

**Town of Milford
Zoning Board of Adjustment Minutes
Oct. 6, 2011**

**Case #17-11
CRJ Properties, Inc.
Special Exception**

Present: Kevin Johnson, Chairman
Laura Horning
Fletch Seagroves
Steve Winder
Zach Tripp - Alternate

Absent: Steve Bonczar
Michael Unsworth - Alternate

Secretary: Peg Ouellette

Case #17-11, CRJ Properties, LLC, owner of 64 Oak St, Map 43, Lot 18 in the Commercial "C" District, for a special exception from Article V, Section 5.05.2A:3 for the placement of an office trailer 1.7ft from the side property line.

Case #17-11 minutes approved and signed on November 17, 2011.

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He then read the Notice of Hearing into the Record. Present were Josh Tannariello representing CRJ Properties, Marc and Pamela Comeau, 58 Oak Street, and Becky and Patrick Flynn, 62 Oak Street.

applicant. Tannariello presented the case. They are proposing to put a drop trailer on the property near the fence line on the left side when you drive in, for more office space. There have been trailers in that same area before so it's nothing that hasn't been done already.

K. Johnson asked for questions from the Board.

L. Horning inquired about the picture in the packet.

J. Tannariello said it is a picture of the trailer.

L. Horning asked if the existing trailer encroaches on the property line.

J. Tannariello stated that it is not over the property line. It was originally but after a survey they moved it.

L. Horning asked if it is still on axle and if it can still be towed and moved.

J. Tannariello responded yes.

L. Horning again asked if it is not encroaching on the property line?

J. Tannariello said no.

K. Johnson asked if it is not currently within the setback?

J. Tannariello stated it is within the legal setback from the fence. They had Meridian come out to do a survey and Meridian said it was a foot over the line so we moved it..

L. Horning said she'd refrain from asking any more questions until applicant has read his explanation into record.

Z. Tripp asked if this is temporary? Are they building more office spaces? What is the long term need for the trailer?

J. Tannariello stated he can't really answer the questions. Ideally it would be as temporary as possible; they don't want to stay in there forever. They would like to acquire another office building or add to the one they have, hopefully in the near future.

Z. Tripp asked why this location was chosen for the trailer as they have a very large lot.

J. Tannariello stated there had been a couple [of trailers] there before and it's in close proximity to the house, which has a bathroom in it. This trailer has no bathroom facility and it is out of the way of everything there. Every other spot on the property is used; you have trucks driving through and stone everywhere. So a lot of things would have to be moved in order to put it anywhere else.

L. Horning asked if this was basically done to minimize foot traffic back and forth across the yard to utilize a bathroom?

Applicant said no, that is just one of the reasons.

K. Johnson said Article 5.05.5 specifies the required setbacks for structures within the commercial district. He quoted "A. Each structure shall be set back at least 30 feet from the front line B. each structure shall be set at least 15 feet from the side and rear property line. In the case of a corner lot" [which this is not, so it doesn't apply] "the side distance shall be increased to 30 feet on the side bordering the street, lane or public way." He stated the plan in front of him says they are 1.7 feet off the line and he assumes that means the property line.

J. Tannariello said it does.

K. Johnson said that means they are well within, and currently encroaching the required 15-foot setback.

L. Horning said correct and thanked the Chair for clarifying.

S. Winder asked if there is any reason why it can't be placed next to the house.

J. Tannariello said if they put it next to the house it would encroach into the driveway or underneath the craneway where there is material.

L. Horning said that would in turn affect the egress in and out of that particular area?

J. Tannariello said yes it would.

K. Johnson said, referring to plot plan supplied by Meridian, there is a building that says “roof only” and “no building.”

J. Tannariello said there is not actually a building where it says “roof only”.

K. Johnson said he doesn't care what's actually there; he's just using that as a reference point; and then it says “no building.” And in the empty space between those two structures – what's in there?

J. Tannariello said that empty space is where the entrances to the actual mill and to the house. He stated there is not nearly enough room in there to fit the trailer.

L. Horning asked if there is no structure where it says “roof only and the applicant doesn't know what it is, is there a possibility of putting this trailer in place of that?

J. Tannariello stated he was going to say, where it says “roof only” when you take an overhead shot you can see that is actually a bridge that covers a crane. It's part of the craneway that functions to move stone.

L. Horning asked if there is any other place on this lot for this trailer? She pointed to a location on the overhead photo near the center bottom and asked what about this area in the corner. There is substantial space there. In the back corner.

J. Tannariello asked if she was pointing at the concrete pad?

L. Horning said yes.

J. Tannariello said if they moved every bit of material out there, then yes. You could essentially put it along that fence but you would have to move a lot of stuff.

K. Johnson asked why not along the side of the building as opposed to the side of the fence.

J. Tannariello said there is a garage door in the middle of the front of the building

L. Horning said it looks like a docking bay.

K. Johnson said right, but they do have materials stored on both sides of it?

J. Tannariello said it's not as long there as the trailer is on either side of that door. It would be encroaching on driveways either way.

K. Johnson said as opposed to the entrance to the mill building?

J. Tannariello said if it fit in there you would probably have about two feet on either side of it and you'd have doors going into both buildings.

K. Johnson said they could continue this in a little bit and asked for any further immediate questions from the Board. There were none.

K. Johnson opened the meeting to public comment.

Becky Flynn of 62 Oak Street spoke. She stated she lives right next door to the applicant and has lived there for 15 years and never had a problem with them. She said there have been trailers there in the past but they have been much smaller and further towards the front and away. Since this one has been there, it has taken away the privacy on that side of the house from the inside and for the whole back yard. They can see it from all the bedrooms on that side. She also stated that the air conditioning runs all night long, and there is nobody in there at night. It is loud with the windows open. She feels it is somewhat a fire hazard; if it ever caught on fire their house would be gone. In addition, it has taken away any winter sun they get on that side of the house, which she doesn't know if it will eventually cause icing problems against the house, for the cellar. She stated the big issue is the privacy; it has taken everything away; they can see the trailer windows from the house.

Marc Comeau of 58 Oak Street spoke. He lives two houses away. He said the trailer is huge. He can see there is a need for an office building, but get a smaller trailer. By the same token, it is a big piece of property. There must be another spot to put it in.

K. Johnson asked if anyone else wished to speak. No one else came forward and the public portion of the hearing was closed.

K. Johnson there are a number of letters in the application packet which are not actually relevant to the Board's deliberations for this case. They are in reference to the property itself and transfer of ownership which is not the Board's concern at this point.

K. Johnson asked the applicant to read the application into the record.

Description of proposed use: Placement of a 12' x 40' 480SF modular unit 13.3 feet into side setback. Unit to be used for office space. It is also 1.7 feet from the side lot line.

1. The proposed use shall be similar to those permitted in the district:

The placement of an office trailer on a commercially-zoned property is an acceptable use by right in the district and is similar to other uses allowed.

2. The specific site is an appropriate location for the proposed use because:

The location for the office trailer as proposed allows for its most efficient placement to conduct business operations.

3. The use as developed will not adversely affect the adjacent area because:

The office trailer is secured by fencing from the adjacent property. The office trailer will add negligible additional impact from the existing business at the property.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

Site as it exists functions properly to support the long established operation. There is adequate parking and accessibility that does not cause hazard to vehicles or pedestrians. There is minimal traffic.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

Site is secured by municipal water and sewer and power from PSNH. All applicable site development and building codes will be applied prior to operation.

K. Johnson asked if the Board members had additional questions.

F. Seagroves asked what the height of the fence was.

J. Tannariello said he thinks it is a six-foot fence.

L. Horning said she is rephrasing an earlier question; in looking at the plot she sees there are some substantial expanses of open area and open space for the placement of this trailer. She asked if moving anything aside – moving earthen materials aside in order to move the trailer, is there not another adequate place for this trailer on this lot that does not encroach on anyone's property line?

J. Tannariello said not without moving anything and a lot of materials.

L. Horning said putting that aside, moving the gravel or rock or any of the materials they have on the lot are not fixed pieces of property. Obviously they got the trailer in there so there had to have been egress. There had to have been a way to get the trailer into that small particular plat.

J. Tannariello said yes, through the front.

L. Horning said, barring that aside, if they had to move any of that material, is there a way to manipulate or maneuver that trailer onto another area on that lot that would keep it from encroaching on other people's property? Because there is a setback that the Board has to take into very serious consideration.

J. Tannariello said there is an open expanse in the middle where there is a lot of stone. He can't say that couldn't be moved to put it there but is it a good location for the trailer and is it good for business? No.

L. Horning asked if there is a reason it can't go at the front of the building and pointed to the picture. There was further discussion about possible locations for the trailer.

