

ZONING BOARD OF ADJUSTMENT

MINUTES

November 7, 2023

APPROVED: **December 5, 2023**

AGENDA: **CASES:**

23VAR13 - HERTRICH -113-039 - 150 Lake Street

23SPX12 - RYBECKY - 105-011 – Pikes Point Road

ATTENDING: Richard LaFlamme (Chair) Melody Mansur (Vice Chair), Larry Denton and Andrew Litz

ABSENT: Lorraine Bohmiller and Steve Carten (Alternate)

OTHER: **Staff:** Christina Goodwin (Town Administrator) **via Zoom**, Joanne Bailey (Land Use Manager) and Donna Sullivan (Land Use Administrative Assistant)

Applicants, Abutters & Public: Russ Hertrich, Randall Shuey, Northpoint Engineering LLC, Laura and Paul Rybecky, Ryan McShera, and Dave Mermelstein

Attending via Zoom: Susan Nelson and Todd Wescott

With a quorum present, Chair Laflamme opened the meeting at 6 pm. He addressed the applicants present stating that because a full Board was not present, and applicants had the option of having their cases continued to another meeting or to move forward now with their applications. There was no request for continuance from applicants.

MINUTES: The minutes of October 17, 2023, were reviewed. Ms. Mansur motioned to approve the minutes as presented. Mr. Litz seconded. The motion carried 4-0-0.

NEW BUSINESS:

CASES:

23VAR13 - HERTRICH -113-039 - 150 Lake Street

Ms. Sullivan read the application from Russ Hertrich to establish a Petrol Museum on the property of 150 Lake Street which is split between zones of Village Commercial and Village Residential Districts. She noted the Public Notice postings and read the names of 7 Abutters notified. She stated that there were no phone calls or written comments received from abutters. Department Heads were notified, and the Water Sewer Department was the only respondent, stating that they were okay with the proposal as the location has been used commercially and residentially for years and the records indicate the services are adequate for those uses.

The Board reviewed the application to determine if it was complete. Following review, Ms. Mansur motioned to accept the application as complete. Mr. Denton seconded. The motion carried 4-0-0.

Applicant Russ Hertrich was asked to briefly present his application. He introduced himself and stated he was before the Board to present his proposal to locate a museum to display his Vintage Petrol items to the public at his property at 150 Lake Street. He explained that this location has always had commercial enterprises in the past but at some point, the zoning changed, and this property became split-zoned with the front area being zoned Village Commercial and the back area zoned as Village Residential. He explained the stricter of the zones prevails and therefore requires him to apply for a variance to use this property commercially.

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He went on to state that there are two apartments in the main building and the back attached barn and showroom area was previously used for flooring business, a blacksmith business, and a gift shop by past owners.

Mr. Denton asked for clarification about the variance necessity. Ms. Goodwin clarified that zones have permitted uses and in this case the use is not permitted so it needs a variance.

Chair LaFlamme asked Mr. Hertrich to read his application request, the criteria questions, and his responses to each of these into the record. Mr. Hertrich complied with reading these and elaborating on the reasoning for his responses.

Chair LaFlamme asked the Board if they had any questions for the applicant. Mr. Denton asked about increased traffic and activity on the property anticipated for the museum. Mr. Hertrich replied that he did not intend to have regular hours of operation, but instead would be open on special occasions and all other times by appointment only. He indicated that the special occasions would be tied to the local car club and their events and his other location. He envisioned that other car clubs may set up a day to come by and that may bring business to the Town as well.

Mr. Litz asked if he had a restoration operation at this location. Mr. Hertrich stated that he has done some pump restoration at his other Lake Street property. He shared some photos of his other location and a visit by some of the car show enthusiasts on a special event date earlier in summer. He stated they walked over to his property from the car show.

With no further questions from the Board, Chair LaFlamme asked if anyone from the audience wished to speak in favor of the application. Mr. David Mermelstein stated he would speak in favor as a car show enthusiast and fan of restoration projects like this. Ms. Laura Rybecky spoke in favor because she thought it was a great destination venue which would bring opportunity for restaurants and other businesses as well. Chair LaFlamme asked if anyone wished to speak against the application. Hearing no responses, he closed the public hearing portion of the meeting and the Board moved on to deliberate on the application.

Ms. Mansur read each of the Criteria questions and the applicant answers individually for the Board to discuss and act on.

#1 - Mr. Denton motioned that the applicant **met** criterion 1 because the project will be an interesting venue which will be in the public interest. Mr. Litz seconded. The motion carried 4-0-0.

#2 - Mr. Denton motioned that the applicant **met** criterion 2 because this is a multi-use property and there have been businesses at this location in the past and the limited hours will not have an impact. Ms. Mansur seconded. The motion carried 4-0-0.

#3 - Mr. Denton motioned that the applicant **met** criterion 3 because this has been a business location in the past and there is no change to parking needs and the hours described would be less impacting than past uses. Mr. Litz seconded. The motion carried 4-0-0.

#4 – Ms. Mansur motioned that the applicant **met** criterion 4 because there are no changes from past mixed use on this property use. Mr. Denton seconded. The motion carried 4-0-0.

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#5 A I - Mr. Denton motioned that the applicant **met** criterion 5A(I) because the split-zoning has put the owner in hardship for this proposed use. Mr. Litz seconded. The motion carried 4-0-0.

#5 A II - Mr. Denton motioned that the applicant **met** criterion 5A(II) because the proposed use is similar to previous commercial uses and the multi-use activities on this property. Ms. Mansur seconded. The motion carried 4-0-0.

5 B - Mr. Denton motioned that the applicant **met** criterion 5B because the owner has demonstrated that the restrictions of the split-zoning have caused a hardship for his reasonable use of a historically multi-use residential/commercial property for a lower impact use as a museum. Ms. Mansur seconded. The motion carried 4-0-0.

Mr. Denton motioned to grant Variance #23VAR09. Ms. Mansur seconded. The motion carried 4-0-0.

Chair Laflamme announced Variance 23VAR09 approval to Mr. Hertrich and cautioned him about the 30-day appeal period. Ms. Sullivan indicated that the Notice of Decision would be available later in the week.

23SPX12 - RYBECKY - 105-011 – 271 Pikes Point Road

Ms. Sullivan read application 23SPX12 into the record. She stated the application was for demolition of a guest house and replacement with a garage with second floor guest quarters with increased height which requires special exception. She noted the public notices posted and read the names of 8 abutters notified. She stated that several phone calls were received from abutter Susan Nelson and 3 written responses received from abutters which she named and stated that these were in the Board meeting folders and were shared with the Town Attorney. Ms. Bailey announced that the response from the Town Attorney had just been received late in the day by the Town Administrator.

Ms. Sullivan went on to state that a previous review of the project applications by the Town Attorney indicating that the lot coverage percentage of non-conforming use does not change and is within the limits required so the project is grandfathered so no variance is required and only the application for special exception needs to be filed.

She added that two of the abutters Susan Nelson and Todd Wescott of Doherty Lake, LLC are attending via Zoom.

The Board reviewed the application to determine if it was complete.

Following review, Ms. Mansur motioned to accept the application as complete. Mr. Litz seconded. The motion carried 4-0-0.

Chair LaFlamme asked the applicant to speak to the application. Mr. Randall Shuey of Northpoint Engineering introduced himself as agent for Paul and Laura Rybecky. He was asked by Mr. Denton to just give a general description of the application. Ms. Mansur clarified that based on the Town Attorney letter as to elimination of the variance issue due to grandfathering, the applicant's agent should speak only to the Special Exception application.

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Chair LaFlamme asked for further clarification from Town Administrator, Christina Goodwin regarding the Town Attorney opinion on the variance and what was before the Board for decision at present. She stated that the variance issue was settled and there was only need for the Special Exception application, but a second opinion received from the Town Attorney in response to the written letters from abutters has yet to be reviewed by the Board and therefore a continuance may be an option for the Board to review this information prior to further review of the Special Exception application.

The Board discussed the need to have all information available for consideration of this case and whether a continuance made the best sense so that the Board could review the opinion about the abutters concerns prior to presentation and consideration.

Mr. Paul Rybecky stated that they understood the position of the Board and would hold off on the presentation tonight to allow continuance if that was what the Board wished. Ms. Bailey shared that the Town Counsel was asked to review the 3 letters from abutters due to the complexity of the issues raised. Ms. Goodwin stated she would like to have the Town Counsel review this opinion with the Board.

Following discussion and agreement with all impacted, Ms. Mansur motioned to continue case #23SPX12 to December 5, 2023, so that the Board could review the just received Town Counsel opinion about abutters letters received. Mr. Denton seconded. The motion carried 4-0-0.

COMMUNICATIONS:

Motion for Rehearing Request - Case #23 – KELLY - 128 Brown's Beach Road

Chair LaFlamme updated the Board about a Motion for Rehearing request received from the attorneys for John and Patricia Kelly. The letter was received by the Land Use Office on November 2, 2023, and the Board has 30 days to grant or deny this request. Mr. Denton stated that this should be reviewed to ascertain if there is new information provided to allow for a rehearing. Mr. Litz asked if the Town Counsel had seen this yet. Ms. Bailey stated it had been shared with the Town Counsel, but no response has yet been received. She stated this is a request from applicants to allow them to share new information and present their case. She stated that the Board needs to review this and decide whether to grant or deny this rehearing. A meeting to decide this must happen within the 30 days of receipt of the Motion for Rehearing request.

Following discussion of process and calendar dates available to have quorum for this, it was decided that the meeting to review and decide on the motion of rehearing will be scheduled for November 29, 2023, at 6 pm. Town Counsel will be consulted for this request and a meeting with the Board about the opinion letter for case #23SPX12.

2024 Meeting/Application Deadline Dates Review

Ms. Sullivan shared the proposed dates for 2024 for the Zoning Board meetings and application deadlines for those dates which will be posted. The Board agreed to the proposed 2024 schedule.

Board Member Terms:

Ms. Sullivan shared information about terms expiring for Board members. She indicated that those with terms expiring should let the Office know if they plan to continue so the appointments for 2024 can be processed.

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OTHER BUSINESS: None

LAND USE: None

NEXT MEETING: November 29, 2023

ADJOURNMENT:

With no other business before the Board, Mr. Denton motioned to adjourn at 7:11 pm. Ms. Mansur seconded. The motion carried 4-0-0.

Respectfully submitted,

Janet F. Cote
Land Use Associate