

**ZONING BOARD OF ADJUSTMENT MEETING
WEDNESDAY, MAY 5, 2004 MINUTES**

Members present: Chris Dunne, Steve Bluhm, Roland Seymour, Kent Finemore, Ken Gorrell. Alternates present: Michelle Davis and Dave Liberatore. Also present: Mike Izard, LRPC and Eliza Conde, Secretary.

Kent reminded that board that there have been zoning changes and Mike Izard reviewed the newly adopted ordinances and amendments.

A request to change the agenda to address #6 first was received by the board. After polling the board and audience for any objections to the change, Chairman Finemore agreed to accept the request.

Roland Seymour moved, seconded by Chris Dunne to accept the minutes of Oct. 22, 2003 as read. Motion passed.

Ken Gorrell moved, Roland Seymour seconded to accept the minutes of December 16, 2003 as read. Motion passed.

S.J. Equipment, LLC: Application for a variance to the terms of Article 7, Table 2 to construct buildings and parking areas for wholesale and retail sales and repair of new and used construction and forestry equipment within the 100' natural buffer zone on I93 in the Commercial/Industrial zone off Forrest Road, (Tax Map U5, Lot 7). Mike Izard presented his review of the application and its intent. There has been no site plan presented to the Planning Board yet and the applicant acknowledges the new I93 buffer requirements but has requested a variance to the 100 foot buffer requirement. This application is specifically related to Article 7, Table 2, Note G only, requesting a variance to the newly adopted 100 foot undisturbed buffer zone. Roland Seymour inquired about the status of the variance that has been granted for the property. Mike Izard responded that this is an entirely different issue, requiring a variance. Kent Finemore read, for the record, a letter submitted by SJ Equipment with the application. Mr. Finemore explained that the ZBA has previously granted a variance for the frontage and a special exception for the use.

Steve Bluhm moved, seconded by Chris Dunne, to accept the application as complete. Motion passed.

Atty. James Steiner, representing SJ Equip., stated that this involved the issue of grandfathering because of the impact of the new ordinance on the frontage and access. As the frontage has already been granted a variance to the frontage requirement, that variance is grandfathered. Not allowing access to a property by a zoning change renders the property useless and creates a taking of property. The variance process allows the town to address such an issue. Atty. Steiner stated that the issue is the impact the 100-foot buffer has on this lot, not whether to keep the buffer intact. The road was moved

closer to I93 in order to reduce the impact to the wetland areas and also keeps the road further from the abutter's homes. Not allowing a variance to this undisturbed buffer would make it impossible to access this property and render it useless. S. J. is willing to agree to not remove vegetation of the westerly side of the driveway so that the only disturbance would be the actual road. The planned building sites are not within 100 feet of I93, therefore not affecting the buffer zone. SJ Equip. cannot get into the property without constructing a road within the buffer.

Atty. Steiner noted that this is in the Commercial/Industrial zone and without the variance it cannot be accessed and therefore must have the variance to avoid a taking of the property.

Kent Finemore reminded the board that it is only discussing the variance to the buffer zone requirements.

Public hearing opened: Kent Finemore read a letter from the Conservation Commission recommending approval of the variance for the first 396 feet from the entrance and suggesting that no vegetation be removed except for the roadway up to 30 feet wide. Howard Mallory, abutter expressed concern about the equipment being so close to his property. Kent Finemore responded that the Planning Board would be responsible for the location of the road and buildings. Mr. Mallory requested that there be a buffer behind his property so that he can't see or hear the equipment and he is concerned about his property value being diminished. Kent Finemore pointed out that the Con. Commission's recommendation puts the road closer to the abutters at the beginning.

Randy Barclay asked if this variance is passed allowing less buffer on the I93 side, would there then be more buffer behind the neighboring houses? Kent Finemore explained that the Planning Board has not approved any site plan and that the issue at hand is only the variance to the 100 foot undisturbed buffer zone. Joanne Mallory expressed concern about the heavy equipment and the entrance being near their property.

Paul Loan asked how the buffer affected his property as his house is within 100 feet of I93. He was given a copy of the ordinance. Peter Knapp stated that the buildings would be seen from both the highway and the homes. He asked that the board not keep changing the rules and granting variances. He supports the buffer zone and asked that the board not grant this variance.

Christopher Hunt commented that there had been much discussion on this amendment by the Planning Board before presenting it to the voters who supported it by a great majority. The Planning Board and Board of Adjustment need to respect the voter's decision and grant variances only when necessary. The Conservation Commission felt that the additional impact on the wetlands was not as important as keeping the buffer intact. The principle of the buffer is that 100 feet of tree vegetation reduces road sound by 50%. Mr.

Hunt agreed that the property owner needs access to the property, but if a variance is passed there should be conditions included. If a variance is considered it needs to be specific and it is important to keep the integrity of the buffer zone.

Randy Barclay agreed that the town voted to create the buffer zone and that vote should be respected. Peter Knapp pointed out that barriers are being built on the highway in Manchester at great expense to the taxpayers.

Atty. Steiner requested that the variance be consistent with the Conservation Commission's recommendation. Christopher Hunt stated that this would only impact the buffer for the first 400 feet of the entrance to the property. Hearing closed.

Steve Bluhm questioned the Planning Board requesting changes of the applicant and then when the changes are made there are objections. Christopher Hunt responded that there has been no site plan accepted by the Planning Board, only a conceptual discussion. Steve Bluhm noted that the newest map was a result of that conceptual discussion. Kent Finemore reminded that board once again, that the issue is only on the variance to the buffer zone. Ken Gorrell asked if the board approves the variance does that then allow the applicant to keep the road further away from the abutters? Kent Finemore pointed out that the town had a large voter turnout this year and that the amendment for the I93 buffer zone was passed. The Board should uphold the wishes and desires of the voters. Roland Seymour noted that this property needs access and not to grant a variance would render the property useless. Ken Gorrell stated that the ZBA's function is to give variances to zoning regulations and by permitting the road to be in the buffer zone, it would allow the applicant to place the road away from the abutters. Steve Bluhm agreed that they should be able to use the buffer area to keep the road away from the abutters. Kent Finemore stated that maintaining the buffer along the majority of this lot does not stop them from developing the property; it is only the entrance area that would require a variance. Roland Seymour asked if the board could grant access to the property and not disturb the buffer the rest of the way. Kent Finemore responded that is what the Conservation Commission recommended, granting a variance for the first 396 feet where the lot is narrow.

Ken Gorrell again stated he felt allowing the variance the whole way allows the road to be further from the abutters. Kent Finemore pointed out that the intent of the ordinance is to protect the abutters from the sound from the highway and allowing a road in that buffer would cut vegetation and increase sound for the abutters. Mike Izard commented that the applicant is amenable to the Conservation Commission's recommendations and that would give the applicant entrance to the property while respecting the voters wishes. Atty. Steiner commented they agreed to the 30-foot width, not the 396 feet recommended by the Con. Comm.

Roland Seymour moved to grant the variance from the 100-foot buffer with the condition that the access road be no closer than 30 feet from the boundary line. Chris Dunne seconded. Dave Liberatore noted that if that motion passed the applicant could not enter the property, as the entrance is only 50 feet wide. Roland Seymour suggested just waiving the first 396 feet. Steve Bluhm suggested all buildings must be outside the 100-foot buffer. Roland Seymour and Chris Dunne withdrew their motion.

Steve Bluhm moved to accept the variance to allow access as close to the railroad as feasible within the first 396 feet with the access road being not closer than 30 feet from the property line (this represents a summary of the motion, verbatim language would need to be transcribed from the hearing tapes). Kent Finemore refused to accept the motion because the language is not clear.

Ken Gorrell moved to grant the variance for the entire length of the property. Chris Dunne seconded. Steve Bluhm questioned no setbacks and Kent Finemore stated he is opposed to this amendment, as it does not have any conditions attached which could limit the extent of the variance to accommodate access in consideration of testimony received from the Conservation Commission. Motion passed 3-1. **Variance granted.**

Charles Harris: Application for a variance to the terms of Article 7, Table 2 to construct a 12'X18'6" addition to existing residence at 43 Vine Street. The proposed addition would be within the required setbacks of R-1 zone (Tax Map U8, Lot 19). Mike Izard reviewed the application noting that the existing home is 4 ½ feet from the south boundary line. The addition would be no closer than the existing home, but would increase the amount of square footage within the 20-foot setback.

Steve Bluhm moved, seconded by Chris Dunne to accept the application as complete. This is a pre-existing, non-conforming lot requiring a variance for the side setback. Public hearing opened and closed.

Ken Gorrell moved to grant the variance as requested in the application. Chris Dunne seconded. The board reviewed the criteria as follows:

- The proposed use would not diminish surrounding property values because it conforms to the surrounding properties.
- Granting the variance would be of benefit to the public interest because the town would receive additional taxes and has no negative affect on surrounding properties.
- Denial of the variance would result in unnecessary hardship to the owner, as it is a small house in need of updating.
- Granting the variance would do substantial justice because it would allow the applicant use of the home

- The use is not contrary to the spirit of the ordinance because it does not affect the neighborhood.

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Motion passed, **variance granted.**

James & Debra Morrison: Application for a variance to the terms of Article 7, Table 2 to add a “mother-in-law” apartment to an existing single family residence at 521 Oak Hill Road in the R-1 zone. (Tax Map R9, Lot 5-5 1.93 acres).

Mike Izard explained that the variance is for the size of the lot only as all setbacks will be met. Zoning requires 2.5 acres for a two family home and this lot is 1.93 acres. Ken Gorrell moved, seconded by Chris Dunne to accept the application as complete. Motion passed.

