

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, June 6, 2022

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Richard Clough

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Michal Hagan, Plans Examiner

Members Not Present:

All Present

I) Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting – May 2, 2022

Ms. Taylor proposed the following changes to the May 2, 2022 meeting minutes:

Line 50 - It should read "copy of the prior applications," instead of "copy of *what* the prior application."

Line 90 – It was noted after "entitled to a Variance" that the property owners did not take advantage of the Variance.

Line 92 – It should read either "denied a second Variance application" or "denied a new Variance application."

Ms. Taylor stated that the suggested changes to Lines 90 & 92 will make the next paragraph make more sense. She continued that on line 1446, the final word of the sentence should be "opposition," not "opposing."

Mr. Welsh made a motion to accept the May 2, 2022 meeting minutes with the amendments. Mr. Hoppock seconded the motion, which passed by a vote of 5-0.

III) Unfinished Business

Chair Gorman asked Staff if there was any unfinished business. John Rogers, Zoning Administrator, replied no.

IV) Hearings

A) ZBA 22-11: Petitioner, Thomas Bogar, represented by Dan Bartlett, of 185 Winchester St., requests a Variance for property located at 94 Key Rd., Tax Map #110-018-000-000-000 that is in the Commerce District. The Petitioners requests a Variance to permit the construction of an open, rigid canopy structure for customer weather protection 10 feet into the setback where 20 feet is required, per Chapter 100, Article 5.1.2 of the Zoning Regulations.

Chair Gorman asked to hear from Staff.

Michael Hagan, Plans Examiner, stated that this building was built in 1965. He continued that it previously had two other Zoning Board applications, one on December 30, 1969 for a Special Exception, and was granted to sell new and used cars. Under today's current Ordinance, it is a permitted use and a Special Exception would not be needed. The other one was October 1, 1990, a Variance for paving setbacks and coverage, which was withdrawn by the Petitioner.

Ms. Taylor stated that she wondered whether the driveway sections of the Code applied to this, because it appears from the drawings that this is a travel throughway between two curb cuts. She continued that she did not know what the regulations were, whether the Zoning ones applied or if it was something else.

Mr. Hagan replied that providing access around the building, you could still have access from one driveway to the other; it does impede on that. He continued that the Fire Department would review this as well for the height of the canopy for access for emergency vehicles.

Mr. Rogers stated that he wants to add that in the Commerce District, the setback for front, side, and rear is 20 feet.

Mr. Hoppock stated that he is looking at the image that was submitted and trying to understand. He continued that the Board does not have a diagram of the entire building showing where the proposed canopy would be located. The partial site plan is in fact partial, as far as the building is concerned. He asked if the Board could see something that shows the canopy in relation to the building.

Mr. Rogers replied that they could zoom in on the image. He continued that it still is not showing the whole building, but it shows the section closest to Key Rd. He did not think to ask the Applicant for a full site plan. He showed another drawing on the screen and stated that if you

see the long side of the building that faces Key Rd., the canopy would be on the right hand side of that part of the building.

Mr. Welsh stated that he has a procedural question. He asked if the particulars of this canopy, when it is designed, would go before the Planning Board and be subject to Standard 19. Mr. Rogers replied that under the new Land Development Code and Planning Board standards, this would probably be approved administratively. He continued that it is possible that it could go to the Minor Project Review Committee, but until they see more detailed plans, he thinks it would most likely be administratively approved.

Chair Gorman asked if anyone had more questions for Staff. Hearing none, he asked to hear from the Applicant.

Dan Bartlett of DB Architects, 185 Winchester St., stated that frequently, auto dealerships and other businesses receive requests by the parent company, the nationwide franchise entity that makes recommendations or requirements, for building upgrades to keep up with the trends that the company wants to portray. He continued that he has been engaged to be the Architect to upgrade this building, which is something that has not been done for many years, bringing it in line with contemporary architecture and in keeping with the Mazda Autex brand so that customers recognize that aesthetic. Part of the improvement is creating an amenity for service customers who currently pull up in the same location that they will be continuing to use. Currently, customers who bring their vehicles for service when it is raining, park in the parking lot, getting wet as they enter the building. With the proposed project, customers can drive under canopy then enter the building without getting wet. It is a little more comfortable for the patrons.

Mr. Bartlett continued that the canopy has to be in that location because that is where the service department is. They are not interested in redesigning the building to such a degree that the whole flow would be disrupted. They talked about putting the canopy elsewhere but it was just a non-starter to consider. This location works best for the existing building and for the new proposed improvements as this area is paved and the new canopy would go entirely within a that paved area. They are not changing site drainage or permeable surface area; they are simply requesting for the construction of the canopy. This amenity is consistent with the image the company wants to project.

