



ZONING BOARD OF ADJUSTMENT

Town of Greenland • Greenland, NH 03840

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, October 20, 2015 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chair John Samonas, George Baryames, Steve Gerrato, Brian Hutchinson

Members Absent: Liz Cummings

Staff: Myrick Bunker – 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. Requests for Variances: 1533 Greenland Road [Map R21, 55]
Owner/Applicant: Richard E. Landry, Jr. – ThurKen IV, LLC
 - The owner/applicant proposes to erect a 16'x45' two-sided billboard:
 - Greenland Zoning Ordinance: Article VI, Section 6.3, Subsection 6.3.19 –The referenced article states billboards are not permitted.
 - Greenland Zoning Ordinance: Article VI, Section 6.3, Subsection 6.3.5 – The proposed sign is 50' tall. The Ordinance states the maximum height of all signs shall be 20' above grade.
 - Greenland Zoning Ordinance: Article VI, Section 6.3, Subsection 6.3.7B - In the commercial zone, signs shall not be larger than 48 sq. ft. per side, except lots with multiple businesses where 60 sq. ft. is allowed; the proposed sign is 720 sq. ft.
 - Greenland Zoning Ordinance: Article VI, Section 6.3, Subsection 6.3.13 – The owner/applicant has indicated that the sign would not advertise businesses located on the lot. The Zoning Ordinance states signs advertising businesses not located in the Town of Greenland are prohibited.
 - Greenland Zoning Ordinance: Article VI, Section 6.3, Subsection 6.3.14 – The proposed billboard will be 50' tall and set back 5' from the property line. All newly constructed permanent signs must be located at least 15' from the edge of pavement or property line; the more restrictive shall apply.
 - Greenland Zoning Ordinance: Article VI, Section 6.4, Subsection 6.4.2A – The owner/applicant indicates no less than four free standing billboards. The referenced Ordinance states a single free-standing sign is permitted for each business or industry. Where two or more businesses share a lot or tract, a single free-standing sign shall serve the lot or parcel.
 - The owner/applicant proposes to erect a 14'x45' single-sided billboard.
 - Greenland Zoning Ordinance: Article VI, Section 6.4, Subsection 6.3.19 –The Ordinance states billboards are not permitted.
 - Greenland Zoning Ordinance: Article VI, Section 6.4, Subsection 6.3.13 - The owner/applicant has indicated that the sign would not advertise businesses located on the lot. The Zoning Ordinance states signs advertising businesses not located in the Town of Greenland are prohibited.
 - Greenland Zoning Ordinance: Article VI, Section 6.4, Subsection 6.3.7B - In the commercial zone, signs shall not be larger than 48 sq. ft. per side, except lots with multiple businesses where 60 sq. ft. is allowed; the proposed sign is 630 sq. ft.
 - Greenland Zoning Ordinance: Article VI, Section 6.4, Subsection 6.4.2A - The owner/applicant

indicates no less than four free standing billboards. The referenced Ordinance states a single free-standing sign is permitted for each business or industry. Where two or more businesses share a lot or tract, a single free-standing sign shall serve the lot or parcel.

Due to the absence of L. Cummings, the Board consisted of only four members. The applicant was given the option of continuing or tabling his application until a full Board was present; he would need a majority vote (three of four) to be granted the requested Variances. The applicant opted to proceed.

David Howard, Attorney at Bosen and Associates and representing the applicant, addressed the Board. Attorney Howard updated the Board, stating that the applicant had received a number of municipal approvals to develop 1533 Greenland Road as a variable use property that includes parking, retail, restaurants and commercial facilities. They were seeking relief from five sections of the Sign Ordinance to allow two free standing billboards on the site.

The proposed location of the billboards is the rear of the property, abutting I-95. They will not be visible from Rt. 33. R. Landry plans on leaving as many trees as possible as a buffer between the billboards and Rt. 33. The intention is to direct advertising to people travelling on I-95. Attorney Howard continued that according to RSA 674:33, R. Landry meets the criteria necessary to grant the requested variances.

Attorney Howard summarized the five criteria: the Variance will not be contrary to the public interest; the spirit of the Ordinance is observed; substantial justice would be done; the values of surrounding properties are not diminished; and, enforcement of the provisions of the Ordinance will result in an unnecessary hardship.

- *The Variance will not be contrary to the public interest and the spirit of the Ordinance:* The test for these criteria is whether or not the Variance would substantially alter the characteristics of the neighborhood, or health, safety and welfare of the public. There would be no change in the essential characteristics of the neighborhood, and the health, safety and welfare of the public would not be affected. The closest neighboring property is defined primarily as Commercial. The proposed billboards would be consistent with the neighboring use. In addition, the billboards will direct advertising toward travelers on I-95, it would not threaten the public health, safety and welfare of the residents of Greenland. The applicant will be leaving trees as a significant buffer around the billboards so that Rt. 33 is not affected.
- *Substantial justice would be done by granting the Variance:* This criteria consists of a balancing test. It asks the Board to determine whether the hardship upon the applicant outweighs any benefit to the general public by denying the Variance. The proposed billboards would allow the applicant to enhance the commercial return on a very challenging lot and alleviate the pressure to develop the back portion of the lot into additional commercial space. Due to utility easements and restrictions, it's necessary to use the lot in a way that will allow multiple uses in a relatively small building envelope on a large lot.
- *The values of surrounding properties will not be diminished:* The closest property affected by this project is the truck stop, which is an existing commercial enterprise. The proposed billboards will not harm that or other neighboring properties. The property also abuts I-95, which will suffer no adverse effects.
- *Enforcement of the provisions of the Ordinance will result in an unnecessary hardship:* More specifically, would literal enforcement of the Ordinance result in unnecessary hardship on the applicant? The analysis is based on the special conditions of the property, whether the use is reasonable, and the relationship between the intent of the Ordinance as applied to the property, and whether or not it's fair. There are special conditions associated with the property that prevent

proper enjoyment under the strict terms of the Zoning Ordinance and, therefore, constitute an unnecessary hardship if the Variance isn't granted. Special conditions include its large size, massive wetlands, and utility easements; the development area is a narrow corridor.

At the request of Chair Samonas, R. Landry explained the plan in detail. Allowing the billboards on the rear of the property would drastically reduce the amount of commercial development that would be done in that area. R. Landry stated that he would agree to limit, significantly, what can be done on the rear property. They have looked into the possibility of constructing a multi-story office building up to 60,000 sq. ft.; the footprint would be approximately 15,000 sq. ft. There could be an additional 10,000 sq. ft. building. Responding to Chair Samonas, R. Landry stated it would be allowed with the existing uplands and setbacks, and could be done without Variances within the current zoning. He also stated that he has MSC Engineering doing a plan for two separate condos on the back lot. There are soils in the back of the lot that work for a leach field on the rear property.

Attorney Howard continued that the massive wetlands require the development of the property to be clustered in the northern section. There are existing utility easements that burden the property, and limit the overall space and scope of development. Strict compliance with the sign restrictions would eliminate a significantly and relatively benign commercial opportunity for the applicant. In addition, it may encourage further, and more intense, commercial development on the back of the property. The billboards constitute a reasonable use within the commercial zone. They may advertise non-local businesses and products.

In closing, Attorney Howard stated that there is a very reasonable use for free standing billboards given the property's location within the commercial zone and being adjacent to the existing truck stop and I-95. There is also no fair and substantial relationship between the intent of the Ordinance as applied to this property. The applicant has designed a project to maximize the utility of the property; it will greatly contribute to the Town's tax base. The purpose of the sign ordinance is to reduce distractions and obstructions that may contribute to traffic accidents as well as enhance the scenic beauty of the landscape. This proposal does not compromise that in any manner. Again, the trees will provide a significant buffer between the billboards, I-95, the Town and Rt. 33.

The "hardship", as stated and in the narrative included in the packet, would be the size of the parcel and the wetlands, and whether the property can be substantially developed as is. Applying the strict terms of the Zoning Ordinance, there is an unnecessary hardship because the applicant cannot get the economic value of the property. Attorney Howard added that if the Variances were denied, further development of the rear of the property has been proposed. R. Landry added that if he has to fully develop the back of the property, traffic could become a problem because there is only one access point. Asked by Board members about the possibility of a light being added, R. Landry responded that it would depend on the uses in the back. He continued that when the traffic study was done, they were not close enough to warrant a light even though it included 25,000 sq. ft. of retail. If the Variances were not granted, they would not be able to utilize the property in the best manner.

Chair Samonas clarified for the Board that R. Landry committed to less development in the back of the property if the Variances were granted. S. Gerrato explained to the applicant and Attorney Howard that the Zoning Ordinance was voted on and approved by residents in the Town. The rules were the residents will, and the Zoning Board was there to uphold those within reason. The residents scream loud "no billboards". R. Landry's response to S. Gerrato's comment was that the point of Variances was there may be a special situation that doesn't fit the intent of the Ordinance. When the Town residents voted on this Ordinance, they didn't want to see billboards that were visible everywhere. Given the unique situation of this lot, there would be basically no impact on the public and still meet the intent of

the Ordinance. Questioned about visibility from Rt. 33, R. Landry explained that the location would be 700' to 800' from the road and behind a buffer of trees; it would be unlikely they would be seen from Rt. 33. Members of the Board were concerned that the billboards may be visible from within the community at some point, and they didn't want that. It was noted that they would be visible from the Ocean Road Bridge.

The proposed billboards would be static. There would not be any strobe lights, flashing lights, LED lights, etc. They would be vinyl faced, static billboards. The larger billboard will have north/south visibility; the smaller will be visible to northbound traffic only. The larger billboard is a single double-sided billboard. The smaller one is single sided. The size and height are set to industry standard. R. Landry stated they meet the State's criteria.

Chair Samonas opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board. Chair Samonas stated that the size of the parcel doesn't prove hardship; that has been the size of the parcel for a very long time. The parcel is defined by setbacks, wetlands and minimum sizes. The Zoning Board has approved and denied many uses on that property through what is allowed by the Zoning Ordinance and what may be special hardships. Chair Samonas didn't feel the size and wetlands were the issue proving hardship. Being limited by the uses of the property would be more of a hardship. He felt that the applicant had been creative with the development of the parcel. Chair Samonas didn't feel there was enough of a hardship, citing other properties in the area with more wetlands. The limitations set by residents are important; members have received a great deal of feedback due to the renovation of an existing billboard.

G. Baryames also agreed there was not enough hardship. The applicant has shown that the property can be developed and there are other opportunities for development in the rear. Chair Samonas noted that developing the property with allowed uses could possibly increase traffic on Rt. 33.

Attorney Howard stated that height of the billboards may be an issue. It should be taken into consideration that the billboards will be abutting I-95 in a commercially zoned location. The applicant is also leaving as many trees as possible for buffering. R. Landry told the Board that the State felt that based on the layout, it would meet their criteria but they would need approval from the Town. Attorney Howard noted that the Variances could be granted with contingencies or limiting the height of the billboards. R. Landry added that he would be willing to do one billboard rather than two. He questioned if residents had the choice between a use that generated zero traffic and a use that generated "xx" number of trips per day on that site, which they would prefer. Chair Samonas suggested he survey the residents and let the Board know the results. S. Gerrato suggested a petitioned warrant article could be done to change the zoning. G. Baryames pointed out that buildings on the lot would generate more tax revenue for the Town than billboards. The Board did acknowledge that there will impact on traffic, and possibly emergency services, if the property is further developed.

MOTION: *S. Gerrato moved to deny all Requests for Variances for billboards at 1533 Greenland Road [Map R21, 55] as submitted. Second – G. Baryames*

DISCUSSION: Chair Samonas clarified that the Board agreed that the request was too intense. S. Gerrato felt that residents were being very vocal about no billboards.

MOTION: *S. Gerrato moved to deny all Requests for Variances for billboards at 1533 Greenland Road [Map R21, 55] as submitted. Second – G. Baryames; all in favor. MOTION CARRIED*

DRAFT: SUBJECT TO CHANGE

2. Approval of Minutes: Tuesday, August 18, 2015

MOTION: Chair Samonas moved to approve the minutes of Tuesday, August 18, 2015. Second – B. Hutchinson; all in favor. **MOTION CARRIED**

3. Other Business

Chair Samonas commented that he liked the new equipment being used for presentations.

4. Adjournment

MOTION: S. Gerrato moved to adjourn at 7:45 p.m. Second – G. Baryiames; all in favor. **MOTION CARRIED**

NEXT MEETING

Tuesday, November 17, 2015 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: 