

**TOWN OF NORTHFIELD  
ZONING BOARD OF ADJUSTMENT  
May 24, 2006  
MINUTES**

Members present: Kent Finemore, Alternates Keith Murray, Polly Mills Fife and Steve Bluhm. Also present: Dave Lorch, LRPC and Eliza Conde, Secretary.

Minutes for April 6 and April 26 will be reviewed at the next meeting. Chairman Finemore appointed all three alternates to serve as voting members of the board for this meeting.

**Theodore Evangelo: Application for a Special Exception to replace an existing porch with an 11'6" x 18'11" porch at 5-7 Oak Street .37 acre (Tax Map U7, Lot 35) in the R1 zone.** Kent Finemore explained to the members that this application is for expanding a non-conforming use which does not meet the current setback requirements. Steve Bluhm moved, seconded by Polly Mills Fife to accept the application as complete.

Mr. Evangelo explained to the board that the old porch has rotted and water has damaged his foundation. He would like to build a new larger porch with a roof line that will direct water away from his foundation. The new porch would be 9 inches further from his side setback than the current porch. The old porch was constructed before zoning was in effect for Northfield. The proposal to increase the size of the porch requires a special exception as he is expanding the square footage of a non-conforming use.

Public hearing opened and closed with no comment. Members reviewed the criteria for a special exception:

- The porch is an appropriate use
- The porch is compatible with surrounding homes
- Water supply, etc is not an issue
- The new roof line will not impact the abutter and will improve the applicant's drainage.

Polly Mills Fife moved, seconded by Keith Murray to grant a special exception for Tax Map #U7, Lot # 35 located at 7 Oak Street, Theodore Evangelo owner, to expand the length of the deck to 18' 11", while decreasing the width from 12' 3" to 11' 6". Motion passed, 3-0.

**Gregg Meuhlen: Application for a variance to the terms of Article 6.2 Section 6-j of the Northfield Zoning Ordinance for Small Engine Repair for Motorcycles, Snowmobiles and ATVs at 62 Forrest Road (Tax Map U4 Lot 7) in the C/I zone.**

Kent Finemore explained that the Special Exception is needed because it is an auto repair business in the C/I district and the variance is required because the location is within the groundwater protection district.

Mr. Muehlen explained to the board that this is an existing garage with a solid concrete floor. The building has previously been used for truck repair and transformer repair. Mr. Muehlen wants only small engines, ATV's, snowmobiles and motorcycles which do not have lots of oil or antifreeze. There is no drain in the floor. Storage of items would be inside the building.

Steve Bluhm moved to accept both applications as complete. As no second to the motion was offered, Keith Murray moved, seconded by Steve Bluhm to accept the application for a variance as complete. Motion passed. Discussion followed about previous owners' use of this building and the fact that the groundwater protection ordinance has only recently been adopted. Even though previous owner's had used the building for commercial use, there has never been an official site plan or recognition of a business at this location.

Keith Murray asked about the condition of the floor of the building. It is flat with a two foot block foundation and no drains in the floor. The floor can be sealed to prevent contamination. Mr. Muehlen collects any oil in pans and plans to use the oil in a waste oil heater. Steve Bluhm asked if Mr. Muehlen plans to rebuild motors and would be need other chemicals. He would have a parts-cleaning tank and brake cleaning fluid.

Public hearing: Christopher Hunt, representing the public, stated that the intent of prohibiting automotive repairs in the groundwater protection district is to draw the line on any chemicals reaching the aquifer. He stated that while this owner may be meticulous, the next owner may not be and it is difficult to regulate. He noted that this aquifer is a back up aquifer for municipal water should the current aquifer fail. He suggested that if the board decides to grant the variance it should do so with conditions such as limiting the size of operation, requiring special protections, requiring BMP of chemicals, requiring site plan approval by the Planning Board, etc. He reminded the board that the town passed this ordinance in order to protect the drinking water supply from disasters and/or slow seepage of chemicals.

Kent Finemore read a letter from the Conservation Commission dated 05-04-06 recommending the board deny this application. Public hearing closed.

Polly Mills Fife stated that she is very concerned about the contamination of the groundwater, but at the same time the town has placed the C/I district within the groundwater area. She asked the applicant if he was willing to work within some constraints to protect the aquifer. Mr. Muehlen stated he was willing to use containment methods to control any possible spills. He would use "Speedy dry" to soak up the occasional spill and there are also containment rolls available. Keith Murray asked about water supply for the neighbors, they are private wells. Dave Lorch noted that engines and motors running at length is not compatible with the residential area, but it is in the C/I zone. He added that any spills are likely to be small and can be contained easily.

Keith Murray asked the applicant how denial of the variance would be harmful to him. Mr. Muehlen stated he would not have purchased the property had he known it could not be used for his business. Polly Mills Fife commented that if the board denies this application, the garage is still there and it will probably still be used for this type of work even if it is not commercial. If the variance is granted, it would give the town some control over the conditions of its use.

Public hearing: Christopher Hunt stated that the use needs to be defined, specifically prohibiting larger vehicles, limiting the square footage and requiring the work to be done on impermeable surfaces. Public hearing closed.

Considerable discussion followed relative to the risk to the groundwater, the need to protect it, methods of protection and the fact that neighbors can change their oil in their own car on a dirt driveway without any permission required.

Members discussed:

- Various conditions to a variance if it is to be granted.
- The Conservation Commission's letter and the importance of their opinion
- Best Management Practices, specifically the NH code DES WS-421 for handling of hazardous materials
- How to limit the size of the business
- The definition of automotive repair and vehicles.

