

**Town of Milford**  
**Zoning Board of Adjustment Minutes**  
**April 7, 2011**  
**Birdland Properties, LLC**  
**Case #4-11**  
**Variance**

Present: Kevin Johnson - Chairman  
Fletcher Seagroves – Vice Chairman  
Laura Horning  
Zach Tripp – Alternate  
Michael Unsworth – Alternate

Absent: Katherine Bauer – Board of Selectmen’s representative  
Steven Bonczar  
Steve Winder

Secretary: Kathryn Parenti

The applicant, Birdland Properties, LLC, owner of 475 Nashua Street, Map 32, Lots 23-2, -3, -5 in the Limited Commercial “LC” district, is requesting a Variance from Article V, Section 5.07.1 to permit a multi-building self-storage facility of no more than 20,000 SF of storage space, a use not permitted in the district.

Motion to Approve: \_\_\_\_\_

Seconded: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Kevin Johnson, chairman, read the notice of hearing into the record. He then read the list of abutters; Alexander Buchanan, representing Birdland Properties, the applicant and owner of 275 Nashua Street, Matthew and Andrew Ciardelli, also representing Birdland Properties, a representative of RC Properties of Milford, owner of 479 and 483 Nashua Street, Betsey Deasy, owner of 473 and 477 Nashua Street, several representatives from Nottingham Place, 16 James Street and Stoney Creek, 28 James Street were present. He then invited the applicant forward to present his case.

A. Buchanan began by stating he is an attorney with an office in Nashua, lives in Amherst and graduated from Milford High School and was representing Birdland Properties. He then handed out several exhibits and photographs to the board and to the audience so show everyone where this location is and what it is and will be. He asked the board to look at Exhibit A, which is an overhead view of the subject site and noted north is at the top of the and south is at the bottom of the page with Nashua Street on the east side and Powers Street on the left side. The letter A represents the Ciardelli Fuel complex and below that are the former Woodman's greenhouses. The site is where the greenhouses are along with an empty spot of land. The second supplement, B-1, is the zoning districts, the orientation of this map is opposite of the prior exhibit. This exhibit shows the rough boundaries of the lots and shows the location of the residential complexes to the south. The property in question is located in the Limited Business Commercial zone and consists of 2.44 acres. There is a mathematical error in a later exhibit, Mr. Rizzi, the appraiser, calculated the lot to be 2.326 acres; there is a part of the property that the appraiser was unaware of. He stated one (1) greenhouse may remain but that is not a final decision; that has to do with other people's desires for the property and will be a planning board issue. The square footage of the storage space has been calculated. Important to the variance is understanding where the property is situated. Referring again to exhibit B-1, the neighborhood is shown with all of its zoning districts. The property in question is outlined in black and abuts industrial property to the west, residential to the south and limited commercial to the north and east. This property is in among a mix of uses and many things in the area are not allowed by the current zoning ordinance but are grandfathered, such as offices, fuel storage, residences and retail to the north. Exhibit B-2 clearly shows the parcels in question, 32/23-2, 32/23-3, 32/23-5 are clearly in the Limited Business Commercial zone. Exhibit B-3 shows the uses in the Limited Business Commercial district, which are not consistent. The uses are residential and retail and 32/24-3 and 32/24-2 are marked as industrial and is a fuel storage area with its supporting garages. Parcel 32/25 could easily be characterized as industrial and has trucks stored on it but is marked as being in conformance with that zone. There are many competing uses and the lots are not just used for the allowed Limited Business Commercial uses. He noted the letter submitted by John Rizzi, licensed appraiser, addresses the diminution of values criteria and on page 2 describes the surrounding area not only within the immediate area of the proposed site but along the Nashua Street corridor. This is an area of a lot of different uses, not just a single type. Exhibit C-1 shows the proposed use and shows what can be done with the property based on the acreage of the lot and the requirements to maintain drainage, how much pervious area you have. Theoretically it shows how much storage area could be on the site; it could be up to 22,000 square feet of storage. They do not propose that. They are proposing something along the lines of exhibit C-2, which shows the location of seven (7) to ten (10) buildings on the site but that depends on the grade of the land and condition of the soil. This is an engineer's conceptual best guess of what will go on the site. It depends on if they maintain the old Woodman greenhouse or not. Many of those issues will be worked out with the planning board. This exhibit shows 15,200 square feet of storage and the access to the property is off of James Street at what is known on older plans as Victory Street, the hammerhead. It is a public way that never became a public way. There may have to be some things done with that later but it is nothing

that will concern the town. This is where they are with the project and what the proposal is all about. It's not a permitted use within this zone so a variance is required. In the state of New Hampshire, in order to get a variance there is a five prong test that must be met with the exception of hardship which has several sub-prongs.

A. Buchanan then went on to address those criteria:

**1. The proposed variance would not diminish surrounding property values because:**

He stated the proposed use is compatible with other uses in its District as a commercial activity next to an oil distribution facility, a hair salon and a florist shop. This is less intense than many of them and is consistent with those existing uses. Because it is consistent with existing uses, the values of surrounding property will not be diminished by the addition of this more consistent and compatible use with those around it. This is further supported by J. Rizzi's opinion; he has been a long time appraiser in the area and his qualifications and credentials are part of his presentation.

**2. Granting the variance would not be contrary to the public interest because;**

He stated public interest would be served because this use would: 1) this property is unique; it is an undeveloped property within a whole bunch of very well developed property and it has the opportunity to serve as a buffer between competing uses of a commercial district to the north and a residential district to the south; and 2) provide easily accessible storage availability to nearby single and multi family residences and to this area of town. In determining if the public interest of the town is adversely affected, the New Hampshire Supreme Court, 9A, LLC versus the Town of Chesterfield has stated: *"In order to be contrary to public interest a variance must be unduly and in a marked degree conflict with an ordinance such that it violates the ordinance's basic zoning objectives. In determining whether granting a variance violates an ordinance's basic zoning objectives, the court looks to, among other things, whether it would alter the essential character of the locality or threaten public health, safety or welfare."* We think it's evident that this property is located among several conflicting uses. Use for storage, as a proposal, would not alter the essential character of the neighborhood. The character of that neighborhood is already fixed. The addition of 7-10 storage buildings is not going to change it nor is the addition of 7-10 storage buildings going to threaten the public health, safety or welfare. We will be able to meet all the criteria that are required under the ordinance for the use of the property as self-storage, which will be addressed later on.

