

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, February 4, 2019

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Jane Taylor, Vice Chair
Joshua Greenwald
Joseph Hoppock
Michael Welsh
Michael Remy, Alternate

Staff Present:

John Rogers, Zoning Administrator

Members Not Present:

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM, introduced members of the Board, welcomed the public, and explained the rules of procedure. Chair Gorman welcomed new member Michael Remy to the Board.

II. Minutes of the Previous Meeting- January 7, 2019

Mr. Welsh made a motion to approve the minutes for January 7, 2019. The motion was seconded by Mr. Hoppock, which carried unanimously.

Hearings

ZBA 19-03:/ Petitioner, Bradley Sullivan Keene Properties of 670 North Commercial St., Manchester requests a Variance for property located at 0 Island St., Tax Map Parcel #583-014-000, which is in the Commerce District. The Petitioner requests a Variance for self-storage units within the Commerce District where it's not a permitted use within the district per Section 102-542 of the Zoning Code.

Mr. Rogers began his presentation stating the property is located on Island Street. He referred to the map displayed indicating the location of the Colony Mill in reference to the application site. The location of the property heading down Island Street off of West Street is on the left side and located on the back part of the Colony Mill. Mr. Rogers stated the whole area is located in the Commerce Zone. He explained the Commerce Zone runs half way down Island Street heading

toward Winchester Street on both sides of the road. Mr. Rogers noted that any development that may occur if the Variance were granted, the Applicant would need to merge the lots in order to meet zoning requirements for setbacks and other various issues. Several years ago there were multiple single family homes and businesses on adjacent lots that have been torn down. In the Commerce Zone self-storage units is not a permitted use.

Vice Chair Taylor asked which zones self-storage units would be permitted. Mr. Rogers responded self-storage units are permitted in the Industrial Zone and Commerce Limited Zone.

Chair Gorman recognized Benjamin Kelly, Brady Sullivan Keene Properties of 670 North Commercial Street, Manchester. Mr. Kelly stated they are seeking approval for a use Variance for this parcel. He noted that anything they do at this property would immediately be followed up with a merger of those multiple lots.

Mr. Kelly stated they are looking to put together the self-storage plan based on an amenity to serve the 90 unit apartments currently under construction at the Colony Mill building next door. Mr. Kelly stated their model for the self-storage units is not the traditional or older warehouse style with a drive-in but more of a retail style type storage with a climate controlled building. In addition, he noted that it would be similar to what is across the street. Mr. Kelly added that they felt the building would also fit into the neighborhood.

Mr. Kelly stated that when they got the approvals for the Colony Mill building they had 373 parking spaces. In addition, they had a traffic study and parking demand study done that showed at the anticipated peak demand time there would be around 175 vehicles. He noted that left them with a surplus of a couple hundred parking spaces. Mr. Kelly stated they would lose some parking with the proposed building. He referred to the plan displayed noting the green space and how the building does take up some parking space. Mr. Kelly stated that even with the new proposed structure they would still have about 119 parking spots on top of the 175 parking spaces to serve the new structure. He stated they feel there is adequate parking to serve peak demand at the residential and commercial uses at the Colony Mill.

Mr. Kelly stated what they would be proposing to the City if approved for the use would be roughly a 30,000 square footprint of a building that is 120' x 250'. Chair Gorman asked what number of stories is proposed. Mr. Kelly responded they are proposing three stories which would require a Special Exception. Chair Gorman asked Mr. Kelly to clarify if they would be coming back before the Board for a Special Exception in the event they acquire this Variance. Mr. Kelly responded most likely.

Mr. Hoppock stated that he cannot tell between the two plans that were submitted where the boundary lines and the setbacks are located. Mr. Kelly responded there are three or four different lots that they own so it does not meet setbacks because it would be at four different lots at this current time. He explained they did not want to merge these lots until they know it is an approved use since once the lots are merged, they cannot be unmerged. Mr. Hoppock asked what about the setback to Island Street. Mr. Kelly responded the building is situated to meet existing conforming setbacks and has been setup with 20 foot setbacks off Island Street. Vice Chair Taylor stated because the law changed in 2010, there is no such thing as a Use Variance and that

a Variance has to meet all the criteria. She stated that she is looking for more information than what has been presented. Vice Chair Taylor explained that the Board has to examine things such as what the building is going to look like or if it an amenity for an apartment use. She noted that Mr. Kelly also stated that it was going to be retail. Mr. Kelly responded speaking to the amenity for the apartments they do feel it would be for that use but not exclusively. He noted that it would be marketed toward the public as well.