Public hearing opened and closed. Steve Bluhm asked if they really need a variance if it was just called an addition. Mike Izard responded that it will be considered a two family home and assessed and treated as a duplex. The applicant has specifically asked for another unit and it will be considered a two unit dwelling if the variance is passed. Kent Finemore stated that although it does not appear that the intent of the current owners was to rent the second unit, the ordinance requiring 2.5 acres for an additional unit was in place to prevent uncontrolled growth. Ken Gorrell stated that this will simply look like a garage addition to the home and that the lot is nearly two acres and therefore moved to grant the variance as requested. Roland Seymour seconded the motion. The board reviewed the criteria as follows:

- The proposed use would not diminish surrounding property values because it will not affect the appearance of the property
- Granting the variance would be of benefit to the public interest because it increases tax base and does not harm public interest.
- Denial of the variance would result in unnecessary hardship to the owner because it would interfere with the reasonable use of the property.
- Granting the variance would do substantial justice, as it is a reasonable use, does not impact neighbors and there is a shortage of elderly housing in the area.
- The use is not contrary to the spirit of the ordinance because it will conform to the R1 zone requirements.

Motion passed. **Variance granted.**

Sydney Barton: Application for a variance to the terms of Article 7, Table 2 to construct a 26’X36’ garage on Hodgdon Road within the required setbacks of the Conservation Zone, (Tax Map R5, Lot 28-1).

Mike Izard explained that this is a pre-existing non-conforming lot that was in the R-1 zone when created and has been changed to Conservation with deeper setbacks. The variance request is for the front 100-foot and side 50-foot setbacks. The applicant wishes to locate his garage approximately 50 feet from the front and 20 feet from the side. Kent

Finemore stated that it is possible to meet the current setbacks, the structure would be roughly in the center of the property. Roland Seymour walked the property and noted that it slopes down in the back and there are wetlands also, so that the best location to place the buildings is on the high point. Steve Bluhm moved seconded by Chris Dunne to accept the application as complete. Motion passed. Public hearing opened: Abutter Charles Gouger has no objection. Public hearing closed.

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Roland Seymour moved to grant the variance to the setback requirements with the condition that the garage be at least 50 feet from the front property line and at least 20 feet from the side property line. Ken Gorrell seconded the motion. The board reviewed the criteria as follows:

- The proposed use would not diminish surrounding property values because it is similar to surrounding use of property
- Granting the variance would be of benefit to the public interest because it allows the owner to use the property as originally intended when subdivided.
- Denial of the variance would result in unnecessary hardship to the owner because it might affect the ability to build a home on the property because of the size of the lot.
- Granting the variance would do substantial just because it would allow use of the property
- The use is not contrary to the spirit of the ordinance because it conformed at the time of creation of the lot.

Motion passed. **Variance granted.**

Tanya & Eric Power: Application for a variance to the terms of Article 7, Table 2 to construct a single family home on Hodgdon Road within the required setbacks of the Conservation zone, (Tax Map R5, Lot 28-7).

Mike Izard reviewed the application, which is a request for a variance to the side setback on a lot created before it was changed to the Conservation zone. Steve Bluhm moved, seconded by Roland Seymour to accept the application as complete. Motion passed. Deb Hinds, representing the owner, showed the board the plan of the lot showing that the best location for a home is within the 50-foot setback as the land drops off quickly and there are wetlands also. Public hearing opened: Charles Gouger and Mike Bolduc, abutters did not have any problem with the application. Public hearing closed.

The board discussed the criteria:

- The proposed use would not diminish the surrounding property values because it will not be visible to abutters.
- Granting the variance would be of benefit to the public interest because it increases property values.

- Denial of the variance would result in unnecessary hardship to the owner because it would limit reasonable use of the property.
- Granting the variance would do substantial justice because it met the criteria of the ordinance when lot was created.
- The use is not contrary to the spirit of the ordinance because it disturbs the least of amount of land on the property.

Motion passed. **Variance granted.**

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Jonathan & Rebecca Fredette: Application for a variance to the terms of Article 7, Table 2 to construct a single family home on Cross Mill Road in the Commercial/Industrial zone, (Tax Map R4, Lot 17-2a).

Mike Izard explained that the only issue on this lot is that it is now in the Commercial/Industrial zone. The applicant meets all setback requirements. Chris Dunne moved, seconded by Steve Bluhm, to accept the application as complete. The east side of Cross Mill Road is now Commercial/Industrial zone although almost all lots on the road have been developed for residential purposes.

Public hearing: Christopher Hunt stated that this use is compatible with the uses in the area and the variance should be granted. Public hearing closed.

Steve Bluhm moved, seconded by Chris Dunne, to grant the variance as requested. The board discussed the criteria for a variance:

- The proposed use would not diminish the surrounding property values because the surrounding properties have single-family homes on them.
- Granting the variance would be of benefit to the public interest because it would keep the community the same.
- Denial of the variance would result in unnecessary hardship to the owner because it is a small lot initially intended for a residence.
- Granting the variance would do substantial justice because the land would be used as it was initially intended when subdivided.
- The use is not contrary to the spirit of the ordinance because building a home on this lot will fit well with the surrounding area of single-family homes.

Motion passed. **Variance granted.**

Meeting adjourned at 11:30 pm.

Respectfully submitted,

Eliza Conde, Secretary