**3. Denial of the variance would result in unnecessary hardship.**

**A. "Unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:**

**i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

He stated the property is different from others in the area because it is undeveloped. All of its abutting properties are developed with a variety of uses from single and multi-family residences to commercial retail operations to fuel oil storage and industrial warehousing and manufacturing. Further, this property is situated in the Limited Business Commercial District and abuts two different zoning districts, Residential B to the south and Industrial to the west. It has the unique characteristic of being able to serve as a buffer between these competing zoning districts.

The second prong of this test is there must be no connection between the "general public purposes" of the ordinances in restricting self-storage units in this zone. The ordinance itself is silent as to the general public purposes of restricting this use in the Limited Business Commercial District.

Accordingly then the general purposes of the Ordinance needs to be reviewed. Section 1.01.D of the Milford Zoning Ordinance states that “[t]he regulations...are for the purpose of promoting the public health, safety, morals, general welfare and civil rights of the Town of Milford...” It is difficult to understand that allowing this site, situated among such a variety of other uses, to be uses as a self-storage would somehow be a threat or damaging to the health, safety and general welfare of the citizens of Milford. In fact, we think it would better serve them by providing a place to store many of their goods and property.

**ii. and; The proposed use is a reasonable one because (explain):**

The use is reasonable for the site because it is relatively benign and less intensive in comparison to most of the other uses surrounding it. Exhibit C-3 show some of the other uses that could be done on the site and the intensity of those uses as compared with the use they are providing. Further, it would serve as a buffer between these uses, that other permitted uses in the Limited Commercial Business Zone cannot provide. As discussed below, these uses simply cannot provide the buffer that the proposed use can. Exhibit D-1, prepared by Sanford Survey, shows the traffic analysis per each use allowed by the ordinance on the parcel. Under the proposed use of approximately 15,000 square feet of storage, there would be 41 trips per day as compared with the allowed uses. This use is less intense, at least from a traffic standpoint, than the permitted uses and nothing will infringe on the protections set in place by the zoning ordinance so by that, they meet the condition of hardship. As indicated before, if you do not meet the first prong, then there is another way to obtain a variance.

**B. If the criteria in Section A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:**

As indicated above, this parcel of less than three acres is located among several districts in their varying uses. As such, it is unique because it can be utilized as a buffer among these competing uses. This parcel is not developed and an owner has the right to develop their property within the confines of the ordinance but, this parcel is not conducive to the permitted uses in its zoning district, and as required “Cannot be reasonably used in strict conformance with the ordinance.” The following uses are allowed in the Limited Business Commercial District (5.07.01): A. Offices; B. Hospitals and/or medical facilities licensed by the state of NH; C. Schools; D. Bed and Breakfast; E. Churches; F. Funeral homes; G. Single family dwellings and their accessory uses and structures, with their respective related conditions set forth in the Residence “A” district; H. Two-family and multi-family dwellings and their accessory uses and structures, with their related conditions set forth in the Residence “B” district; I. Home Occupations in accordance with Section 10.02.3; J. Telecommunication facilities (2000); K. Senior Housing Developments (2002); and L. Farm roadside stands (2010). None of these uses would be appropriate for this site due either to its size or proximity to many different uses. Due to its proximity to the fuel storage facility to the north, it is unsuitable for most of the uses allowed. The owners and/or occupants of these facilities would not want to be subject to the noise, lightings and occasional odor emanating from the site to the north. This is true of the enumerated uses A-H above. A home occupation (I) and senior housing (K) by definition connected to residential use which is included above. The site has never been identified as a suitable site for a telecommunication facility because it has no elevation requiring a tower height in

excess of the maximum allowed. The site is not suitable for a roadside farm stand because it is not along a highly traveled thoroughfare. The fact that this property can be used as a buffer is important and every landowner has the right to develop his property within the ordinance but in this case, the ordinance is too restrictive. Many of the allowed uses do not want to locate next to a fuel storage site. The parcel is not suitable for a roadside farm stand due to its proximity to traffic. For those reasons, it is a reasonable use and they do meet the criteria set forth in the ordinance. Exhibit D-2 is a simple analysis that shows how intense this use is in relation to the lot and to other self-storage units in the area. This use is 13% of the lot, at the lower half of the group but not an under intense use of the lot. The Old Wilton Road facility is at 7% because of the wetlands on the back part of the lot. It shows they are not asking for the world beyond what the lot and neighborhood can support.

**4. Granting the variance would do substantial justice because:**

Allows owner to develop its property in a reasonable manner with no negative impact on abutters and the surrounding neighborhood that wouldn't otherwise occur with any other development on the property.

**5. The use is not contrary to the spirit of the ordinance because:**

This use is allowed in other zones of similar uses as this zone is not contrary to the spirit because the spirit and intent of the ordinance is to promote orderly growth and the appropriate use of land. Considering all of the competing uses surrounding the subject site the Board's approval of this request will accomplish just that: promote the orderly growth and appropriate use of land.

The intent of the ordinance is hand in hand with the first prong of the variance. The courts have held that for a variance to be denied, the use would be contrary to the other uses allowed. Self storage is not permitted by right but by special exception and they do meet those requirements.

