



Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, November 22, 2022 at 6:30pm
Town Hall, 231 Atlantic Avenue
North Hampton, NH 03862

These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official Case Record and available for inspection at the Town Offices.

In attendance: Robin Reid, Chair; Bill Clifford, Vice Chair; Members Rick Stanton, Audrey Prior, and Larry Miller; Alternate Member Mark Janos; and Recording Secretary Rick Milner.

I. Preliminary Matters.

Chair Reid called the meeting to order at 6:35pm.

Ms. Reid presented the minutes of the October 25, 2022 meeting.

Mr. Stanton moved that the ZBA accept the minutes of the October 25, 2022 meeting as written. Second by Ms. Prior. The vote was 4-0-1 in favor of the motion with Mr. Clifford abstaining.

II. Old Business.

1. Case #22:06 – Applicant: Route One Convenience Store, LLC, 39 Freetown Road, Unit 1, Raymond, NH 03077. The Applicant requests a special exception as required by Section 202.4 and Section 409 of the Town of North Hampton Zoning Ordinance to allow a motor vehicle refueling facility on the property. The Applicant also requests a variance to allow a motor vehicle refueling facility on a site with frontage only along Lafayette Road and not one other town road as required by Section 409.8.

Property Owners:

Arlene A. Jewett, Trustee, The Arlene A. Jewett Revocable Trust of 2002

Edward Jewett, Trustee, The Edward Jewett Revocable Trust of 2002

Kellie A. Jewett, Trustee, The Kellie A. Jewett Living Trust

Timothy J. Wallace, Trustee, The Timothy J. Wallace Living Trust

Twilight Years, LLC

All owners above c/o 39 Freetown Road, Unit 1, Raymond, NH 03077

David E. Howard, Trustee, The David E. Howard Revocable Trust

c/o P.O. Box 3385, Concord, NH 03302;

Property Location: 180 Lafayette Road, North Hampton, NH 03862; M/L: 017-086-000; Zoning District: I-B/R, Industrial – Business/Residential District.

In attendance for this application:

Curt Neufeld, engineer.

Ms. Reid swore in Mr. Neufeld. Ms. Reid noted that the Board's consideration of the case was continued to this meeting at the October 25 meeting. Ms. Reid also noted that she visited the 180 Lafayette Road site with Mr. Neufeld and Mr. Milner to observe how different features indicated on the site plan relate to the actual site conditions. Ms. Reid asked Mr. Neufeld to once again summarize the details of the

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special exception and variance applications for the benefit of the Board members who were not present at the last meeting.

Mr. Neufeld addressed the Board. Mr. Neufeld presented a site plan and associated information for the large, multi-use commercial property at 180 Lafayette Road which included the following:

- demolition of an existing gas station/convenience store building, existing gas pumps, and existing restaurant/thrift shop building,
- construction of a new 4,350 square foot gas station/convenience store/food service building, new gas pumps, and 38 parking spots on 62,200 square foot area at front of property along Route 1/Lafayette Road,
- expanded motor vehicle fuel storage capacity,
- new septic system, signage, and updated site lighting,
- new stormwater management system which will infiltrate and treat stormwater on the site,
- improved green space landscaping, outdoor seating areas, and traffic flow patterns, and
- New England style architectural building design features.

Mr. Neufeld addressed the criteria for granting a special exception identified in the Town of North Hampton Zoning Ordinance.

1. The proposed business will not diminish the value of the surrounding properties in that the project entails redevelopment of an existing store and motor vehicle refueling facility. Modern architecture and landscaping associated with the new development would improve the value of surrounding properties.

2. The proposed business will not adversely affect the public interest, safety, health, or welfare in that the upgrades to fuel storage tanks, dispensers, vapor capture devices, and fire suppression systems will minimize any possible contamination or adverse impacts. A new stormwater management system will collect and treat stormwater run-off on-site. This will be an improvement of the current site conditions. New lighting fixtures will be dark sky compliant and eliminate light spillage off of the property. The site layout and traffic flow patterns will provide more space and better sightlines between pedestrians and vehicles on the site.

Mr. Neufeld addressed the criteria identified in the State of NH RSA's for granting a variance to allow a motor vehicle refueling facility on a site with frontage only along Lafayette Road and not one other town road as required by Section 409.8.

1. The variances will not be contrary to the public interest.

2. The spirit of the ordinance is observed.

Renovating and upgrading an existing gas station to current technological and environmental standards will provide greater public safety and improve the appearance of the site.

3. Substantial justice is done by granting the variance request in that the property owners will be allowed to make improvements to the existing business and better serve the public. By placing the new building and fuel pump canopy further back from the road than the current building and fuel pump canopy, there is an improvement to public safety and traffic flow. There is no gain to the public by not granting the variance request.

4. The values of the surrounding properties will not be diminished in that improvements to the existing business will at least maintain, and most likely increase, property values in the surrounding commercial district.

5. Literal enforcement of the provisions would result in an unnecessary hardship in that a use which has existed on the site for many years would not be allowed to make improvements that are beneficial to both the property owner and the public. The current gas station use has existed in the same location within the 180 Lafayette Road site with frontage on only one road for many years. The proposed gas station/convenience store use is a reasonable expansion to the current gas station/convenience store use.

Mr. Neufeld stated the following changes to the original proposal:

- a. The applicant intends to operate the business 24 hours per day.
- b. The proposed underground fuel storage tanks have been moved away from the northerly side yard lot line in order to conform to the zoning ordinance setback requirement.

Ms. Reid asked for clarification regarding the location for refilling the fuel storage tanks and the fuel truck delivery process.

Mr. Neufeld explained that the fuel trucks will most likely enter the site using the southerly most access drive along Lafayette Road, loop around the back of the new building, and enter the refilling area from the gravel surface area at the back of the site.

Ms. Reid stated her concern that delivery trucks, emergency vehicles, and other vehicular traffic may be entering the site over the gravel surface area indicated on the site plan. The surface behind the building is currently in disrepair and has potholes. Gravel surface is not sufficient for the likely amount of delivery truck, emergency vehicle, and other traffic volume. Ms. Reid suggested that the gravel area be paved to improve site conditions and enhance public and vehicular safety.

Mr. Miller stated that, in his opinion, the proposed plan is a vast improvement over the current site conditions. However, he would like to see a site plan that has been reviewed by the Planning Board before deciding on the application. The Planning Board has more expertise to properly evaluate the adequacy of the proposal. There may be changes to the site plan as the result of Planning Board review of the project which the ZBA may need to consider.

Mr. Stanton stated that the suggestions made by Ms. Reid and Mr. Miller are not within the purview of the ZBA. The ZBA should only consider how the application meets the specific criteria for approval of a variance and a special exception as written in the State of New Hampshire RSA's and the Town of North Hampton Zoning Ordinance. In his opinion, the application meets all of the criteria for approving the special exception and variance requests.

Mr. Stanton moved that the Zoning Board of Adjustment grant a special exception as required by Section 202.4 and Section 409 of the Town of North Hampton Zoning Ordinance to allow a motor vehicle refueling facility on the 180 Lafayette Road property and grant a variance to allow a motor vehicle refueling facility on the 180 Lafayette Road property with frontage only along Lafayette Road and not one other town road as required by Section 409.8 as represented in the application and site plan presented to the Board. This decision is based on the following findings of fact:

- 1. The application meets all criteria for approving a special exception and a variance.**
- 2. The site conditions and business operations are improved by the proposed plan.**

Second by Ms. Prior.

Discussion of the motion – Ms. Reid suggested a condition requiring paving of the gravel surface area behind the proposed building be added to the motion. As proposed, the area is not safe for delivery

trucks, emergency vehicles, and other traffic. Mr. Stanton stated that such a condition is a Planning Board function and did not agree to adding the paving requirement condition to the motion.

Mr. Milner suggested that a condition be added to the motion that the project receives all required federal, state, and local permissions, including, but not limited to, Planning Board site plan approval and Building Department/Fire Department permits. Mr. Stanton and Ms. Prior accepted the permitting requirement condition as an amendment to the motion. The motion was revised as follows:

Mr. Stanton moved that the Zoning Board of Adjustment grant a special exception as required by Section 202.4 and Section 409 of the Town of North Hampton Zoning Ordinance to allow a motor vehicle refueling facility on the 180 Lafayette Road property and grant a variance to allow a motor vehicle refueling facility on the 180 Lafayette Road property with frontage only along Lafayette Road and not one other town road as required by Section 409.8 as represented in the application and site plan presented to the Board.

This decision is based on the following findings of fact:

1. The application meets all criteria for approving a special exception and a variance.

2. The site conditions and business operations are improved by the proposed plan.

This decision is subject to the following condition:

1. The applicant receives all required federal, state, and local permits and approvals, including, but not limited to, Planning Board site plan approval and Building Department/Fire Department permits. Second by Ms. Prior. The motion failed by a 2-3 vote with Mr. Stanton and Ms. Prior in favor and Ms. Reid, Mr. Clifford, and Mr. Miller opposed.

Mr. Milner suggested that the Board state its justifications for denying the application as they relate to the specific criteria for approval of a variance and a special exception as written in the State of New Hampshire RSA's and the Town of North Hampton Zoning Ordinance.

Mr. Stanton stated that he was resigning from the ZBA effective immediately because, in his opinion, the ZBA is not adhering to its defined legal, quasi-judicial role in adjudicating zoning ordinance petitions and is trying to assume the role of the Planning Board in this case and other previous cases. Mr. Stanton left the meeting.

Mr. Neufeld asked if there was an option for the applicant to re-submit the application after the site plan has been reviewed by the Planning Board. Ms. Reid asked if there was an option to postpone consideration of the case.

Mr. Milner suggested that the case could not be postponed since a decision had already been made. Also, reconsideration of the decision motion could not occur because the member who made the decision motion was no longer present. Mr. Milner suggested that the ZBA could allow the applicant to re-apply without prejudice and waive the application fees excluding legal noticing costs.

Mr. Clifford moved that the ZBA allow the applicant to re-submit the special exception and variance request applications without prejudice and waive the application fees. Second by Mr. Miller. The vote was unanimous in favor of the motion (4-0).

Mr. Milner suggested that the ZBA waive its application submittal deadline requirement for this project only to allow the applicant to re-submit the special exception and variance requests after the Planning Board January 3 meeting and prior to the ZBA January 24 meeting. This timeframe will allow for the

proposed site plan to be reviewed at two Planning Board meetings prior to its re-consideration by the ZBA.

The ZBA came to a consensus without objection to waive its application submittal deadline requirement for this project only to allow the applicant to re-submit the special exception and variance requests after the Planning Board January 3 meeting and prior to the ZBA January 24 meeting.

The Board came to a consensus to add the following justifications for not granting the special exception and variance requests within the notice of decision:

1. The lack of pavement in the gravel area behind the proposed building is a public safety concern.
2. There is not sufficient evidence to adequately evaluate the application due to the lack of a site plan that has been reviewed by the Planning Board.

Mr. Clifford moved to adjourn the meeting at 7:51pm. Second by Mr. Miller. The vote was unanimous in favor of the motion (4-0).

Respectfully submitted,

Rick Milner
Recording Secretary