

**Town of Milford  
Zoning Board of Adjustment  
October 19, 2017  
Case #2017-25  
Gregory Bergeron  
Variance**

Present: Steven Bonczar, Chair  
Jason Plourde, Vice Chair  
Michael Thornton  
Joan Dargie  
Rob Costantino  
Tracy Steel, Alternate  
Wade Scott Campbell, Alternate  
Karin Lagro, Alternate  
Laura Dudziak, Board of Selectmen Representative

Absent: Robin Lunn, Zoning Administrator

Secretary: Peg Ouellette

Gregory Bergeron, for property located at 559 NH Rte 13 South, Milford, NH, Tax Map 47, Lot 38, in the Residential R district, is seeking a Variance of the Milford Zoning Ordinances per Article V, Section 5.04 and .01.3 to allow an automotive restoration business in an existing nonconforming building previously used for manufacturing.

**MINUTES APPROVED DECEMBER 7, 2017**

Steven Bonczar, Chair, opened the meeting and introduced the Board members. He said Tracy Steel, Wade Scott Campbell and Karin Lagro, alternates, could participate in the conversation but did not have voting rights because there were five full members in attendance. He stated there were three cases on the agenda. There were no minutes to approve. He informed all of the procedures of the Board. The Board's rules state that they may adjourn at 10 p.m. if cases were lengthy. Any cases not heard or completed would be continued to the next regularly scheduled meeting with no additional notice to applicants or abutters for the continued or tabled hearing date.

S. Bonczar read the notice of hearing into the record.

Attorney Thomas Quinn, representing the applicant, and applicant Gregory Bergeron came forward.

T. Quinn said applicant was seeking a variance to allow him to use property as an automobile restoration facility. Property on South St – 1.2 acres. Was created in 1961. He had a copy of the plan showing it was subdivided in 1961. He said it lacked frontage. It accessed 25 ft right of way that led to Rte 13. It was also deeded in 1961. Applicant didn't plan any changes to the footprint of the building, parking, site development in any way. It had been used as a manufacturing facility. Variance was granted in 1969. May have been before that – not sure. Variance granted in 1996. Very open building. He passed around photos. Largely unfinished. Steel frame building; insulated, but only portion of it sheet-rocked. Rudimentary bathroom. Industrial building with concrete veneer. It is in residential rural zone which requires two-acre lots and 200 ft frontage. This property had neither. It doesn't allow proposed use or prior use. It is located in the groundwater overlay district. Because that district only allows uses permitted in the underlying zone, variance needed for that also. He pointed out an error in the notice that they were seeking a variance from 5.04 and .01.3. It was actually 6.01.3, but it was correct in the application. Unless the Bd had questions he would move to discuss the five points. No questions.

Re 1 and 2, the requirement that the variance will not be contrary to the public interest, and it be consistent with the spirit of the ordinance, according to the Supreme Court are really one test. Those were not the operative words either. Bd referred to the proper text in the earlier case, that it cannot unduly and to a marked degree conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. That meant they had to show that it would not alter the essential character of the neighborhood or threaten the public health, safety or welfare. Granting the variance would not alter the essential character of the neighborhood. The building has been there 60 years and is already part of the neighborhood as much as the other things that are there. Proposed use is less intense than the prior use. It had been used for manufacturing since day one and for 30 to 40 years. Proposed use will be less intense. No change to the footprint or the property itself. Although in residence zone, many of the properties in the area are not residence. Starting at the Bypass and going south you have an office park, across from that the old Centrix Bank, and on Armory Rd you have a doctor office and going up the hill to Chappell on one side the Kawasaki, Chappell Professional Bldg, self-storage facility, auto repair and another self-storage.

R. Costantino said what he was describing that area as zoned was different. That was Integrated Industrial and Commercial. So those uses are allowed to be there.

T. Quinn said the test wasn't what was allowed but what was defining the neighborhood. What was the nature of the flavor of the neighborhood? Even if in the same zone under this test you would have to show you would be changing the character of the neighborhood. This proposal, whether zoned by variance, the test was whether it will change the neighborhood.

R. Costantino didn't agree.

T. Quinn said granting will not threaten public health, safety or welfare. Nothing hazardous going on – no noise, vibrations, etc. Property existing 30 years or more. Some small level of solvents there, oil used previously. Same type of thing, but very small levels. Mr. Bergeron licensed by DES to handle those materials. Will be done in conformance with regulations.

Re 3, Substantial Justice, the Supreme Court said that any loss to the individual that is not outweighed by a gain to the general public is an injustice. This building was there before zoning. Building has been there somewhere between 1966 and 1973. Tax assessor shows original building in 1962. Didn't survey the addition. Certainly the addition has been up since 1966. Not changing the use in any significant way. Very similar to prior use. If this was a completely grandfathered situation the ordinance allows by special exception some alteration of the pre-existing use. It was debatable if this was close enough to that prior use. When Robin Lunn gave that opinion – they were under the gun for time because the property is under agreement for purchase with a deadline in November – there was no time for administrative appeal. Decided to come in for a variance. He felt the use as proposed was similar to prior use and certainly less intense.

Prior had 5 or 6 employees, required seven to ten parking spaces, and had daily delivery of supplies. Applicant will have no frequent visitors by customers. They will have more customers, but not like a service station. People will come and leave their cars; they won't be coming and going every day. Public access to the lot will be less than it was. From public point of view they were asking to use existing site and building for commercial purposes, when that is how it had always been used. Didn't think a big gain to the public if the use of the property was restricted to manufacturing; that would not be a big windfall to the town. The proposed use is non-intense. They meet that requirement.

Re 4, granting will not diminish the value of surrounding properties. Property had been used for industrial, commercial since early '60's. Applicant trying to use the same facility and structure for similar use. Impact of using it this way reflected in the market values of the surrounding area and probably won't affect it one bit. Not one person there to speak against them. As of the day before, there was nothing in the town file from abutters. If people in the neighborhood felt it would undermine value of the properties, they would hear from them. He provided more photos of interior and exterior and an updated site plan. Proposed site plan in the application had been updated slightly. Subsequent to that they asked Meridian to tweak it to show setbacks and that. except for a small shed, everything is within the setbacks.

Re 5A, this is unlike those in the neighborhood. First, it was developed before zoning. It was a permitted use. There was no restriction. It was built lawfully and used the same since. Commercial Industrial use has been consistent. Initially, it was in the Industrial Zone, but Zoning changed and it was in Res. R zone. Intent of Res. R is to provide for low density residential and agricultural uses, and other compatible land uses, that are sensitive to the rural character and environmental constraints existing in the district. This property not suitable for that. It is already developed. If it was raw land he would be here trying to show the land had special conditions that separated it from surrounding properties. This is not raw land and is already improved with industrial/commercial building. Sit is not suitable for residence because of economic waste in doing that. No feasible way to convert to residence. Parking is not a driveway; it is ten to twelve potential parking spots. It is unlike others in the area. Intent of R district is to provide low density residence. That is not how significant amount of property in the area is developed. Proposed use not inconsistent with the neighborhood as developed. Granting the variance will not unfavorably impact the neighborhood.

W. Campbell said it will strictly be an auto body shop. He thought he saw that they won't be working on motors or engines.

T. Quinn said much of that work today was farmed out.

W. Campbell asked if that was prior to coming into the building.

G. Bergeron didn't understand the question.

S. Bonczar saw that, too.

T. Quinn said it could have been in his letter to Mr. Daly requesting opinion on whether a variance was needed attached to Robin's memo.

J. Plourde read from the attorney's September 1<sup>st</sup> letter that the majority of the work is body work, including disassembly and reassembly, and most of the engine, transmission and interior restoration work will be outsourced and performed offsite. So, the question was, when will the outsourcing take place? Before body is brought into his shop?

G. Bergeron said it was disassembled in his shop. As well as the engine and transmission are shipped off.

W. Campbell said he was pretty much doing the body work?

G. Bergeron said all the metal fabrication and body work.

W. Campbell said restoring of the metals outside?

G. Bergeron said inside.

R. Costantino asked if these were collision cars being repaired, or were they antiques.

G. Bergeron responded high-end antique cars.

R. Costantino asked if he had a place in Mont Vernon.

G. Bergeron said that was his father's.

R. Costantino asked if he was opening a new business or relocating.

G. Bergeron said he had a business in Litchfield and was relocating from there to this building because it had bigger space.

R. Costantino said it didn't look like you could drive into the building.

G. Bergeron said that will have to be addressed.

T. Quinn said there was a garage on the addition.

R. Costantino asked if it was on the back or the side.

T. Quinn said it was on the side.  
R. Costantino asked if you could actually drive in.  
T. Quinn said on the south side of the addition.  
R. Costantino said there was a low wall there so you could not drive into the building.  
T. Quinn said there would have to be a ramp.  
R. Costantino said a ramp was a little bit of an alteration, right?  
T. Quinn said, a little  
S. Bonczar said that didn't pertain to the request for a variance.  
T. Quinn said depending on the grade you might be able to come in at the side. Would be a modification of the building less than modification of the site.  
S. Bonczar said the modification of the building would be with the building inspector because it was not a modification of the site.  
J. Plourde said, re the deed that was handed to the Board about conveying the right to use the driveway, he was unsure coming in if there was a deed or an easement. Wanted to make sure he could legally get to the property.

J. Plourde said on Rt. 13 near Melendy Rd. there is a partial sign. Would that be used for his business?  
T. Quinn said yes. He would have to get a permit.  
J. Plourde said considering how people would find it.  
T. Quinn said would have to take care of some overgrowth and vegetation.  
R. Costantino asked who the current owner was.  
T. Quinn responded Nelson.  
R. Costantino said somebody else owns it?  
G. Bergeron said yes.  
R. Costantino asked if the applicant was buying it and investigating whether he could use this property.  
M. Thornton said there was a letter in the file from the owner.  
R. Costantino said his question was with the hardship.  
S. Bonczar said the Board would discuss that criteria after the presentation.  
T. Quinn said before going to 5B, he would say for the record they believed the proposed use was reasonable for all the reasons stated previously. That was last part of the hardship test. Even if the Bd should deem the applicant had not been meeting the burden under 5A, their argument was that the way the property exists with lack of frontage or driveway and pavement and industrial building as it exists, residential or agricultural wasn't suitable for that property. Even if the hardship wasn't met, they believed the variance was necessary to allow a reasonable use of the property.  
S. Bonczar asked about storage of vehicles. Parking is different than storage. Did they anticipate storing vehicles on the exterior, and, if so, how many?  
G. Bergeron said at the most, two or three cars outside, but the majority would be inside. For the most part, there wouldn't be any storage outside.  
S. Bonczar said it would not be a dozen vehicles waiting to be repaired?  
G. Bergeron said no.  
S. Bonczar said based on clientele, no one would want their classic cars sitting out there.  
T. Quinn said he went out there again today. You can see this building from the folks living on Melendy Rd. Other than that, this place is in the middle of the woods. Nothing but trees around the building. Mobile home park are abutters, but you can't see the mobile homes or any new development at all. All woods as far as you can see; only thing you can see are abutters directly on Melendy Rd.  
K. Lagro asked about arrangements for noise abatement because they were close to the houses. Concerns about impact of noise on abutters.  
G. Bergeron said what he does was not really loud. He's not running impact hammers or taking wheels off inside assembly. Doors are closed. For the most part, there wouldn't be any noise nuisance for the abutters.  
K. Lagro said it was a steel building.  
S. Bonczar said it was industrial building before so there had been some noise there.

G. Bergeron was sure there was with the machines. There was a dust problem.  
J. Dargie asked about painting and odor that would be a concern.  
G. Bergeron said that gets filtrated before it leaves the building which is a rule of DES that he has to follow. He basically does one car a year. Not painting every day.  
J. Dargie asked about employees.  
G. Bergeron said he had one part-time employee who is an apprentice going to school for this work but he has worked mostly on his own for twenty years.  
J. Plourde said they discussed 5.0.4 and asked him to talk about 6.01.3.  
T. Quinn said that for 6.01.3 the use allowed was the only use allowed in the underlying zone so he needed a variance from that, the same as from 5.04. Proposed use not prohibited. Not mentioned in the list of prohibited uses in that zone. Outside of use it didn't have any applicability.  
S. Bonczar opened the meeting for public comment. None. He asked for any other questions from the Bd.  
J. Dargie asked, re access was a little before the fork off Melendy? The right immediately before Melendy Rd?  
G. Bergeron said it was shared in common with the residential property in front. A shared driveway.  
J. Plourde said the sign was in the right corner.  
M. Thornton asked if there would be signs.  
G. Bergeron said he would have to use the existing post there. Basically the size of a For Sale sign for a house – no flashing lights, etc.  
S. Bonczar asked for any further questions. None. He proceeded to discussion of the criteria.  
**1. Granting the variance would not be contrary to the public interest.**  
J. Plourde – didn't think it will be contrary to public interest. Knowing what the use had been since the late sixties as compared to this proposed use, didn't think it would have significant alteration to the character of the neighborhood or threaten the health, safety and welfare of the public.  
S. Bonczar agreed. The building exists and was used for manufacturing. Use change wasn't drastically changing any of the characteristics of the property.  
M. Thornton – At the rate of one car per year, the rate of production would be way down from where it was before.  
S. Bonczar – even if it was two, probably a lot less activity on the property than was or could be with another use.  
M. Thornton – agreed. Customers coming and going would be rare.  
J. Dargie – mulling the difference between manufacturing and restoration – are similar.  
S. Bonczar – it is similar but with some differences.  
J. Dargie – a lot of the same things you do for one, you do for the other.  
S. Bonczar – in this case it might be less intensity than having machines cranking out widgets on a regular basis.  
J. Plourde – you could also consider the amount of truck traffic with manufacturing as compared with the little truck traffic with the proposed use.  
M. Thornton – the coming and going of raw products in order to substitute the use of 5 or 6 people with the previous manufacturing use.  
S. Bonczar asked for any other comments on this question. None.  
**2. If the variance were granted the spirit of the ordinance would be observed.**  
J. Dargie – if this were a new building it would be different.  
S. Bonczar – we would have a totally different scenario.  
J. Dargie – the zoning was created after the building was created. Using zoning, thought the use was similar.  
S. Bonczar agreed. If someone coming in proposed to build it there in Residential, his opinion would be no, it was not meeting the spirit of the Ordinance  
They are looking to use it for a similar but different function. In his opinion, no issue with it.  
M. Thornton – he looked at it as manufacturing because the car is disassembled, the panels are restored, and vehicle is reassembled.  
R. Costantino – thought there was no more impact than there was before.  
**3. Granting the variance would do substantial justice.**  
J. Plourde – no gain to the public if denied.

J. Dargie – if there was gain to the public then there would be letters from the abutters or they would be in attendance at the meeting.

M. Thornton – would be loss to the public if manufacturing moved back in there, there would be greater intensity of traffic coming and going and greater noise pollution and possibly, or chemical pollution depending on what was being manufactured.

J. Plourde agreed. This specific tenant would be more desirable than manufacturing use that could be there.

S. Bonczar – right. Any type of manufacturing was allowed at this point. Didn't think public would gain by denying this variance.

**4. Granting the variance would not diminish the value of the surrounding property.**

J. Dargie didn't think it would.

J. Plourde – as mentioned, if this was brand new project and built in residential area, it would be different.

J. Dargie – it was already there and won't affect anything.

J. Plourde – any more than what was there.

M. Thornton – seemed liked it would be more benign and could provide value instead of a manufacturing use. Since it was manufacturing, it could go to a higher rate, so would have to say it would stay about the same as now.

J. Plourde – could that happen? If they allowed this to go forward, do they negate the previous manufacturing nonconforming use?

J. Dargie thought so.

S. Bonczar – they would have to come back to make it manufacturing going forward. If someone came in and wanted to change facility that would be different than this auto restoration. It was a specific type of use that the applicant was proposing. Any change back to manufacturing would require another variance. According to the zoning administrator the nonconforming use would go away. Would go out anyway if the building sat vacant for more than a year; in this case they would be granting a new nonconforming use in this zone.

**5. Granting the variance would not result in unnecessary hardship.**

**a. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:**

S. Bonczar thought the attorney brought forth that it was a residential district and there was no way you could possibly return this to a residential use per se. In his opinion, what was proposed was reasonable because it seemed to be less impact than what was there previously – manufacturing. In his opinion, the hardship could be met within 5 a. Didn't need to discuss b.

M. Thornton – as benign as a single family residence with coming and going of one person. And sometimes with another person as an apprentice.

J. Dargie – for hardship, the zoning ordinance was put in after the building was there. How would you get the building to fit with the residential zone?

R. Costantino – thought it was a good idea. Not sure of the hardship. If the original owner built this and then zoning changed underneath him, that was hardship. A new owner was coming in knowing what the zoning was. It was not a hardship in his mind. Not sure he agreed with S. Bonczar that it can't be a residence. It would be difficult. T. Quinn had mentioned if it was raw land it would be a different argument. But it wasn't. If it were raw land, you would have to take down trees and prepare new site. You could do that – prepare a site for a home. But it wouldn't be desirable. Would like to hear what others thought. Not convinced it was totally a hardship knowing that the zoning was like this.

S. Bonczar asked if R. Costantino didn't feel it was a special condition of this property that distinguished it. You think it fits in perfectly?

R. Costantino said he could change his mind but if it was raw wooded land or land with a building on it that needed to be removed, then it would not be much different.

**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; and**

**ii The proposed use is a reasonable one:**

S. Bonczar asked R. Costantino if he thought the proposed use was a reasonable one.

R. Costantino thought it was good idea in this case.

S. Bonczar said this case was unique.

R. Costantino agreed. In the back of his mind someplace, there was a company that bought a bunch of little pieces of land to make a big piece of land. They wanted to put munitions in the middle of the land.

Everybody thought it was a good idea. The Court said it was not allowed in that zone and they didn't approve hardship. This is similar in his mind.

J. Plourde said there were different ways to look at hardship. One of the ways he looked at it was the parcel is unique or not shared by other parcels in the area. The reason why he thought so was because the zoning changed after the original use was already there.

R. Costantino said not for the new owner.

J. Plourde said the hardship cannot be self-created.

S. Bonczar said it was the property. The use of that property was why they were there. That property has already been there.

R. Costantino – there was a hardship for the original owner.

S. Bonczar – but you were taking into consideration the owner. The owner had no bearing here.

J. Dargie - he was saying the hardship goes with the property. You were saying the owner can't sell the property but the hardship was with the property. That would be financial that they can't consider. The owner could be coming in asking for the change in the use of the building.

M. Thornton – it was a pre-existing condition before the ordinance. It was grandfathered. Not still grandfathered because of the variance process. The change would be a hardship to change it from manufacturing restoration to a residential would take more resources and thinks there might be less attractive in that location.

R. Costantino asked S. Bonczar to repeat what he said about hardship with the land.

S. Bonczar said they were a land use board so they need to deal with the property. Talk about hardship relative to that property. Doesn't matter who owns it. What are the characteristics of that property? He had been doing this a long time and still has to read hardship over and over. Can have an opinion, but need to make sure it is based on the right criteria. Not on ownership or financial. It was the land and the property and the way it was being used previously in this case. Respects R. Costantino's opinion but wanted to make sure when they were talking about it, what they were focusing on.

R. Costantino – so do I.

S. Bonczar asked for other comments re hardship. Was it the consensus that it was meeting 5a or did 5 b need to be considered?

J. Plourde thought both of them were satisfied.

J. Dargie – if 5a was satisfied, don't need 5 b.

J. Plourde agreed, but he felt b was satisfied.

S. Bonczar thought it was both, too. Any other comments?

S. Bonczar left public comment open just to be sure there was no other information from the applicant. Any? None. He closed the public comment.

S. Bonczar then proceeded to the vote on the criteria for a variance.

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

M. Thornton – yes; J. Plourde – yes; R. Costantino – yes; J. Dargie – yes; S. Bonczar - yes

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

M. Thornton – yes; R. Costantino – yes; J. Dargie – yes; J. Plourde – yes; S. Bonczar - yes

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

J. Plourde – yes; J. Dargie – yes; R. Costantino – yes; M. Thornton – yes; S. Bonczar - yes

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

R. Costantino – yes; J. Dargie – yes; M. Thornton – yes; J. Plourde – yes; S. Bonczar - yes

**5. 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.**

M. Thornton – yes; J. Plourde – yes; R. Costantino – yes, he had been convinced; J. Dargie – yes; S. Bonczar - yes

**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.**  
S. Bonczar said no need for B because A established hardship.

S. Bonczar said the variance was for Gregory Bergeron for property located at 559 NH Rte 13 South, Milford, NH, Tax Map 47, Lot 38, in the Residential R district for a variance of the Milford Zoning Ordinances per Article V, Section 5.04 and 6.01.3 to allow an automotive restoration business in an existing nonconforming building previously used for manufacturing.

S. Bonczar stated the variance was approved.

Case # 2017-25 was unanimously **approved**.

S. Bonczar informed applicant of approval and reminded applicant of the 30-day appeal period.