He continued with section F of the submitted application, Additional Considerations of the Milford Zoning Ordinance. The proposed use, self storage facility, is only permitted in one district [R] and only by special exception pursuant to section 10.02.4. The applicant believes it has demonstrated that variance should be granted because the proposal meets the 5 prong test of a variance and is not otherwise required to meet the requirements of Section 10.02.4. The proposal does meet the conditions imposed by Section 10.02.4. That Section has six enumerated requirements:

Subsection A1 requires the use to be located on certain property in the R district. By definition the compliance with the variance requirements for the subject district, LBCD, obviates this requirement. Subsection A2 requires a 15 foot perimeter landscaped buffer with specific requirements of planting of evergreen trees. This is consistent with the applicant's proposal and will be addressed at the Planning Board. Subsection A3 allows the ZBA to waive all or part of the screening. The applicant requests that screening be required only on the west, south and east sides of the premises. Subsection A4 requires no outside storage. The applicant's proposal does not provide for outside storage. Subsection A5 requires site plan approval by the Planning Board. The applicant will submit a site plan for approval by the Planning Board. Subsection A6 requires a fifty (50) foot front setback. This will be met by the approved site plan. In conclusion, he requested the Board grant the variance as requested.

K. Johnson asked if the members of the board had any questions.

M. Unsworth noted on one plan that one lot has greenhouses on it and one is empty; he wondered where the buildings are currently situated.

A. Buchanan showed him an older site plan of Woodman's Florist that showed the locations of all of the existing buildings. There are currently buildings on 32/23-2.

M. Unsworth asked how many storage units would there be per building.

M. Ciardelli replied they are not that far in the planning process.

L. Horning clarified that all of the greenhouses were on 32/23-2.

M. Unsworth asked if they had done traffic counts for the other self storage facilities in town.

A. Buchanan replied they did not. As explained by the engineer at Sanford Survey, there is a formula for the traffic number such as so many trips per day per 1000 square feet of storage. They didn't take that formula further.

F. Seagroves asked if they were saying there could be a possibility of 150 units.

A. Buchanan replied the units would be of varying sizes and they would engage a national firm that would survey the area to anticipate what the demand was for them. He feels they would be in sort of the medium range; he didn't think they would be the small or really big ones. They are trying to serve a more local area.

F. Seagroves asked what the hours of the facility would be.

A. Buchanan replied they have not planned that far but typically they are open 24 hours but they don't need to be. That is something that the Planning Board will deal with.

M. Unsworth stated that would indicate lighting needs.

A. Buchanan replied they are aware of that and will need to deal with it at the planning board stage.

M. Unsworth asked about signage.

A. Buchanan replied they had thought there would be some kind of signage somewhere but it might not be necessary.

M. Unsworth asked if they would place one on Nashua Street.

A. Buchanan replied they may not but would probably need one closer to the site. They don't have any rights to an off-site sign by may need to negotiate that in the future.

L. Horning asked about the size of the storage units; would they be a standard size, how many and what size?

A. Buchanan replied they have not calculated that yet.

M. Ciardelli replied they would probably be 10'x30' and 10'x15', backed up against each other.

A. Buchanan replied the buildings are oriented so the butt ends are facing south. It is probably the most pleasing view than the broad face. Garage doors would be along the sides and not on the gabled ends.

L. Horning asked how many units per block there would be.

A. Buchanan replied there would be about 2400 square feet per building.

K. Johnson replied the average unit would be 120 square feet and they would be of varying sizes, as in a typical self storage facility.

L. Horning asked if the lot would be all paved or would the surface be impervious and would there be any type of water detention pond.

A. Buchanan referred to Exhibit C-1 and noted the west side of the facility is pulled backed as part of the drainage plan. The engineer did not indicate a detention pond, just a recharge area.

L. Horning asked if in the future they address signage, would that incur more lighting issues.

A. Buchanan replied he didn't think there would be any signage that would require lighting. The only sign that would be present would be to mark the property; any other signs would be inappropriate. They are not asking for rights or easements for signage on Nashua Street.

Z. Tripp asked why they were not continuing with the greenhouses and using the lot as is.

A. Buchanan replied only one has economic life left in it; the others are in disrepair.

M. Ciardelli stated they have not been used in the past five (5) to ten (10) years due to the cost of fuel and the maintenance required. The florist business isn't about growing and storing any more; it's just logistical.

Z. Tripp asked if there is demand for the commercial use that no longer exists.

M. Ciardelli replied no; no one was interested in taking the greenhouses or even the glass.

K. Johnson asked if there were any additional questions from the board; there were none so he opened the meeting for public comment.

Michael McGowen, 28 James Street, stated he had several concerns. His bedroom windows look out onto the proposed self-storage facility and he objects to the construction. He doesn't believe there would be minimal safety risks as there would be many strangers travelling in and out of the neighborhood. There have been very few incidents on Stoney Creek property and their lives will be changed. They are located in an almost rural area surrounded by woods with a pine lot to the left, a field and hardwood trees to the right. It will change their lives and the complexion of the neighborhood and who they are and they don't like that. He is not in favor of this and is vehemently opposed to this speaking for himself and many of his neighbors.

K. Johnson stated the parcel is located in the "Limited Commercial" district and those types of uses are allowed to go on that parcel. While he understands it is nice to see undeveloped lots remain undeveloped, this parcel is not undeveloped; there are some buildings on the parcel. In reality, many remaining undeveloped parcels will be developed. He asked if the speaker would prefer to see medical offices or other allowed uses on the site.

M. McGowen replied if the building is occupied, it will be supervised. There will not be a variety of strangers coming and going as with the self-storage units. He noted the applicants were asked how many units would be on site three (3) times and they responded once. The board doesn't know; there are a lot of unknowns. This is being presented in generalities.

K. Johnson stated it was not within the purview of the Zoning Board to make the determination whether to allow one (1) building with fifty (50) units or fifty (50) buildings with one hundred (100) units; that falls on the planning board. This is a two prong process. The planning board looks at what will fit, what size, what it will look like. If this was in a district where the use is allowed, it would go straight to the planning board. The zoning board needs to determine if this would be an appropriate use and as part of that process, they ask for abutter input.

