

**Ashland Zoning Board of Adjustment
Ashland Planning Board
Joint Meeting**

Approved Minutes as of Sept 12th, 2024

Meeting of Thursday, August 8, 2024

CALL TO ORDER:

Kendall Hughes, Chair of the Planning Board, called the meeting to order at 6:32 PM. Kendall called a roll call. Kendall recessed the Planning Board meeting

**PLANNING BOARD
MEMBERS PRESENT:**

Mardean Badger, Kendall Hughes, Chris Janosa, Tricia Farris
Paula Hancock, Linda Barnes (alternate)

**ZONING BOARD
MEMBERS PRESENT**

Asa Ammarin, Tim Peters, Mardean
Badger, Charlie Bozzello, Mike Myshrall (alternate)

Charlie Bozzello called the Zoning Board of Adjustment meeting to order 6:33 PM. Charlie appointed Mike Myshrall as a voting member for this meeting.

DISPOSITION OF MINUTES FOR JULY 11 JOINT MEETING

The minutes of the Thursday, July 11, 2024 Joint Meeting were reviewed. Mardean Badger made a motion to accept the minutes of the July 11, 2024 minutes as amended. Tim Peters seconded the motion. The motion passed unanimously.

CASE 2024-05 DELIBERATION SESSION: SPECIAL EXCEPTION APPLICATION for
Property Owned by Lisa Cross at 3 Cross Road, Tax Map 108 Lot 014, to Conduct a Commercial
Business in the Rural Residential Zone

The ZBA began their deliberations as a follow-up to a public hearing conducted at the previous ZBA meeting of July 11th, 2024 which presented a request by Lisa Cross for a Special Exception to locate a commercial food truck business in a Rural Residential Zone.

ZBA Chair: Charlie Bozzello

We are deliberating this evening regarding a Special Exception request. The seven deliberating criteria for a special exception are different from the five criteria required for a variance. Although the applicant has submitted the variance application form, we will necessarily deliberate according to the criteria indicated on the Special Exception application form.

There has been some discussion regarding a tenant of the subject property, Dew Drop In, and the tenant of an abutting property with an owner in opposition to this application, Tracy Girl. The ZBA is only concerned with issues affecting the properties and their respective owners. The respective tenants of these properties do not have standing in this matter before the board.

Zoning regulations have an important role in the community to promote specific lifestyles by area and to enhance property values by establishing lifestyle and operating expectations. A residential zone

creates the expectation of a relatively peaceful and less regulated lifestyle. A commercial zone has greater demands including expanded parking requirements, noise regulation and safety concerns among others. Supporting these regulations is what the ZBA does.

The ZBA recognizes that all rules and regulations may encounter the need for exceptions. The ZBA assesses the need for exceptions and initiates an exception, in accordance with the deliberation requirements of the State of New Hampshire, whenever the overall benefit to the community exceeds the potential harm.

Mitigating Circumstance

This application has a mitigating circumstance that lends support to the approval of the application. The Ashland Board of Selectmen approved a temporary operating permit for a food truck on the subject property. This may have led to a false assumption by the owner that the operation of a food truck was in compliance with Town of Ashland requirements.

Aggravating Circumstances

There are several aggravating circumstances that support opposition to the application.

- 1) The operating permit for this business originally granted by the Ashland Board of Selectmen has expired. There has been no extension or renewal
- 2) The Ashland Planning Board had informed the applicant over eighteen months ago that a Special Exception from the ZBA was required for the operation of the intended commercial business on the property zoned as rural-residential

The Planning Board minutes of May 4 and May 25, 2022 indicate that the applicant was told at both meetings of the need to apply to the ZBA for a special exception permitting the operation of the business

- 3) The applicant has allowed the operation of the commercial business for approximately the past eleven months without an approval from the ZBA
- 4) While the ZBA has no enforcement authority, the ZBA is required to “frown” on applicants who knowingly disregard zoning requirements
- 5) The Land Use Assistant, Susan MacLeod, has asked the applicant to submit responses for the Special Exception deliberation criteria. That specific submission has not been received.

ZBA Vice-Chair: Tim Peters

I am irked that this issue has gone on since 2022 and that the rules of the town were disregarded.

ZBA Secretary: Asa Ammarin

The latest reference to a paper trail shows that consultations with the Planning Board go back an additional year. It is outrageous this has gone on without an approval from the town. This is an aggravating factor.

ZBA Chair: Charlie Bozzello

Public Hearing Summary:

Applicant's agent represented that the tenant operating on the subject property provided a community benefit by providing good food at reasonable prices. This benefit justified the request for a special exception to operate this commercial business on a rural-residential zoned property.

