



# ZONING BOARD OF ADJUSTMENT

## Town of Greenland • Greenland, NH 03840

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### MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, March 18, 2014 – 7:00 p.m. – Town Hall Conference Room

*Members Present:* Chair Chris Halligan, Liz Cummings, Ron Gross, Brian Hutchinson, John Samonas

*Staff:* Myrick Bunker – Building Inspector

Chair Halligan 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. Reorganization of the Board

Chair Halligan announced that this would be his last year on the Board, and would not be running for re-election next year.

**MOTION:** *R. Gross moved to appoint C. Halligan as Chairman, and J. Samonas as Vice Chairman. Second – L. Cummings; all in favor. MOTION CARRIED*

#### 2. Request for a Variance: 01 Bayside Road [Map R17, 3]

Owner: MMC Greenland LLC

Applicant: MJS Engineering, PC

*The owner and applicant are proposing to construct a fourth self-store building on a site that has 30.3% open space. Article IV, Section 4.2, Subsection CA(i) of the Zoning Ordinance requires 60% open space.*

Mike Sievert, MJS Engineering and representing MMC Greenland LLC, addressed the Board. Also present was Bill Goodison, Property Manager; the owner has signed all verification sheets. M. Sievert described the existing conditions of the lot: 5 acre parcel with approximately 300' of frontage on Bayside Road and 133' of frontage on Portsmouth Avenue; there is a 17,000 sq. ft. office/retail building and three self-storage buildings on the property. They are proposing to construct a 30' x 140' building on the impervious area. The project was originally done in 1996 and added to over time; the residential/commercial zone has changed since that time.

Expansion is needed to meet the demands of business and provide additional storage space. Outdoor storage of vehicles, including recreational vehicles, will be eliminated. The new building will clean up the area, property values will not be diminished. Open space will not be reduced any further, and there will be no additional pavement; they do not plan to extend the existing gravel area. The lane of travel on the top side of the property will be 25', which is adequate for emergency vehicles. Drainage calculations have not been done; a waiver from the Planning Board will be requested. The impervious surface is a mixture of gravel and recycled asphalt. Traffic on the site is expected to decrease with the elimination of outdoor vehicle storage.

Chair Halligan opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for comments. Several members of the Board agreed that the surface appeared to be fairly impervious and the area would be cleaned up. It was suggested that a contingency could be placed on the approval regarding external storage of vehicles.

L. Cummings was concerned with open space. Although the applicant indicated there would be no change in the open space, she felt there was, and referred to the definition in the Zoning Ordinance. She stated they were already below the Town's minimums on a non-conforming lot; a change could make it more non-conforming. L. Cummings was also concerned about drainage; there is a major change in the roof covering and wetlands are in close proximity.

There was additional discussion about open space. The ordinance states there needed to be open space; L. Cummings felt there was a reasonable relationship between open space on the lot and the ordinance. Although the lot is big it's crowded, and the applicant is proposing to make it more crowded with the additional storage building. The use is reasonable and there is no other location for the building. However, it doesn't have to be there. M. Sievert felt there was 30% open space plus the existing gravel, parking, etc. There was discussion about what was considered open space and what was included in the calculation; the gravel area was prepared for vehicle storage and cannot be included.

The only variance granted was to allow travel into the residential area to get around the building. Notes on the original plan regarding the existing edge of gravel area need to be removed. If the open area on the original design was depicted as gravel, the intent was to use the area. Removing vehicles and cleaning up the area was seen as a positive step by some Board members.

**MOTION:** Chair Halligan moved to deny the Request for a Variance for 01 Bayside Road, Map R17 Lot 3 as presented. Second – L. Cummings

DISCUSSION: Chair Halligan felt the applicant did not prove hardship. L. Cummings felt they changed unnecessary hardship; if the request was denied, the Board would have unreasonably affected the applicant. She felt there was not a fair and substantial relationship between the public and the private because one of the significant purposes used in the past was open space; the public wants open space. R. Gross reminded the Board the applicant was there due to the open space requirement; they were not requesting that. Putting an unfair restriction on the property use and the special conditions on the property don't exist; they are already below their minimum and decided 20 years ago. The proposed use is a reasonable one, and is being done now. They will be making a better use of the property, eliminating uses, and it will be a much better situation. J. Samonas added the Board didn't know what the Planning Board would require of the applicant, and would be an opportunity for that Board to improve the existing conditions. He agreed the applicant was not changing or asking for less open space than what currently existed.