M. McGowen stated he can't see how this will increase property values. The lack of security will diminish them. He doesn't see how a developer would put a residential use or multi family in there since it is right next to an oil company. There is too much noise there that they have to endure as it is. He doesn't want to see this near this community.

Jennifer Levin, 28 James Street, stated the increased traffic of this use would put many people at risk whether in their cars or on foot as there is limited room to maneuver there already. People going into the storage units at all times of the day and night would really increase that risk.

K. Johnson noted an office building, a permitted use, would have more traffic.

J. Levin stated that would be in a more controlled manner. With an office building there would be a sense of community; with a storage facility, there would be no sense of ownership. There would be break-ins, the storage of chemicals, the potential for illegal acts and break-ins and any building near by would be subject to that. It would also be a potential eye sore. If there is lighting for 24 hour access, it would impact all of the people in the area; they would be in daylight 24 hours a day.

Shelly Lockings, 16 James Street, asked if the facility would have someone on site 24 hours a day.

K. Johnson replied typical storage units do not have managers on site 24 hours a day. They are just self-storage units. At some sites, customers have access at all times and other facilities have gates with pass codes.

S. Lockings asked about the screening of the site.

K. Johnson replied that is a regulation of the ordinance and can be fencing, landscaping or trees and that is dealt with by the planning board.

S. Lockings stated there will be a traffic problem. There are thirty (30) units at Nottingham Place and sixty six (66) units at Stoney Creek and there are over one hundred (100) cars of residents that use the road every day. In winter the road becomes one lane. There is no room on James Street for additional traffic. Would the units have orange doors or would be they more upscale like the ones on Route 13 North, across from the Quarry condominiums?

K. Johnson replied specifics, such as the design of the building are not in line with what the zoning board controls; it is a planning issue. The zoning board will determine if this is an ok use in an area where the use is not allowed.

S. Lockings stated this request will negatively impact the property values; the values have dropped in the past year and this will make it worse.

Larry Nelson, 16 James Street, said the attorney stated there will be no drainage issues with the proposed use. There are plenty of drainage issues on James Street already; this will make it worse.

K. Johnson replied, not to reflect this question, this is also a planning board issue; they will look at the appropriate engineering reports, the number of buildings, the surface of the site, etc.

L. Nelson stated it was his understanding the developer went before planning when the condominiums were approved to go into the town sewer system but they are not hooked up and the town will not let them hook up. What happens one time will happen again. Property values will go down and he also wondered how many storage units were needed in Milford. He thought there must be enough for every house in town.

K. Johnson replied the number of units is not a concern of the zoning board; if they put up so many units and there weren't any customers, it would indicate there was no demand. Normally if someone comes before the zoning board, they have done the research on the need for self storage in the area before coming to the zoning board with this plan. They've researched how to operate such a facility, the color scheme, and how to build the units for the most part, is outside the reach of the zoning board. He did state the board could attach a condition to mitigate the impact on the neighborhood.

Maureen Roy, 16 James Street, stated she was concerned with the runoff. There is a serious problem with their building and there is no reason to think there won't with the proposed building and will be with the entire property in question. She was concerned that units would be large enough to put an entire homes' goods in one unit. She doesn't want moving vans coming on to James Street several times a day.

K. Johnson replied a typical self storage unit is the size of a one car garage or less. On the other hand, there is nothing to stop someone from renting five (5) units and storing an entire house full of stuff in them. From experience, living on a street near a self storage facility, moving vans are on site one or two times a year. It's not designed to get the larger tractor trailers in and out. More commonly, smaller moving vans are used.

M. Roy stated that can't be ruled out. She asked what the driveway finish would be.

K. Johnson replied that was a planning board issue; it could be partially paved or gravel.

M. Roy asked about the entrance and egress to the site.

K. Johnson replied the side nearest to Route 101, off of James Street would be both the entrance and the exit. The facilities typically do not have in and out traffic happening at the same time versus an office complex.

M. Roy asked if the entrance to the site would be across from the garage entrance at 16 James Street.

K. Johnson replied it would be another planning board issue.

Jean Duffy, 28 James Street, asked if the empty space shown on the plan would be for the storage of campers and boats. She thought this would definitely diminish her property values.

K. Johnson replied the ordinance is very specific and any new storage facilities will be put in place within the limits the ordinance. Many of the existing storage facilities were constructed before the ordinance was in place. In this specific case, the ordinance prohibits any outside storage.

J. Duffy asked if the site would be fenced.

K. Johnson replied that was a planning board issue.

Robert Moran, 16 James Street, stated the planning board and zoning board are two separate entities. They should stop this request here at this stage, if they don't want the rest of it to happen. He noted there have been numerous incidents where things have been changed when they should not have been. To put something in that is allowed by zoning is fine; to change the zoning to put something like this in will affect everyone else in the area. He noted the applicants may have more power in town and will get their way and it isn't right. Whatever is put on the site should comply with the zoning ordinance.

K. Johnson replied his concerns will be addressed in their discussions.

Christopher Kerrissey, 28 James Street, referred to image of the site with the yellow lines super imposed on it, asked if they can expand beyond what is shown.

K. Johnson noted the photo shows the boundary of the property and how they develop the site within the boundary is a planning board issue.

Susan Ingraham, 28 James Street, noted there were many questions that could not be answered because this request must go before the planning board, if the variance is granted. If they do not stop this tonight and it goes forward, there are so many things they will have no control over. She stated she supported the other uses the property is zoned for. She stated the attorney said this would not affect property values or the character of the neighborhood. It will; Nottingham and Stoney Creek are wooden residential structure. If an office or church and the like were built, they would be similar, more upscale.

K. Johnson replied he did not know what the units would be made of; they could be wooden in the shape of a barn. Assumptions are being made that fall within the realm of the planning board.

