

Town of Chesterfield, New Hampshire
Chesterfield Zoning Board of Adjustment (ZBA)
Meeting Minutes –December 15, 2022
Town Offices, Chesterfield, NH

CALL TO ORDER:

The meeting of the Chesterfield Zoning Board of Adjustment (ZBA) was called to order at 6:30 p.m. by Kristin McKeon. Members present: Kristin McKeon, John Zannotti, Nate LaChance, Alternate Joseph Brodbine, Alternate Deb Livernois, and Selectboard Representative Gary Winn. Also present was ZBA Secretary Jennifer Keating.

ABSENT: Joe Hanzalik

Alternates Joseph Brodbine and Deb Livernois were seated tonight.

OTHERS PRESENT: Matt Bombaci, Robert Trickett, Jeff Scott

MINUTES:

The meeting Minutes of October 20, 2022, were considered. **Motion** was made by Brodbine to approve the meeting minutes as amended. There was a second to the motion by Zannotti and no further discussion. All were in favor by roll call. ***Motion passed.***

PUBLIC HEARINGS

Public Hearing opened at 6:45pm

Aubuchon Realty Company is requesting a variance from Article II, Section 206.5A, Parking Area Setback Requirement, and Article IV, Section 400.1, the Number of Parking Spaces Requirement. The property is located on the Southwest Section of Stow Drive and Franklin Pierce Highway, Chesterfield (Tax Map 12, Lot A1.21) in the Commercial/Industrial District.

Matt Bombaci, a representative for the applicant, presented the plan. The applicant is hoping to build a retail store on the property. It is a corner lot that has an isolated wetland area that they are trying to preserve. The project is a 10,500 square foot retail store, potentially a retail store, hardware store, or auto parts store. He stated that the regulations would require 65 parking spots in this space, but the applicant does not believe that more than 35 parking spots would be required. He stated that only one store would be in the building. The request is based on the applicants experience with previous buildings. Peak parking demand for various uses have been performed.

Livernois asked how many would have handicap access. Bombaci answered two spaces have been designed to be ADA spaces.

Bombaci showed that the Zoning required property would fit on the property, but they would prefer not to in order to preserve the area.

Brodbine asked about the loading and unloading areas. Bombaci showed the proposed areas on

the plan. Brodbine said that he believes this in violation with 400.2. Bombaci said while this a conceptual plan, it would be included in the final site plan presented to the Planning Board. The variance would allow for more landscaping and greenspace on the lot, while reducing the impervious coverage and not disrupt the wetland.

The section variance requested is for the front setback. Bombaci showed a plan that has a 10 foot setback from the road. He explained that this is because they are trying to reduce the wetland impact and allowing them to maintain the wetland environment to the best of their ability and protect more wooded areas. Bombaci said they will be submitting a plan with NHDES regarding the plans.

Livernois asked if the building could be oriented differently to impact the wetland less. Bombaci stated that it has been discussed, but he does not believe that it would be appropriate for the location as far as the aesthetic purposes. Brodbine asked if the building could be smaller. Bombaci stated that that Aubuchon has done research regarding rental candidates.

Bobby Trickett from Aubuchon Realty stated that this square footage is necessary in order to make the project viable. A smaller building would not allow them to get the rent that they need in order to cover the costs associated with the project.

Zannotti stated that any approval for variance stays with the property. McKeon stated that it can be conditional based on ownership as well. Bombaci said that the applicant would be comfortable saying that it needed to be one of the three uses outlined in the application in order for the variance to apply.

Bombaci stated that the applicant has had a conceptual consultation with the Planning Board with the same basic site plan.

Brodbine asked about the loading area. Bombaci said that while the plan does not show it, he is confident that it will fit without encroaching on the setback.

McKeon asked if there was any public comment. Jeff Scott asked how many trips per day would be to the site. Bombaci stated that the estimates are about 300 trips per day. Scott asked when would traffic become an issue. Brodbine stated that that would be handled by the Planning Board.

Brodbine mentioned that this application may have potential to be a joint meeting with the Planning Board.

Bombaci said that the applicant would be happy to have a variance that is conditional only upon Planning Board approval. Livernois said that she would either like to have a joint meeting or granting a variance that is very detailed and outlines what has been seen on the plan.

Zannotti asked if NHDES has looked at the plan. Bombaci said not at this time, however when they do, they need to show that they have done everything that they can to minimize the impact

to the wetland. Livernois asked about the square footage for the wetland, Bombaci stated that it is about 8,000 square feet.

Trickett stated that they would like to get in front of the state as quickly as possible.

Livernois asked if this was two separate questions that should be considered. Brodbine answered yes.

Zannotti referenced the parking memorandum that the applicant provided. Zannotti asked what sort of building would require more parking. Bombaci said that for example, a grocery store. He said that the applicant would be comfortable stating in the variance that if it is not one of the stated uses, that it would require a new variance.

Livernois asked if there was enough space to have the 65 spaces if there was not a wetland. Bombaci answered yes. Bombaci stated that he believes that preserving the greenspace and impervious coverage is important for the town and the community, so minimizing the parking seems to make sense.

McKeon stated that her biggest problem is that they do not even know what the retail store is and what it would require.

Brodbine said that he would feel more comfortable filling in the wetland and not having the limited buffer in the front of the property.

Zannotti asked why the ZBA would need to approve the size of this building. Bombaci stated that is a permitted use and permitted size in the commercial zoning board.

McKeon stated that this variance seems to be predicated on how important the NHDES deems the wetland to be.

McKeon said that she is trying to wrap her head around the application. She would like to continue the application to January so that she could get more information.

Brodbine asked if they would consider a joint meeting with the Planning Board. Zannotti said that he would not like to make a variance decision in a joint meeting and he would like the ability to deliberate amongst the board. He said that the variance is the variance request and the ZBA board can make a decision.

Livernois said that her questions are more about the wetland. Bombaci said that the applicant is under the obligation to protect the wetland to the best of their ability.

Zannotti asked what new information would the board gain between now and the next meeting. McKeon said that she would like to lay out the potential conditions before she was willing to consider the variance and that is why she would like to continue.

Zannotti made the motion to deny the application for the variance submitted for Article II,

Section 206.5A to permit a 10-foot front setback where a 50 foot front setback is required for the building and/or parking lots. He made the motion to deny the application because the application clearly shows that there is sufficient room to move the building and required 65 parking spaces 30 feet further to the rear of the property. This movement would then require ZBA acceptance of approximately a 40-foot setback on Stow Drive.

Further, it is noted that acceptance of this variance would permanently set the record that the decision would be carried with the property forever.

Utilizing the 5 established criteria, the following is submitted:

- 1. The variance is contrary to public interest since it would negatively impact the aesthetics and/or the public safety.*
- 2. The variance is contrary to the intent of the ordinance to preserve the welfare and safety of the town since the application recognizes the future wetland disturbance is possible should the need be required.*
- 3. The variance is not consistent with the intent of the ordinance to preserve the character of the town. As stated in the property variance application, further wetland disturbances is proposed should more spaces be required.*
- 4. The variance may diminish the values of the surrounding properties which are in compliance with the ordinance.*
- 5. A. a. Since the proposed parking Variance recognizes that there will be wetland disruption, there is no special condition on this property which prevents compliance.*
A. b. The proposed retail space is reasonable.
B. No unnecessary hardship exists.

Note: There is sufficient land available to allow compliance with the 50% structure and 70% impervious requirements of 206.4 C.

Livernois seconded the motion.

Brodbine stated that he does not believe that the 10 foot setback is for safety, but he is against it for the aesthetic value.

McKeon stated that she thinks that 2 and 4 could be removed from the motion completely.

Bombaci stated that if the ZBA would like a landscape plan, the applicant would be happy to provide them.

Bombaci stated that they would be willing to present more information to better present the information if the board does not believe that they have met the criteria.

McKeon asked if the wetland was a special condition. Bombaci said that they have a wetland evaluation available if the board would like to review it. McKeon stated that if the applicant has to work around the wetland and the ZBA does not grant the variance, it could render the lot unbuildable. Brodbine stated that a retail location is not the only use for the property.

Brodbine said that if the state denies the application to fill in the wetland, it is new information

that the applicant could reapply with.

Livernois asked Bombaci how long it would take to have the state review the information.

Zannotti stated that the board is not making the property less valuable, the location of the wetland is making the property less valuable.

McKeon said that she would prefer to continue the hearing and ask for more information on the wetland and what the state would look at before she made a decision. Brodbine said that he was not sure what new information could be gained.

McKeon said that there could be a condition added that if the state denied the ability to fill in the wetland.

The board took at 5 minute recess at 9:10.

The hearing resumed at 9:15.

Zannotti made the motion based on the application to deny the application because the application clearly states that there is sufficient room for the proper number of parking spaces "should they be required." Further, it is noted that acceptance of this variance would permanently set the record that 35 parking spaces are allowed and the decision would be carried forward with the property forever. Additionally, the spaces proposed do not designate separate spaces required for deliveries, loading and unloading per 400.2.

Utilizing the five established criteria, the following is submitted:

- 1. The variance is contrary to public interest since full compliance is possible should they be required in the future.*
- 2. The variance is contrary to the intent of the ordinance to preserve the welfare and safety of the town.*
- 3. The variance is not consistent with the intent of the ordinance to preserve the character of the town.*
- 4. The variance may diminish the values of surrounding properties which are in compliance with the ordinance.*
- 5. A. a. Since the proposed variance recognizes that there will be wetland disturbance, there is no special condition on this property that prevents compliance.*
 - A. b. The proposed retail space is reasonable.*
 - B. No unnecessary hardship exists.*

Note: There is sufficient land available to allow compliance with the 50% Structure and 70% Impervious requirements of 206.4C.

Livernois seconded the motion.

Brodbine asked how the variance is contrary to public interest. He thinks that going forward, site plan reviews would be covered by the Planning Board. McKeon said that the ZBA would need to be very implicit in stating that if anything changes (ownership or use), that the variance would be

null and void.

Brodbine said that he is more hung up on number two and feels uncomfortable cutting the parking requirements nearly in half. McKeon states that she would like to know what the intent of the ordinance actually is. It is not in the purview of the ZBA to decide if the ordinance is reasonable. Livernois states that she thinks that the ordinance is very unfortunate.

McKeon commented that she believes that the ordinance is not in compliance with the Master Plan.

McKeon asked the board if there is a special condition on the property.

Livernois said that she would like to add a provision that if the NHDES denies the application, that the applicants are able to resubmit a variance application.

McKeon said that if the wetlands impact is great enough that it is a severe economic impact and they can come back before the board. Bombaci said that he would be happy to represent the application with further information if the board requested it.

Zannotti stated that the application already showed that the 65 parking spaces can fit on the property.

McKeon said that if the applicants find that they cannot impact the wetlands, she believes that it a different situation and she would like to add a note to the decision. If the wetlands become a bigger issue, she wants the applicant to be able to come back in front of the board. She thinks that the wetland is impacting the property.

Bombaci said that the applicant would like to provide the wetland report to the board.

Trickett commented that the property has been on the market for two years as an eyesore.

McKeon said that if the board makes a decision and if the state does not approve the filling of the wetlands, then it is very different application in her eyes. She also thinks that if the wetland mitigation is cost prohibitive, they should be able to reapply as well.

LaChance asked if the board could grant the variance, and say that if the state says that they can fill the wetlands that the variance is no longer granted. McKeon stated that this may be more difficult for the applicant in the long term.

Bombaci stated that if the parking request was denied, the hardship for the applicant would be enough to not move forward with the project, so he would like to request a continuance. This will allow him time to present alternative concepts, bring additional information on the wetlands, a wetland impact study, and show additional hardships on the property.

McKeon said that in order to allow a continuance, the motions on the table would need to be put

on hold. She noted that the motions could be pulled forward to the next meeting.

McKeon said that she would like to add the following to the motions: If it is found that the wetlands impact is such that the property can not be developed without variance then the applicant can reapply with the application without it being considered a second bite of the apple.

McKeon asked if the board would like to continue past 10pm. The board unanimously said yes.

Zannotti asked if the vote could be tabled and continued at the next meeting. Winn said that a motion to table would be appropriate.

Livernois made the motion to continue the meeting on January 19 because it is after 10pm. Brodbine seconded the motion. Motion passed unanimously.

FOR DISCUSSION

OTHER BUSINESS

Lion's Club

Gary Winn announced that on February 12, 2023, the Board of Selectman is giving the board the opportunity to go to the Lion's Club Breakfast as a thank you for their service.

2023 ZBA Members

Gary Winn asked if Deb Livernois would be willing to be a full member of the board instead of an alternate going forward. She said that she would. It will be discussed at the next Selectboard meeting. It was noted that the ZBA still needs alternates.

Next Meeting: January 19, 2023

***Motion** to adjourn was made by Livernois. McKeon was a second to the motion and no further discussion. All were in favor by roll call. **Motion passed.** Adjournment occurred at 10:04 pm.*

Respectfully Submitted,

Jennifer Keating
ZBA Secretary

Approved By:

Chair

Date