



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT/PLANNING BOARD JOINT PUBLIC HEARING

Tuesday, July 15, 2014 – 7:00 p.m. – Town Hall Conference Room

ZBA Members Present: Liz Cummings, Ron Gross, Brian Hutchinson, John Samonas

ZBA Members Absent: Chair Chris Halligan

Planning Board Members Present: Chair Stu Gerome, Steve Gerrato, Chip Hussey, Dave Moore, Paul Sanderson, Rich Winsor, Mo Sodini – Selectmen's Rep

Staff: Myrick Bunker – Building Inspector

Vice Chair Samonas opened the Board of Adjustment/Planning Board meeting at 7:00 p.m. and a roll call was taken; he announced a quorum was present and the meeting was being recorded.

1. Applications for a Variance: 1533 Greenland Road [Map R21, 55 & 55A]

Owner: Clan Murphy Limited Partnership

Applicant: Richard Landry, Thurloe Kensington Development

The owner and applicant are seeking two variances: (1) Lighting - Foot-candles on the side and front property lines range from .03 to 5.4; Article XXIV, Section 24.2, Subsection 24.2.1 of the Greenland Zoning Ordinance allows 0.2 foot-candles at the property line in the commercial district. (2) Truck Service Facility – According to Section II of the Greenland Zoning Ordinance, the proposed truck service facility meets the definition of a truck stop. Article III, Section 3.6, Subsection L4 CA of the Greenland Zoning Ordinance does not allow truck stops in the Commercial CA Zone.

R. Gross noted that the agenda should read .3 foot candles rather than .03 foot candles, which is a typographical error.

Chris Mulligan, attorney for the applicant, addressed the Board and introduced Ken Mavrogeorge, engineer for Tighe & Bond. K. Mavrogeorge reviewed variance request (1) for lighting and explained they were also requesting a waiver from the Planning Board for lighting. The lighting plan has been revised since it was submitted as part of the Planning Board application in April. The revised plan shows the proposed subdivision lot line with the lighting levels across the proposed development as well as the property line located in front along Route 33.

Lighting levels exceed both the Zoning Ordinance and Site Plan Regulations. The Planning Board will be reviewing the subdivision application on Thursday, July 17. The lighting levels exceed the front property line, and will spill over due to the subdivision creating a shared driveway. Vice Chair Samonas clarified that the Variance would be for lighting crossing a proposed property line on a subdivision that had not been approved. L. Cummings pointed out that the Variance would be approved based on a lot that was a single piece; hardship and other elements reviewed by the Board may change once the subdivision was approved. She continued that in good conscience, she could not grant a Variance without looking at it. C. Mulligan suggested they go forward with the Variance for the illumination levels on the front of the property, and make it as a condition of approval for the subdivision of land. Members of the ZBA didn't

feel a Variance should be granted for lighting on a proposed lot which had not been approved. Vice Chair Samonas stated that if a subdivision plan was approved, and the lighting Variance was not granted, they could change the lighting to meet current zoning. R. Landry responded that it can't be done on this project because the lighting is flowing over the front.

R. Winsor stated that the plan before them was new and different than what was presented previously to the Planning Board. K. Mavrogeorge noted the plan in question was for the truck service facility Variance. R. Winsor suggested that if the ZBA was going to consider granting the Variance, they needed to understand that additional lot lines may be needed as well as other lighting variances.

K. Mavrogeorge stated that the plan addresses the concerns of the Boards regarding safety and lighting of the intersection. Lights have been proposed at the front of the shared driveway; however, they will spill over to Route 33. The foot candles are 1.6/1.7 at the driveway, where .2 is allowed; lighting in a typical parking lot is 2.3 to 2.5. Lighting at the driveway was a recommendation through the traffic study. Stephen Pernaw, Pernaw & Company, prepared the traffic study for the applicant and stated that illuminating the intersection was recommended for safety reasons. The width of the driveway is 50'; the front of the parcel is approximately 800'. Lighting should not affect the residential area across the street; illumination at the median was zero. The light pole will be 20' high, and lighting will be dark sky compliant.

C. Mulligan reviewed the narrative accompanying the Variance request (copy on file). There will be no spillage into the residential area across the street; the other abutting properties are commercial. The hardship on the owner has to be balanced against any benefit to the public. The project has been designed to maximize a small buildable envelope.

The Office of Energy and Planning has an ordinance that states lighting will not project more than 3% of its light rays above the horizon from Land. Responding to a question from L. Cummings, K. Mavrogeorge stated that the fixtures are shielded at the top and are dark sky compliant. The lights are LED; some site lights will be left on for security by the buildings but not at the driveway.

Vice Chair Samonas opened the meeting to the public for comments. Members of the ZBA asked the reason for a joint meeting with the Planning Board. The applicant requested a joint meeting because there are a number of issues requiring a Variance and waiver, and was hoping to avoid confusion between Boards. P. Sanderson added that the two Boards will have to deal with the project, and it's more efficient to look at the same plans at the same time. He suggested that as motions were made, reference should be made to the plan number and date revised.

Vice Chair Samonas closed the public hearing and returned to the Board for discussion. R. Gross commented that driving up Route 33, he noticed very few businesses with lighting in the front. Using Lowe's as an example, he stated they didn't have other lights at the intersection, and didn't understand why it was perceived as a safety issue at the applicant's proposed intersection. He felt there was adequate lighting. He would like to keep the community rural as much as possible and saw no reason for having safety lights when there were none at other locations.

S. Pernaw addressed the question regarding a signal at the intersection. He stated that based on their analysis, the location did not warrant a signal; there was not enough traffic coming out of the site. It was also not recommended due to the proximity of the signal at Ocean Road. It has been recommended to add traffic signal conduit under the highway while doing construction. NHDOT has approved the traffic study; however, a final decision from them has not been made. S. Pernaw reiterated to the

Boards that for safety reasons, the intersection should be lit. The elevation at the driveway location is 50; the road height will be matched, but drop off approximately 4' before coming back up.

Gorrill-Palmer has also reviewed the traffic study and agreed the site didn't warrant a traffic signal. They also felt a left turn shouldn't be allowed. R. Winsor suggested that if the ZBA was going to consider granting the Variance, it should be very specific to the plan and current traffic configuration.

MOTION: *L. Cummings moved to grant the Variance to allow 1.6 foot candles at the front property line of 1533 Greenland Road as shown on Plan C-17, last revised 06.10.14. Second – B. Hutchinson*

DISCUSSION: L. Cummings reviewed the criteria. *Granting of the Variance would not be contrary to public interest:* the difference between where the property line is and where it goes below .2 as required by the Zoning Ordinance is at the driveway. It will be zero across the street; the light would be site lighting and off after normal operating hours. *Spirit of the ordinance:* after extensive research on lighting, it's difficult for the Board to say it has to be that for any particular substantive reason. *Substantial justice would be observed:* due to trucks turning in and out of the turn lane further down Route 33, vehicles turning left would benefit from the light, and would not be detrimental to the rural character of the Town. *Surrounding property values diminished:* property values will not be affected. *Unnecessary hardship:* There is no fair and substantial relationship between the specifics of the ordinance and a general purpose of maintaining .2 foot candles at the property line for of this parcel. *The use is a reasonable one:* having better lighting is a reasonable use. R. Gross clarified that site lighting will be turned off during non-business hours.

MOTION: *L. Cummings moved to grant the Variance to allow 1.6 foot candles at the front property line of 1533 Greenland Road as shown on Plan C-17, last revised 06.10.14. Second – B. Hutchinson; three in favor, one opposed (R. Gross). MOTION CARRIED*

(2) K. Mavrogeorge addressed the Board regarding a proposed truck service facility at the rear of the property. There is a potential for a lot line adjustment in the future. The lot in question has not been submitted to the Planning Board for site plan review or subdivision. K. Mavrogeorge explained that there is a plan before the Planning Board for development in the front of the lot, with septic located in the rear.

The proposed truck service facility is an effort to secure sewer for Greenland; an approval would bring the Town closer. R. Landry explained that he's been negotiating with Travel America in an attempt to turn their private sewer system into a public facility. The line that runs to the Portsmouth treatment facility would cost the Town \$4 million to \$5 million. The Town of Greenland has signed a joint use agreement with the City of Portsmouth for sewer. R. Landry would give Travel America a lot at the rear of the property, with a developable building envelope, in exchange for their pump station which will be turned over to the Town. There is an agreement in principle contingent upon being granted a Use Variance. Travel America would like to cut down on the number of tow trucks accessing their facility and opening up circulation on the site. R. Landry reiterated that the request for the Variance was to acquire sewer for the Town.

Vice Chair Samonas clarified that by granting the Variance for the truck facility the Town would acquire sewer. R. Landry stated it would be a swap: the Variance for the truck facility; he would give them that section of land, and they would give the Town of Greenland the sewer system in exchange for buildable land. R. Gross stated that a non-conforming lot would be expanded. Responding to questions from Vice Chair Samonas, R. Landry told the Board that there is currently an agreement between Greenland and Portsmouth for sewer.

C. Mulligan reviewed the Variance criteria (copy on file). He reminded the Boards that there is a very small developable envelope on a large piece of property due to wetlands and utility easements. Although the proposed use is not a permitted use, it's appropriate for the location.

Vice Chair Samonas opened the meeting to public comments. Nick Holmes, attorney for Travel America, stated they are very interested in pursuing the possibility and have been in discussions with the applicant. He was aware of the disagreements between the Boards and Travel America regarding the expansion of the facility. He assured the Boards that this is viewed as an opportunity to more efficiently service their customer base. There are a number of trucks that come through the facility, many requiring service. Although some members of the Board may view that as an expansion of a non-conforming use, it would allow Travel America to operate more efficiently.

R. Winsor asked if information was available to say the sewer was sufficiently sized and capable of handling loads from the Town. R. Landry explained that the pump station was specifically designed for 15,000 gallons per day. In order to upsize that, new pumps would have to be installed. There is excess capacity on the system; eventually there would have to be an upgrade. A pump will have to be put on his site, whether he does septic or sewer; he may build a pump station on his site. R. Winsor questioned the restrictions on the line exiting the Travel America site down Route 33 to Portsmouth. R. Landry wasn't aware of any; there is a 6" forced main.

The proposed truck service facility would be three bays. Access would be from Ocean Road; there would not be a connection between the lots. R. Landry felt that the proposed facility would not generate a great deal of new truck traffic; there is enough need on the Travel America site with trucks being towed and/or waiting for repairs. S. Pernaw agreed there may be minimal increase in truck traffic. Three trucks bays would be 7,500 sq. ft.; the remaining 1,500 sq. ft. would be used for offices, waiting area and tool storage.

C. Hussey told the Boards that the Conservation Commission had reviewed this earlier. If a Variance is granted, he wanted them to be aware that the applicant was "waving a carrot"; if they don't provide the carrot, they shouldn't get the Variance. He continued that Travel America produced approximately 10,000 gallons of raw sewage a day (based on when they were pumping into the wetlands).

Chair Jerome commented on granting a Variance on a lot that doesn't exist; it would be granted on the entire lot. It was agreed it would be granted on the lot of record. The piece that would be turned over should be subdivided first; that would be the only parcel with the allowed use. R. Landry suggested adding a condition that the sewer must be turned over, and the truck facility would be on that specific parcel. R. Winsor added that as soon as a lot line was changed, the application was changed and would mean expansion of a non-conforming use. P. Sanderson reminded ZBA members that necessary conditions preceding could be added; things would come into effect only when all conditions were met. He suggested Town Attorney approval, a sewer line which is regulated by the Public Utilities Commission, and approval from the City of Portsmouth. The advantages for Greenland would be looking at subsurface disposal in very sensitive area and beneficial changes to the site. It was his hope that they would look at the conditions preceding, and let Travel America and the applicant deal with the conditions preceding set by the ZBA. P. Sanderson continued that there would be a lot line adjustment reviewed by the Planning Board. The ZBA would have to review it as a non-permitted use and an expansion of what was no longer a permitted use.

It was suggested that traffic from 1533 Greenland Road exit around the rear to Ocean Road and the lights. P. Sanderson reminded those present that the applicant stated the lots would not be connected;

however, DOT may want them connected. It may mean that trucks servicing Tractor Supply could exit through Travel America.

There being no further comments, Vice Chair Samonas closed the public hearing and returned to the Board for discussion. L. Cummings stated while she appreciated their efforts with sewer, they can't make a judgment on whether it happens. The common good would be the sewer system; the common not so good would be the significant expansion of a non-conforming use. Her concerns were with granting a use that may not be the only thing that could be done on the lot and a significant change in traffic on Ocean Road. There could be a truck facility anywhere on the lot that is buildable. She also didn't feel it met the spirit of the Ordinance; the Town clearly said "no". The Planning Board did not change their types of uses for commercial zones. Although it's a proposed truck service, by the Town's definition it's a truck stop. She would not vote in favor of the Variance. R. Gross stated that the Town didn't want any expansion of the truck stop. He felt they were voting on another truck stop, and it's not allowed. He continued that he was voted in by the Town to enforce what they wanted. B. Hutchinson agreed with R. Gross. Vice Chair Samonas stated there may be an increase in truck traffic with the facility at the rear of the property. He felt there would be a benefit with sewer in areas that were very sensitive. He continued that he felt pressured and hurried to make a decision; there were holes in specifics from the applicant regarding capacities, etc. The developer was sincere in helping the community while benefiting at the site. Everyone would benefit, including the truck stop, by providing service. Vice Chair Samonas suggested tabling the Variance until more specific information could be provided to the Board. He reminded the Zoning Board they could grant, deny or table the Variance.

R. Landry suggested adding a condition that the pump station would have a capacity up to 25,000 gallons per day when turned over to the Town. M. Sodini added the Town has a study completed by Tighe and Bond, phasing in sewer at a cost of \$26 million.

R. Gross felt there was not a need for the expansion of the truck stop in order to obtain sewer for the benefit of the Town; tabling it would keep it in the same fashion. Vice Chair Samonas responded it would give the applicant and Board an opportunity to consider important perimeters for approval. P. Sanderson reminded the Board that if the Variance was denied, it cannot be asked for again. R. Winsor suggested the applicant could withdraw their application. R. Gross added there were other ways to work with Travel America to get sewer. He continued that the Town had a plan and that didn't mean having another truck stop.

MOTION: *L. Cummings moved to deny the Variance for the proposed truck service facility at 1533 Greenland Road. Second – R. Gross*

DISCUSSION: Vice Chair Samonas asked if the retail traffic on the front of the site was unsafe without a signal; L. Cummings responded no, but she wouldn't travel that way. If the traffic study doesn't warrant a traffic signal, then the determination by an expert has to be accepted. Vice Chair Samonas countered that it was an unsafe situation; as a Zoning Board member they could make it safer by adding a contingency that car traffic had to exit at the rear of the lot to Ocean Road. He continued that they could set parameters of things that the Town needed. L. Cummings reminded him that what was before the ZBA was allowing the use of a truck service facility, or truck stop as defined by the Ordinance, on that piece of property. Contingencies could be established, but the bottom line was do they want a truck service facility there; she doesn't. The Town clearly voted, and the Planning Board had the opportunity to change Commercial C.

L. Cummings reviewed the criteria, stating that they only had to show the applicant didn't meet one of the criteria. Granting the Variance would be contrary to the public interest; hardship was also an issue.

The remaining items were covered adequately. Hardship: the applicant stated he didn't have a use but that he could. There are other uses for the property, not making it critical and solely a requirement for that area.

MOTION: *L. Cummings moved to deny the Variance for the proposed truck service facility at 1533 Greenland Road. Second – R. Gross; three in favor, one opposed (Vice Chair Samonas). MOTION CARRIED*

2. Approval of Minutes: Tuesday, June 17, 2014

MOTION: *L. Cummings moved to approve the minutes of Tuesday, June 17, 2014. Second – R. Gross; all in favor. MOTION CARRIED*

3. Other Business

L. Cummings suggested that at the next meeting a procedure be developed for joint meetings. Vice Chair Samonas agreed, adding that joint meetings are beneficial. He invited the Planning Board to the August meeting to work on the procedures for joint meetings.

ZBA Adjournment

MOTION: *L. Cummings moved to adjourn at 8:51 p.m. Second – R. Gross; all in favor. MOTION CARRIED*

NEXT MEETING: ZBA

Tuesday, August 19, 2014 – 7:00 p.m., Town Hall Conference Room

Planning Board

The Planning Board continued their portion of the meeting at the request of the applicant. Chair Gerome asked for discussion of the waiver, reminding members to limit it to the front portion of the property. There was no discussion.

MOTION: *R. Winsor moved to grant the waiver for General Lighting Requirements (Site Plan Review Regulations, Section 5.10 – Lighting, Subsection 5.10(c) (1): Illumination levels at property boundaries will not exceed 0.2 foot-candles, except between residential properties.) to meet the plans dated April 25, 2014 and last revised 06.10.14, in accordance with the ZBA approval of a Variance to allow light over the property line at the rate of 1.6 foot candles at the street as it directly relates to the plan and traffic pattern. Second – D. Moore*

DISCUSSION: There was no discussion. Chair Gerome opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board.

MOTION: *R. Winsor moved to grant the waiver for General Lighting Requirements (Site Plan Review Regulations, Section 5.10 – Lighting, Subsection 5.10(c) (1): Illumination levels at property boundaries will not exceed 0.2 foot-candles, except between residential properties.) to meet the plans dated April 25, 2014 and last revised 06.10.14, in accordance with the ZBA approval of a Variance to allow light over the*

property line at the rate of 1.6 foot candles at the street as it directly relates to the plan and traffic pattern. Second – D. Moore; all in favor. MOTION CARRIED

MOTION: *P. Sanderson moved to continue 1533 Greenland Road to the Planning Board Public Hearing on Thursday, July 17, 2014. Second – R. Winsor; all in favor. MOTION CARRIED*

Planning Board Adjournment

MOTION: *R. Winsor moved to adjourn at 8:58 p.m. Second – D. Moore; all in favor. MOTION CARRIED*

NEXT MEETING: PLANNING BOARD

Thursday, July 17, 2014 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Board Secretary

Approved: Tuesday, October 21, 2014