Mr. Bartlett continued that the clearance is about nine feet. There is vehicular emergency access from driveways on both sides. He cannot imagine a scenario that would require pulling under that canopy, when there is a lot of access all around the building otherwise. As Mr. Hagan alluded to, the Fire Department would rightfully have a concern about that. He went to a pre-submission meeting with the Planners from the Community Development Department with the Fire Department where they raised the question but did not reject it or ask for anything different.

Mr. Bartlett stated that he was going to talk about setbacks, but he thinks he can close his presentation and turn it over to the next step. Chair Gorman asked if Mr. Bartlett wanted to go

through the criteria, specifically, or just leave it at that. Mr. Bartlett replied that he is happy to leave it at that. He continued that he wanted to point out that there is another slide showing the street. Regarding setbacks, the intent is to keep the street line clean. Setbacks are often about light and air, circulation, visibility, and so on and so forth, and he wanted to point out that this street edge, right where the canopy is going to go, is somewhat confused. He would argue that there is not a strong street edge along Key Rd. There is a KFC restaurant very close to the road and then parking lots. If you view this canopy as you are entering Key Rd, it does not obstruct the street edge, because the background of that view is just another building. That function of the setback requirements, he would say, is probably less valid. He thinks it has been acknowledged already that where the canopy is going is right where the street comes closest to the building, but he would argue that the street pulls away from the encroachment in both directions, so it is just a very finite moment that the encroachment has any kind of impact. It says it is a 10-foot encroachment, but it is really just a point that is at 10 feet. The rest of it recedes away from the road just as the road recedes away from the encroachment.

Chair Gorman asked if the Board had questions for the Applicant.

Ms. Taylor stated that one of the points made was that it does not change any of the run-off. She continued that this area is notorious for getting a couple inches or more of standing water every time there is a downpour. They are not changing the impervious surface, but still, with a roof there, she believes that would change the flow. She asked how that would be addressed.

Mr. Bartlett replied that they have to get the water off of the roof of the canopy, so that will go, presumably, into a subsurface drainage system that is already in place if there is one, or it would just go to surface run-off. He continued that in other words, instead of the rain coming down in a certain location, the rain would get concentrated in a different place, or out on the grass somewhere. He has not detailed this yet on the architectural plan, but yes, they need to deal with the water. It will change the way the water gets to the pavement and then to wherever it needs to go. The point is that it is impervious material right now and putting a roof over an impervious surface does not increase the amount of impervious area on the lot. Ms. Taylor replied that it might change where the water actually goes. Mr. Bartlett replied yes, he thinks they could say that.

Ms. Taylor stated that on the picture of proposal, it looked like there is a one-way area. She asked if that would be a one- or two-lane canopy, asking for further details. Mr. Bartlett replied that it is wide enough for two vehicles to pass side by side. He continued that he is not aware of any signage that would restrict the direction of traffic. The owner was unable to be here tonight due to business out of state, and he would probably be able to address that more accurately, but his understanding is that the drivers enter “this way”, as that is how it lays out best. However, if there was another driver who wanted to get through there, they could; it is wide enough for two vehicles.

Chair Gorman stated that ultimately, it would be fair to say that that is basically a pull-up, and then you will enter the service area, a Technician will come take your vehicle, bring it to a service bay, and any traffic leaving the service bays behind would go around or out. Mr. Bartlett replied that is correct, because the cars are headed to the garage bays anyway, and then come out of the bays, then exit. He continued that he thinks it is a de facto one-way route, regardless of the signage.

Mr. Hoppock stated that if he is reading the partial plan correctly, the side facing the road is the north side. Mr. Bartlett replied that is correct. Mr. Hoppock asked if there will be a wall or any kind of solid structure between the top of the canopy and the ground, or it will be all open. Mr. Bartlett replied that there are two pillars, but otherwise it is open. Mr. Hoppock asked if it is correct that you can pretty much see through it. Mr. Bartlett replied absolutely, all three sides.

Mr. Welsh stated that for a while he was wondering what the motivation was adding the canopy and he was thinking that customers were just regularly getting out in the rain and it was getting to be a problem, but it does not sound like that is really the motivation. He continued that it sounds like Mazda wants a renovation like this to keep up with an industry standard or corporate look, and that is the beginning point of this. Mr. Bartlett replied that he is coming to that conclusion on his own; no one has said to him specifically. They presented this, so he is figuring that similar to how gas stations have canopies, most dealerships are directed this way, too. He figured that it was something they wanted to provide for their customers. Whether it is crucial to the look or not is conjecture.

Mr. Clough stated that on the line drawing, the surveying one, it looks like there are two parking spaces perpendicular to the building, with one possibly being a handicapped space. He asked if those are expected to stay. It is odd to have two parking spaces there when you are trying to have people drive through, which would restrict it.

