

April 12, 2016

Present: Chair John Smith, Vice-Chair Todd Page, Lewis Major, James MacDonell, Jim Waters and CDC Kathryn Lynch. The applicants and two members of the public were present.

7:00 pm Chair Smith called the meeting to order. The first order of business was elections of offices. Mr. Major made a motion for John Smith to remain as Chair, seconded by Mr. MacDonell, motion passed. Mr. MacDonell made a motion for Todd Page to remain as Vice-Chair, seconded by Mr. Waters, motion passed. Mr. Page made a motion for James MacDonell to remain as Secretary, seconded by Mr. Major, motion passed.

Chair Smith read the Public Notice. Chair Smith read the Application for an Area Variance submitted by Jean-Pierre Fortier for tax map 45 lot 57, 34 Indian Acres Dr., in the Residential District. The applicant seeks a variance from Article VII, Section 6 Open Space Requirements of the Zoning Ordinance to permit building a shed within the properties setback, case #0416A.

Chair Smith asked if anyone else was present in favor. Chair Smith asked if there was anyone present that was opposed. Chair Smith read the Department Head comments: Fire Chief Jay Matuszewski wrote that all building and fire codes must be met. Town Administrator Jill Collins had no concerns. Building Inspector, Rod Lawrence wrote that a building permit is required.

Hearing no further questions or comments Chair Smith closed the public hearing. The Board worked on the Finding of Facts:

1. The applicant would like to replace an existing shed with a larger shed that is within the setback of their parcel.
2. If the shed was built ten feet from the property line it would be in the back yard.
3. The existing shed is four feet away from the property line.

Board discussed the Finding of Facts: Mr. Page explained that it is already a non-conforming lot that is why it is a hardship. Mr. Major explained that several lots in Indians Acres have received variances for this very same reason.

Mr. Major made a motion to adopt the Finding of Facts, seconded by Mr. MacDonell, the motion passed.

Board composed the Statement of Reasons:

1. Granting the variance (~~would~~ – **would not**) be contrary to the public **interest** because: They are replaced an existing structure with one that is marginally different.
2. The **spirit** of the ordinance (~~would~~ - ~~would not~~) be observed because: They are replacing an existing structure with one that is marginally different.
3. Granting the variance (**would** - ~~would not~~) do substantial **justice** because: They would be able to build their shed.
4. For the following reasons, the **values** of the surrounding properties (~~would~~ - **would not**) be diminished: There is not much change, small lots in the neighborhood, similar variances have been granted for similar reasons.

5. **Unnecessary Hardship**

- A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: *If the garage were to be built at the end of the drive it would be extremely costly to the applicant due to the severe slope in the land.*
1. There (~~is~~ - ~~is not~~) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because: *There is no significant change.*
  2. The proposed use (~~is~~ - ~~is not~~) a reasonable one because: *The shed will allow space for the applicant's yard items.*
- B. n/a

Mr. MacDonell made a motion to approve the Statement of Reasons. He was seconded by Mr. Major. The motion passed unanimously.

Mr. MacDonell made a motion to grant the Variance. He was seconded by Mr. Major. The motion passed unanimously.

Chair Smith read the Application for an Area Variance submitted by Bradford Manton II & Samantha Marine for tax map 28 lot 11, 55 Old Brattleboro Rd., in the Roadside Commercial District. The applicant seeks a variance from Article V, Section 4 Use Regulations Requirements of the Zoning Ordinance to permit livestock on their parcel, case #0416B.

Chair Smith asked if anyone else was present in favor. Bradford Manton II explained that he would like to have 8-10 chickens and a couple of goats. He would like to keep grocery cost down and have fresh eggs, goat's milk and possibly cheese for his own use. He has a larger lot so he can keep the animals away from Rt. 119. Chair Smith asked if there was anyone present that was opposed.

Hearing no further questions or comments Chair Smith closed the public hearing. The Board worked on the Finding of Facts:

1. The applicant would like to have small livestock in the Roadside Commercial District.

Mr. MacDonell made a motion to adopt the Finding of Facts, seconded by Mr. Page, the motion passed.

Chair Smith read the Department Head comments: Building Inspector Rodney Lawrence wrote that a building permit would be required for any structure. Town Administrator Jill Collins wrote that livestock abutting Rt. 119 can be problematic if livestock gets loose. Police Chief Todd Faulkner wrote that the Police Department would need good contact information in the event livestock is loose and Officer needs to contact owner. Fire Chief Jay Matuszewski wrote that all building and fire codes must be met and that traffic concerns with the proximity of livestock to road, would need secure fencing.