J. Tannariello said if you go 15 feet, it puts it to a point where you can't have access for trucks to back in and out of the craneway to unload material.

L. Horning asked if there are residences against that side of the property.

J. Tannariello said there is a house there.

Z. Tripp suggested it would be beneficial to draw the major delivery routes on the plot plan.

J. Tannariello drew on the picture and explained where trucks come in and where they go. He said it is basically all around the building that they are loaded and unloaded. He said to encroach on any of that space would seriously hinder the daily operations of the business.

K. Johnson asked what type of operations take place in the trailer.

J. Tannariello said it strictly office. There are three employees there.

K. Johnson asked if they meet with customers there.

J. Tannariello said no.

K. Johnson said then it is really a convenience to place it there rather than in the other open spaces that exist around the property.

J. Tannariello responded it is the only space that you can put it right now that works.

K. Johnson said he's not sure he agrees with that. If it were the type of facility that needed to be close to the front gate because it was being used to demonstrate products to customers, etc. , that might be a different consideration. But if it strictly office space where you conduct the business of the business with no public interaction,

J. Tannariello stated he can't say there is no public interaction. When customers come we try not to bring them there because it is an office trailer, but they do come in there occasionally.

K. Johnson asked about a showroom.

J. Tannariello said there is no showroom, just the material to show that is there.

L. Horning asked about an area of open space (to the right of the picture) that is shown there, as well as on the map.

J. Tannariello stated there is no access to get back into that area.

L. Horning said it doesn't look heavily vegetated.

J. Tannariello said there is some stone and you couldn't put a trailer in there. Access would be difficult as it is along the railroad track. That is where the rail bed used to come in when they had a direct line from the quarry on Armory Road probably in the early 1900's so no trees.

L. Horning said the burden of proof lies on the applicant to provide the Board with an adequate reason as to why they want to encroach on a setback that was voted into an ordinance by voters. If the Board were to allow or disallow it would be based on the evidence the applicant is proposing in front of the Board now. That's the reason she is asking whether it could go here or there. The Board has to consider the abutting property owners' rights to enjoy their property. That is why we have setbacks – to keep those encroachments under control.

J. Tannariello said he would add that every house in this neighborhood encroaches on that setback. They are not 15 feet away.

K. Johnson said that is true, but they exist now; they are not asking to put new houses in that would encroach on the setback. He pointed out that the applicant is asking the Board to do something that has already been done.

J. Tannariello said they would have come to the Board first but didn't know they needed to. A representative from the Town stopped by after it was there. After months of deliberation, we decided that it made sense for all of our office employees to be in one location to run the business more smoothly. It finally came down to getting a drop trailer and we had already moved out of the office in a different location. The Town said if we moved forward, it would be at our own risk, but they didn't say not to.

L. Horning and K. Johnson said they can't.

K. Johnson said the Town will tell you do it at your own risk. In looking at the picture and the plan of the property, other than for convenience, he can see no reason why there aren't a number of other locations on the property where the trailer could go without encroaching on the setback.

L. Horning said that would require reconfiguring the lot; the burden of that would be on the applicant.

K. Johnson said not even reconfiguring the lot.

L. Horning said she meant moving some of his material.

J. Tannariello said he would have to move things where trucks load or unload.

L. Horning said she's aware of the turning radius of these trucks and taking that into consideration. But she reiterated what she stated earlier about the applicant saying he was told do it at your own risk, it's on the applicant to take the entire ordinance into consideration. The Board is not permitted to steer him in one direction or the other because they are not lawyers. The town administrators cannot give him legal counsel .

J. Tannariello said he understands. If it works for the Board and for the neighbors, he would be open to moving it out to a point where the neighbors don't feel their privacy is being encroached on. It is all hard-wired in and the electrical is done, etc. but he can redo that.

K. Johnson said commenting on one of the statements made, the size of the fence. In looking at the fence in relation to the size of the cars, it would appear to be more of a four or five foot fence. It barely clears the roof of the car.

F. Seagroves said he estimates the trailer over 18 feet high.

L. Horning said it is a pretty substantial construction trailer. They generally tend to be tall and the abutter spoke to the air conditioning unit.

F. Seagroves said if it is a six foot fence, he comes up with about 18 feet.

J. Tannariello said he thinks the property in front of the cars starts to slope down a bit and said it is a six foot fence. A brief discussion followed.

L. Horning said it seems he has a garage operation and he's outgrown his garage.

J. Tannariello said the manufacturing capacity is great but there is nowhere near enough space.

L. Horning commented she is sure that many office building owners in town would love to have him in one of their offices. She's very happy he's growing.

J. Tannariello said he tried to get the one on Armory Road but they wouldn't let it go for a reasonable price.

L. Horning said let's hope some of the local businesses are listening in and he'll get a reasonable offer. She hopes he will continue to grow.

J. Tannariello said one of the reasons they decided to move there was because of the point they are at now.

L. Horning said to be more cohesive and they understand that, but the only thing the Board can consider is the encroachment and that is what they have to look at very seriously, as the Chairman mentioned. They have to look at the viability of why the trailer is there and what affect it is having on the abutters.

J. Tannariello said it is difficult to get a good idea unless you are actually at the property and walk around. If he didn't know the area so well, in looking at the picture, he might say maybe it could work there or there. But when you actually go there you see that it doesn't.

Z. Tripp said the abutters said the current trailer was larger than the previous one. Is there a reason for that?

J. Tannariello said he wasn't one of the owners of the property when the previous trailers were there but he worked there at the time. They were William Scotsman's trailers and he doesn't remember the height.. There were two of them and they were at least thirty feet long, so with two of them it is more trailer than the one.

K. Johnson proceeded to deliberations by the Board of the five criteria.

1. The proposed use shall be similar to those permitted in the district.

F. Seagroves said he would have to say yes because in this district there are a lot of houses and whatnot that are within the setback. They are all grandfathered, so he would say yes.

S. Winder said the use is similar but what they are asking is not within the criteria of the zoning, the restrictions of the zoning code, with the 1.7.

Z. Tripp said the use of a trailer is an acceptable use within the manufacturing. If it was not in the setback he doesn't think the applicant would be before the Board.

L. Horning agreed. The proposed use is similar to those permitted in the district as outlined by the zoning ordinance. It is the location of the proposed use that is at question and not the proposed use itself.

K. Johnson said to clarify, in this application, he views the use being the placement of the portable office trailer and referenced the Zoning Ordinance Section 5.05.2; Acceptable Uses and Requirements for special exception are reduced front side and rear setbacks. That is what makes this proposed use similar those permitted in the district. It is one of the criteria that have to cover all sorts of things. In this case, this first criteria is whether this is allowed by special exception if it's spelled out in the ordinance, and reduced front, side and rear setbacks is spelled out in the ordinance. Therefore, this use encroaching on a setback is allowed by the ordinance.

2. The specific site is an appropriate location for the proposed use.

Z. Tripp said the proposed use is for office space for this business on this lot. Applicant testified that it is an appropriate location to satisfy those needs.

L. Horning said she disagrees. She doesn't believe the specific site is an appropriate location for the proposed use. The Board is addressing the setback, which is what the applicant is seeking relief from. He would like to be encroaching into the setback and she doesn't believe the specific site is an appropriate location for this proposed use.

S. Winder said he thinks the site is convenient but doesn't think it is the appropriate site for the trailer.

F. Seagroves agreed with L. Horning. He doesn't think it is an appropriate site for the use. Where the other trailer was there, it would be grandfathered, but once it was moved, you lost the grandfathering. He would like to see if they could find a better place because it is too close.

K. Johnson agreed with S. Winder. He thinks this is a convenient site but not an appropriate site. It encroaches far too greatly into the setback in this specific location.

3. The use as developed will not adversely affect the adjacent area.

S. Winder said Question 4 seems to be more appropriate but it doesn't impact the area other than the disruption of the neighbors.

Z. Tripp said he believes the use as developed, being the location of the trailer, would vastly affect the adjacent area. The purpose of the setback is to have that buffer between, whether it's residential and commercial or commercial and commercial. When you violate the setback in this area, he would say it does have an impact on the neighbors, as they testified. He can see from the picture that it is right up against that fence, so he thinks it would adversely affect the adjacent area.

F. Seagroves said he thinks it does affect the adjacent area where it is so close to the property line and the noise from the air conditioner running at night and everything else, it is affecting them.

L. Horning said she said she's happy to hear the applicant is doing so well at this location and to hear that things are growing, but the use that is developed – none of them can clearly say it is not adversely affecting the adjacent area. The residents of Milford have voted into the ordinance a particular buffer of 15 feet for side setbacks to have peaceable enjoyment of their property boundary. The Board must take that into serious consideration. This use as developed is already having an adverse affect on its neighbors. It's unfortunate we have an ICU unit ordinance in such close proximity to residences, but it's been there for years; however, the trailer has not been. She believes the use as developed is having an adverse affect on the adjacent area and the abutter.