Mr. Kelly described the building structure as a glass and steel framed building with an Eifs façade. He noted they have not gone too far with planning until they knew if it was an approved use. Mr. Kelly stated the idea is similar to Blue Bird Self-Storage. In addition, he stated the proposal is in line with what they did in Manchester along South Willow Street which is in the retail corridor. He described the proposed building as a three story mezzanine building that is an Eifs with a lot of glass with retail signage. In addition, he stated the building will have smaller types of storage units that are climate controlled. Mr. Kelly stated that he thinks that it would also be an improvement to the neighborhood and surrounding properties. He noted that Class A type building material would be used and built to match the quality of the Colony Mill. In addition, Mr. Kelly stated the proposal would fit in what is on West Street and the section of Island Street that is close to West Street. Mr. Kelly added that the building would have a lift and a retail type presence selling moving and packing materials.

Chair Gorman asked Mr. Kelly if he wanted to elaborate on the five criteria.

Mr. Kelly reviewed the criteria for a Variance.

1. Granting the Variance would not be contrary to the public interest because:

Mr. Kelly stated that Island Street going to West Street is in the cross roads of where residential starts to meet business. He stated that it would certainly be an amenity not to just businesses but also to what will be the residences to the neighboring property. In addition, he stated that it would not just be an industrial yard but a combination of controlled storage units and some drive up as well. He stated this is a growing demand for business and residential users.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Mr. Kelly stated the goal of the Commercial Zone is to attempt to create opportunity for a wide variety of businesses to thrive. He stated that a self-storage facility would give businesses in the area an opportunity to expand or grow by utilizing nearby storage as an affordable alternative. In addition, he stated self-storage will draw people to the area from other nearby areas.

3. Granting the variance would do substantial justice because:

Mr. Kelly stated the Variance would do substantial justice because it will fit in with the area dynamic of retail, residential and commercial uses. In addition, he stated that it would support all of these adjacent uses.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

Mr. Kelly stated the introduction of a self-storage building would not diminish surrounding property values. He noted that the area now is a parking lot and what they propose is a building built of Class A building materials. Mr. Kelly stated the introduction of self-storage in this location would draw people from nearby residential areas and businesses that need additional storage close by. He stated that it would help attract people to support existing businesses and therefore strengthen surrounding property values.

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:*

i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*

Mr. Kelly stated no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific restriction because the use is one that supports all elements of the adjacent businesses and residents. He stated the property would thrive and contribute to the success of neighboring activities.

ii. *The proposed use is a reasonable one because:*

Mr. Kelly stated the proposed use is reasonable because it can play a supporting role for the surrounding businesses and residents. He stated the use as it relates to this property does not create a large parking demand and can operate as proposed without compromising the parking requirements of the Mill or other adjacent uses.

B. *Explain how, if the criteria in subparagraph (A) are not 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.*

Mr. Kelly stated that given the building lot and extra parking that exists on the site, the construction of another use would both take up area for the structure and require substantial parking to make it feasible. He stated this particular use allows for a new business to be established on the excess parking area while not compromising parking needs in the area. He noted that an offsetting use is important to them because they do not want to compromise the parking ratio they have.

With no further comment, Chair Gorman welcomed comment from the Board.

Mr. Hoppock asked Mr. Kelly to explain what the special conditions are at this property that distinguishes it from others in the area. Mr. Kelly responded that what they are proposing fits in as a like kind. In addition, he stated that right now it is a parking lot.

Mr. Hoppock asked zoning wise, what special feature exists or special problem exists that makes it different from others in the area that would create an unnecessary hardship if the Variance was not granted. Mr. Kelly responded that if looking at the adjacent surrounding businesses and residences this use although the current zone does not allow for it, their proposal fits in with and supports the adjacent business.

Vice Chair Taylor asked with the remodeling of the Colony Mill into residential units, if this entire area will be considered part of the Colony Mill site. Mr. Kelly responded that those are three separate lots. He referred to the map and stated that some of the area is parking spaces that are considered part of the Colony Mill. He noted these sites have separate addresses and tax map identification numbers. In addition, he noted that a portion of those parking spaces were included when they got approvals for with the Colony Mill redevelopment. Vice Chair Taylor asked if this was approved as a development site or part of the parking. Mr. Kelly responded that 222 West Street was what they got approval for which is a different address than what he is seeking approval for tonight. He stated that parking spaces are included in the count for 222 West Street's approval.

Mr. Rogers stated that it would be his belief that this parking was probably required when the Colony Mill was a much more mixed retail use building, which would have required more parking than the current change of use into residential units. He noted that this predates the ownership of Brady Sullivan for this property. Vice Chair Taylor asked if this area was part of the original site plan for this project. Mr. Rogers responded they may have included the parking spaces with that change of use. He explained that they far exceed the number of parking spaces needed for the apartments, restaurant and the other stand-alone building.

Vice Chair Taylor stated that she is trying to understand why they decided to develop this now as opposed to including it in the original site plan. Mr. Kelly responded that part of it was because they were actively working on plumbing and sheet rocking the units. He explained that until they had a good rhythm they would not try to tackle two different projects at the same time. In addition, he stated they had not done self-storage until a year ago. Mr. Kelly referred to their South Willow project and explained that after this project they began thinking about the Keene project with the available pad site. Mr. Kelly stated that now that they are heading into the final stages of the apartments, they feel that now is the time to develop the storage units into phases.

Vice Chair Taylor asked how many rental units would in the structure either at the two story level or the three story level. Mr. Kelly responded that he does not have an exact answer because the planning has not been finalized. He explained they have a rough footprint and an elevation drawing. Mr. Kelly stated the layout of units has not been completed. He noted that most of the units are under 6' x 8' and are smaller type units meant to accommodate a single or two bedroom apartment.

Chair Gorman asked if the structure has a proposal for a building at an estimated 90,000 square feet. Mr. Kelly responded that it something in that area. He noted there would be a common area and retail sales area. Chair Gorman asked how parking and traffic studies have been determined if the number of units is unknown. Mr. Rogers responded that for the parking they do have a formula which would be based on square footage that could be determined through the Zoning Code.

Chair Gorman welcomed comment from the public in favor of the application.

With no comment, Chair Gorman welcomed comment from the public in opposition of the application.

Anthony Mastronardi, 100 Darling Road, Keene stated that he was the owner of 70 Island Street which is the first property down from the proposed building site. He stated that he had hoped to see elevations because his property is located eight feet from his property. Mr. Hoppock asked Mr. Mastronardi to indicate the location of his property on the map. Mr. Mastronardi indicated the location. He stated that it looked like the proposed building online was going to be awfully close. Mr. Mastronardi stated that his concern is that he has a two story building that is currently facing a lawn and does not want to look out and see a building that is three stories blocking all of his windows. He stated that he was hoping to see elevations and setbacks. Mr. Mastronardi noted that Mr. Kelly has been a great neighbor and that he does not have enough information to say that he is oppose. He stated that he does have enough information to be concerned.

Chair Gorman commented that in the event the Board does decide to move forward with the Variance, Mr. Mastronardi will have opportunity to weigh in on height. He explained that it does appear the applicant would need to come back to the Board for a Special Exception for the third story they are proposing. Mr. Rogers added that in the Commerce Zone it is a 20 foot setback on all sides. Chair Gorman asked Mr. Rogers to clarify that a 20 foot setback would be met upon construction. Mr. Rogers responded at this point the applicant is before the Board for a Variance for the use. Chair Gorman asked if the applicant were seeking a setback Variance would they have to come back before the Board. Mr. Rogers responded in the affirmative.

With no further comment, Chair Gorman closed the public hearing.

The Board deliberated on the five criteria.

Mr. Hoppock stated that he does not see any hardship to this property and would like to see more detail on setback. He stated there has been no demonstration of special conditions that distinguishes it from others in the area. Mr. Welsh concurred with Mr. Hoppock. He explained it is that demonstration that is necessary as a basis for hardship and is not sure he has heard that yet. He referred to Vice Chair Taylor's comments that if a storage facility that is related to an apartment complex is not a commercial storage and is an accessory use. Vice Chair Taylor responded that it is her understanding if this was solely for the benefit of the main apartment building and storage for their use that it would be an accessory. She stated that when it is opened to the general public it is no longer an accessory use. Mr. Welsh asked if the Board would even need to consider a Variance if it was an accessory use. Mr. Rogers replied that Vice Chair Taylor is correct. He explained that the applicant would be limited to a certain percentage that they could build, which would be high number knowing the size of the Colony Mill. In addition, he explained the fact that the use is open to the public is the need for the Variance. Mr. Greenwald added if that was their route they would probably not be doing that in the first place. He noted that it would not be financially viable. Mr. Greenwald explained that it will cost hundreds of thousands of dollars to build just to give free storage for their tenants. He further explained that it

would not be viable to charge tenants for storage because the tenants could turn around and opt out. He stated that is why he believes the applicant would want to open it up to the public.