A residential property abutter expressed that the business of the applicant's tenant currently operating outside of the zoning requirements, constitutes a nuisance. He purchased property anticipating lower noise, less traffic and less commercial odor.

Marcia Litchfield, commercial property abutter, read a statement summarizing her opposition at the public meeting on this issue.

Granting the Special Exception would adversely affect the value of the property at 113 Riverside Drive. This property was purchased in good faith at a premium with an expectation of exclusivity in the surrounding area

The business of the applicant's tenant is in direct competition with the business operated by her tenant

The business of her tenant is restricted by the "Grandfathered" regulations affecting the property rights

Mardean Badger: This is happening in a rural residential zone. This is a new business. The older business (Tracy Girl) preexisted before zoning and hence it is grandfathered. Both businesses are a similar type of business with traffic and hours of operation. The impact is similar. It is not in the purview of the ZBA to talk about the business competition and grandfathered case. The ZBA needs to deal with the new business and how the new business impacts the community. The ZBA is not an enforcement agency.

Charlie Bozzello: This business is operating outside the zoning ordinance requirements and has likely harmed the property interests of abutters.

Asa Ammarin: The general welfare of the pre-existing business is being affected. It is the benefit vs. harm

Mardean Badger: If two new businesses located in a rural residential zone, do we accept one business and consider the second business as competitive?

Charlie Bozzello: The town creates zoning regulations for residences in the residential zones and businesses in the commercial or industrial zones. The ZBA needs to uphold the integrity of the zoning regulations. This commercial business has been operating in a rural residential zone in conflict with the zoning regulations. The ZBA can't promote harm to a "grandfathered property" which is operating in accordance with established regulations.

Asa Ammarin: A grandfathered business has special permission. The ZBA can't stop competition but the business needs to do it the right way.

For the Special Exception application to be approved there must be at least three board members voting in the affirmative on all of the seven deliberation criteria.

Special Exception Criteria

Criteria 1: *The specific site is an appropriate location for the intended use or structure*

Asa Ammarin: No. Based on zoning specifically rural residential community; the business not in the Rural Residential Zone is a structure not followed.

Mardean Badger: No. This is a Rural Residential Zone. This definition does not allow businesses.

Tim Peters: No. This is in a Rural Residential Zone.

Mike Myshrall: No. This is not in the Rural Residential Zone definition.

Charlie Bozzello: No. I am concerned that the subject property is a rural residential property and does not permit commercial business.

Criteria 1 Vote:

Ammarin: No Badger: No Peters: No Myshrall: No Bozzello: No

Criteria 2: *The use will be compatible with neighboring land uses*

Asa Ammarin: No. Because at the last meeting we learned that the welfare of the abutters properties are adversely affected.

Mardean Badger: No. Because even though the impact on neighbors are adding while the abutters have essentially similar business on the other side. This is an aggravating impact.

Tim Peters: No.

Mike Myshrall: No. This does not comply with the zoning ordinance and substantially affects the abutters.

Charlie Bozzello: No. I am struggling with a business operating in a rural residential zone in direct conflict with a preexisting business in conformance with the zoning requirements.

Criteria 2 Vote:

Ammarin: No Badger: No Peters: No Myshrall: No Bozzello: No

Criteria 3: *The property values in the zone and in the surrounding area will not be reduced by such a use*

Asa Ammarin: No. The local property values are diminished. The increased traffic and associated noise will reduce the values of the properties in the area.

Mardean Badger: No. With the additional impact on the abutters compounds what is happening.

Tim Peters: No. Property values will be reduced on properties on either side of the business and across the street.

Mike Myshrall: No. The business is located in a different zone and that traffic, noise and smells from the business impacts the abutters.

Charlie Bozzello: No. Property owners expect zoning regulations to be adhered to. A loss of confidence in the enforcement of zoning requirements makes property investment more uncertain. Property values will be diminished.

Criteria 3 Vote:

Ammarin: No Badger: No Peters: No Myshrall: No Bozzello: No

Criteria 4: *There will be no nuisance or serious hazard to vehicles or pedestrians*

Asa Ammarin: No. Based on the discussion when building inspector, Devon Tibeault who described that the permit is not current. The permitting is not proper and things can go wrong. There is also the issue of vehicles and customers entering and leaving the property. There are rules.

Mardean Badger: Yes. Looking at the words of the criteria, the business being there is no hazard to either vehicles or pedestrians.

Tim Peters: Yes. Reading the wording of the criteria specifically for vehicles and pedestrians.

Mike Myshrall: Yes. There is easy entrance to the property and no serious problem with traffic or pedestrians.

Charlie Bozzello: No. There is a different traffic expectation in the rural residential zone. The abutters don't expect significant numbers of vehicles in motion. This is introducing at the least a nuisance and perhaps a safety issue.

Criteria 4 Vote:

Ammarin: No Badger: Yes Peters: Yes Myshrall: Yes Bozzello: No

Criteria 5: Adequate and appropriate facilities will be provided for the proper operation of the proposed use

Asa Ammarin: No. There is no vendor permit.

Mardean Badger: No. Because of permitting issues. We need to look at the adequacy of the facilities. The business did not go through the permitting process.

Tim Peters: No. The business did not go through the proper procedures. There have been no inspections.

Mike Myshrall: No. Because of the reasons of permitting compliance. The ZBA does not know where we are with all that.

Charlie Bozzello: No. The business has not gone through the permitting process. We need to be vigilant about compliance.

Criteria 5 Vote:

Ammarin: No Badger: No Peters: No Myshrall: No Bozzello: No

Criteria 6: The proposed use will comply with the minimum lot sizes, frontage and setback requirements

Asa Ammarin: Yes. There are no issues with setback requirements.

Mardean Badger: Yes. There are no issues with lot size and frontage setbacks.

Tim Peters: Yes. Same reasons as Mardean Badger (above). There are no issues there.

Mike Myshrall: Yes. For the same reasons as Mardean Badger and Tim Peters.

Charlie Bozzello: Yes. There are no current issues with these considerations.

Criteria 6 Vote:

Ammarin: Yes Badger: Yes Peters: Yes Myshrall: Yes Bozzello: Yes

Criteria 7: Existing roads and highways are capable of carrying the additional traffic

Asa Ammarin: Yes. There is adequate roadway space to get in and out of the property.

Mardean Badger: Yes. The road going by is level and straight.

Tim Peters: Yes. Customers can see in both directions when pulling out

Mike Myshrall: Yes. The topography is conducive to get in and out of the property.

Charlie Bozzello: Yes. Infrastructure for traffic control appears adequate.

Criteria 7 Vote:

Ammarin: Yes Badger: Yes Peters: Yes Myshrall: Yes Bozzello: Yes

Motion for Consideration:

Mardean Badger made a motion to deny the Special Exception. Asa Ammarin seconded the motion.

Roll Call Vote on the Motion to Deny the Special Exception

Asa Ammarin: Yes to deny the Special Exception

Mardean Badger: Yes to deny the Special Exception

Tim Peters: Yes to deny the Special Exception

Mike Myshrall: Yes to deny the Special Exception

Charlie Bozzello: Yes to deny the Special Exception

Vote Tally:

Votes to Deny the Special Exception: 5

Votes in Opposition to the Denial of the Application: 0

Having received three or more affirmative votes, the motion carried and the application for a Special Exception was DENIED.

The applicant can resubmit the application within 30 days. The applicant will be notified by Notice of Decision within 5 business days.

Zoning Board Meeting was recessed.

Planning Board Motion to Adjourn

Kendall Hughes, Chair, called the Planning Board meeting to order at 7:45 PM. Kendall made a motion that based on the vote of the ZBA the Planning Board will adjourn. Tricia Farris seconded the motion. The Planning Board adjourned.

The Zoning Board resumed.

Case 2024-06 was called by the ZBA Chair.

Case 2024-06: An application for a variance for property owned by Steven A. and Katherine S. Dwyer of 10 River Street, Tax Map and lot 108-022 in the Rural Residential Zone requesting a Variance from

the Ashland Zoning Ordinance, 2.3c requiring a minimum setback of 25 feet to allow building a 10-foot x 11.5-foot deck on the left side of the existing house. The required 25-foot setback cannot be met due to the topography and layout of the parcel with the existing structures.

Mardean Badger made a motion to accept the application as complete. Tim Peters seconds the motion. The motion passes unanimously.

PUBLIC HEARING

Mardean Badger made a motion to open the Public Hearing. Tim Peters seconded the motion. The Public Hearing opened at 7:55 PM.

Steven and Katherine Dwyer were present and appeared before the ZBA.

Applicant's Statement: The Dwyers are coming before the ZBA to request a variance to construct a deck on the left side of their existing house. The deck will provide a second egress to the residence. A set of patio stairs were taken out and a new foundation constructed under the residence. This has made the residence 18 -24" higher. The residence does not meet the 25' setback regulation. The space from the residence to the boundary is only 15'. The house is a preexisting nonconforming structure. The new deck measures 10' x 11 ½' and will incorporate the stairs and a cement walkway.

The 25' setback regulation can't be met due to the geography and layout of the parcel and the structures on the property.

Devon Thibaeult, Building Inspector, advised that what is being proposed is modestly larger than the zoning ordinance allows. The vegetation and topography on the property give privacy to the abutters to the property. The Building Inspector supports the granting of the variance.

No abutters were present. There were no abutter submissions either in support or opposition.

Tim Peters made a motion to close the Public Hearing. Asa Ammarin seconded the motion. The motion passed unanimously. The Public Hearing closed at 8 PM.

VARIANCE CRITERIA

Criteria 1: The variance will not be contrary to the public interest

Tim Peters: Yes.

Mardean Badger: Yes. This is not contrary to the public interest. It is shielded and is not seen. It also meets the topography.

Asa Ammarin: Yes. This is not contrary to the public interest. There are no situational circumstances.

Mike Myshrall: Yes. It is not contrary to the public interest. The Building Inspector, Devon Thibaeult, recommends this proposed variance.

Charlie Bozzello: Yes. It is not contrary to the public interest. No one is speaking in opposition to this application for a variance.

Criteria 1 Vote:

Peters: Yes Badger: Yes Ammarin: Yes Myshrall: Yes Bozzello: Yes

Criteria 2: *The spirit of the ordinance is observed*

Tim Peters: Yes. The spirit of the ordinance is observed and is well intentioned.

Mardean Badger: Yes. The spirit of the ordinance is observed and health, safety and privacy are addressed.

Mike Myshrall: Yes. The spirit of the ordinance is observed and a great application has been submitted.

Charlie Bozzello: Yes. The spirit of the ordinance is observed. This is where we create an exception for the practical use of the property

Criteria 2 Vote:

Peters: Yes Badger: Yes Ammarin: Yes Myshrall: Yes Bozzello: Yes

Criteria 3: *Substantial justice is done*

Tim Peters: Yes. Granting this variance the applicant will have a second egress to the residence. The layout is good.

Mardean Badger: Yes. There is a safe egress at the rear of the house. This does not have an impact on abutters.

Asa Ammarin: Yes. The applicant has adequate egress. The application process was done the right way.

Mike Myshrall: Yes. It provides an egress and also ties in the walkway and adequate shielding from neighbors.

Charlie Bozzello: Yes. The property is improved and no one is harmed.

Criteria 3 Vote:

Peters: Yes Badger: Yes Ammarin: Yes Myshrall: Yes Bozzello: Yes

Criteria 4: *The values of surrounding properties are not diminished*

Tim Peters: Yes. The value of the property is not diminished.

Mardean Badger: Yes. The value of the property is not diminished and there is topography between the applicant's property and the abutters.

Asa Ammarin: Yes.

Mike Myshrall: Yes. For all the above reasons.

Charlie Bozzello: Yes. The proposal does not affect surrounding properties negatively. It is an improvement.

Criteria 4 Vote:

Peters: Yes Badger: Yes Ammarin: Yes Myshrall: Yes Bozzello: Yes

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

Tim Peters: Yes. If the setback regulation is enforced it will cause hardship to the applicant.

Mardean Badger: Yes. If the setback regulations are enforced the applicant can't use their door.

Asa Ammarin: Yes. A deck promotes a better use of the property and will help with egress.

Mike Myshrall: Yes. This is the proper use of the house.

Charlie Bozzello: Yes. For the property to have proper egress the applicant needs a variance.

Criteria 5 Vote:

Peters: Yes Badger: Yes Ammarin: Yes Myshrall: Yes Bozzello: Yes

All deliberation criteria were answered with an affirmative response from each of the Board members. The vote was unanimous.

A motion was made to approve the application for the variance as proposed. Asa Ammarin seconded the motion.

Roll Call Vote on the Motion to Approve the Variance Application

Asa Ammarin: Yes to Approve the Variance Application

Mardean Badger: Yes to Approve the Variance Application

Tim Peters: Yes to Approve the Variance Application

Mike Myshrall: Yes to Approve the Variance Application

Charlie Bozzello: Yes to Approve the Variance Application

Vote Tally:

Votes to Approve the Variance Application: 5

Votes in Opposition to the Approval of the Variance Application: 0

Having received three or more affirmative votes, the motion carried and the application for a Variance was APPROVED.

ADJOURNMENT

The meeting was adjourned. The next ZBA meeting will be Thursday, September 12, 2024 at 6:30 PM at 6 Collins Street.

Minutes submitted by Paula Hancock and amended by Charles Bozzello