Board composed the Statement of Reasons:

- 1. Granting the variance (~~would~~ – **would not**) be contrary to the public **interest** because: The applicant’s lot borders a district that this is an allowed use of the property.
- 2. The **spirit** of the ordinance (**would** - ~~would not~~) be observed because: The applicant’s lot borders a district that this is an allowed use of the property.
- 3. Granting the variance (**would** - ~~would not~~) do substantial **justice** because: This is a reasonable use of the property.
- 4. For the following reasons, the **values** of the surrounding properties (~~would~~ - **would not**) be diminished: There are similar uses in the neighborhood.

**5. Unnecessary Hardship**

- A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: Neighbors have livestock.
  - 1. There (**is** - ~~is not~~) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because: The house was built prior to zoning determinations.
  - 2. The proposed use (**is** - ~~is not~~) a reasonable one because: There is enough land between the building and Rt. 119.

B. n/a

Mr. MacDonell made a motion to approve the Statement of Reasons with the condition that they have no more than twelve chickens and two goats on site. That the storage and fenced area for these animals shall be on the same elevation as the residence. He was seconded by Mr. Page. The motion passed unanimously.

Mr. Major made a motion to grant the Variance with the condition that they have no more than twelve chickens and two goats on site. That the storage and fenced area for these animals shall be on the same elevation as the residence. . He was seconded by Mr. MacDonell. The motion passed unanimously.

7:15 pm Chair Smith read the Application for a Use Variance submitted by Jay Hodge for tax map 46 lot 172, 27 Northfield Rd., in the Residential District. The applicant seeks a variance from Article V, Section 4 Use Regulations Requirements of the Zoning Ordinance to permit an ice cream stand of the frontage of his property, 10x16 shed with picnic tables and off street parking, case #0416C.

Mr. MacDonell requested a Board vote because as he explained he is not an abutter to this case but lives approx. 500 feet from the property. Mr. Major made a motion for the Board not to ask Mr. MacDonell to recuse himself. He was seconded by Mr. Page, motion passed with Mr. MacDonell abstaining.

Chair Smith asked if anyone else was present in favor. Chair Smith asked if there was anyone present that was opposed.

Chair Smith read the Department Head comments: Building Inspector Rodney Lawrence wrote they would need to comply with State Health Codes and any structure, electric etc. requires a building permit. Town Administrator Jill Collins wrote that parking and traffic on Northfield Rd were a concern and that there is no sidewalk for pedestrians. Fire Chief Jay Matuszewski wrote that all building and fire codes must be met. That there is no parking on Rt. 63, traffic exiting is a concern and the corner has poor visibility. Police Chief Todd Faulkner wrote it is a poor location for increased traffic entering and exiting onto Northfield Rd.

Hearing no further questions or comments Chair Smith closed the public hearing. The Board worked on the Finding of Facts:

1. The applicant would like to have an ice cream stand at his location on Northfield Road.
2. It is in the Residential District so it requires a variance.
3. The applicant will need to submit a site plan to the Planning Board.

Mr. MacDonell made a motion to adopt the Finding of Facts, seconded by Mr. Page, the motion passed.

Board composed the Statement of Reasons:

1. Granting the variance (~~would~~ – **would not**) be contrary to the public **interest** because:

Board discussion: Mr. MacDonell stated that it is 400' from the previous ice cream shop, so it doesn't change the area. Mr. Waters explained that he likes the idea except the parking and corner. Mr. Smith explained that the Planning Board would address parking and egress concerns. CDC Lynch asked how will the Planning Board address children crossing Rt. 63 on a bad corner and no sidewalk from the bridge to the applicant's lot. Mr. MacDonell explained that he would like to have a condition that the applicant be approved for a curb cut and possible crosswalk from NHDOT prior to Planning Board approval.

*The applicant's lot is adjacent to the business district and the applicant will need approval from NHDOT prior to abstaining Planning Board approval.*

2. The **spirit** of the ordinance (**would** - ~~would not~~) be observed because: *Years ago there were business near this exact area.*
3. Granting the variance (**would** - ~~would not~~) do substantial **justice** because: *The ice cream stand would bring harmony in the neighbor and would encourage people to come together.*
4. For the following reasons, the **values** of the surrounding properties (~~would~~ - **would not**) be diminished: *There are similar uses 500' up the road. There is also a farm stand nearby with similar parking issues.*

##### 5. **Unnecessary Hardship**

- A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: *There are similar uses in the neighborhood.*
  1. There (**is** - ~~is not~~) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because: *He has ample parking on his lot and it is within close proximity to the ballfield.*

2. The proposed use (~~is - is not~~) a reasonable one because: *This is an accessory use similar to a lemonade stand.*

B. n/a

Mr. Major made a motion to approve the Statement of Reasons with the condition that Mr. Hodge receives Site Plan Approval from the Planning Board and Approval from NHDOT for a curb cut and possible crosswalk. He was seconded by Mr. Page. The motion passed unanimously.

Mr. Major made a motion to grant the Variance with the condition that Mr. Hodge receive Site Plan Approval from the Planning Board and Approval from NHDOT for a curb cut and possible crosswalk. He was seconded by Mr. Waters. The motion passed unanimously.

8:00pm Chair Smith read the Application for Administrative Appeal submitted by Rymes Propane & Oil. The applicant seeks a variance from Article VII, Section 4 Use Regulations Requirements of the Zoning Ordinance, case #0416D.

Chair Smith read the Department Head Comments: Police Chief Todd Faulkner wrote that the location of trucks parking and size of the sign may inhibit traffic view. Town Administrator Jill Collins wrote when truck is parked it creates an off premise sign. Writing is not on the truck door but on the billboard strapped to bed of truck.

Chair Smith asked if anyone else was present in favor. Robert Miller from Sheehan Phinney representing Mr. Rymes passed out information to the Board, (in the Community Development Office for inspection). Mr. Miller explained that they agree the Ordinance prohibits such an action. He explained that the truck stops in the location on Rt. 119 because the driver has a friend that works in the gravel pit and they have lunch from time to time. He stated that the Notice of Violation is full of factual inaccuracies. Exhibit 1 is the Notice of Violation from the Town of Hinsdale. Exhibit 2 is pictures of the Rymes truck at locations around town with equipment. The truck is used to distribute equipment through town. Exhibit 3 is pictures of "Off Premise Signs" through town. Exhibit 4 are email conversations between Mr. Rymes and CDC Lynch. Exhibit 5 is a notarized affidavit from the driver of the Rymes truck. Exhibit 6 are pictures of vehicles around town with company logos displayed. Exhibit 7 is a final email between Mr. Rymes and CDC Lynch asking for clarification.

Chair Smith asked if anyone else was present in opposition. Mike Darcy explained that he took the pictures for the town of the vehicle onsite. He viewed the truck in that location many times. He explained that he uses common sense and most vehicles do not park perpendicular to the road, they back into a spot so they don't back onto the roadway. The sign is affixed to the truck and there is no purpose for it to be at the location, no business is done there, the driver could choose the vacant Wal-Mart parking lot up the street to take a break or have lunch.

Mr. Major explained that in the manner that it is explained it sounds great, but it's not reality. He had viewed the truck at this location multiple times for three to four hours at a time, which is way to long for a lunch break. Mr. MacDonell also mentioned that he saw the vehicle at this location numerous times.

Mr. Miller explained that they have permission from the landowner in an email on his phone if the Board would like to see it, the Board did not.

Mr. MacDonell asked where the driver lives, the affidavit states Winchester but Mr. Miller stated Northfield. Mr. Miller explained this he misspoke the affidavit is correct he lives in Winchester.

Mr. MacDonell made a motion to table the hearing till May 10<sup>th</sup> so the Board can acquire Legal Opinion from the Towns Attorney. He was seconded by Mr. Page, motion passed unanimously.

Mr. Miller asked if the Board would approve him speaking directly to the Towns Attorney if he is agreeable to that. Board explained that if the Town's Attorney wishes he will do so.

CDC Lynch passed out to the Board an invite to a meeting about ethic and board conduct on May 16<sup>th</sup>.

Mr. Waters made a motion to approve the minutes dated July 14, 2015. He was seconded by Mr. Page. The motion passed unanimously.

Mr. Waters made the motion to adjourn. He was seconded by Mr. Major, and the motion passed unanimously. The meeting ended at 8:45 pm.

Respectfully submitted,

Kathryn Lynch