**MOTION:** Chair Halligan moved to deny the Request for a Variance for 01 Bayside Road, Map R17 Lot 3, as presented. Second – L. Cummings; two in favor, three opposed. MOTION FAILED

**MOTION:** J. Samonas moved to approve the Request for a Variance for 01 Bayside Road, Map R17 Lot 3, as presented. Further, there is to be no external storage on site and notes on Plan C1, dated 02.27.14, pertaining to gravel in the hatched area and "Variance Requested" must be removed; Note 10 must be amended to indicate 50%. Second – R. Gross

DISCUSSION: J. Samonas stated that getting rid of the cars and any potential storage out back would be an improvement. Although the lot is used to the maximum, they found a location for a small building.

They are encroaching on open space that will never be less than that. He continued that this is an opportunity to clean up the property and make better use of the lot. He has faith that the Planning Board will be able to create a better situation within the property. The Building Inspector, responding to R. Goss, agreed that they will need to appear before the Planning Board due to expansion of non-conforming commercial use.

**MOTION:** *J. Samonas moved to approve the Request for a Variance for 01 Bayside Road, Map R17 Lot 3, as presented. Further, there is to be no external storage on site and notes on Plan C1, dated 02.27.14, pertaining to gravel in the hatched area and "Variance Requested" must be removed; Note 10 must be amended to indicate 50%. Second – R. Gross; three in favor, two opposed. MOTION CARRIED*

Items 3 – 6: 1533 Greenland Road [Map R21, 55 & 55A]  
Owners: Adrian Murphy, *et al.* and Clan Murphy Limited Partnership  
Applicant: Tighe and Bond

Chris Mulligan, Attorney, addressed the Board. Also in attendance were Rich Landry, Landry Architects, and Ken Mavrogeorge, Tighe and Bond. C. Mulligan requested that J. Samonas recuse himself from the discussion regarding 1533 Greenland Road. The proposed project is substantial and involves retail facilities including Dunkin' Donuts, which is a current tenant of J. Samonas and he would have a direct pecuniary interest in the outcome. J. Samonas responded that as a resident of Greenland for over 20 years, he was voted on the Board by residents to responsibly portray their views for the development of the Town. Dunkin' Donuts is a tenant under contract at this time; if they choose to leave, there are other tenants to move in that location. He respectfully denied their request to recuse himself, stating he could be fair and just in his decisions. It was the consensus of the Board that J. Samonas did not need to recuse himself, and they did not question his integrity. C. Mulligan stated that it was the appearance, and not the actual practice, but needed to be addressed.

C. Mulligan gave an overview of the site. They were seeking a Special Exception as well as a number of Variances to facilitate the construction of the mixed-use site. They are proposing to locate retail space on the front portion of the property abutting Rt. 33, and automotive services in the rear closest to Rt. 95. There is an agreement with Ryder Truck Rental to utilize one of the facilities at the rear that would include sales and leasing with a maintenance component. As part of the agreement with Ryder, upgrades to the sewer situation would be needed. The Travel America lot has a pumping station they would take over and upgrade, bringing the sewer line onto the site; it will be turned over to Portsmouth.

There are a substantial amount of wetlands on the southern portion of the property. Utility easements also exist on the lot: the PSNH easement runs the length of the property and severely restricts what can be done. In addition, there is a gas line that runs through the property that limits what they can do. Although it's a large lot, the available envelope for development is restrictive. The applicant is requesting a use variance and special exception for the automotive facilities at the rear of the lot. Setback variances are requested for Rt. 33 and wetland encroachments.

Travel America is adjacent to the proposed development. The automotive facilities proposed for the rear of the property would be a nice compliment to the existing facilities in the area. The buildable/useable space at the rear of the property is not big enough for box retail (Costco, BJ's, Sam's Club) nor is it appropriate for smaller retail because it sits so far back on the lot. Ryder is the most appropriate choice.

3. Application for a Special Exception: *The owners and applicant are proposing an auto service as part of their multi-use development. Article III, Section 3.6, Subsection CC L2 of the Zoning Ordinance only allows auto service facilities by Special Exception.*

Chair Halligan indicated the Board would want to discuss traffic. The applicant is proposing two automotive facilities in the rear of the property, one of which would be a truck repair facility. There is a possibility of connecting to Travel America at the rear, but has not been determined. There were questions regarding box trucks turning into the property with their trailers attached. R. Landry explained that a box truck is a single unit truck not a tractor trailer. There may be some tractor trailers on the site; Ryder does have them. R. Landry continued that Ryder is planning to consolidate facilities in Portsmouth and Salisbury as well as their executive offices in Exeter. Responding to a question from the Board, there are specific instructions in order to cross the gas line.

Automotive use is the most viable option for the rear of the property. The Board was told that there will not be a gas station available to the public; however, Ryder would be fueling their vehicles. Underground tanks for fuel storage will be needed. The Board also commented that the trucks accessing the rear would not be light trucks as stipulated in the Ordinance. The facility will be used for service and maintenance of their trucks as well as trucks that will be for sale and lease. There was discussion regarding the Table of Uses and automotive services. The Building Inspector told the Board that his interpretation was if you fuel only, you service only; several members of the Board disagreed.

L. Cummings noted that if the use was not specifically listed in the Table of Uses, it's not a permitted use. C. Mulligan asked for clarification on the Table of Uses, Section L 2.3, and how that does not apply to their request. Bulk storage of fossil fuel is not permitted on site. C. Mulligan felt bulk storage meant storage that will be transferred to the ultimate end user (another fueling station); that would not be happening in this case. The fuel stored at this site would be used for their vehicles. J. Samonas pointed out the end user would be the person renting/leasing from Ryder. C. Mulligan countered that bulk storage is before you get to the end user, you're storing it similar to a depot facility and then taking it to a place where it's going to be sold. Ryder Truck will have a storage tank approximately 12,000 gallons. L. Cummings noted that in the definition of "Automotive Service Station" there was no reference to the renting or leasing of vehicles.

The consensus of the Board was that the applicant did not fit the definition of "Automotive Service Station". They do fit the requirements in the Table of Uses, Section L 1; however, it must be light trucks, and it becomes a permitted use without fueling. If they are permitted with a Special Exception for a service station, the Planning Board can require all the protections that are needed for tanks in prime wetlands.

C. Mulligan clarified that the Special Exception was based on the denials by the Building Inspector, who countered that the denials were written based on the information he was given. Stating they are further along, C. Mulligan felt they could come back before the Board requesting the appropriate Variance. The applicant requested to withdraw their Application for a Special Exception.

**MOTION:** *L. Cummings moved to reject without prejudice the Application for a Special Exception for 1533 Greenland Road due to lack of applicability and it does not appear to be a Special Exception. Second – R. Gross; all in favor. MOTION CARRIED*

4. Request for a Variance: *The owners and applicant are proposing an auto service as part of their multi-use development. Article III, Section 3.6, Subsection CC L2 of the Zoning Ordinance prohibits*

*auto service facilities within one mile of an existing auto service station; currently there are at least four such facilities.*

The applicant withdrew their Request for a Variance.

5. Request for a Variance: *The owners and applicant are proposing to construct five buildings with associated parking within the vegetated buffer strip from wetlands contiguous with surface waters. Article XVIII, Section 18.8.2 of the Zoning Ordinance mandates a 25' vegetated buffer strip from wetlands contiguous with surface waters.*

The proposed construction does encroach into the wetlands and vegetated buffers. They do not feel it would be contrary to the spirit and intent of the Ordinance and would not alter the character of the neighborhood. The character of the neighborhood is defined by its proximity to Rt. 95 and Travel America. The proposed wetland incursions were calculated to minimize the impact. Mitigation systems have been designed in the plans: rain gardens and gravel wetlands will be installed to improve the treatment runoff into the wetlands. The developable land on the parcel is small relative to its overall size due to the amount of wetlands. Strictly complying with the vegetated buffer requirements would unreasonably limit the amount of workable land. The Commercial C Zone has been designated as an Economic Revitalization Zone by the State to encourage economic development. The overall project calls for a sewer upgrade that otherwise would not be available to the Town.

This is a very large lot with utility easements. There is also a PSNH corridor that limits the buildable area. The buildable area has been clustered, and maintaining the 25' buffer would not allow the development of the lot. This is a mixed-use commercial retail facility with proposed automotive uses. A number of mitigation elements have been added to the design. The area of encroachment is relatively small.

The impacted areas and edge of wet were pointed out to the Board. K. Mavrogeorge reminded the Board there are specific requirements for the gas easement. Space has been reserved at the rear of the lot for a potential septic system (Ryder Truck = sewer; no Ryder Truck = septic system). The reserved space does have an effect on the location of the road to the rear of the property. The road could possibly be moved if sewer is used.

Building location and size was discussed. If the building is moved forward 50' it would be out of the buffer but in the utility easement. J. Samonas suggested reducing the size of the building by half; it would be out of the buffer and easement. The Board was reminded that the parcel was difficult to develop due to available space. They are trying to utilize the buffer area by adding a rain garden and gravel area; the proposed impact on those areas will be utilized for mitigation by stormwater management of runoff. L. Cummings told the Board that the buffer zone can be a rain garden.

Road design and location was discussed. The design was done to reduce the need to relocate the utility poles. Requirements from the gas company further dictated the design. Sewer is an environmental requirement of Ryder Truck. Bringing sewer to Rt. 33 from the pump station on Travel America's property would allow for future connection by the Town.

L. Cummings reminded the Board that the Planning Board decides wetlands and the ZBA enforces wetland buffers. With creative placement of parking spaces, they could be out of the wetlands but not the wetland buffers.

Chair Halligan opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for discussion. The number of required parking spaces was discussed. R. Landry stated more parking might be added in the final analysis. If sewer is done, parking could be added to the proposed septic area. The building location, size and shape were discussed. Chair Halligan reminded the Board the variance before them was for the vegetated buffer. Easements were pointed out and briefly discussed.

**MOTION:** *L. Cummings moved to grant the Request for a Variance for 1533 Greenland Road for encroachment on the 25' vegetated buffer strip as presented. Second – Chair Halligan*

DISCUSSION: L. Cummings noted that the wetlands and wetland buffers have expanded over time. On the lot being discussed it creates hardship for a development of this size. The applicant has done well staying out of the wetlands with the exception of the corner of the rear building. They have done their due diligence trying to protect the wetlands. Angling the building would move the edge out of the wetlands, but not the buffer. The hardship is that there are many unique circumstances on this parcel. R. Gross felt there were other possibilities available to the applicant. He was concerned with snow removal and the proximity to the wetlands. J. Samonas agreed with R. Gross, adding the development at the rear of the property was excessive. He was also concerned about the number of trucks accessing the property and Travel America; the number of trucks Greenland accommodates may double because of the excessive development at the rear of the property. There are other uses for the property or a smaller development with the same use that would have less impact on the wetlands.

**MOTION:** *L. Cummings moved to grant the Request for a Variance for 1533 Greenland Road for encroachment on the 25' vegetated buffer strip as presented. Second – Chair Halligan; two in favor, three opposed. MOTION FAILED*

**MOTION:** *R. Gross moved to deny the Request for a Variance for 1533 Greenland Road for encroachment on the 25' vegetated buffer strip as presented. Second – L. Cummings; four in favor, one opposed. MOTION CARRIED*

6. Request for a Variance: *The owners and applicant are proposing to construct five buildings with associated parking within the structural setback from wetlands contiguous with surface waters. Article XVIII, Section 18.7.2 of the Zoning Ordinance mandates a 75' structural setback from wetlands contiguous with surface waters.*

The applicant withdrew their Request for a Variance without prejudice.

7. Request for a Variance: *The owners and applicant are proposing to construct three buildings at the front of the lot with associated parking within the minimum front yard setback. Article IV, Section 4.3, Subsection 2 of the Zoning Ordinance requires a 75' minimum front yard setback for property abutting Route 33 between the Portsmouth line and Tuttle Lane.*

The drive aisles, parking spaces and building on the front of the lot are within the 30' setback. There will be a dedicated right lane; the entrance to the development will be 800' from the Ocean Road traffic light. They have requested a traffic light, but don't meet the warrants for a light with truck usage at the rear of the lot. Board members were concerned about a left turn onto Rt. 33 without a traffic light. There will be 50' of green between the road and parking area; they are not encroaching on the right-of-way.

The applicant is looking for a similar relief to that of the movie theatre, which was granted a variance for 20' from the property line. C. Mulligan stated that without a variance, it would force an unreasonably small building envelope on large lot. The lot is approximately 2/3 wetlands and is burdened with utility easements that force the development envelope into certain areas on the lot. Special conditions of the property prevent proper enjoyment under the strict terms of the Zoning Ordinance, and that is unnecessary hardship. Strict compliance with the setback requirement on Rt. 33 would be unreasonable and would force the applicant into an unreasonably small development envelope. The proposed use at the front of the lot that the variance would facilitate is reasonable; they are permitted uses within the zone. The applicant has put together a thoughtful design to maximize the limited space available. Development of this property should be encouraged. The relief sought is minor in relation to the size of the lot.

J. Samonas questioned the size of the retail space parking: total stated was 50,600 sq. ft.; his total was 53,600 sq. ft. Parking calculations are important, and there would be a shortage in the front. J. Samonas reiterated the correct parking calculation was important based on the retail space in front. He continued that the fenced-in area on the plan was for retail items at the proposed Tractor Supply store (15,000 sq. ft.). The applicant is asking for a front setback of 30'. If that building was moved, the 15,000 sq. ft. could easily accommodate the 11,500 sq. ft. building and the square footage of the fast food restaurant. He felt it was excessive use in the front of the lot also. J. Samonas felt it was the excessive nature of the development driving the Request for a Variance not the size of the lot or the wetlands; it was the economics. He continued that a 30' setback could be abided by and still have a quality development. R. Landry countered that the constraints of the site make it expensive to develop. L. Cummings stated there are alternatives for setback.

K. Mavrogeorge stated that the parking calculations were due to the 90 seat restaurant.

Chair Halligan opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for discussion. R. Gross stated that the Planning Board and residents just voted to provide relief for this type of development. The change from 75' to 30' is significant and is a strong statement to what the Town would like. He was not comfortable with providing even less than what the Town approved. L. Cummings stated that the spirit and intent of the Ordinance in terms of the setback is to provide an area between the road and the development. Trying to preserve the rural area of Greenland, space is a consideration. Agreeing with R. Gross, she stated the Town just voted to approve 30'. She felt 12.5' was too close and the development was just too busy.

**MOTION:** *L. Cummings moved to deny the Request for a Variance from the 30' setback at 1533 Greenland Road. Second – R. Gross*

DISCUSSION: Although Chair Halligan was in favor of the development of this parcel, he felt it was bulging out a little too much. He continued that he would like to see it constricted a bit. He added that he didn't feel the development would work without a traffic light. J. Samonas felt it should be re-drawn in a way so it's conforming.

**MOTION:** *L. Cummings moved to deny the Request for a Variance within the minimum front yard setback at 1533 Greenland Road. Second – R. Gross; all in favor. MOTION CARRIED*

#### 8. Approval of Minutes: Tuesday, November 19, 2013

**MOTION:** *Chair Halligan moved to approve the minutes of November 19, 2013. Second – Ron; four in favor, one abstain (L. Cummings). MOTION CARRIED*

9. Other Business

There was no other business to discuss.

10. Adjournment

***MOTION:*** *L. Cummings moved to adjourn at 9:51 p.m. Second – R. Gross; all in favor. MOTION CARRIED*

NEXT MEETING

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

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: Tuesday, April 15, 2014