

BRISTOL
ZONING BOARD OF ADJUSTMENT
September 2, 2014

APPROVED as amended:

10/7/14__jrl_____

AGENDA: 14RVAR01 VARIANCE REHEARING: ZAREMBA
PROGRAM DEVELOPMENT LLC/DOLLAR GENERAL,
215 Lake St., #112-001

ATTENDING: Alan DeStefano (Chairman), Richard LaFlamme (Vice Chair),
Lorraine Bohmiller, Larry Denton, Ashley Dolloff

ABSENT: -----

OTHER: Fred Schneider, Kevin French, Steven Bleiler, Sandra Heaney,
Clay Dingman,

The meeting opened at 6:00 pm with one member excused.

MINUTES OF AUGUST 5, 2014:

R. LaFlamme made a motion, second by L. Bohmiller, to approve the minutes as read.
The motion carried.

**VARIANCE REHEARING: ZAREMBA PROGRAM DEVELOPMENT LLC/
DOLLAR GENERAL**

Attorney John H. Sokul Jr. introduced Erin R. Lambert (Nobis Engineering), Scott Holman (Zaremba Development Manager) and William J. McLean (Certified General Appraiser).

The secretary read the application for rehearing, the abutters notified, where the hearing was advertised, and stated that she received no telephone calls nor written correspondence in regard to this case.

Mr. DeStefano asked if the Board was satisfied with all that was submitted and if they had any further questions. The Board determined that the application was complete and they had no further questions.

ZAREMBA REHEARING continued:

Attorney Sokul stated that the original variance had been denied on diminution of property values. That the hearing opened on June 3rd and Mr. McLean is here with supporting information. Mr. DeStefano explained that we had only addressed the diminution issue on that date and that the town attorney has informed the Board that the full variance hearing must be heard at a rehearing.

Attorney Sokul then pointed out the plan for the subdivision and stated that the lot coverage and setbacks have all been met. The variance is for 34 parking spaces versus the required 55. Dollar General (the interested party for this development) states that they only use 30 spaces in all of their other stores. Atty. Sokul stated that he looked at other Dollar General facilities. He feels that the traffic here is safe. The peak hour would accommodate 35 spaces and 6 spaces per 1,000 sq. ft. is a high standard (Bristol's requirement). Most others are 3 – 4 spaces per 1,000 sq. ft. We are asking for a little more than 4 per.

Atty. Sokul then addressed the criteria needed for a variance:

1. NOT CONTRARY TO THE PUBLIC INTEREST – Atty. Sokul felt that this is consistent with the Spirit of the Ordinance. It is essential to the neighborhood, is an allowed use, and they believe it is adequate for their needs.
2. SPIRIT OF THE ORDINANCE – It is adequate parking for the use and there will be no change to the feel of the neighborhood.
3. SUBSTANTIAL JUSTICE IS DONE – It will not do any harm to the general public to have fewer parking spaces. Having 55 spaces would be wasteful and create more pavement. Fewer spaces encourage more open space. The area is conducive to walking and biking traffic.
4. DIMINUTION OF VALUE TO SURROUNDING PROPERTIES – Atty. Sokul stated that they submitted the letter by a broker but the Board wanted more specifics. There is very little data out there to compare to. We have asked Mr. McLean in to come in and answer any questions that the Board has.

Mr. McLean supplied a supplement to the Board members and the Board took time to read this. Mr. McLean asked what detail the Board is asking for. Mr. DeStefano answered that the public asked for detail for Bristol. We want to understand this better. Mr. McLean stated that you have to know the traffic and the mix of uses. The area has had a slow transition of residents and commercial properties. Lowering parking spaces have no negative impact on value. It reduces traffic and there is less noise. To come to his conclusion, he took market data. He has been involved in 3 previous Dollar General developments (2009, 2010, and 2013). In Walpole, they announced the project and then looked at the real estate activity (sales prices per acre). The information that he got from these showed either the same value or an increase in value. Rents/income figures, also.

ZAREMBA REHEARING continued:

He used the potential gross income multiplier for sales in town and there was no evidence of devaluation.

In Meredith, the project had been a bowling alley. The only sale within ½ a mile of it was a mixed use of sales and apartment at \$59.00 a foot (the town sales were \$54.00 a foot). The 4 room, 2-bedroom apartment rents for \$695.00 (the town average is \$700.00 a mo.).

Mr. Denton asked how many Dollar General stores has he dealt with and Mr. McLean answered 3. He added that his practice takes him all over the state. Mr. Denton then asked if he used what he knew and Mr. McLain said that he did.

In Ossipee, Mr. McLean stated that the complex is located at the corner of Routes 28 and 16. It is a combined Family Dollar and tractor sales. Bristol has a Family Dollar on Pleasant St. which Mr. McLean was not involved with but he was involved with Mid-State Health next door. They paid \$150,000 for the land which was an increase due to the commercial growth in that area.

Mr. Denton questioned the Walpole sales (#2 on the supplement provided tonight). Mr. McLean said that the property was for sale for \$379,000 but closed at \$275,000. Mr. Denton questioned if this was the perceived market price and was told that it was but there is no relationship between the asking price and the eventual sale price. Mr. Denton then asked if \$379,000 was the fair market price. He was told that it was not as a subdivision was already in place and one section had been sold. He only appraised the Family Dollar project. He did a summary of the market data available to see if there was any evidence of up or down in value in which to base his opinion. Again Mr. Denton questioned the market value and Mr. McLean stated that he can only use closed sales figures. There was no evidence of duress, he added. Residences and Commercial properties have been here in this area of Bristol for decades and there is no compatible way to think that an empty parking lot would have any more affect that a Dollar General.

Mr. DeStefano asked about public opinion and there was none.

Atty. Shokul stated that Diminution of value usually occurs when the project is different from what is allowed. This will only cover 17% of the lot and total coverage is less than 50%. It will have less impact.

Mr. DeStefano asked if they had run the numbers. Mr. Holman answered that Dollar General has two sizes: 9100 sq. ft. or 12,000 sq. ft. This is based on 9100 sq. ft. and is as low as 26 and as high as 40. Mr. DeStefano asked what size building would be needed to

ZAREMBA REHEARING continued:

be in compliance with the lot. Mr. Holman stated that Zaremba would not do anything smaller. Atty. Sokul added that a smaller building would also drop the number of needed spaces.

5. **HARDSHIP** – Atty. Sokul stated that this is a reasonable use based on the special conditions of the property. It is an allowed use and meets the dimensions of the Ordinance. It is also the standard number of parking spaces for this size store. Mr. Schneider, present owner of the property, mentioned that the Family Dollar got a reduction in their required spaces and Atty. Sokul felt that this set some precedence. The Ordinance has a high standard with too much pavement. The purpose is to be certain that there is adequate parking for the use. 34 spaces is more than typical for these stores.

Mr. Holman tried to explain further to Mr. Denton about the asking price versus sales price issue. He stated that dropping the dollar amount is not uncommon. Listing price is quite another. The real data comes from the sale price. In the case of Auto Trends, ½ the size building to meet parking would be of less value than the Dollar General preferred size. Mr. Denton stated that the listing price and the sales price is a big difference. Mr. Holman added that all we can go by is the sales data. Mr. Denton said that it will add jobs for the town.

Mr. Holman then stated that the ZBA has done an MRI of Zaremba and he appreciates what they have done. They are very thorough for the good of their town. Atty. Sokul apologized for any misunderstanding on his part.

Mr. Schneider stated that the value of Auto Trends will go up and he spoke with Ben Perry whose property will also increase. The town zoned this area as commercial. Mr. DeStefano mentioned that the problem is the size of the store for the size of the lot. We look at what is allowed to fit into this. Mr. Schneider stated that this is why Zaremba is here for a variance.

At this point, Mr. DeStefano called for anyone in favor from the public. No comments were made. He then asked for any opposed.

Steve Bleiler, abutter, stated that when he began in Alexandria, there was no zoning and he could do what he wanted. When he looked into his property here in Bristol, he checked first with the town. He had to take out a garage and not add storage in order to meet the town regulations, but he did so as that is what the people of the town want. Mr. Bleiler does not feel that there is a hardship in this case. He then cited several Dollar General stores across the country that are smaller than what is proposed here.

ZAREMBA REHEARING continued:

Mr. Dingman (Planning Board/HDC) stated that he is neither for nor against. He asked how much of the building is in the wetlands setback. Ms. Heaney (Conservation Commission) stated that she also is neither for nor against but, as representative of the Commission, she asked if they have gone to the NH DES yet. They had not. Ms. Heaney stated that they may have to move out of that setback.

Mr. Holman stated that the smaller Dollar General stores may be leased properties. He added that a Family Dollar bid was rejected and Dollar General may move on it. He added that they never want more than 34 parking spaces. Mr. DeStefano mentioned that if the building was smaller, they wouldn't need more parking. Ms. Bohmiller asked if they will consider a smaller store if they go to the State and have to move from the setback. Mr. Holman stated that they do not want to go smaller than a 9100 sq. ft. building.

With no further comments, Mr. DeStefano closed the public portion of the hearing. He then addressed the five criteria:

1. **CONTRARY TO PUBLIC INTEREST** – Ms. Bohmiller had no problem with this. Neither did Mr. LaFlamme or Ms. Dolloff. Mr. DeStefano mentioned that the public has shown a dislike for it. Mr. Denton said that it will bring jobs and an increase in the tax base.

R. LaFlamme made a MOTION, second by L. Denton, to APPROVE CRITERIA #1. The motion CARRIED.

2. **SPIRIT OF THE ORDINANCE** – Ms. Dolloff stated that this is a Commercial zone. Ms. Bohmiller, Mr. Denton, and Mr. LaFlamme agreed.

L. Denton made a MOTION, second by L. Bohmiller, to APPROVE CRITERIA #2. The motion CARRIED.

3. **SUBSTANTIAL JUSTICE** – Mr. Denton thought that substantial justice would be done if we allow the 34 parking spaces instead of the 55 required. Mr. DeStefano added that they claim that it would not hurt the public and will be adequate for the store. They are unwilling to build a smaller building to meet regulations. Mr. Denton stated that, even if they went larger, they do not need more than 34 spaces. Mr. Laflamme feels that this criteria is met as, even if they built smaller, they would only want 34 spaces. Ms. Bohmiller agreed.

R. LaFlamme made a MOTION, second by L. Bohmiller, to APPROVE CRITERIA #3. The motion CARRIED, 3 for, 2 opposed.

ZAREMBA REHEARING continued:

4. DIMINUTION OF VALUE – Mr. Denton felt that we have more evidence offered than was asked for. As he is not knowledgeable with real estate, he asked Mr. DeStefano’s opinion (Mr. DeStefano owns a Real Estate business). Mr. DeStefano stated that he deals in residential properties for the most part. However, he felt that we now have a true opinion by a professional. This is a commercial zone. Residential properties will probably go down but commercial value will increase. Mr. Denton added that we did get more evidence and testimony tonight and Meredith is closer to Bristol.

L. Denton made a MOTION, second by R. LaFlamme, to APPROVE CRITERIA #4. The motion CARRIED.

5. HARDSHIP - Mr. DeStefano reminded the Board that town council advises that this is the most difficult criteria. Mr. Denton stated that it is a small lot in which the back section drops off but we are here to determine spaces. Mr. DeStefano agreed that it is hard when considering the size of the building versus the size of the lot. Mr. Denton agreed that it is hard to say there is a hardship when they don’t own the lot yet. Ms. Dolloff added that the lot is not unique as the river is behind all of the properties along that area (all drop off to it). Mr. DeStefano stated that, if they chose another lot that was large enough for what they want, they wouldn’t have to be here. It is an allowed use but just not enough area for the required spaces. Mr. Denton said that the land owner says they cannot put in a smaller store. Mr. DeStefano stated that they could put in another use.

Mr. Denton stated that, when he first looked at this, he felt there was a hardship for them as the lot is what it is. Mr. DeStefano said, but they haven’t purchased the lot yet. Mr. Denton answered that it is a legitimate use for that lot. Mr. DeStefano mentioned how he had to arrange his business to meet the lot requirements despite being an allowed use. Mr. Denton felt that this is not the first time that the ZBA has dealt with space reduction. Mr. LaFlamme explained that they would have to drop the size by 3,000 sq. ft. in order to meet the requirement. Ms. Bohmiller thought that it is a hardship not to be allowed the 9100 sq. ft. building. Mr. DeStefano stated that the town is not creating the hardship.

At this point, Police Chief Michael Lewis came in and asked us to either continue the hearing or move upstairs as he needed the room for a juvenile prisoner. The meeting was moved up to the Assessing Office.

ZAREMBA REHEARING continued:

Mr. LaFlamme stated that, going back to Dollar General being asked to drop the size of their building is a hardship. Mr. Denton stated that their business model might need 9100 sq. ft. Mr. Holman stated that, for this investment, they need the 9100 sq. ft. (land price plus the cost of the building). Mr. DeStefano said that our town has said that they want folks to meet certain requirements. This business is deciding that they only want this many spaces and this size of a building. Is this a hardship when they haven't purchased the property yet? The lot is not unique; Zaremba is creating the hardship themselves even though it is an allowed use.

Ms. Bohmiller asked the applicant if, when they proposed to purchase this property, did they realize these problems. Mr. Holman stated that they were aware of the Zoning Ordinance requirements but not the drop-off of the land in back. Mr. Denton asked if they looked at the property and Mr. Homan answered that they looked at the tax map. Again, Ms. Dolloff expressed that the lot is not unique. Others have met the requirements. Mr. Denton and Ms. Bohmiller feel that it is unique. Ms. Dolloff mentioned that other businesses there are the same. Mr. DeStefano felt that they knew this when they looked at the property. He added that the town owners have voted in these requirements. He noted that Mr. Bleiler, an abutter, complied. Mr. Denton agreed that the lot is not unusual. Mr. DeStefano made an example of, if they purchased the whole lot as it is now, removed the Auto Trends building and built the store that they want, this could be done. They have created the hardship, he added. Mr. Denton stated that, if the subdivision is done, it creates a hardship.

L. Denton made a MOTION, second by R. LaFlamme, to APPROVED CRITERIA #5. The motion CARRIED, 3 for, 2 against.

The Notice of Decision was signed.

There were no communications or further business to attend to. The next meeting is to be held October 7, 2014 at 6:00 pm. Mr. Denton moved to adjourn at 8:00 p.m.

Respectfully submitted
Jan Laferriere, recording secretary