

Town of Greenville
Zoning Board of Adjustment

Minutes – December 8, 2020

Call to order at the Mascenic SAU, 16 School Street, Greenville, NH, at 7:00 p.m. Present: Chairman Pedro Sousa, Member Michael Rathbun, Alternates Debra Reardon and Kelly Fitzwater, Town Counsel Biron Bedard, and Town Administrator Tara Sousa (serving as the ZBA's Administrative Assistant).

Chairman Sousa read the public notice for the special exception application of Country Corner Mile Realty, LLC, and H-Cor, LLC. Atty. Bedard asked Mrs. Sousa to review the noticed abutters. Mrs. Sousa listed the noticed abutters/applicants: Country Corner Mile Realty, LLC; Fieldstone Farm Properties, LLC; HEG-7 Sophia's Way, LLC; SNZ, LLC; Paul Cormier; James & Robin Reissfelder, and Wilcox and Barton. She stated that return receipts were received from Country Corner Mile Realty, LLC; Fieldstone Farm Properties, LLC; Paul Cormier; James & Robin Reissfelder; and Wilcox and Barton.

David Frothingham, of Wilcox and Barton, presented the site plan. He reviewed the existing site as having a 2-dispenser system located between the building and the State right-of-way, with the fuel tanks adjacent, and accessed by 3 driveways. The proposal would remove the dispensers from the front of the building, and close one entrance (curb cut), moving the congestion away from the front of the store. The dispenser station would move to the center of the existing side parking lot, adjacent to the diesel dispenser, and would be increased from 2 dispensers to 4 (4 dispensing locations to 8, 2 per dispenser). New fuel tanks would be relocated to the rear of the lot, with 50,000 gallon capacity. Diesel area and tank is unchanged. He stated permit applications have been submitted to DES for the new underground storage system and piping, and to NHDOT for the work in the right-of-way, that being the closure of one entrance and reconfiguration of another, which is currently askew and would be changed to perpendicular, improving traffic flow and sight distances. Chairman Sousa sought to clarify for the record the proposed access changes, those being closure of the north entrance, reconfiguration of the existing middle entrance, and no changes to the south entrance. Mr. Frothingham noted that NHDOT is not requesting a traffic study for this change. He stated that there will be an increase in traffic, estimated based on the number of dispensers, but will be limited by the number of cars on Route 31. He stated that the increase (in dispensers) is to meet existing demand.

Mr. Rathbun questioned the increase of the fuel storage. Mr. Frothingham confirmed with property owner Joseph Correia the existing capacity, and answered that this would increase the storage for regular by 10,000 gallons, and that it would be a single tank with 2 compartments, meeting all requirements of DES (double-walled, spill containment, etc.) Mr. Rathbun questioned the available space for the parking near the building. Mr. Frothingham answered that there is space for an 18 foot parking space and 24 foot aisle, arranged at standard the 90 degree angle. Chairman Sousa asked if the reconfiguration will result in the same number of parking spaces, and Mr. Frothingham answered that it would. Mr. Correia discussed how the front area will be used for a customer loading area. Handicapped spaces were discussed, and Mr. Frothingham confirmed the existing spaces would remain in their current location, save for the elimination and replacement of the non-ADA compliant space in front of the building.

Mr. Rathbun questioned the increased car count reflected in the plan being 822 (one-way) trips, which would be additional 411 cars. Mr. Frothingham explained that the estimates are from the IHS's book, reflecting statistical analysis of the traffic generated by the additional dispensers. Mr. Rathbun asked about the current car count. Mr. Correia answered that he averages 350 transactions daily at the pumps, with 1400 gallons of that being overnight. Mr. Rathbun questioned what he actually expected for an increase, and Mr. Correia stated that industry people he had spoken to suggest a 22-23% increase. Mr. Rathbun expressed his impression that the proposal will resolve some traffic issues at the site, because people won't be backed-up onto the street waiting for gas. Mr. Correia discussed the customers that leave their cars at the pump while shopping, which he believes will not occur with the new plan due to the distance from the pumps to the store. Mr. Correia noted that it is hard to give up the curb cut. Mr. Frothingham stated it was a dramatic improvement to the flow at the site.

Mrs. Sousa asked Atty. Bedard if there were specific criteria that the Board should review for a special exception, similar to the 5 criteria for a variance. Atty. Bedard answered that there are 3 specific criteria, listed in the ordinance, and that he felt their project narrative had done a reasonable good job of addressing those requirements, along with the presentation, but indicated that he may have some questions after the Board has finished their questions.

Chairman Sousa questioned a setback distance, and it was clarified that the distance referenced was from the edge of the canopy, not from the pumps themselves. Mr. Rathbun asked Mrs. Sousa if there had been any feedback from abutters, and she answered that she had not received any written or verbal correspondence. Mr. Rathbun asked Atty. Bedard if the Board could infer then that abutters are okay with the proposal. Atty. Bedard answered that it only means that abutters have received the notice and chosen not to participate at this juncture. Mr. Frothingham noted that no abutters attended the Planning Board hearing either. Mr. Frothingham noted that the required distances from existing structures is met, for example the closest church, he stated, was 1.8 miles away. Atty. Bedard directed the Board's attention to page 2 of the project narrative as the applicant's addressing of criteria A, B, and C. Atty. Bedard questioned if an AOT (Alteration of Terrain) permit or other state or federal permit was required, and Mr. Frothingham answered that it was not, noting that there was an existing approved stormwater management plan that was not being affected by the changes. Atty. Bedard asked if there will be pavement markings and signage to encourage traffic to move as intended within the site. Mr. Frothingham stated that that question was raised at the Planning Board, and they will be adding arrows to direct traffic. He noted all traffic is two-way. Mr. Rathbun asked if they will be changing signage, and Mr. Correia answered that the name on the canopy had already been changed. Atty. Bedard noted that there is parking for the building and Dunkin Donuts that are accessed from one to the other and vice-versa, and that while it is not an issue currently due to the common ownership, he would like to see, either at the Planning Board level or here (at the ZBA), that a covenant be required for cross-easements to allow for that access should the ownership ever change. He expressed greater concern for a potential change in ownership between the Dunkin Donuts property and the store, than for the store and gas dispensing area. He recommended that the easements for access and parking either be recorded now, or that a covenant could be recorded to require said easement before any transfer of property.

Mr. Rathbun asked if the door is being changed, and Mr. Correia answered that it was not. Mr. Rathbun questioned the two-way traffic close to the store's front door. Mr. Correia discussed that the Massachusetts traffic generally uses the southern entry, and he anticipates more vehicle parking in that area than the lot in front of the store. The location of the existing handicap ramp was discussed. Current issues with different car fill locations resulting in cars oriented in different directions was discussed. Mr. Rathbun asked what variance was needed, and Mr. Frothingham replied that this is for a special exception. Atty. Bedard explained the difference between a variance and a special exception, noting that, unlike a variance where there is some discretion, the applicant is entitled to a special exception if they meet the criteria. Mrs. Sousa noted that the term "enlargement" in the ordinance was the determining factor for this plan needing to come before the ZBA. Mr. Rathbun questioned the status of State and/or EPA approvals, expressing that they will have the final say despite any Board decision. Atty. Bedard explained that the State is only approving the underground storage facility, and that DES, through delegated authority from EPA, will be the permitting authority, reviewing all aspects of the fuel storage, including tanks, transmission lines, fume recapture, and safety mechanisms, such as fire suppression. Mr. Rathbun asked the timeframe for construction, and Mr. Correia answered that they would break ground in the spring if all the permits were in place. He discussed the intent to keep the existing dispensers in operation during construction. Atty. Bedard further clarified the need for the cross-easements.

Hearing no further questions from the Board, the Chairman opened the floor for public comment. Marshall Buttrick, of 240 Adams Hill Road, first expressed his thanks to the Board for making the application and plans available for the public's review on the Town's website. Mr. Rathbun gave credit to Mr. Sousa, and she thanked Mr. Frothingham for providing an electronic version of the plan to facilitate that posting. Second, Mr. Buttrick expressed that he believed the proposal would make the site safer. He liked the two items raised by Town Counsel, and with those being addressed, he felt the applicant would meet the burden for the special exception.

Upon the Chairman referencing the need for agreement from the applicant regarding Counsel's recommended conditions, Mr. Frothingham questioned the timeline for compliance with those conditions. Atty. Bedard expressed the need for the easements or a recorded covenant before the change from 2 dispensers to 4 is made, and clarified that that requirement would apply to all 3 involved lots. Atty. Bedard offered to answer any questions the applicant's legal counsel might have.

Motion by Mr. Rathbun, 2nd by Mrs. Reardon, to approve the special exception as having met the conditions of Section 5.4 of the Zoning Ordinance with the following conditions:

1. Applicant to place traffic movement stripping and markings on the lot for the fuel dispensing station; and
2. Applicant to record cross easements for parking access for all three lots, or to record a covenant which prohibits the sale of any of the three lots prior to such easement being recorded.

Motion approved with 4 in favor, none oppose.

Motion by Mr. Rathbun, 2nd by Ms. Fitzwater, to approve the minutes of June 11, 2019 and June 25, 2019 as written.

Motion approved with 4 in favor, none opposed.



The Board reviewed the draft Rules of Procedure, which Mrs. Sousa noted was adapted from another town's adopted procedures. She wanted feedback from the Board as to how specific they would want these rules, specifically noting the current detailed list regarding public hearings. Mr. Rathbun indicated he liked the detailed procedures. Mrs. Sousa asked Atty. Bedard the risks of adopting such specific rules, should the Board be lax in following procedure. Atty. Bedard explained that the courts generally recognize that Boards are composed of laypeople, and will consider if a failure to follow the rules materially prejudiced the applicant or application. He noted the importance of the need for a waiver process which includes clarity that the waiver process only applies to these specific rules. He suggested he would provide the Board with a redlined mark-up with his recommendations, and asked when the Board intended to meet again. Mrs. Sousa recommended that the Board call a meeting when the Board is not conducting a public hearing, specifically to deal with this draft, and to ideally get some new members on the Board to be part of the discussion and adoption. Atty. Bedard agreed that it would be preferred to adopt procedures to be in effect when the next application is received, and Mrs. Reardon expressed her agreement as well.

Motion by Mrs. Reardon, 2nd by Mr. Rathbun, to adjourn at 7:58 p.m.

Motion carried with 4 in favor, none opposed.

Prepared by: Tara Sousa, Town Administrator

Approved by:


Pedro M. Sousa, Chairman
Michael Rathbun

Debra J. Reardon


Kelly A. Fitzwater