S. Ingraham replied that is why this is a public forum; there is a lot of unknown in this application. She didn't know the property on which she lives existed four (4) years ago it is appealing. What is allowed by the ordinance would be more appealing. If the facility was to operate 24 hours a day, units could be used for woodworking, for homeless people to live in. When the applicant was asked if they had any electrical options in mind, the answer was indefinite. She referred to Exhibit C-2 and noted the preliminary drawing shows the wooded area not being used. She noted there was a wetland area on this property was not sure how that would be dealt with if this is approved. In the planning board stage, if this plan does not work, they may have to cut down trees. She stated their condominiums are not worth much now. She noted some of the smaller units have a slider and two (2) windows, like hers, that look out onto trees. She was concerned if the trees were cut down, that it would diminish the value of her unit even further. If they don't oppose the plan now, it will leave themselves wide open for the unknown.

L. Horning wanted to clarify everything previously stated by the chairman. There is a vast difference between the zoning board and the planning board. This is a land use board; the planning board handles aesthetics. As the chairman has expressed, they can attach conditions if this variance approved. The board members do not have preconceived notions and the zoning ordinance is here, in part to protect property values and property owners and the board members ask questions to get a feel for the issue.

K. Johnson stated the zoning board has a responsibility for what goes where. The planning board has a responsibility for how it goes there. Does this request meet the requirements that are spelled

out in the ordinance, based on the application and the questions and answers received? He noted, in the previous equitable waiver case, they asked the same questions over and over. They are required to do that. They review the criteria and state their reasons why it has or has not met them. If they determine this is a reasonable project, it fits with the character of the neighborhood and it meets specific criteria as set by the state. Then they have the criteria of the town of Milford ordinance that need to be met. Only if all of that is met can they grant the variance. They take all of the public, the applicant and the board input and take it into consideration before voting. Jean Dibenadetti stated questions have presented that have no answers so how can the variance be granted.

K. Johnson stated they have dealt with controversial cases in the past; the board does not make the determination of what it will look like, they can only determine if what they want to do will work. If it is ok, it then goes to the planning board for more requirements. The zoning board is the first step; if they say no, then the process stops. If the zoning board says yes, the planning board looks for certain things and the process goes forward. It is the way the process works. They are separate boards with separate procedures.

Bob Kokko, property manager for 16 and 28 James Street, asked about the conditions that were spoken about.

K. Johnson replied to quantify this, it is sort of vague; they have power in certain areas and not in others. They could, for example, attach a condition that the lighting be motion controlled but they don't have any ability to say there needs to be a manager on site 24 hours a day. There are specifics granted reasonable to the ordinance. They represent both the town and the developers and are trying to find the line between both.

B. Kokko noted most of the concerns were about property values and aesthetics. If they tabled the application, it would give the applicant time to design the facility and provide definitive answers to the questions asked.

K. Johnson replied they can't do that; they can't say it needs to look like colonial cottages. The planning board can override it; they can't do it.

B. Kokko stated they can't give conditional approval then.

B. Kokko stated the architectural design is too broad.

L. Horning reiterated this is a land use board and they do not deal with aesthetics. They can address lighting and ask questions on traffic. They could add a condition that the applicant must abide by. In this case, they must comply with the ordinance which deals with screening, run off and all other things listed in the ordinance.

B. Kokko stated, in an effort to stay neutral, they are tying the hands of the applicant and the people.

K. Johnson replied in essence, this is how the process of land use in New Hampshire works.

L. Horning stated the planning board can tell them to come back with something more conducive to the neighborhood.

K. Johnson stated the zoning ordinance is their guide; the planning board has its own criteria that must be met that has nothing to do with the zoning ordinance. If someone goes before the zoning board for an apartment building, they can't tell them how many parking places to put it; that is what the planning board does. The vast majority of the issues raised tonight fall under planning. If it is approved tonight, it will then go to the planning board and the same procedure will be followed with the notification of abutters and a public hearing. If the variance is granted, it is for a self-storage facility.

Alfred Dibenadetti, 16 James Street, asked if this variance is approved, will it go to the planning board and will they have another meeting.

K. Johnson stated, if approved, it would and the specific concerns would be addressed at that time.

A. Buchanan stated he assumed the residents, should the variance be granted, would meet with planning to get the general take on this before the engineering is done. They will want to meet with the abutters and they want to be good neighbors as well as being able to use their property. They may not be able to meet all of their concerns because of economic reasons but they will work with the neighbors. If they can make the buildings less obtrusive and won't make an economic hardship for the owner, they will do it. The Ciardelli's have tried to be good neighbors for the time they have been on their property and they won't stop now because of some concerns from the neighbors.

Joe Catalize, 16 James Street, asked if this is approved and it goes to the planning board, what is their recourse if it is approved, to stop it before it goes to the planning board?

K. Johnson stated there is a 30 day appeal period and within that time, anyone can appeal the board's decision.

J. Catalize replied, as a group, they could get together and appeal the decision.

K. Johnson replied as an individual, he can. They have to state specific reasons why they are appealing the decision and give evidence to that. As a hypothetical, the applicant provided information by a realtor who says the property values will not be impacted.

J. Catalize asked where the realtor was from.

K. Johnson replied it doesn't matter but they have provided that information. They could hire a real estate assessor to state the opposite, submit it and the board will take that into consideration.

J. Catalize asked if that would stop it from going to the planning board.

K. Johnson replied it would not; however, there are time constraints for the appeal process to occur. The only time it will not go forward to the planning board is if the supplied new information in the appeal is enough for the board to reverse its decision; there is another 30 appeal period for the applicant to respond. At the end of that process, if everyone is still unhappy, the court system exists.

J. Cataldi asked how soon a decision will be made by the zoning board.

K. Johnson replied a decision will be made tonight; if appealed, six weeks from tonight.

F. Seagroves stated the appraiser is from New Hampshire and is certified in New Hampshire.

A. Buchanan stated he lives in Mont Vernon.

J. Dibenedetti state if the variance passes and the planning board turns it down, what happens.

K. Johnson replied they have one year to begin substantial construction; if the planning board and applicant can't come to an agreement, they then have to come back to the zoning board.

S. Ingraham stated she did not agree with the applicant's statement regarding hardship. There are other options for the parcel that are less intrusive to their livelihood. She doesn't want to say they can't do anything with the property. She noted not everyone in the room had a chance to speak or chose to speak. She wondered if a show of hands would be appropriate since not everyone likes to stand up.

K. Johnson replied it was not; if an audience member has something to say, they must go to the microphone to speak.

S. Ingraham asked if this is approved, and they say yes to the self storage facility which could have 24 hour access and electricity. There could be inebriated people hanging out in the units, there could be big moving vans and trucks. A lighted sign could be there. In the likelihood the applicant will work with the neighbors, who will open and lock the gate. The board will be saying yes to something that is very general. There are 30 units at Nottingham Place, 66 units at Stoney Creek and not all the residents are present to voice their opinion. She thought it was interesting there was no one present to support this. If they approve this, they are affecting many people.

J. Duffy, 16 James Street, asked if any of the members of the zoning board were on the planning board.

F. Seagroves replied they cannot be on two (2) boards.

K. Johnson stated only one person may sit on both boards and in this case, none of the full or alternate members sit on the planning board.

A. Dibenedetti stated there were only a small portion of residents present but they do pay a lot in taxes; at the same time, this will make it harder for them to sell their properties.

R. Moran stated this was a witch hunt for residents. Once the zoning board makes their decision, it's a no win situation. This is where the residents have to stop this. The town has set up the zoning ordinance and places for these storage facilities; this is not one of them. But they can't say don't use the property just use it for what it is approved for.

K. Johnson stated, without going to The Board of Adjustment in New Hampshire, A Handbook for Local Officials, it defines the zoning board as a quasi judicial board. They are here to make a judgment of are these laws are correct. Does it make sense to strictly enforce them or can they make some accommodation in them. To do that, the applicant makes their case, the board accepts input from the public and no testimony carries more weight than another. They make the best determination if the applicant has met the criteria; if they have, they must grant it. If they haven't, they must deny it. If it doesn't meet the requirements, they can't say yes. He asked if there were any additional comments from the audience; there were none so he closed the public portion of the hearing.

There was some discussion regarding having the applicant read his responses to the criteria into the record again. Since all criteria were addressed previously, it was accepted as such.

L. Horning asked if there was any consideration to fence the site at all, just to clarify.

A. Buchanan stated they haven't discussed that and assumed it will be addressed during the planning board stage.

K. Johnson asked if they had checked with the police department regarding crimes at other self storage units.

L. Horning asked if they have looked into the pass code technology.

A. Buchanan replied they did not check with the police regarding crime and yes, they have looked into the pass code technology to defer unwanted traffic in the area.

L. Horning asked about the setback from the house and the distance from 101 and James Street.

A. Buchanan replied the closest building is probably seventy five (75) feet from the proposed units.

L. Horning asked how far from the lot line it would be.

A. Buchanan replied it would be the allowed setback for the zone and the frontage would probably be on James Street, it would be fifty (50) feet.

Z. Tripp asked if the applicant would entertain the idea of limiting the hours of operation.

M. Ciardelli replied he would, if necessary.

L. Horning asked about fencing.

M. Ciardelli stated they haven't thought about it yet. One side of the property is trees so no fence is needed there. They do need to put something up between the parcel and the fuel storage facility to limit foot traffic. If it was cost conducive, they would have no problem putting up a fence.

F. Seagroves asked about screening.

A. Buchanan replied the ordinance requires trees that will grow thick and tall.

F. Seagroves stated he asked that for the benefit of the audience.

K. Johnson read from Article X, Section 10.01.2 Variances: *“Every variance granted by the Board of Adjustment shall be based upon and accompanied by a specific find or findings that: A. There are special circumstances or conditions applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the property in question, or exceptional topographical conditions), which are peculiar to such*

land or structure, and the application of the requirements of this Ordinance will deprive an owner of such property a reasonable use of it, and will impose upon such a hardship not shared by the owners of other property in the same district. B. The specific variance as granted is the minimum variance that will grant reasonable relieve to the owner and is necessary for a reasonable use of the land or structure. C. The granting of the variance will be in harmony with the general purposes and intent of this Ordinance, and with convenience, welfare and character of the district within which it is propose, and will not be injurious or otherwise detrimental to the public welfare.” He then read from Section 10.02.4, Self Storage Facilities (1997): “A. In all cases involving self-service storage facilities in the residence “R” District, the following shall be minimum performance conditions of approval, in addition to any other conditions the Board of Adjustment may require: 1. The self-storage facility shall be located specifically on, and have frontage on, Rte. 13 North, Rte. 13 South, and/or the following parcels of land on North River Road: Map 8, lots 11, 11-1, 19, 48, 49, 50, 51, 53, and 53-5. 2. In order to screen facilities and insure their compatibility with surrounding land uses, there shall be a minimum fifteen (15) feet perimeter landscaped buffer along all sides of the parcel, This buffer shall be planted and maintained with evergreen trees, minimum six (6) feet in height, at intervals fifteen (15) feet on-center, alternately staggered along the length of the buffers. The type of evergreen tree shall be subject to the approval of the Planning Board. 3. If the Board of Adjustment determines that existing landscaping and/or topographic conditions already create an effective perimeter screen, the Board of Adjustment may waive all or a part of the evergreen tree screening requirement. 4. There shall be no outside storage. 5. The use shall require site plan approval by the Planning Board. 6. Each structure shall be setback at least fifty (50) feet from the front lot line.” He asked if the board had any additional comments; there were none so they discussed the criteria for a variance.

**1. Could the variance be granted without diminishing the value of abutting property?**

Z. Tripp stated this was tricky but the applicant did supply evidence from an appraiser who did not feel there would be a diminution of property values. Self-storage units in themselves wouldn't reduce property values more than any other commercial use allowed in the district. He noted there was an industrial complex to the north of this site and with screening and the other self-storage requirements he felt it could be granted without diminishing the value of abutting property.

M. Unsworth agreed. Looking at Mr. Rizzi's qualifications, and although it is only one opinion, he felt the variance could be granted without diminishing the value of abutting property.

L. Horning stated looking at the application and the exhibits, and hearing what was stated before, as far as professional opinions go, and even though there are commercial uses that could be developed on this property, she felt the variance could be granted and would not diminish surrounding property values.

F. Seagroves agreed; reading from Mr. Rizzi's letter: “...it is my opinion that property values in the area surrounding the subject may well increase ...” They are talking about tearing down neglected greenhouses, so yes, granting the variance will not diminish the value of surrounding properties.

K. Johnson agreed for a number of reasons. Any development on the property will have some affect on the property values. There may be a dip in values for a short period of time. Speaking from personal experience, his appraisal went down by 5% and five (5) years later it was up 10%, living on a street where a self-storage facility was located. He understands the concerns of the abutters but he believes they are afraid of the potential that won't develop. This use will be less busy and will be used by the neighbors. He didn't believe property values would be negatively impacted.

## **2. Would granting the variance not be contrary to the public interest?**

F. Seagroves stated yes, although many people disagree. This will be beneficial, the owner will pay more taxes and they are going to make the facility look nice and will help to keep it clean.

M. Unsworth agreed; there is no harm in putting up these buildings compared to what would be allowed on the site.

L. Horning agreed it would not be contrary, for the reasons stated before. The applicant went over, in great detail, the traffic count, etc.

Z. Tripp agreed. He read from page II-19 of The Board of Adjustment in New Hampshire, A Handbook for Local Officials: "...it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance." The basic objective is for commercial uses. There are other business activities in the neighborhood. This is a low intensity use and is more compatible with the residential district than the recommended uses, like hospitals and schools. There is much public interest with traffic, namely strangers going into the facility, overall appearance with the addition of trees and safety but based on the submitted traffic formulas, there would be less than with other allowed uses. The empty lot nearby is a nice feature for the residents but he hopes the residents understand an industrial complex can go in on that site in the future. With regard to safety, he felt this would be a good spot to add a condition limiting hours, and with that in place, he would be able to say yes and leave the issues that need to be addressed up to the planning board.

K. Johnson agreed and said the statement is worded strangely but is that way to garner an affirmative answer. This question and the question on the spirit of the ordinance are very similar. Reiterating what Z. Tripp said, from the powers of the zoning board: "*For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance.*" He stated this is what this question deals with. Further, with regard to the spirit of the ordinance, the handbook says: "*To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?*" It is very specific. He agreed with Z. Tripp on the safety aspect; James Street is narrow. He noted this is a place where the board can put conditions to help the variance, if granted, meet the safety requirements so he comfortably said yes.

## **3. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**  
**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

### **ii. The proposed use is a reasonable one.**

M. Unsworth stated yes, the proposal is reasonable as other businesses surround this site. It is very similar to what is already there. Assuming the applicant did his research and has a business plan, he felt this was a good business for this particular parcel as opposed to the dilapidated greenhouses.

F. Seagroves agreed and mainly dealt with B. Because of the nearby fuel storage facility, it would be hard to find any offices, hospitals, schools or churches that would want to build on that piece of property. With that condition, there is a hardship.

Z. Tripp stated relief could be granted without frustrating the purpose of the ordinance. As he stated earlier, the low intensity use is compatible with the surrounding neighborhoods. The proposed use is a reasonable one given the commercial uses already in the neighborhood. To address the concern there is another reasonable uses for the property, the applicant has submitted he doesn't believe the other uses are viable due to lot size or position of the lot. The only viable use he could see, due to lot size and position would be single or multi-family housing but it may not be reasonable with the current housing environment. The hardship must be shared by others in the district and forcing the applicant to use his land only as a residential use, with all the commercial use in the area, would be unreasonable and a hardship that wouldn't be shared by others. The use also has to be in harmony with the existing residential and business uses. It would be an unnecessary hardship to deny this request.

L. Horning stated Z. Tripp made a very good point. The traffic comparison entered into the record by the applicant shows this is by far one of the lesser impact uses, given the intense nearby residential use, there is no fair and substantial relationship that exists between the ordinance and the application of it to the property. The proposed use is a reasonable one. This use will have far less impact on traffic flow and land use. It's not a use that is being imposed on the surrounding landowners. Denial of the variance would be an unnecessary hardship, taking all of those things into consideration not just for the applicant but for the surrounding residents, considering what could be put there.

K. Johnson disagreed; he felt there would be no hardship in denying the variance. He felt it does not meet the criteria of hardship. There is a substantial relationship between the general purposes of the ordinance and their applicability to this particular parcel. The parcel is somewhat undeveloped because it does have development on it; that does not on its own, make it that unique. There are other uses allowed by the ordinance, which was created with the intent of allowing limited commercial use. When they created the ordinance, they knew there were other existing businesses in the area that did not fit within that zoning. They have specifically within the town's ordinance stated self-storage facilities are only allowed in the Residence "R" District but not just the specific district but specific lots on which this use is allowed. The proposed use is not a reasonable one given the nature of the neighborhood surrounding the parcel and the existing and future businesses going in the surrounding area. This property could easily be used in accordance with the ordinance and it is not up to the board to take in the applicant's economic considerations. Offices and medical buildings could be allowed on the site; it is not up to the zoning board to determine which would be the best alternative for the applicant. He does not see that there are any special conditions of the property that make it unique per the zoning ordinance.

#### **4. Would granting the variance do substantial justice?**

K. Johnson read from page II-10 of the Handbook: *"It is not possible to set up rules that can measure or determine justice. Board members must determine each case individually. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by granting a variance that meets the other four qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance."* Those are the requirements; basically they have to balance public and private interest in the use of this land.

Z. Tripp stated granting the variance would do substantial justice. The gain to the public, in this case, is to not have a commercial development on the lot. As we know, there is commercial development allowed on that lot and is specifically called out in usage. Is

there any additional gain in not allowing this one as opposed to other ones? No. Yes, this can be granted.

L. Horning disagreed; granting the variance would not do substantial justice because the loss to the individual would not outweigh the gain to the public.

M. Unsworth stated granting the variance would do substantial justice. It enables the property owner to have a business they feel is appropriate in the area.

F. Seagroves stated yes; he was not sure what the public would gain if this was denied.

K. Johnson agreed with L. Horning; there would be no significant loss to the applicant if this was denied. The applicant still has a number of other possibilities by right, as allowed by the ordinance that they could use to develop the property. The gain to the public falls into not losing features they are concerned about such as safety. There could be a potential for an increase in crime and traffic and by not allowing the self-storage units it would eliminate the potential danger to the public. The potential loss is the applicant would be required to develop the property within the confines of the limited commercial district.

**5. Could the variance be granted without violating the spirit of the ordinance?**

M. Unsworth stated the variance could be granted without violating the spirit of the ordinance. There is a limited business listing in the ordinance; who's to say that self-storage facilities shouldn't be on this list as well. He didn't think the spirit of the ordinance would be violated nor would safety be an issue, for that matter.

L. Horning stated she didn't think the variance could be granted without violating the spirit of the ordinance because that is why we have the ordinance. As the chairman stated earlier and read from the Handbook: "*Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.*" As far as what she can read from the ordinance, it is governed by the criteria that are set before the board. She didn't believe granting this variance could be granted without violating the very intent and purpose of the ordinance.

Z. Tripp stated yes, the variance could be granted without violating the spirit of the ordinance and he alluded to the comments made before in a similar question. He read from page II-9 of the Handbook: "*...must promote the 'health, safety, or general welfare of the community'.*" If this is built in accordance with the restrictions put forth in the ordinance plus the restriction he would like to propose with regard to limited hours, he thinks it satisfies both the safety and the welfare of the community aspects. He read again from page II-9: "*...determine the legal purpose the ordinance serves and the reason it was enacted.*" That addresses activities that are compatible with the surrounding residential neighborhoods. This use is compatible with the surrounding residential neighborhoods.

F. Seagroves felt granting the variance would not violate the spirit of the ordinance.

Referring to the Handbook, it talks about the "*health, safety or general welfare of the community.*" He believes, going by the applicant's exhibit regarding traffic counts for this use, that 41 trips per month is not too many. His daughter once rented a self-storage unit and rarely visited it. He didn't think there would be that much traffic going in and out of the facility. He didn't really see that there would be any safety issues and although there is always a possibility for trouble, it is hard to control.

K. Johnson stated the variance could not be granted without violating the spirit of the ordinance. The self-storage units are very specifically defined and placed in the ordinance where the town, in its planning, wanted them to be. It put very specific restriction on where it wanted them to be. The statement, which has been referred to a couple of times, is about the intent of the Limited Commercial-Business District: "*The intent of the Limited Commercial-Business District is to provide areas for those business activities which are compatible with surrounding residential*

*neighborhoods.*” He had two (2) comments on that, the first being these districts were created specifically to control development along the main arteries in and out of Milford. The second comment was with regard to the surrounding residential districts, which are Residence “A” and Residence “B”. They are actually looking for business uses that would be compatible with those districts. When the ordinance was drafted and written by the planning department, they determined self-storage units were not compatible with the Residence “A” and “B” districts by specifically not allowing them in the ordinance as exceptions. He did not believe the variance could be granted without violating the spirit of the ordinance.

There was some discussion as to the placement of the discussion of conditions. It was decided to put forth the condition prior to the vote.

Z. Tripp proposed the condition that the hours of operation be limited to between 7 am and 9 pm.

F. Seagroves seconded the motion.

Z. Tripp – yes      L. Horning – yes      F. Seagroves – yes      M. Unsworth – no  
K. Johnson – no

The condition was granted by a 3-2 vote.

K. Johnson asked if there were any additional comments; there were none so he stated after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote, to which the condition is added.

**1. Could the variance be granted without diminishing the value of abutting property?**

F. Seagroves – yes      L. Horning – yes      Z. Tripp – yes      M. Unsworth – yes  
K. Johnson – yes

**2. Would granting the variance not be contrary to the public interest?**

L. Horning – yes      M. Unsworth – yes      F. Seagroves – yes      Z. Tripp – yes  
K. Johnson – yes

**3. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;  
ii. The proposed use is a reasonable one.**

**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

M. Unsworth – yes      Z. Tripp – yes      L. Horning – yes      F. Seagroves – yes  
K. Johnson – no

**4. Would granting the variance do substantial justice?**

F. Seagroves – yes      L. Horning – no      M. Unsworth – yes      Z. Tripp – yes  
K. Johnson – no

**5. Could the variance be granted without violating the spirit of the ordinance?**

L. Horning – no      Z. Tripp – yes      M. Unsworth – yes      F. Seagroves – yes  
K. Johnson – no

K. Johnson asked if there was a motion to approve case # 4-11, a request for a variance, with the attached condition.

Mike Unsworth made the motion to approve Case #4-11, with the above mentioned condition.

F. Seagroves seconded the motion.

**Final Vote**

M. Unsworth – yes    Z. Tripp – yes    L. Horning – no    F. Seagroves – yes  
K. Johnson – no  
K. Johnson reminded the applicant of the thirty (30) day appeal period.