

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
March 4, 2020

MEMBERS PRESENT: Richard Brooks Vice Chair, Brad Fredette,
Keith Perkins-Alternate, Coty Donohue, Ken Vincent-Alternate
MEMBERS ABESENT: Matt Keiser Chair, Glenn Garvin-Alternate, and Donald Routhier
STAFF PRESENT: Shanna B. Saunders, Director of Development Services,
Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Acting Chair Brooks appointed Perkins as a full voting member for the meeting. Brooks welcomed Vincent to the Board for his first meeting.

1) Approval of the minutes:

Donohue **MOVED** to accept the minutes of January 29, 2020.

Fredette seconded the motion.

The **MOTION CARRIED** by a 4-0-1 vote. (Vincent abstained)

Donohue **MOVED** to accept the minutes of February 5, 2020.

Fredette seconded the motion.

The **MOTION CARRIED** by a 4-0-1 vote. (Vincent abstained)

2) OLD BUSINESS

- A) Any old business that may come before the Board.
 - i. No other business.

3) NEW BUSINESS

- A) **Brixmor Tri City Plaza LLC, is seeking a variance from Table 5.A.1 to construct a commercial building within 10' of the front setback on a property located at 8 Tri City Road, in Residential Commercial (R/C) District, Assessor's Map 40 Lot 5C, ZBA#02-2020 PUBLIC HEARING**

Brooks opened the public hearing at 7:00PM.

Applicant Statement: **Karyn P. Forbes** of Shaheen & Gordon Attorneys at Law, **Jim Bernardino** of Bohler Engineering and **Reuben Twersky** of Brixmor were in attendance to represent the application.

Bernardino stated they are seeking a variance for a front yard setback for a proposed building. He stated the subject area is the north west corner of the Tri City Plaza. He stated the Plaza is a little over 18 acres. He stated the existing non-conforming condition of the building to be raised sits within the setback of Tri City Road about 6.2'. He stated it is compliant to the setback from High Street.

Bernardino stated the site has an access point, a right-in-only, from High Street. He stated that entryway is being proposed to be maintained as part of the development. He stated there are two other access points to the site, one controlled by traffic signals and the secondary access from Tri City Road.

Bernardino stated the proposal is to raise the existing building and rebuild a building that will be set back 10' from Tri City Road. He stated they are proposing to construct a 3,500 s.f. Aspen Dental office building. He stated it is a slight increase in building size from what exists today. He stated the primary focus of siting the building was of site circulation and safety. He explained the site is very wide open and free flowing for site access. He stated they have taken this opportunity to evaluate site circulation to make it safer for pedestrians and other individuals traversing the property and enhance the site with landscaping. He explained how they came to the proposed location of the building.

Bernardino stated there are easements on the property shown as a 'no build' area on the plan. He stated the drive aisle, of the entry-only from High St., has a 'no build' area that leads to the Staples building. He stated if there is anything proposed in those areas or changed in those areas it is subject to input and control from those other tenants. He stated if the building was to meet all of the setbacks it would be within the 'no build' zone and the High St. entry-only would have to be relocated. He stated the 10' variance setback is an improvement over the existing conditions, since the building is currently 6.2' from the property line. He stated they have also proposed increased landscaped areas and improved site circulation of the property.

Forbes stated the proposal is to replace the existing building with a more desirable building. She stated the new building will be 10' from the property line along Tri City Road. She stated the Staples building on this property is 13' from the property line along Tri City Road. She stated there will be no diminishment to surrounding properties or this property by allowing the 10' setback.

Forbes stated this variance would not be contrary to the public interest because it will not increase the traffic flow nor alter the traffic flow as it exists now. She stated the proposal will result in an improvement to the traffic flow because it will move the building father from the 'no build' travel way. She stated there will be a space between the car and travel way from the building. She stated there will be fewer pedestrians crossing the drive isle because of the parking spaces next to the building. She stated the pre-existing building is 6.2' from the property line along Tri City Road. She stated there is also a large right-of-way between the property line and travel way.

Forbes stated there will be no cause to harm of health, safety or welfare by turning the building and moving it to be 10' from the setback instead of 6.2'. She stated the building area is constrained by the Bank. She stated there is a protected area (no build) and the situation would not be helped if they were to move the protected area. She stated a straight direct flow of traffic is the safest and most desirable. She noted the lease specifically restricts the landlord from constructing with the protected areas.

Forbes stated the use is reasonable because it is a commercial use in a heavily commercial area. She stated granting the variance would do substantial justice because it will not change the neighborhood at all and traffic flow will be made safer. She stated it would not be contrary to the spirit of the ordinance just as it is within the public interest. She stated they are not affecting the health, safety, or welfare because they are improving the traffic flow and not altering it.

Saunders noted that the setback is 50' along Tri City Road.

Brooks opened for public comment:
No Public comment.

Vincent clarified that this property is connected with the Market Basket property. Twersky stated it is all one property, under the ownership of Brixmor.

There was a brief discussion on the details of the proposed parking lot islands.

Vincent stated he has no issues with the proposal. He stated the Plaza is very busy and the traffic flow is not great.

Fredette stated he agrees with Vincent, the traffic flow as it exists today is not great. He stated patrons will still have to cross the travel way from the parking spaces to the building and the flow is not great there. He stated many times traffic goes fast from the entrance and the wrong way, despite the Do Not Enter sign. He stated he would like more information on the potential increased safety risk and how it is not contrary to the public safety. He stated he views a setback as a 'no build zone'. He stated according to the tax assessment card there is currently about 1,750 sf. within the setback area. He stated with the new building they will be increasing the amount of building within the setback. He stated he sees that as a substantial increase.

Bernardino stated the overall site has challenges and they have done a review of what exits today. He stated they believe rotating and moving the building further from the drive in, along with providing parking spaces along the building will improve pedestrian safety and traffic flow safety. He stated they can take measures to ensure that traffic flows appropriately with additional signage. He stated the proposed development mitigate the traffic challenges.

Twersky stated the entrance doors of the building will remain facing High St.

There was a brief discussion on the ADA access and handicap parking spaces.

Vincent stated he thinks the islands will control traffic better. He stated the parking lot is barren.

Fredette asked if the parking lot islands are part of the site plan review or within this Board's jurisdiction. Saunders stated the Board should focus on the variance criteria. She stated if landscaping of the islands supports one of the criteria then it can be a condition.

Brooks asked if the building could be moved to the alternate side of the 'no build' zone, closer to the bank. Forbes stated it would put the building too close to the bank drive-up. She stated it seemed like the safest way was to push the building back.

Bernardino stated there are complexities to move the building there. He stated they would have to relocate the entry way, the costs associated with moving the entry way, complexity of renegotiating with the tenants who have a claim in the no-build zone. He stated the complexities of working with all of those tenants would almost make the project financially unreasonable.

Brooks stated he is struggling with the hardship aspect of the request. He stated the overall property is a large piece of land and needs more information to why they need to be within the setback. Forbes stated currently the existing building sits 6.2' from the property and the proposal is to move it to 10' from the property line. She stated it is an improvement over what is existing, which they could replace in the current footprint. She stated

they are trying to improve the situation. She stated there are site problems that are in existence like the entry way. She stated hardship lies in the cost to redesign the entry way and deal with all of the stakeholders of the no-build zone. She stated the hardship is also that there is no reasonable relationship because what they are doing is making an improvement of what is existing.

Fredette stated the cost factor is not to be considered part of the criteria. Saunders stated that is correct.

Fredette stated the request will increase the amount of building within the setback. Forbes stated this is a pre-existing non-conforming building on the site. She stated they are trying to maximize and make the site safer. She stated it is a reasonable use because it will be commercial. She stated the hardship has to do with the location and the constraints to the site that have to do with the protected area and existing building location.

Fredette stated this proposal creates a building that is even more non-conforming than what exists now from a setback standpoint. Bernardino stated they interpret it as the setback from the property line and not the amount of building coverage within the setback. He stated there is some potentials they could remedy to offset the overall footprint within the setback. He stated the building itself could be pushed farther from the setback and remove the parking spaces. He stated it would go against their goal of pedestrian safety to move the building to be setback 25' from the property line.