Vice Chair Taylor stated that she does not have enough information and also does not see the hardship. She stated that a financial reason for building it to make the property have an appropriate financial balance sheet is not enough to give a hardship. Vice Chair Taylor stated that even with that, she does not have enough information on traffic flow or what the building will look like, even though that may be through the Planning Board. She added that this Board still has to decide what the impact is on the neighborhood. Vice Chair Taylor concluded stating that she has serious concerns.

Chair Gorman stated that while the Board does not weigh in on aesthetics, they do weigh in on the impact of public safety, size and scope. He stated that he believes the Board is being asked to approve something that has a lot of blanks left open. Chair Gorman stated that in his opinion he thinks that is risky. In addition, he does struggle for cause when looking at the hardship in terms of this property being distinct and having a special situation to allow this Board to approve this Variance. Mr. Greenwald concurred with Chair Gorman. He stated that he does not feel there is a significant hardship.

Mr. Hoppock stated that the applicant has the burden of proof on these things. He explained to the applicant that what he is hearing is a lot of concern about missing information. Mr. Hoppock stated that it may behoove Mr. Kelly to consider withdrawing the application in case of an adverse ruling. He explained this may be an option to consider now rather than risk a loss and have to come back to show a change of circumstance. Chair Gorman asked with the consensus of the Board, he would reopen the public hearing and allow for such action.

Mr. Greenwald asked Mr. Rogers if being in the Commerce District if that restricted any building of residential homes in that district. In addition, he asked if there was any other use. Mr. Rogers read the allowed permitted uses in the Commerce District according to Section 102-542 of the Zoning Code as follows; *banking or lending institution, clinics, drive-in uses, funeral parlor, garage, greenhouse, nursery, health and fitness center, historic site open to public, hotel, institutional use, motel, apartment, motor vehicle dealership, motor vehicle repair garage, paint shop, vehicle body shop, child care facility, office, parking area, private club, private school, publishing/printing, recreational activity as business, research and development, restaurants and retail sales/service.*

Mr. Rogers stated that this property did receive a Variance for the multifamily units that are going into the Colony Mill under a Variance that was granted by this Board. Mr. Greenwald asked if motel or apartment would fall under the category of multifamily. Mr. Rogers replied that he would have to look back at the definitions and that in his opinion it would not be a multifamily.

Chair Gorman asked Mr. Rogers if the Board is faced with a situation of making something more nonconforming even though a Variance has been granted. Mr. Rogers responded that since a Variance has been granted it is a legal nonconforming use that is occurring on the property and that would be the Board's decision if they believed it is allowing for a non-permitted use.

Mr. Remy referred to the fourth criteria regarding the impact of the surrounding values and that he is not sure how to determine that without knowing what the building is going to look like. Chair Gorman stated that he would agree with Mr. Remy. He added that he would like to see that answered as well and how it would impact the values of the surrounding properties.

Chair Gorman asked the Board if they agreed to reopen the hearing to hear from the applicant.

Mr. Hoppock stated the other option is for the applicant to withdraw without prejudice so the applicant can reapply later when he has the information that the Board needs.

With no objection from the Board, Chair Gorman reopened the public hearing.

Chair Gorman recognized Mr. Kelly and asked him if he wished to proceed with a vote or if he wished to request to withdraw the application. Mr. Kelly thanked the Board for their input. He stated that next time he will be more eloquent regarding the setbacks shown on the plan, get elevations and more detail on the building material. Chair Gorman suggested Mr. Kelly also present evidenced to show a hardship.

Mr. Kelly then requested to withdraw his application without prejudice.

Mr. Hoppock moved to accept the applicant's request to withdrawal application ZBA 19-03 without prejudice. Vice Chair Taylor seconded the motion.

On a vote of 4-0, the Zoning Board of Adjustment approved the applicant's request to withdraw ZBA 19-03 without prejudice.

III. New Business

No new business was presented.

IV. Communications:

Mr. Rogers announced the Office of Strategic Initiatives is holding their 25th Annual Spring Planning and Zoning Conference that will be held on Saturday, June 1, 2019 in Concord. Mr. Rogers stated that the conference is informational and that Board members can contact the Community Development Department for registration.

VII. Adjournment

Hearing no further business, Chair Gorman adjourned the meeting at 7:14 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker
Reviewed and edited by
Corinne Marcou, Zoning Clerk