance for a 9' 3" x 49' 9" open-air porch to be constructed within the 30' front setback. Based on the submitted plan, this addition will create a 16.4' setback from the right-of-way. As stated in the Greenland Zoning Ordinance, Article IV – Dimensional Requirements, Section 4.2 – Table, Subsection 'd' – Front Yard Minimum, the front yard setback is 30'.

Maggie Robidoux, architect, addressed the Board; also present were Joe and Amy Bruno, owners/applicants. The residence is an existing two story home constructed in 1950 with a 1 ½ story garage that is attached by a one story vestibule. They are proposing an open air one story wrap around porch on the front of the house with columns and a roof. There will not be any screening, windows or winterization in the future. The base of the floor will be trex; there will not be a concrete foundation. The sonotubes will be 8' out from the existing home; the 9'3" section is the overhang. The overhang on the existing house is currently 6'3" into the setback, and the corner of the house is in the 30' setback. They are asking for an additional 7'3" into the setback. They would like to add a traditional porch and come off the existing roof line. The roof line is the 9'3" infraction into the setback. There will be asphalt shingles on the roof of the open air porch. At the farthest end, it will be 13'7" off the setback line. A portion of Bayside Road is State; the property line has an additional setback off the road for the right-of-way. At the narrowest, there is approximately 7'3" to the actual pavement. There are three steps up to the landing.

S. Gerrato questioned where the snow would be pushed coming around the corner. The owners responded it would be nowhere near the proposed porch. There is landscaping within the 7'3" now. The roof would be 13'7" beyond the setback. Chair Samonas clarified that the corner of the porch to the edge of pavement would be 13'7". S. Gerrato suggested angling the right corner of the porch 45°. M. Robidoux showed the Board a computerized version of the proposed porch. After viewing the pictures, members agreed that the 45° angle wouldn't look good.

Chair Samonas opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board for discussion. S. Gerrato stated there was no hardship; the porch could be

redesigned. He also felt that heavy snow could be pushed into the porch by plows. He added that the Board should hold to the zoning of the Town. A few inches or few feet could be considered; this was quite a bit. Chair Samonas clarified that currently the setback from the front right corner of the home is 13'7"; L. Cummings stated they were already in the setback by 6'. Frontage, at one time, was 20'; now it's 30'.

L. Cummings noted that the uniqueness of the property was the curve of the road and the location of the house. M. Robidoux stated that part of the hardship was the additional right-of-way; the property line is set back further from the edge of the road. They are respecting the spirit of the ordinance of keeping the open feeling because of the additional right-of-way space. It was clarified that there would be 24' from the edge of pavement to the front of the roofline of the proposed overhang. There is approximately 7' of area from the property line to the edge of pavement. The house is already within the setback, and they're asking for an expansion into the setback.

Chair Samonas asked M. Robidoux if there was anything that could be done to lessen the impact into the setback and make the applicants happy. M. Robidoux responded that the overhang could be narrowed 1'. There was a brief discussion about sidewalks. They were hoping for 8' in depth on the porch, but were willing to compromise. Reducing the overhang by 2', the new setback would be 18'. S. Gerrato would still vote "no" because it's on the curve. A. Bruno responded that the house sits back far enough that it doesn't block the view of traffic.

MOTION: L. Cummings moved to grant the Variance subject to the porch being 7'3", with the overhang being reduced accordingly, and the revised plan must be approved by the Building Inspector. Second – G. Baryames

DISCUSSION: L. Cummings reviewed the criteria for a Variance. The Variance would not be contrary to the public interest: the Zoning Ordinance is designed to keep houses and occupants safe. This is very close to the safe line, but it was safe. There may be room for a very small sidewalk. The house itself is currently within the setback; almost anything that was done would require a Variance. That uniqueness and curve on the road create unusual circumstances. That's where the spirit of the Ordinance is observed because it was designed to try to provide space between things. An open air porch still provides the open aspect and sense of community. Granting the Variance would be substantial justice because it will allow a more attractive home. It doesn't create a hardship from a safety standpoint, from a public use of the facility, and is not a big fire hazard. A porch would help the values of the surrounding properties. The more a neighborhood is renovated, the more the neighbors want to "keep up with the Joneses". There would not be any diminution in values in surrounding properties. The hardship is the hardest and toughest to prove. This one is really "iffy" because the distance is so low. The public purpose was to keep space between the road and the house or porch. Originally, it was 20'; it's now 30'. In a normal situation when a house is being built, that can be done. This house was already built and was there when it was 20'. In certain circumstances, it's acceptable to allow a difference. The proposed use is reasonable. They have met the requirements for a Variance.

Chair Samonas added that the house, as it exists today, is within the 30' setback. The curve of the road affects everything about the house pertaining to the front buffer. If the applicant was asked to move the porch toward the middle of the house to get it out of the buffer, it wouldn't work.

MOTION: L. Cummings moved to grant the Variance subject to the porch being 7'3", with the overhang being reduced accordingly, and the revised plan must be approved by the Building Inspector. Second – G. Baryames; three in favor, one opposed (S. Gerrato). MOTION CARRIED

3. Request for a Variance
34 Orchard Hill Road – Residential Zone (Map R12, Lot 7)
Owners/Applicants: Patrick Carey and Chris Sturr

The owners/applicants are requesting a Variance for a 24' x 36' garage extending 4' 8" into the wetland buffer zone. The required 50' structural setback has not been met as required by the Greenland Zoning Ordinance, Article XVIII – Wetlands Protection Ordinance, Section 18.7 – Prohibited Uses, Subsection 18.7.2 – Structure Setback Requirements.

Chair Samonas stated he would not recuse himself even though he recognized the applicant, Patrick Carey; the applicant was in agreement.

Shannon Alther, TMS Architects, addressed the Board; also present was Patrick Carey. They were requesting a Variance for encroaching into the 50' wetland buffer. S. Alther pointed out the existing garage and main house as well as the location of the proposed garage. There is also an existing garden with fencing around it they would like to keep. The doors on the existing garage and proposed garage will face each other. There is 42' between the two garages; they wanted 44' based on turning radius but realized it was in the wetland buffer setback. The east facing roof slopes toward the buffer. The water running off that roof will be captured with a gutter and diverted back into a rain garden that will be outside the buffer, and filtered into the wetlands. There is also a snow area, based on the way the driveway is plowed. In the winter the rain garden will also help with the distribution of the snow melt.

The hardship part of the project is the wetlands on the property. The location of the rain garden allows them to make the wetland buffer even better. They will be able to mitigate and treat the water before it reached the buffer.

The garage is 36' north to south, and 24' as you would drive in and park. The garage doors are 9' to match the existing garage. There will be a potting shed associated with the garden to one side of the garage. Upstairs in the proposed garage will be storage; there will be a typical stairway to that area. There will be electricity upstairs. The back of the proposed garage is in the setback. If the proposed garage was closer to the existing garage, the turning radius would be affected. If the depth of the garage went from 24' to 22', it would still be in the buffer. Several options for relocating or turning the garage were discussed. All options would impact the existing landscaping, trees or turning radius.

L. Cummings questioned the 178 sq. ft. noted on the plan. S. Alther explained that two zones were created for pervious pavers: one for the existing garage (119 sq. ft.) and one for proposed garage (178 sq. ft.) to enable the mitigation of asphalt for pervious. L. Cummings asked why the proposed garage couldn't be moved in 4' and have the pavers in the turning radius; the pavers can be driven over. S. Alther stated they become a decorative apron in front of the garage. They're concerned with the turning radius going in and out of the existing garage. By moving the proposed garage forward, there will be a pinch point with the existing landscaping and trees.

S. Alther explained that there is 42' from front garage door to front garage door. The cobblestones are at grade and not part of the turning radius. They needed 42' because of the architecture and set up of the existing house and proposed garage. L. Cummings stated that if the primary function of the proposed garage was storage, they didn't need 42'. Even though they are in the buffer, the mitigation of the entire east slope into the rain garden as well as the pavers creates a better water filtration system for the entire area.

P. Carey stated they had discussed moving the garage out of the buffer. However, that would require clear cutting the trees and that would diminish the value of the neighbor. L. Cummings suggested moving it towards the existing garage. She didn't understand why, with as much pavement as there is, 42' is needed. There is 4' of pervious pavers, and there is a garage in the buffer zone. L. Cummings referred to the Conservation Commission minutes of September 13, 2017; they felt it didn't need to be in the buffer and the rain garden was a concern. S. Gerrato reminded the Board that the garage was going to be used for storage and the ZBA has not allowed any garages in the buffer zone. There was no reason why the garage couldn't be moved out of the buffer.

P. Carey stated that the water from the driveway, which was an enormous amount of square footage, runs into the wetlands. He was proposing a rain garden that will catch the water from the driveway and back roofline. This would be a much better situation than currently exists. P. Carey continued that the whole property has wetlands and he has looked at every angle; there is no other place except to the left of the proposed garage. He felt that location would diminish the neighbor's value if the trees were clear cut. S. Gerrato stated he would rather have the garage closer to the neighbors than in the wetland buffers. P. Carey responded he didn't want to open up his property so the neighbors would see the garage; he wouldn't build the garage.

Chair Samonas asked if the garage could be narrowed if the door faced forward. The applicant didn't think it would be physically possible. Chair Samonas explained: if it was pulled in 5' to be out of the buffer, the potting shed and fence could stay as proposed. The proposed garage wouldn't be identical to the existing garage; they could do a 12' or 16' door or 2 – 8' doors. L. Cummings noted that the pavers are 4' wide, and the garage was into the buffer by 4'. If they moved the garage up 4', the remaining 8" into the buffer would be more acceptable. J. Marchese stated that the distance between lanes in a parking lot was 24'; it was his opinion that 42' was extremely generous.

S. Alther noted that by having the rain garden capture runoff from the entire east roof, the water filtration and infiltration was an improvement. Moving it 4' would cause the water to dump directly onto the wetland and not the rain garden. They have looked at several different options architecturally, functionally, and usage wise; this was the best option.

Chair Samonas opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for discussion. S. Gerrato firmly believed the garage could be moved back to where the land tapers off. G. Baryames felt the garage could be moved in 4'8" towards the house, keeping the garage as presented. On the flip side, they were only 4'8" into the setback and they were trying to mitigate the runoff. L. Cummings stated 42' was an awfully big turnaround. There was continued discussion about the garage and its location. Members of the Board felt the proposed rain garden was not enough to mitigate the entire driveway.

MOTION: S. Gerrato moved to deny the request for a Variance because there is no hardship and is located in the wetlands. Second – L. Cummings

DISCUSSION: S. Gerrato stated that garages store gasoline, and that was one of his concerns. The impacted area is 117 sq. ft. There needs to be consistency. G. Baryames added that each case must be looked at individually. S. Gerrato felt something different could be done and they would still have a fine, beautiful garage. The potting shed is 18' wide; L. Cummings suggested moving the potting shed to the front and the garage in the back. It would be exactly the same area; moving it back 18' may take it out of the wetland setback. S. Alther responded they looked at that, but the existing garden was very nice and they wanted the potting shed next to the garden.

The Board felt there were other alternatives. If the garage was not in the setbacks, they wouldn't need ZBA approval. The best option for the applicant was to withdraw the application for a Variance. By withdrawing the application, they could return to the Board with a revised plan. P. Carey stated this was the best plan, and they had tried other locations.

The applicant withdrew the application. P. Carey stated that he understood that the ZBA has never granted a Variance for any garage in the setbacks, and that was really the juxtaposition of the whole thing. L. Cummings explained that if the Variance was denied, they could not return unless the plan was substantially different. P. Carey stated this was the best location and he was trying to help his neighbors.

4. Approval of Minutes: Tuesday, July 18, 2017

MOTION: L. Cummings moved to approve the minutes of Tuesday, July 18, 2017. Second – S. Gerrato; three in favor, one abstain (G. Baryiames). MOTION CARRIED

5. Other Business

Chair Samonas asked if HB86 had been approved; it was not approved. L. Cummings explained that HB86 would have required each criteria for a Variance to be voted on separately. She added that it was a 100% way of guaranteeing court cases.

J. Marchese asked if he should contact 179 Post Road about the status of his revised proposal; the Board would like an update. L. Cummings reminded members that at the time the resident didn't have the money to make the changes the Board wanted.

6. Adjournment

MOTION: Chair Samonas moved to adjourn at 8:45 p.m. Second – G. Baryiames; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, October 17, 2017 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: 