Discussion of the variance criteria as follows:

1. *The proposed use would not diminish surrounding property values.*

This repair shop is located in a residential neighborhood with an industrial plant across the street. Attaching conditions to the variance will help protect the neighborhood.

2. *Granting the variance would be of benefit to the public interest.*

The repair shop would provide a commercial service to the general public, however it would not have any benefit for the groundwater. Conditions to a variance would help control the containment of hazardous materials.

3. *Denial of the variance would result in unnecessary hardship. Hardship, as the term applies to zoning, shall be met if all three of the following criteria are satisfied:*

- a. *The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment. It would deny the current owner his "expected" use of the property, however, there are other*

reasonable uses for the garage which pose no threat to the water quality of the underlying aquifer. The Board must weigh the risk to the town and aquifer versus the wants and needs of the property owner. This is an existing garage used for vehicle repair, it is in the C/I zone, but also in the groundwater protection zone.

*b. No fair or substantial relationship exists between the general purpose of the zoning ordinance and the specific restrictions on the property.*

A small engine repair service does not pose a substantial threat to contamination of the aquifer. Toxic fluids will likely be stored in small quantities. However, spills occurring outside the building could occur.

*c. The variance would not injure the public or private rights of others.*

The aquifer is a resource shared by the community. Access to this water supply is the right of the local residents. Potential contamination of this resource is a threat to the public's right to this supply. Perhaps a condition of a variance would be that the variance may be rescinded at the discretion of the town if this aquifer becomes the main source of municipal water.

4. *Granting the variance would do substantial justice.*

Granting the variance to allow the repair shop would provide a convenience but would not serve a substantial justice, except that it gives the town some control on this use.

5. *The proposed use is not contrary to the spirit of the ordinance.*

The purpose of the ordinance is to reduce potential risks of groundwater contamination (see article 6.2, 2. Purpose). An ounce of spilled petroleum products can spread out to contaminate 1,000s of gallons of groundwater. The ordinance specially prohibits automotive use. However, a variance with conditions could give the town more control over use of and disposal of hazardous materials.

Lengthy discussion followed whether a variance can be granted based upon the answers to the above criteria for a variance. The question was asked whether the board was suggesting conditions for a variance so that the owner could have this use, or to protect the town. If the variance is denied, the use can continue on an informal basis with no control of disposal of hazardous waster. After more discussion it appears that it is more responsible to grant an approval with conditions that can regulate the use of hazardous materials than to deny the variance and have the use continue on an informal basis. After discussing various conditions and review of Best Management practices, Keith Murray moved, seconded by Steve Bluhm to grant a variance to allow the operation of a small engine repair service at 62 Forrest Street, map U4 lot 7 subject to the following conditions:

1. This variance shall be limited to small engine repair including motorcycles, ATV's, snowmobiles and specifically does not include repair of cars, trucks and SUV's.
2. This approval of a variance shall be subject to site plan approval by the Planning Board
3. If the aquifer that this property is located on becomes at any time the primary municipal water supply, this variance may be rescinded at the discretion of the town.
4. The business parking lot shall remain paved and maintained.
5. There shall be no outdoor storage of items present on the property for repair.
6. Property owner and/or business operator shall notify the Town's Code Enforcement Officer immediately of any spills that could lead to contamination of the aquifer.
7. All repair work shall be performed indoors.
8. The floor and pavement shall remain sealed.
9. Operation and storage of regulated substances shall be in compliance with the NH Code of Administrative Rules PART Env-Ws421 (Best Management Practices).
10. There shall be no outside storage of hazardous materials.

After discussion, Keith Murray moved to amend this motion to change "SUV's" in condition #1 to "other vehicles". Seconded by Steve Bluhm and amendment passed. Motion as amended passed 3-0.

**Gregg Muehlen: Continuation of application for a Special Exception for Small Engine Repair for Motorcycles, Snowmobiles and ATVs at 62 Forrest Road (Tax Map U4 Lot 7) in the C/I zone.**

Steve Bluhm moved, seconded by Keith Murray to accept this application as complete. Motion passed. The zoning ordinance requires a special exception for "automotive repair" in the C/I zone. It appears that there is enough parking space for this business, but there may not be enough for the 4 apartments on the property. It was suggested to add a condition of limiting the operating hours.

Public hearing opened and closed with no comment. Polly Mills Fife asked about test driving the vehicles and the disturbance to the neighbors. The snowmobiles and ATV's would be on the property and the motorcycles could be tested on the road if they are registered. Polly suggested that limiting the hours of operation will help to protect the neighbors from excessive noise.

Steve Bluhm moved, seconded by Keith Murray, to grant a special exception for Tax Map #4, Lot #7 located at 62-64 Forrest Road, Muehlen Properties owner, to operate a small engine repair shop subject to the following conditions:

1. This special exception shall be limited to small engine repair including motorcycles, ATV's, snowmobiles and specifically does not include repair of cars, trucks and other vehicles.
2. This approval of a special exception shall be subject to site plan approval by the Planning Board
3. The business parking lot shall remain paved and maintained.
4. There shall be no outdoor storage of items present on the property for repair.
5. Property owner and/or business operator shall notify the Town's Code Enforcement Officer immediately of any spills that could lead to contamination of the aquifer.
6. All repair work shall be performed indoors.
7. The floor and pavement shall remain sealed.
8. Operation and storage of regulated substances shall be in compliance with the NH Code of Administrative Rules PART Env-Ws421 (Best Management Practices).
9. There shall be no outside storage of hazardous materials.
10. The hours of operation shall be limited to M-F 9am to 5pm and Saturday 9am to 3pm.

Motion passed 3-0.

Meeting adjourned at 10:00 pm.

Respectfully submitted,

Eliza Conde, Secretary