Mr. Bartlett replied that this person surveyed what was there and then placed the canopy over it, and it does seem like there are parking spaces there, but he cannot imagine that they are used, because the way it works now is just as he described. They are not disrupting anything and there is ample parking and sufficient ADA parking elsewhere. If those spaces that Mr. Clough is referring to are there, and being deleted, it does not affect the required parking. He has never seen anyone parked there, because it is not a place to park, but he guesses that it was striped that way at one point and the paint is still there. Mr. Clough replied that now that they have seen the picture of what it looks like, it does not make sense that there would be any sort of parking, especially in that configuration.

Chair Gorman asked if the City photo that was taken for this application shows the location he is referencing. He continued that it shows an ADA parking space, with a Jeep parked next to it in what would be the second parking space. Mr. Bartlett replied yes. He continued that those parking spaces would be relocated. Chair Gorman replied that his take would be that anything the Board approves tonight would be contingent upon parking requirements.

Mr. Rogers replied that certainly, when the building permit documentation is submitted, that would be a review that staff would take, especially regarding the ADA space. The State Building Code will dictate how many ADA spaces are required based on the overall number of parking spaces and if one is eliminated, then that one might have to be recreated elsewhere.

Mr. Hoppock asked what the size of the “red triangle” is. Mr. Bartlett replied that he knew someone would ask that tonight but he did not get that calculation yet. He continued that it is 11 times 16, divided by two. Chair Gorman replied that is 85 square feet.

Chair Gorman asked if there were any more questions for the Applicant. Hearing none, he closed the public hearing and asked the Board to deliberate. Mr. Hoppock stated that for the record, there are no members of the public present, and thus no one to speak for or against this.

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

Ms. Taylor stated that she does not believe it would be contrary to the public interest, differentiated from some of the other applications the Board has had. She continued that given the way the curve is on Key Rd., it does not create any line of sight issues for the traveling public on Key Rd. This probably is in the public interest.

Mr. Hoppock stated that he would add that there would be blockage on the northern side of the canopy; that the canopy is only encroaching 9.2 feet; and there is no line of sight issues around the curve, he agrees that it is not contrary to the public interest.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Hoppock stated that he does not see anything in the application, nor did he hear anything in what the Applicant said, that would lead him to believe that granting this Variance would alter the essential character of the neighborhood. He continued that in fact, it would be consistent with the neighborhood, given what is across the street and next door. He continued that there is nothing that would threaten the public health, safety, or welfare.

Chair Gorman stated that he agrees with Mr. Hoppock.

3. *Granting the Variance would do substantial justice.*

Chair Gorman stated that he thinks the advantage to the Applicant does outweigh any potential harm to the general public, and that the intent here is certainly an upgrade. He continued that the picture the Board is seeing is certainly an improvement from what sits there today. It is a reasonable request to keep up with the industry, and he does not see any adverse impacts to anyone else.

Ms. Taylor stated that she thinks this is one of those rare situations where it is almost a wash. She continued that she thinks it is a rather even advantage to the public and advantage to the property owner.

Mr. Hoppock stated that denying this Variance does not really benefit the public. He continued that given the configuration of the road and other factors that are relevant to the hardship criterion, he does not think there is any basis for denying it based on this criterion.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Mr. Welsh stated that he does not think the Board has heard testimony or discussion along these lines, but he thinks it is a safe argument that this will increase the value of the surrounding properties, or at the very least not diminish them.

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 and*

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

Mr. Hoppock stated that the first question for this one is identifying the unique features of the property, and as Ms. Taylor mentioned already the curve of the road is one feature, and following the curve of the road is the setback line. That feature, along with the juxtaposition of the building with that curving line, and the location within the building of what the Applicant wants to attend to, all combine together to make this a unique setting, in his opinion.

Chair Gorman stated that he agrees with Mr. Hoppock.

Mr. Hoppock stated that based on that unique siting, applying the Ordinance to this situation creates an unnecessary hardship if the Board does not grant the Variance.

Chair Gorman stated that in addition, he thinks the proposed use is a reasonable one, given that cars are probably already pulling up there to park anyway. Something that is already happening will just be done in more of an aesthetic fashion or a customer service-oriented atmosphere, which benefits the public. For those reasons, he thinks the request is reasonable.

Chair Gorman asked if the Board had more comments. Hearing none, he asked for a motion.

Mr. Hoppock stated that he does not see a need for conditions, but would entertain the idea if another Board member felt differently. There was no response.

Mr. Hoppock made a motion to approve ZBA 22-11. Ms. Taylor seconded the motion.

Chair Gorman stated that the motion is to approve without conditions, knowing that the parking will be taken care of through the permitting process. He went through the criteria.

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

Met with a vote of 5-0.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Met with a vote of 5-0.

3. *Granting the Variance would do substantial justice.*

Met with a vote of 5-0.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Met with a vote of 5-0.

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 and*

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

Met with a vote of 5-0.

The motion to approve ZBA 22-11 passed with a vote of 5-0.

V) New Business

Chair Gorman asked if there was any new business. Mr. Rogers replied that Staff did not have any new business.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 7:06 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk