

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
June 2, 2021

MEMBERS PRESENT: Matt Keiser Chair, Brad Fredette, Richard Brooks, Keith Perkins

EXCUSED MEMBERS: Kenneth Vincent and Glenn Garvin-Alternate

STAFF PRESENT: Michelle Mears, Director of Development Services, and Dana Crossley
Planning Secretary

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

1) Approval of the minutes:

Brooks **MOVED** to accept the May 5, 2021 minutes as presented.

Fredette seconded the motion.

The **MOTION CARRIED** by a 3-0-1 (Perkins abstained)

2) OLD BUSINESS

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

3) NEW BUSINESS

A) **Packy's Investment Properties, LLC, is seeking a variance from Section 19.6.C.1.a, expansion of a non-conforming use of land, to expand an existing mini-warehouse on a property located at 363 Route 108, in the Commercial/Industrial (C/I) District, Assessor's Map 48 Lot 22B, ZBA#07-2021 PUBLIC HEARING**

Keiser opened the public hearing at 7:01 PM.

Keiser informed the applicant that there is only a four member Board in attendance. He asked if the applicant wished to move forward with a four member Board or wait for a full five member Board.

Attorney Jim Shannon was in attendance to represent the applicant, Packy's Investment Properties LLC. He stated he would like to move forward with a four member Board. He stated he discussed the Board numbers with his client who was fine to move forward with the four but to perhaps table the application if there was a 2-2 vote.

Keiser noted in order for a variance to pass 3 positive votes are needed.

Mears stated the applicant is looking to expand an existing mini-warehouse (self-storage) where mini-warehouses are not permitted. Applicant has an approved site plan for the existing use; use was allowed at the time of site plan approval. The applicant is proposing two structures for the storage units (30ft by 150ft) and (30ft by 100) for a total of 7,500 sf in the rear of the property.

Mears stated therefore this is considered an expansion of a non-conforming use. This proposal will require Site Plan approval from the Planning Board if the variance is granted.

Keiser questioned when the site plan was approved.

Mears stated the site plan is from the 80s.

Shannon stated he believes the property was originally developed prior to zoning enactment. He stated they are seeking to expand the existing use. A conceptual plan was provided to the Board to visually show what is being contemplated and at this point is only concept, only speaking of the use for the variance.

Shannon reviewed the five criteria. He stated the property is located on Route 108, which is a commercial developed zone, all abutters are commercial with the exception of the property owned by the home owners association and Stern in the back. Abutting the property itself is commercial or undeveloped area, therefore the expansion would not significantly modify the appearance. He stated the expansion area would not be visible from Route 108 as it would be in the back of the lot. He stated they do not think it would have a significant look on the appearance, values or uses of surrounding properties. He stated since the use is remaining the same the project would not have a significant impact only potential increase in traffic intermittently but it is not a high traffic use. He stated therefore public safety, such as impact to roads and resources like Police and Fire, significantly changes in that regards and would not be contrary to public interest. He stated the market calls for a lot of storage facilities, his client's storage spaces in 3 communities are almost all completely full. He stated the public interest as to the needs of the market for storage is there and growing. He stated for the no fair and substantial relationship between public purpose and application, the existing has been approved with a site plan and has been in operation for years, there is no significant change or effect to the property outside of a small percent addition of the footprint to the type of storage buildings. He stated they are not acquiring additional property and adding it to the site, it is the same property and trying to develop and use the entire property for this existing use. He stated for reasonability because mini-warehouse has been historically used on the property there is no change in operations besides number of total tenants. He stated the traffic would be nominal and the use is reasonable. He stated for substantial justice it meets the needs for the community for storage options. He stated as seen with the recent other zoning applications for Atlantic Storage on Whitehouse Road and Somersworth Storage next to the Works on Route 108 the storage facilities are a need of the community. He stated substantial justice would be done for the owner with the use of the property in a reasonable commercial manner and meets the needs to the community itself. He stated as he understands the ordinance with the change in the zoning the intent was that industrial can happen but not on the street frontage. He stated for this property the industrial use that is already being done there is looking to expand in the back of the lot which would not affect the zone itself as far as utilizing property frontage. He stated the ordinance says in regards to definition of commercial/industrial that the district is provided to allow strip development of general commercial uses on the road frontage while allowing industrial uses throughout the district. He stated the this industrial use would be further back from the road and not taking an undeveloped piece of property away from reasonable commercial use, but continuing an existing use.

Keiser asked if any public comment was received.

Mears stated no comments were received via mail, email or phone.
No other public in attendance for public comment.

Fredette asked for more information on the existing house listed on the property.
Shannon stated it was previously used for an office and housing of an onsite manager. He stated this property owner does not use it for an onsite manager but it is rented as a residential use that is aware of what the use of the property is.

Keiser stated in general the attempt is to not expand a non-conforming use but there are allowances for a small expansion but with this they are adding an additional building which is why they need a variance. He stated he is having a hard time when looking at this property finding what is different or that there is a uniqueness that causes hardship.

Shannon stated for the property owner to be able to reasonably use the property he cannot do anything else with the lot. He stated the hardship is to be able to utilize the property as it is in a reasonable manner. He stated he won't lose the property if it is not done but hardship is usually the trickiest question. He stated their use is similar to the storage facility on Whitehouse Rd and Prime Storage also on Route 108, same kind of issues, possibly a different background but the same kind of issues that allowed for the variances.

Keiser stated for the spirit of the ordinance, it is clear that the zoning ordinance/the City only wants mini-warehouses in the industrial zones. He stated this property is in the CI where it is not allowed. It was allowed when it was built and therefore is a grandfathered use. If this was a new storage facility, even adding to the storage facility, how is that in line with the spirit of the ordinance where the City does not allow mini-warehouses (storage facility) in the CI.

Shannon stated in the definition of the CI it says 'allowing industrial uses throughout the district' this is an industrial use, classified as only permitted in the Industrial District rather than CI, but the ordinance itself recognizes that industrial uses are used throughout the zone. He stated his understanding, which is backed by that language referenced; there was a desire for more commercial uses (car wash, convenience store or similar) on the strip as opposed to industrial on the frontage but this industrial use already exists and the proposal will not change the road frontage of this site because it is in the back of the property where they are looking to expand.

Brooks stated he did not recall the variance for Somersworth Storage or Atlantic Storage.

Keiser noted that Atlantic Storage is within the Industrial District and a portion is within the CI.

Shannon stated he knows that Somersworth Storage on Route 108 was enlarged within the last 10 years.

Mears stated a variance to expand Somersworth Storage was granted in 2016.

Shannon stated in summary, they believe this is similar to other Somersworth properties that have had similar request. Want to be treated similarly.

Keiser closed the public hearing at 7:18PM.

Brooks stated he understands others have been granted a variance and one of those was expanded along the road frontage but does not recall details of that. He stated this request is looking to

expand in the rear of the lot and therefore the frontage would not be affected. He stated his understanding to why the City does not want the mini-warehouses is due to the appearance of them. He stated nothing would change for appearance of the site, but not sure on the hardship for the site. He stated there are plenty of things the property owner could do with the lot, but the use is already grandfathered.

Fredette stated his understanding the expansion of the Somersworth Storage was allowed because it was interior storage inside of a building rather than traditional storage units. He stated he agrees with the statements made by Brooks. He noted he struggles with the hardship criteria, if the ordinance states that mini-warehouses are not allowed in the CI, traditionally the ordinance does not want to expand non-conforming use, they would be going against the spirit of the ordinance by allowing an expansion. He stated the applicant is not being denied reasonable use of the property, can continue to use the storage units that exist, it is not required to fill the entire commercial site.

Perkins stated he is in support of the variance. To him the hardship exists with the shape of the property, the undeveloped area does not have frontage and is behind another lot. He stated in order to get to this portion of the lot you have to go through the existing business. He stated it is a good point to have the industrial use in the back of the lot and would not affect streetscape.

Keiser stated he agrees with the applicant that he does not think surrounding property values would be diminished. He stated he does not think it would be contrary to the public interest as there is a need for storage units. He stated substantial justice would be done. He stated as discussed the spirit of the ordinance, mini-warehouses are only allowed in the industrial district, this is a grandfathered use, the zoning ordinance talks about not increasing non-conforming uses. He stated looking at it for a new application, understands it is not, what is unique about the property to create hardship. He stated he had not considered the shape of the property as the hardship as Perkins brought up, but does it create hardship that should allow them to increase the non-conforming use. He stated he is not finding the justification to approve it but is not hard against the request as it is an existing non-conforming use.

Brooks stated in review of the five criteria he agrees that 3(the hardship) is the one he is hung up on. He stated if it is true that Somersworth Storage received the variance because the units were inside instead of outside in an 'out of sight out of mind' idea, having it out back could be similar.

Keiser stated each stands on its own though and look at each case individually.

Brooks stated there should be done evenly, what is good for one should be good for another within reason and understands different factors change that and this is a different property. The area of expansion is out of sight in the back as the ordinance suggests.

Fredette asked how Brooks views criteria 5 (spirit of the ordinance).

Brooks stated because it mentions putting industrial uses in the back, there is existing industrial in the front. It does not define how far back it needs to be, unsure how it would be defined.

Fredette questioned for expanding a non-conforming use. He stated he is not totally against the request but it seems contrary to the spirit of the ordinance in a couple ways. One being the expansion of the non-conforming use and that the mini-warehouse (storage units) is not allowed in

the CI. He stated Perkins makes a reasonable argument in regards there is not much else that can be done with the property and it will likely not see frontage for this portion of the lot.

Fredette clarified that residential is not allowed in this zone as well.

Mears stated that is correct.

Fredette stated that is another non-conforming use at this lot, though not being expanded.

Keiser stated the Board will need to determine if the application meets all of the criteria in order to grant the variance. He stated after discussion the Board has found that criteria's 1(property values), 2(public interest) and 4(substantial justice) and need to address if the request meets criteria 3(hardship) and 5(spirit of the ordinance). He stated he finds that since it is a property in the commercial/industrial district that does not allow mini-warehouses there are no special condition of the property, enough special conditions to grant the variance or addition of storage units.

MOTION: Fredette stated after review of the application, the file and all the information presented to the Board, I feel that criteria's 3 hardship and 5 spirit of the ordinance of the five criteria have **NOT** been satisfied and I move that the request of Packy's Investment Properties, LLC., for a variance from Section 19.6.C.1.a, expansion of a non-conforming use of land, to expand an existing mini-warehouse **be DENIED.**

The MOTION is SECONDED by Keiser.

The MOTION CARRIES by a 3-1 vote. (Perkins voted in the negative)

B) Election of Officers

Keiser stated with only 4 members this item can be postponed or dealt with at this meeting.

The Board's consensus was the postpone the item to the July meeting.

C) Any other new business that may come before the Board.

Fredette inquired the status of a zoning change for solar trackers.

Mears stated she is working with the Sustainably Committee on the matter.

Brooks **MOVED** to **ADJOURN** the meeting.

Perkins seconded the Motion.

The **MOTION CARRIED** 4-0 at 7:34PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary