

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, December 7, 2017

Board Members Present:

Elmer “Butch” Barron, Chairman
John Aylard, Vice Chairman
Joe Pitre
Bill Fisher, Alternate
Elise Haig, Alternate

Board Members Absent:

Joanne Shompe, Secretary

Others Present:

Dan DeSantis, Town Planner
Michael Desroche
Christopher Knight, Jeff Knight
Tim Bernier, T.F. Bernier, Inc.

BUSINESS BEFORE THE BOARD:

Call to Order:

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

Alternates Seated:

Chairman Barron asked Ms. Haig and Mr. Fisher to be seated with the absence of Ms. Shomphe and the vacant position.

Review Minutes:

October 5, 2017 – No errors or omissions.

Motion: (Pitre, second Fisher) to accept the minutes as written passed 5-0.

Review 2018 Meeting Calendar:

Chairman Barron asked the board for any comments on the proposed meeting calendar for 2018.

Mr. DeSantis said he noticed a problem with the proposed meeting dates for July 5 and Sept. 6.

Mr. Pitre said he will not be able to attend the June 7 board meeting.

Mr. Barron suggested they move the July and Sept. meetings to the second week of the month.

Motion: (Aylard, second Fisher) to accept the meeting calendar with the changes as noted passed 5-0.

Any Other Business to come before the Board:

None.

NEW CASES:

Application for Variance from Article 2.05 “Village Center District” Table 2.05 (B) Space and Bulk Standards. To convert office space to a new residential unit on the first floor of a building. Parcel is located at 523 Main Street (Map U005, Lot 002): Village Center District.
Michael Desroche came forward representing himself as the applicant and building owner.

Mr. Desroche told the board that the building was built in 1880 as a single family residence with an attached post and beam barn. In the late 1960's the building was converted to a two family residence and the barn was converted into 4 apartment units in the 1970's. In 1989, Attorney Manny Krasner bought the building and began using the first floor of the building for his law offices in 1990.

The first floor of the building currently has a kitchen, living room, bathroom and dining room so no improvements would be needed to use it as residence. We are not planning any changes or conversions and would like to rent it as a residential space he said.

Mr. Desroche said Mr. Krasner has joined a law firm in Somersworth and will move out of the Main Street building.

Chairman Barron asked the board to review the facts supporting the criteria for this request.

1). The Variance will not be contrary to the public interest:

Applicant response: Area is primarily residential. There will be less activity with a residential use than with a commercial use.

Board members noted the area is not 100% residential use.

Consensus of the board was that the proposed use would not be contrary to the public interest.

2). The spirit of the ordinance is observed:

Applicant response: The structure would have less use and activity than with a commercial use.

Mr. Aylard asked if there will be just one rental unit on the first floor of the building.

Mr. Desroche said there would be one rental space on the first floor and the building will have the same number of units (6) that it has now. He added there is a lot of parking for the tenants with 16 parking spaces behind the barn.

Consensus of the board was that the spirit of the ordinance would be observed.

3). Substantial justice is done:

Applicant response: The space will be rentable and will not be vacant.

Mr. DeSantis said it would be difficult to keep the space as a commercial office and one could argue that it shouldn't have been a commercial office in the first place.

Mr. Aylard said its use as a commercial space would be limited to use as a professional office.

Consensus of the board was that substantial justice would be done.

4). The value of surrounding properties are not diminished:

Applicant response: This is a residential multi-family area. There would be no changes to the building as it is a residential building which is being used for office space.

Mr. Barron said he didn't think it diminish anyone's property value one way or the other.

Consensus of the board was the values of the surrounding properties are not diminished.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Applicant response: The space is being used now but would be vacant if used as office space.

Mr. Barron agreed it would be hard to rent as an office space.

Mr. Pitre noted there is already a lot of empty rental space in town and there was a spike in foreclosures in the area in November.

Mr. Aylard asked if this unit would be a single family rental.

Mr. Desroche said the unit is single family residence and added they have done a lot of work to the building and they also plan to install new siding at the end of the month.

Consensus of the board was literal enforcement of the ordinance would result in an unnecessary hardship.

Motion: (Fisher, second Pitre) to grant the application as written;

Discussion: Mr. Aylard asked if the applicant wishes to convert the residential space back to commercial if he would need to come back to the ZBA.

Mr. DeSantis said he would have to come back to the ZBA if wished to change the use back to a commercial use.

Vote: The motion passed 5-0.

Application for Special Exception, Article 2, Table of Permitted Uses V (A) “Utility Uses Not Specified” to allow a solar field to be constructed on the property. Property located at Main Street (Map R19, Lot 15-1); Commercial Business District.

Application for Special Exception Article 2, Table of Permitted Uses V (A) “Utility Uses Not Specified” to allow a solar field to be constructed on the property. Property located at Main Street (Map R19, Lot 15-2); Commercial Business District.

Chairman Barron suggested that because these two applications both sought Special Exceptions from the same article for abutting parcels the applications should be heard together.

There were no objections from the board to Mr. Barron’s suggestion.

Tim Bernier of T.F. Bernier, Inc. agent for the property owner and Chris Knight, property owner came forward to discuss the applications with the board.

Mr. Bernier displayed a map of the proposed subdivision which is located at the corner of Cocheco Road and Main Street (Route 153) abutting 3 Phase Power and across the Cocheco River from the Town Transfer Station.

He said that according to the Table of Permitted Uses Section V (A) utility uses not specified are allowed by Special Exception and although solar panels are not specifically listed he said he felt solar panels are similar to some of the uses specified and could be considered a utility use.

The proposal is to create a solar array to generate electricity for public consumption which will be collected and supplied to the grid. The two arrays are two separate lots and is the result of a state regulatory requirement that no more than 1 megawatt of power can be generated on a privately held lot. He said if the land was owned by a municipality the regulation would not apply so there is no scientific reason behind the requirement. That is the reason the property will have a lot line running through the middle of it creating two lots there he said.

Mr. Pitre asked how much could physically be put on the property if not for the state

regulation.

Mr. Bernier said it would be about the same as what they are proposing. The variance request comes because there is a property line between the two lots requiring setbacks for construction. If the Variance is not granted there will be a 60' strip of unused land between the two lots which does not necessarily make the project undoable but does create a big open space in the middle of the lots.

Mr. Bernier then pointed out some of the physical features of the property such as the ridge area that was mined off by the previous owner, wetlands and the location of the river. He said the parcel has 31 acres and approx. 9 acres will be used for the solar panels.

He said the proposed total amount of electricity to be generated at the site is about 1.7 Mega watts which is just over the amount allowed by the state regulation necessitating the split of the parcel into two lots. He said the engineer said it would be better to split the amount of arrays in half and put half of them on each lot than to put a small number of arrays on one lot and a larger amount on the other lot.

He added there is also one existing single family home on what will be the third parcel in the three lot subdivision and is the only residential use in the immediate area.

Mr. Bernier said the Special Exceptions requested for both lots are the same as the two lots are essentially identical with virtually the same abutters. He then stated the reasons they felt the proposal meets the standards for Special Exceptions (Article 2, Section E 1, a-f):

Section E1 (a) – with the exception of the Variance request all other requirements of the ordinance are being complied with. The Table of Permitted Uses V (A) allows non-specified utility uses by Special Exception in the Commercial Business (CB) zone.

Section E1 (b) – the proposed use is a solar field that has no significant risk of fire, no risk of releasing toxic materials and does not contain any explosive materials.

Section E1 (c) – the proposed use is in a CB Zone with low residential use. An earthen berm, trees and vegetation will block the view of the facility from the street and the river. A chain link fence will prohibit access to the site. There will be no noise, pollution, odors, vibration or significant amount of heat generated at the site.

Section E1 (d) the proposed use will have very little traffic and will only require someone to mow the site once a month during growing season to keep the vegetation down.

Section E1 (e) there will be a low intensity use of the site with no full time employees and no demand on Town services. There is no sewer service available and no plans to use the available Town water. A chain link will be installed to prevent access reducing the need for Police protection and there is no potential fire risk.

E1 (f) an Alteration of Terrain permit has been completed and found there will be zero runoff from the site. It was formerly the site of a gravel pit and is in a bowl shape so water can't leave the site where the solar panels would be located. There would be no significant flooding inside the bowl and no discharge outside of the bowl in the event of a 500 year flood event.

Ms. Haig asked if Mr. Knight owns the house on the third lot and if it is intended for commercial or residential use.

Mr. Knight said he currently owns the house and it is intended for residential use.

Ms. Haig asked if when the house is sold if Mr. Knight intended to inform the buyers about the proposed use for lots 15-1 and 15-2 so that are they are not going to complain about what is going on next to them.

Mr. Knight said he is in the process of selling the house right now and the buyer is fully aware of his plans. He said they talked to the buyers about providing them with some privacy fencing so they are not looking at the solar panels. There should be no surprises what so ever he said.

Mr. DeSantis added that there is also a berm there that goes around the house so they can't really see where the solar field will be located.

Mr. Bernier added that it's a great neighbor because once it is in there you don't hear it.

Mr. Aylard asked if Mr. Bernier has ever seen a solar array blow up.

Mr. Bernier said he has never seen one blow up and noted that if they are giving off heat they are not working right because the idea is to convert everything to electricity.

Mr. Aylard asked snow removal from the solar panels.

Mr. Bernier said it melts off as they are facing south and up toward the sun and have a slight pitch so it just slides off.

Ms. Haig asked if they would consider using the goats from the landfill instead of mowing the property.

Mr. Knight said that he noticed them and that they seem pretty effective.

Mr. Barron asked about glare from the panels distracting the traffic going by on Main Street as it is a busy road.

Mr. Bernier said you would not see the panels from the road as the road is low and the berm around them is high.

Mr. Barron asked for the height of the panels from the ground.

Mr. Bernier said they are 8-12 ft. off the ground and are pointed south toward 3 Phase Power.

Mr. Barron said the only place that might get some glare is behind the house on the third lot.

Mr. Bernier said the panels are facing completely away from Cocheco Road and Main Street is due west of the site. The manufacturer said glare is not a big issue with this type of panel even if they were pointed toward the street he said.

Mr. Knight said there are several examples of this type of array located adjacent to major expressways across the country with no impact on the traffic.

Mr. Aylard asked if there will always be enough cover due south of the facility to protect glare from impacting the lot owned by 3 Phase Power.

Mr. Bernier said glare would be an issue if you are driving at 30 M.P.H. and suddenly you can't see. He said that behind 3 Phase Power is where they park their trucks and store equipment.

Mr. Knight said there is enough tree cover on his property to prevent an issue.

Mr. Pitre asked if there is only one employee at the facility.

Mr. Bernier said the mower is subcontractor and not an employee of the facility.

Mr. Aylard asked how easy it would be to damage a panel such as if the mower were to run into one and if the operator would get electrocuted or set off some sort of chain reaction in the arrays.

Mr. Bernier said all of the power connections will be located underground and that one panel does not generate an enormous amount of electricity as it takes an array to do that. The management company that hires the subcontractor will make sure they are trained because if they damage them it will cost them big money to fix them.

Mr. Aylard suggested the subcontractor wouldn't tell anyone he hit it and move on.

Mr. Bernier said someone will monitor the sites occasionally.

Mr. Knight said there is also remote monitoring of the facility and they would know pretty quickly if something happens.

Mr. Bernier then suggested that probably the worst thing that would happen is the panel would be knocked out of alignment and it would reduce its effectiveness.

Mr. Aylard said he can see the gravel pit from "Watson's Corner" at the intersection of Main Street and Cocheco Road

Mr. Bernier said there is a 6' berm around the gravel pit and it can't be seen when the leaves are on the trees. He admitted that he hadn't looked at the site from that location since the leaves came down. He added that if it is an issue for anybody they would discuss buffering it with the Planning Board and the abutters when it gets to the Site Plan Review stage.

Mr. Bernier said Con Com Chair Dave Connolly expressed interest in locating a small canoe/kayak launch site on Mr. Knight's property and he will work with him to accommodate that request.

Motion: (Fisher, second Pitre) to grant the Special Exceptions for Tax Map 19, Lots 15- 1 and 15- 2 to allow the installation of solar panels;

Mr. Barron asked if there were any interested parties present.

There were no abutters or interested parties present.

The board then reviewed the standards for Special Exceptions as follows:

Standard E 1 (a) – Standards as provided elsewhere in the Ordinance for the particular use allowed by Special Exception.

Consensus of the board was the proposed use will fit under the Utility Uses Not Specified section of the Table of Permitted Uses V (A).

Standard E 1 (b) – No hazard shall be created to the public or adjacent property on account of potential fire explosion or release of toxic materials.

Consensus of the board was there will be no hazard created by this use.

Standard E 1 (c) – No detriment to property values shall be created in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and

industrial districts on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment or materials.

Consensus of the board was the use would not be detrimental to property values in the area.

Standard E 1 (d) – No traffic hazard or substantial increase in the level of traffic congestion shall be created.

Consensus of the board was the proposed use would not create a traffic hazard or substantially increase traffic.

Standard E1 (e) – No excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection and schools.

Consensus of the board was the proposed use would not place excessive demands on the Town or School services.

Standard E1 (f) – No significant increase of storm water runoff onto adjacent property or streets shall be created.

Consensus of the board was the proposed use would not significantly increase the storm water runoff onto adjacent property or streets.

Mr. Barron said the proposal was also subject to E 2 (a) regarding front, side rear yards in excess of the minimum requirements of this ordinance but the remaining standards of this section did not apply to this proposal.

Vote: The motion passed 5-0.

Application for Variance from Article 2.07 “Commercial Business District” Table 2.07 (B) Space and Bulk Standards. To allow solar panels to be constructed within 6 feet of the rear property line. Property located at Main Street (Map R19, Lot 15-1); Commercial Business District

Application for Variance from Article 2.07 “Commercial Business District” Table 2.07 (B) Space and Bulk Standards. To allow solar panels to be constructed within 6 feet of the side property line. Property located at Main Street (Map R19, Lot 15-2); Commercial Business District.

Mr. Barron suggested that the Variance requests for Lots 15-1 and 15-2 be combined as long as there were no objections to the suggestion.

There were no objections stated by the board or the applicant.

Mr. Bernier said they were requesting a Variance to install solar panels within the 30’ setbacks on both properties along the horizontal property line that splits the parcel into two lots. We are requesting the relief for as long as the solar panels remain at the site he said.

Mr. Aylard asked about the life span of solar panels and if they are recyclable.

Mr. Bernier said that their life expectancy is about 25 years and they can be recycled.

Mr. Aylard asked if there would be enough room for a vehicle to travel between the panels for maintenance purposes.

Mr. Bernier said there would approx. 12’ between the panels.

He said it may make sense to approve the request with the condition that if the solar panels go away so does the Variance. The boundary line and setbacks are purely regulatory with no scientific reason for it so it boils down to if there is some value to preserving the setbacks for the public good. We didn't see where the public was benefitted by preserving the setback area and that 60' will generate electricity that is used by everyone he said.

Mr. Bernier then stated the reasons they felt the proposal meets the criteria for a Variance as follows:

1). It would not be contrary to the public interest as the area is in the middle of 21 acres of 2 lots that abut each other. It would not affect anyone else and will have the same use.

Mr. DeSantis said if there wasn't a 1 megawatt requirement they would not be before the board.

2). The spirit of the ordinance is observed as the intent is to protect abutters from inconsistent uses and to be fair to users regarding setbacks. Both lots will have the same use and intensity of use within the setback as the rest of the property.

3). Substantial justice is done because the use is very passive and there is a public value to the use. This portion of the lots doesn't abut anyone and no one would notice if it had or didn't have setbacks. There would be no negative effect on the public in general.

4). The value of the surrounding properties is not diminished as the setbacks are in the middle of the abutting lots and doesn't abut anyone else. The abutting lot affected by the proposed Variance will contain the same use and is requesting the same relief.

5). There is no scientific basis for this purpose for two separate lots. The setback is a zoning requirement as a result of the lot line. The separation between the two lots doesn't serve a purpose and creates no benefit for anyone. Adherence to the ordinance reduces the capacity of the arrays and reduces the public good resulting in an unnecessary hardship.

Mr. Barron then asked the board to review the criteria for a Variance and provide a response.

1). The Variance will not be contrary to the public interest:

Consensus of the board was the Variance would not be contrary to the public interest.

2). The spirit of the ordinance is observed:

Consensus of the board was the spirit of the ordinance would be observed.

3). Substantial justice is done:

Consensus of the board was that substantial just would be done.

4). The value of surround properties are not diminished:

Consensus board was that the value of surrounding properties would not be diminished.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Mr. Barron said this is a property has something to distinguish it from other properties in the area because there are two lots that had to be created due to regulations. These are two lots with the same owner and the same use so with this use this is what has to happen. I don't think

you will find this type of instance with any of the surrounding properties he said.
Consensus of the board was that literal enforcement of the ordinance would result in an unnecessary hardship.

Motion: (Fisher, second Pitre) to grant the Variance for Map R19, Lots 15-1 and 15-2 as written with the conditions that the Variance only carries as long as both parcels are under one ownership and is only for this use passed 5-0.

Adjournment:

Motion: (Aylard, second Haig) to adjourn the meeting passed unanimously at 8 p.m.

Respectively submitted
Kathleen Magoon
Recording Secretary

Elmer Barron, Chairman