Brooks closed the public hearing at 7:39PM.

Board Discussion: There was a brief discussion on non-conforming use expansions. Saunders stated this is not a non-conforming use but rather it is a non-conforming structure.

Donohue asked if there is a previous variance that was granted to allow the building at this location. Saunders stated there is no file for this building and believes it is a very old building.

Donohue stated the plan presented to them with the change in the building and landscape islands would help alleviate traffic flow issues. He stated as the lot exists now there is a lot of traffic mess and feels this application presents an improvement of the issue. He stated the traffic flow improvement outweighs the setback encroachment in his opinion for the overall site. He stated having a new ADA compliant building will be a huge benefit to the public. He stated the City wants commerce in the R/C zoning district and therefore this proposal is in line with the spirit of the ordinance.

Vincent asked if this was commercial what the setback would be. Saunders stated it is commercial. Vincent clarified he was thinking of the zone that has no setback requirements. Saunders stated that is the Business District. She noted a portion of this property is within the Business District.

Vincent stated the building does not meet the setback currently. He stated if this request is approved it would still not meet the setback. He stated he does not think it has any bearing on any of the surrounding properties. He stated it would not block views, it would be an improvement and thinks the criteria have been met.

Brooks stated the hardship is a hang up for him. He stated he feels all the other criteria have been met. He stated he thinks it could be shifted so that it meets the setbacks.

Perkins stated he does find it meets all five criteria with the pre-existing buildings and access. He stated they have had a recently heard a request just down the road. He stated they approved a 25' setback in that case and would be in favor of that requirement here, especially since the applicant has agreed it could work.

Fredette stated he sees the similarities to the application from last month's meeting. He stated that subject lot was surrounded by more residential and this property is surrounded by commercial. He stated he sees the advantage of approving the application as presented because it allows the Planning Board more flexibility to ensure traffic and pedestrian safety. He stated to impose a 25' setback would potentially take away from areas to make the site safer.

Donohue stated he finds it meets the hardship criteria because of the preexisting building, the entry-only (curb cut), the stakeholders and the 'no build' protected zone.

There was a brief discussion on what goes into changing an existing driveway including curb cut.

Donohue stated as the site sits with the existing entry only it creates a hardship and special condition of the property. He stated the curb cut exists and is difficult to move and they would not ask an applicant to move their existing driveway in an alternate scenario. He stated just because there is an alternative that might possibly exist, does not negate special conditions of the property. He stated there is a special condition that creates a hardship.

Fredette asked if the Board agrees or disagrees to this application being similar to the 442-44 High St. application.

Donohue stated there are similarities of the applications. He stated it is the same zone and a building within the setback. He stated he does think this application is different because this building is pre-existing and it is already non-conforming. He stated the previous application was surrounded by a residential neighborhood and building a commercial building would change the character of the neighborhood. He stated in this case, the building is already there, they would not be changing the street scape or character of the neighborhood. He stated the site line is also being improved.

Brooks noted the previous application differed in that it had three frontages. He stated this application is not 100% the same but does have similarities.

Fredette asked if Planning will require a traffic safety report for this project. Saunders stated yes.

MOTION: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of the reason's discussed and I move that the request of Brixmor Tri City Plaza LLC, for a variance from Table 5.A.1 to construct a commercial building within 10' of the front setback **be GRANTED.**

The MOTION is SECONDED by Fredette.

Discussion: Fredette asked if they need to specify the setback amount. Saunders stated it is part of the motion.

The MOTION CARRIES by a 5-0 vote.

Any other new business that may come before the Board.

Saunders updated the Board on the status of the Planning Board's review of the note 2 of Table of Uses within the Business District.

Donohue stated he wanted to thank Saunders and Crossley for the Board Appreciation Dinner. He stated he loved the trivia and thought the event was great.

Donohue **MOVED** to **ADJOURN** the meeting. Fredette seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 7:56 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary