

Zoning Board of Adjustment meeting minutes for August 19, 2014

Present: Bruce Bellville, Selectman Jay Ebbighausen, Alt. Dorianne Almann, Lewis Major (arrived at 6:45pm) and CDC Kathryn Lynch. Excused were Chair John Smith and Todd Page. Applicants and Planning Board members were present.

6:30 pm Bruce Bellville called the meeting to order and read the Public Notice for case # 0814. Bruce Bellville explained to the applicant that there was not a full Board and asked if the applicant would like to proceed, (yes).

Dave Bergeron from Brickstone Land Use Consultants LLC representing Rt. 63 Country Store explained that Rt. 63 Country Store is an existing nonconforming use which has been at the location for almost 50 years. The existing building is within the front setback and the existing pavement extends over the property line and into the ROW for Rt. 63. The proposed location for the gas canopy and edge of pavement will be 7.94' from the ROW. This is more conforming than the existing pavement location. The location is on a state highway, away from the residential areas. The proposed use will have no effect on surrounding property values. The pavement and gas canopy pose no threat to the public health or safety. The addition of gas pumps will improve the value of the property and increase the tax base. This will be the only gas station on this side of town. The construction of the pavement and gas canopy in this location was done in error, an honest mistake. The contractor was not aware that the plan approved by the State for the tank installation was revised to comply with the local setback requirements. The canopy and pad are complete, resulting in a special condition that requires an area variance. Denial of the variance would hurt the existing business and would cost approximately \$100,000. This would be a significant financial hardship for the business. The proposed use is a normal customary accessory use to the existing convenience store. The construction still meets the State requirements for fuel storage and dispensing as required by the NHDES permit.

Bruce Bellville asked if any member of the public had questions or comments in favor. HPB Morris Klein asked how did you find the mistake and if any neighbors have complained about the location, (When we were looking for sign placement we noticed the mistake and stopped all construction immediately. No neighbors have complained.).

Bruce Bellville asked if any member of the public had questions or comments opposed.

Hearing no further questions or comments Bruce Bellville closed the public hearing and asked for questions or comments from the Board. Bruce Bellville explained that this is an unusual variance, it is a mistake and the only way to fix it would be a variance. He felt that the Planning Board had worked hard on the original Site Plan and it was constructed wrong.

Bruce Bellville and the Board composed the Statement of Reasons:

1. Granting the variance (~~would~~ – **would not**) be contrary to the public **interest** because: The intent and need are still the same. It is in the public's interest to have a gas station in that area. It meets all State Regulations; tanks meet all requirements and are in the correct position.

2. The **spirit** of the ordinance (**would** - ~~would not~~) be observed because: The public will use the gas pumps and the Variance meets the spirit because there is no impact on the area. The parking spaces are moving back away from the road.
3. Granting the variance (**would** - ~~would not~~) do substantial **justice** because: The cost of repositioning the tanks and pad would impact the business negatively.
4. For the following reasons, the **values** of the surrounding properties (~~would~~ - **would not**) be diminished: The gas pumps will enhance the property and the surrounding property. It is a value to local residents to have gas pumps on that side of town.

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:
 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: To ask the business to move the tanks and pad would be an unnecessary hardship, costing approximately \$100,000. The property is almost 50 years old and it is customary to have gas pumps at a convenience store.
 2. The proposed use (**is** - ~~is not~~) a reasonable one because: To have gas pumps at a convenience store is a customary use. Due to Shore Line Protection there is no other place to have a gas station in the down town area by the Ashuelot River.
- B. The criteria in subparagraph (A) having not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The property (~~can~~ - **cannot**) be used in strict conformance with the ordinance because: The cost to the applicant to come into conformity with local zoning would be great. The tanks meet all State requirements.

Alt. Dorianne Almann made a motion to approve the Statement of Reasons as developed, seconded by Selectmen Jay Ebbighausen, the motion passed.

Selectmen Jay Ebbighausen made a motion to grant the variance, seconded by Alt. Dorianne Almann, the motion passed.

It was explained to the applicant that the variance was granted.

7:10 pm Selectman Jay Ebbighausen made a motion to adjourn, seconded by Alt. Dorianne Almann, motion to adjourn unanimous.

Respectfully submitted by,

CDC Kathryn Lynch