K. Johnson said he agreed, that as developed this would adversely affect the adjacent area, the adjacent being the abutters that are right next to that fence. It is a low fence; it is a tall trailer. There is an air conditioning unit on it. The existing house of the abutters is closer to the property line than the 15 foot setback which causes the Board to be even more sensitive to it because the setbacks are already reduced. If the abutters' property were the full 15 feet away from the fence it might be a different issue because now we would have even more space to deal with. But we don't. The Board must deal with the existing properties. Their house is very close to the fence. With the trailer close to the fence he thinks it places an unwarranted burden on the abutters to put up with it. With the noise of operation, and the abutter who testified as to the trailer blocking the sunlight, he believes that is a valid issue. That is a very tall trailer in a very narrow area that, sitting where it does right under the existing trees, could have that effect on the adjacent property. He thinks this would adversely affect the adjacent area.

4. There will be no nuisance or serious hazard to vehicles or pedestrians.

S. Winder said it is a nuisance to their neighbors, as articulated.

F. Seagroves said he doesn't see where there will be any nuisance with vehicles or pedestrians. It has been there many years so people are used to it.

Z. Tripp said as proposed by the applicant, he believes they chose the location to avoid hazard to vehicles and pedestrians. He's not sure if nuisance applies to abutters. If it does, he thinks it probably is a nuisance to abutters.

K. Johnson said this specifically applies to vehicles.

Z. Tripp said in that case no, there would be no nuisance or hazard.

L. Horning said she agreed, the ordinance specifically addresses hazard to vehicles or pedestrians and there is a fence between this applicant and the abutter. She doesn't think this use as proposed will pose a serious hazard to vehicles or pedestrians.

K. Johnson agreed saying this would not create a serious nuisance or hazard to vehicles or pedestrians. It is out of the way of vehicular traffic. It would not obstruct the view for traffic. Members of the business who move back and forth across the property are not considered pedestrians. Pedestrians are members of the general public. So if they have to cross the traffic lanes of the business, that is their responsibility and their own consideration, since the Board's is to protect the general public which would be the people walking along the side of the street. If it were placed in a manner that you could not see vehicles exiting from the property as you were walking, that would create a hazard to pedestrians.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use.

F. Seagroves said yes

S. Winder said there are proper facilities existing there

L. Horning said given the location, adequate appropriate facilities are already installed in this facility for the operation of the proposed use. However, the location could not be considered an appropriate means for proper operation of the proposed use. Based on that, she would say no.

Z. Tripp said the application itself has a permit in it so he believes the facility itself is adequate for use of office space but he doesn't as to the setback, not the use of office space.

K. Johnson said these criteria by nature need to be fairly broad because they cover a wide variety of circumstances. In the encroachment upon a setback, he doesn't see that this particular criteria has any actual effect. The proposed use is into the setback so adequate appropriate facilities – there are no facilities to the setback. So to answer the question pro forma he would say since it does not apply to exceptions dealing with setbacks.

L. Horning said her inference was on the electrical and the hardwiring and all those things that have been done to facilitate the proposed use.

K. Johnson said the proposed use is the encroachment of the setback. Since that is the exception they are looking for. So what facilities are within the setback?

L. Horning said questionable.

K. Johnson said in this particular circumstance they could go either of two ways. That it's not an adequate appropriate facility because it does create a noise and light barrier to the adjacent properties. Or it is an appropriate facility because it's a sound well built trailer with appropriate.

K. Johnson said the Board has determined the following findings of fact:

Is the proposed exception allowed by the ordinance?

Z. Tripp – yes; L. Horning – yes; S. Winder – yes; F. Seagroves – yes; K. Johnson – yes

Are the specified conditions present under which the exception may be granted?

F. Seagroves – no; S. Winder - no; Z. Tripp – no; L. Horning – no; K. Johnson – no

K. Johnson asked for a motion to disapprove Case 17-11.

Z. Tripp made a motion to disapprove Case 17-11.

L. Horning seconded the motion.

In favor of disapproving the application:

Z. Tripp – yes; S. Winder – yes; L. Horning – yes; F. Seagroves – yes; K. Johnson – yes

Application was unanimously disapproved.

K. Johnson informed the applicant of the thirty day appeal period.