

Town of Chesterfield, New Hampshire
Chesterfield Zoning Board of Adjustment (ZBA)
Meeting Minutes –January 19, 2023
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 Joe Hanzalik. Members present: Joe Hanzalik, John Zannotti, Nate LaChance, Deb Livernois, Alternate Joseph Brodbine, and Selectboard Representative Gary Winn. Also present was ZBA Secretary Jennifer Keating.

ABSENT: Kristin McKeon

Alternate Joseph Brodbine was seated tonight.

OTHERS PRESENT: Matt Bombaci, Robert Trickett, Eamon Moran

MINUTES:

The meeting Minutes of December 15, 2022 were considered. **Motion** was made by Zannotti to approve the meeting minutes as amended. There was a second to the motion by Brodbine and no further discussion. All were in favor by roll call. ***Motion passed.***

PUBLIC HEARINGS

Public Hearing opened at 6:45pm

Continued Hearing

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 more information on the plan. A TES Environmental Consultant delineated the wetland as a level 4, and a potential vernal pool habitat. A boundary survey and a topographic survey have also been performed. NHDES's Wetland Permit Reviewer and the Chief of Permits at the Army Corp of Engineers have been consulted as well. It would be considered minimal impact application because it would be under 3,000 square feet of wetland disturbance. If it was over 3,000 square feet of wetland disturbance, there would be a much lower likelihood that the application would be accepted. If the Army Corp issued wetland impact fees, it could be \$100,000-140,000 or greater. Additionally, NHDES noted that there would be significant impact to the wetland if the buffer area of the trees around the wetland were removed.

Bombaci stated that with the feedback that they received, they have created a new site plan, including utilities and a dedicated loading zone. Additionally, a landscape plan of the project was submitted, utilizing 3–4-foot shrubs as well as shade trees every 30-35 feet. Livernois asked where the sign would be located. Bombaci noted where a sign would be on the plan.

Bombaci showed IDE parking information that showed that the location would support the number of parking places that they have requested.

Zannotti asked if the wetland was man made. Bombaci stated he was unaware. Eamon Moran, the president of the Aubuchon Realty Company, stated that there are trees growing in the wettest areas of the wetland, making him think that it was at least not created within the last 20-30 years.

Zannotti noted that the plan is encroaching onto over 2,900 square feet of the wetland.

Bombaci spoke to the number of parking spaces that they are requesting. IDE information has stated that the peak parking demand would be 30-32 spaces. He stated that this would allow for less impervious coverage on the property and would allow the applicant to keep more of the wetland area and keep more wooded areas. The wetland area prevents the applicant from building the required number of parking places, he noted that strict adherence of the zoning ordinance would prevent the applicant from developing the property in a way for the permitted use. The variance would also not change the character of the neighborhood.

Bombaci explained that the applicant is also asking for relief from the 50' setback. He noted that there would be 32' between Stowe Dr. and the edge of the parking lot. They would plant landscaping as well as a wooden guard to prevent cars from accessing Stowe Dr. anywhere other than the driveway. Without the waiver, this project would not be able to move forward, because the wetland does not allow the project to be located in another location on the property, he said. There would also be a full buffer zone along Route 9.

Livernois asked if the building could be any smaller. Moran stated that the retail need of a merchant is at least 10,500 and going smaller would be prohibitive. Additionally, he said that in order for the project to be economically feasible for Aubuchon, it would need to be that size.

The public portion of the hearing was closed at 7:52.

At the December 15, 2022 meeting, the following motion was tabled: *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 because 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.

The board reviewed this motion in relation to the new information. Zannotti stated that he would like to amend the motion to read:

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.

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 not consistent with the intent of the ordinance to preserve the character of the town.*
- 3. The variance may diminish the values of surrounding properties which are in compliance with the ordinance.*
- 4. Since the proposed variance recognizes that there will be wetland disturbance, there is no special condition on this property that prevents compliance.*
- 5. a. 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.

Brodbine stated that he does not believe that they have the ability to have the proper number of spaces. Bombaci confirmed that there was not enough space after they had consulted with NHDES. Bombaci stated that there is a unique hardship that does not exist for the other properties in the area.

Zannotti made the motion to withdraw the motion, Livernois seconded the motion. Motion to withdraw the motion passed unanimously.

Brodbine said that he had informally spoken to the Planning Board about the reasoning behind the number of Parking Spaces. He stated that it pre-dated everyone on the Planning Board. He states that the ordinance seems clear that providing ample parking is clearly within the spirit of the ordinance. He also thinks that it is contrary to the public interest because ample parking would be required. Brodbine stated that he has reached the conclusion that this may not be an appropriate lot for this particular project. He said it was a great presentation and a good looking

building, but he can't rationalize it against the ordinances.

Zannotti said that the wetland is making the lot very difficult to build on.

Livernois said that all of her questions regarding the wetland from the last meeting have been answered. She thinks that the property does seem to have a hardship on a building this size. Hanzalik stated that he understands that this is the size needed for a lot of this size. Zannotti stated that there are a number of other applications that this property may be appropriate for that do not require a variance.

Brodbine made the motion that the board deny the variance for 400.2, the Number of Parking Spaces for the following reasons:

- The variance is contrary to the public interest because the town zoning ordinance greatly exceeds the ITE study presented in the Bohler Document (dated January 12, 2023) that was an 85% percentile of three locations and it would have adequate parking that town requires.
- The intent of the ordinance was to have adequate parking, this proposal would have barely adequate parking according to studies shown.
- It would not be an extraordinary hardship. The hardship only exists because of the size of the building that the applicant is placing on the lot.
- The proposed use is not reasonable, because it is too large a building and too much impermeable area for the lot.
- The property could be used, it can just not be used for this specific use.

LaChance seconded the motion.

The board voted on the motion. Four affirmatives. Livernois opposed. Motion to deny the application passed.

At the December 15, 2022, meeting, the following motion was tabled: 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.

The board reviewed the motion, and assessed it based on the new information that Bombaci had provided.

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.

Utilizing the 5 established criteria, the following is submitted:

1. The variance is contrary to public interest since it would have negative aesthetic value.

2. 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 in the future.

3. 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 amendments to the motion. The amendments to the motion were accepted unanimously.

The board voted on the motion. Motion was unanimously denied.

Brodbine made the motion to deny 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 because the variances would be contrary to the public interest because the ordinance states that consideration should be given to the character of the town and the overcrowding of the land. The ten-foot set back set back would not accomplish this. The spirit of the ordinance would not be observed

because the ordinance is to provide reasonably sized setback.

Zannotti seconded the motion. Motion to deny the variance passed unanimously.

Moran stated that he believes that the Zoning Ordinance should be addressed because 65 parking spaces for the building was unlike any other town that he had ever worked for and no other town had ever asked for more parking that has been required.

FOR DISCUSSION

Election of Officers

This was tabled until the next meeting because McKeon was not in attendance.

Advertising for Public Hearings

It was advised that the Planning Board now advertises on the website for public hearings, in lieu of in the newspaper. Brodbine commented that he thought that was a wise move for the Zoning Board as well. Hanzalik agreed.

Zannotti made the motion to change the Rules of Procedure to read:

X. Public Notice

A. Public Notice of public hearings on each application shall be given on the Town Website and shall be posted in two (2) public places including the Chesterfield Town Office not less than five (5) days before the date fixed for the hearing.

Livernois seconded the motion. Motion passed unanimously via roll.

OTHER BUSINESS

Next Meeting: January 19, 2023

***Motion** to adjourn was made by Hanzalik. Livernois was a second to the motion and no further discussion. All were in favor by roll call. **Motion passed.** Adjournment occurred at 8:31 pm.*

Respectfully Submitted,

Jennifer Keating
ZBA Secretary

Approved By:

Chair 

Date 4/20/23