

Town of Farmington
Zoning Board of Adjustment Meeting
Thursday, September 1, 2016

Board Members Present:

Elmer Barron, Chairman
John David Aylard, Vice Chairman
Joe Pitre, Secretary
Joanne Shomphe
Paul Parker

Staff Members Present:

Liz Durfee, Interim Planner

Others Present:

Packy Campbell, RSA Realty
Jim Shannon, RSA Realty
Ken Cormier, Cormier Movers, Inc.

1). Call to Order:

Chairman Barron called the meeting to order at 7:05 p.m.

2). Review of Minutes:

May 5, 2016- no changes or corrections.

Motion: (Pitre, second Parker) to approve the minutes as written passed 4-1 (Shomphe abstained).

3). Any Other Business to Come Before the Board:

Financial Hardship- Ms. Durfee said following the discussion at the previous meeting as to the extent that financial hardship should be considered, she attempted to obtain further information from the NH Municipal Association but Staff Attorney Margaret Byrnes told her there is no one answer in evaluating the fifth criteria under RSA 674:33 and that the applications must be decided on a case by case basis. She received an information sheet from NHMA which she provided to the board.

Chairman Barron said previously Zoning Boards were told not to consider financial hardship which has now been changed.

Ms. Durfee said going forward she will provide background information about potential financial hardships when it is provided by the applicant in her memo provided to the board. She added the board could also seek legal advice if necessary.

Chairman Barron questioned if it could be considered a financial hardship if the applicant doesn't make as much money for one lot as he would for two lots because he wasn't allowed to subdivide the lot.

Mr. Parker said the greatest priority consideration is the conditions of the land but noted that the board won't be taken to task on it if they do consider some small amount of financial hardship.

Ms. Durfee agreed it can be a consideration.

Mr. Barron added it should not be the only consideration.

New Cases:

Application for Special Exception from the Table of Permitted Uses by: Cormier Movers, Inc. (Tax Map R20, Lot 10): To allow a residential and commercial moving service with a 10,000 sq. ft. warehouse for vehicle servicing and transient storage of goods. The parcel is located at 359 NH Route 11 in the Commercial Business District.

Packy Campbell of RSA Realty came forward representing the applicant Ken Cormier of Cormier Movers, Inc. Mr. Campbell told the board this is a special exception application because a moving company is a commercial use not specified and because a warehouse also requires a special exception in this district. He noted they are seeking only one special exception which should cover both of these uses.

Ms. Durfee said town counsel advised one special exception would be permissible as long as the elements of the uses were presented to the board at this meeting. She added that if they waited until a year from now the warehouse would need a second special exception.

Mr. Campbell said the warehouse is a secondary part of the business and he does not know when it will be constructed. He said the applicant wants to make sure the special exception is granted and the plan is approved before closing on the parcel. They plan to go before the Planning Board for conceptual review on Sept. 20 and for site plan review in Oct.

Mr. Campbell said a special exception is different from a variance and has different criteria for approval. It's specific to the Town's Zoning Ordinances Section 2.00 (A-F) and to Section 2.07 (C-1) which were addressed in a supplemental letter.

He said they were before the board because the proposed use is not listed in the Table of Permitted Uses. He said the most prevalent criteria is that the project must be consistent with the character of other uses in the zone. The moving company with a storage component will not have traffic like a convenience store but will have approx. 6-8 workers entering in the morning, loading and leaving the site. About once or twice a month a tractor trailer will bring goods to the site to be stored until they are ready to be moved. It has less traffic than many of the other uses in

this zone so it is consistent with the character of what is already there and will not impact the property values in the area he said.

He said no hazards will be created by the plan.

There will be no excessive demands on municipal services as there is a private well and a private septic system. No issues are expected with the Police or Fire Depts. and there will be no significant increase in storm water run-off from the property as there is an existing large gravel area he said.

Mr. Campbell said the current owner has a grandfathered residential use and potentially there may be a family member or a worker that will stay in the house until the warehouse is built. The house is then expected to become an office for the company.

He said the plan will be good for the town as the vehicles will be registered in town, as many as 10 jobs will be brought to town and construction of the warehouse in the next 1-3 years would increase the tax base.

Ms. Shomphe asked if the warehouse will be a mini-storage or self-storage facility. Mr. Campbell said only customers who are having their things moved by Mr. Cormier's company will store things in POD's in the warehouse. It will not contain self-storage or mini storage units he said.

Mr. Campbell then stated that once approved Mr. Cormier could do whatever is allowed at any commercial warehouse.

Chairman Barron asked if the applicant is not proposing to end the residential use of the existing house.

Mr. Campbell said the house is grandfathered and it would have to be ended by site plan review. It is a right that goes with the property he said.

Chairman Barron agreed that it is a right that goes with the property but suggested Town Zoning Ordinances may specifically prohibit having a business with a residential use on it. He said that if the ordinance specifically prohibits mixed uses in that zone the applicant would have to choose one or the other of the uses.

Ms. Durfee said the residence is an existing use which is grandfathered but the parcel is not an existing mixed use lot. She expressed concern that the Planning Board may not be able to permit a mixed use in this district.

Chairman Barron added the applicant is not being denied reasonable use of the property if that is actually the case. You would simply have to make a choice he said.

Ms. Durfee added she was also concerned if mixed uses are not specifically permitted it is an issue that has to go before the ZBA and was not included in the application. The Planning Board won't be able to approve the application if the mixed use is something that needs a variance she said.

Mr. Campbell expressed frustration about meeting with the Code Enforcement Officer, asking four times what he needed to be ready to come before the board and then to come before the board and be told he needs a different application.

Ms. Durfee clarified that Mr. Campbell never mentioned a residential use during all of their communications. She said she was informed the house was going to be an office.

Chairman Barron asked everyone to move on and discuss the rest of the application. Mr. Parker asked what zone the parcel is located in.

Ms. Durfee said the parcel is in the Commercial Business District.

Mr. Parker suggested there may be a small section in that area that does allow multi-use but he was not sure of its location and if it extends into this parcel.

Ms. Durfee said she is not aware of a small piece across from or near this parcel that allows mixed use and there is nothing that specifies multi-uses in the Table of Permitted Uses.

Mr. Pitre said the board once allowed a car repair facility in with a residential use on Ten Rod Road.

Chairman Barron said that is not a commercial district and there are different requirements for different zones. That's why we have zones he said.

Mr. Campbell apologized for not bringing up the residence during the application process.

Chairman Barron said he would like an answer to his question about what the applicant will do if the ordinance specifically says that zone can't have a mixed use- make a choice between the uses or ask for a special exception rather than create a problem later on down the road.

Mr. Campbell asked if the board could take a break and review the ordinances.

Chairman Barron suggested the board continue the hearing while Ms. Durfee researched the ordinances.

Mr. Parker asked about the “truck servicing” stated in the application.

Mr. Campbell said the applicant plans to conduct normal maintenance such as oil and tire changes on his own trucks.

Mr. Parker asked if the vehicle maintenance will be done inside or outside of the proposed building.

Mr. Campbell noted that a repair facility is a permitted use in the commercial zone. He said he would rather say probably both because he can't speak to what will happen in the future.

Chairman Barron added that since the parcel is in the Aquifer Protection Zone he hopes Mr. Cormier is not going to change oil in the parking lot.

Mr. Parker asked how many vehicles will be on site on a regular basis.

Mr. Campbell there may be as many as 12-14 with the box trucks, pickup trucks and employee vehicles. He said he was unsure about the number but it would not be 150 like another business close by.

Mr. Parker asked if the moving company will also be moving/storing customers' vehicles as part of the company's services.

Mr. Campbell said a description of the company's services could be found on their website and gave the board a copy of the information from the website.

Mr. Parker asked what types of vehicles the company will use.

Mr. Campbell said the applicant has PODs and two tractor trailer bodies he can use for a big job maybe once a month. The business primarily uses six-wheeled moving trucks he said.

Mr. Parker asked if customers' items will be left on the trucks and how long the trucks will be sitting there.

Mr. Campbell said it depends on the customer. The applicant doesn't want to leave the truck sitting there when it is not making money moving somebody else. Items could left in the truck

for up to 2-3 weeks but if they want to store it for 2-3 months then they will use a POD which will be stored in the warehouse. It could happen that a truck would be parked for an extended period of time but that means someone made a mistake in managing the business he said.

Mr. Parker asked about the proximity to the Cocheco River and if the parcel is in the flood zone.

Mr. Campbell said that the heavily dotted line on the plan shows where the 250 ft. setback is located. He said they plan to keep the building and the construction out of the 250' setback. He said he understood there could be a special exception needed from the Planning Board if anything was done within the 250 ft setback. There is nothing being contemplated within the 100' setback and there is no construction being contemplated within the 250' setback he said.

Mr. Campbell said there will be traffic around the building and it is an impervious surface so a state Shoreland Protection Act permit is needed. He said the act is very similar to the Town ordinance so they will have to get the state permit first and then the Planning Board may have to grant three special exceptions or special use permits.

Ms. Durfee explained that the Planning Board doesn't grant special exceptions. A special use permit is required depending on the use and the impact proposed she said.

Mr. Parker asked that regarding the proximity to river and the shape the river is taking, how much digression/consideration the board has in contemplating these issues.

Chairman Barron said the board can't anticipate what shape the river might take so it couldn't be a consideration in their decision. If the river should decide to change course and come right up to his building that is not his fault. But we should consider the flood plain because I do know that the flood plain comes into this lot quite deeply he said.

Ms. Durfee said the flood plain is not shown on the map but it does show the 250' "Shoreland Zone". She said the Cocheco River is large enough that it is subject to the state Shoreline Water Quality Protection Act which ranges from 250' buffer zones down to 50' buffer zones with different requirements in each zone for what is permitted and not permitted.

Chairman Barron said it looks like the project could be done outside of the 250' buffer area. Ms. Durfee added that all water bodies within the Town of Farmington are subject to the local regulations. There are two tiers – one is called the Controlled Development Zone that requires a 250' buffer from any water body and the other tier is called the Limited Development Zone that requires a 100' buffer from any water body. The 100' buffer is shown on the plan and the applicant was informed that a special use permit may be required depending on if the proposed uses are within the buffer. The extent to which the board can consider the potential impacts to

those water bodies when evaluating granting an exception is based on the public health, safety and well being and the town's natural resources. She said it is an element the board can consider and that the ZBA has the ability to ensure that at a minimum best management practices are followed. She said the ZBA also has the ability to require issues be addressed in the site plan review.

Mr. Parker asked where the parking will take place.

Mr. Campbell said the site is not been engineered so that information was not provided. He said he was looking for the board to determine if the use of this property as a moving company is consistent with the other uses currently on Route 11 and is consistent with the six zoning criteria A-F.

Chairman Barron said this proposal will see a full blown site review and that the ZBA could include in their approval that all setbacks be approved. He noted there is enough room for the building outside of the 250' setback but they don't have a lot of room to "mess around" there. Chairman Barron added that there is existing parking in the graveled area of the lot and that some of that area may be in the flood zone.

Ms. Durfee said she did not find a specific section in the ordinances that prohibited mixed uses but expressed concern that it may still be an issue because it doesn't specifically allow mixed uses in that zone. She read Section 1.12 Non-conformity states certain districts prohibit single family residential use. To prevent this the ordinance from becoming unduly burdensome such single family homes shall be permitted to be expanded and accessory uses added that are permitted or permitted by special exception in the zone are allowed subject to the same criteria and review indicated elsewhere in the ordinances with the exception that there shall be no increase in the number of residential units on the lot.

Chairman Barron said that led him to believe if the board was to grant the special exception the applicant can keep the residential use on the lot.

Ms. Durfee agreed and said if there wasn't an existing residential use there you couldn't do it without going through the extra step of getting a variance for an unspecified residential use.

Mr. Barron said his earlier question has now been answered.

Ms. Shomphe noted crane services were listed and asked if the applicant owned the crane or if he hired out the crane.

Mr. Cormier said he owned the crane.

Vice Chairman Aylard asked if the warehouse is built on the property, would it be linked to the house and must be sold together with the house.

Mr. Barron said they are not subdividing the property.

Mr. Campbell said they are not applying for a subdivision as the property is just short of the required frontage. He said someone could request an area variance but they would have to get the variance first and then get the subdivision. He noted that he was only disclosing what is possible in the future for someone but not probable.

Mr. Parker asked if they intend to use the existing driveway and extend it out to the proposed warehouse.

Mr. Campbell said that is a decision to be made by NH DOT.

Mr. Barron said the DOT will probably prefer the existing driveway be used and suggested due to the amount of traffic on Rt. 11 the board should request the installation of a deceleration lane going into the entrance of the property. He added that all it would take is one truck slowing down to make a turn to cause a fatality.

Mr. Pitre said that a turning lane is in the works for the road next year.

Mr. Barron said the break down lane will be lost when this takes place. There will be three lanes going through there and no place to stop. He said the state is starting to require deceleration lanes almost everywhere and he plans to put one in front of his shop to try to prevent someone from plowing into the back of one of his trucks slowing to turn into his property.

Mr. Barron said the board has the following considerations:

- 1). The proposal must go to site plan review;
- 2). The flood plain must be observed and adhered to and the building must not be constructed within the flood plain;
- 3). Installation of a deceleration lane;
- 4). Best management practices must be observed.

Mr. Barron suggested the applicant pay special attention to the placement of the building and the parking as he has seen 4-5 feet of water come up onto the back lands of the property. Following a brief discussion of the effects of the “Mother’s Day Flood” in 2006 Chairman Barron asked if there was any additional discussion.

There was no further discussion on the application.

Motion: *Mr. Parker motioned to grant the application with the following conditions just mentioned:*

- 1). The proposal must go to site plan review;
- 2). The flood plain must be observed and adhered to and the building must not be constructed within the flood plain;
- 3). Installation of a deceleration lane;
- 4). Best management practices must be observed.

2nd by Mr. Pitre.

The motion passed unanimously.

After a brief discussion about the history of the flooding of the parcel Mr. Barron suggested the applicant obtain some flood maps to review.

Ms. Durfee suggested he should look at the 500 year flood plain map if he wished to see an extreme example of flooding for that area

Adjournment:

Mr. Aylard motioned to adjourn the meeting;

2nd by Ms. Shomphe;

The motion passed unanimously at 7:55 p.m.

Respectively submitted,

Kathleen Magoon
Recording Secretary

Elmer W. "Butch" Barron III, Chairman
Zoning Board of Adjustment