

**Town of Milford
Zoning Board of Adjustment
June 1, 2017
Case #2017-13
Creative Ventures
Variance**

Present: Steven Bonczar, Chair
Jason Plourde, Vice Chair
Joan Dargie
Wade Scott Campbell, Alternate
Robin Lunn, Zoning Administrator

Absent: Michael Thornton
Rob Costantino, Alternate
Tracy Steel, Alternate
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

Creative Ventures, for property located at 411 Nashua Street, Milford, NH, Tax Map 31, Lot 6, in the Limited Commercial Business (LCB) District is seeking a Variance of the Milford Zoning Ordinance per Article V, Section 5.07 to allow for a 12' x 12' retail art gallery space as a part of an artist's cooperative.

MINUTES APPROVED ON JULY 6, 2017

Steven Bonczar, Chair, opened the meeting and introduced the Board members. Wade Scott Campbell was seated as an alternate. S. Bonczar informed all of the procedures of the Board. Board members agreed to table Approval of Minutes to the next regularly scheduled meeting, since there were not enough members currently present who attended the May 18 meeting.

Present representing Creative Ventures were: Martha Wilkerson, potential purchaser; Betsy Crawmer, principal of Creative Ventures.

S. Bonczar informed the applicants that since there was not a full five-member Board present, the applicant could choose to continue his case to a future meeting. If they chose to proceed with a four-member board, they would still need to get three affirmative votes for approval. They chose to proceed.

S. Bonczar read the notice of hearing into the record and asked the applicants to state what they planned to do.

M/. Wilkerson said they were requesting a variance for a structure to be used as an artist cooperative. Would be comprised primarily of artists' studios. Secondly, will be a classroom with a small secondary studio that students would sometimes used as a classroom. There was a request to use a small 12 x 12 space in front as a gallery to exhibit student artwork as well as visiting artists. They believed this benefited the community as well as the artists. Currently four artists in the co-op. Some of them teach. It was characteristic within the art community to teach art to others. Also will offer classes for students and children who want to learn to draw or paint with acrylic or watercolor.

B. Crawmer said they wanted to show other artists how to create whatever it was they were working on. Other reason for being was to create artwork and have other people see it. They were requesting a variance on this approx. 12 x 11 room to showcase student work so the public can see what they have accomplished, and possible have a visiting artist in.

M. Wilkerson said a popular conception of an artist's co-operative was that it was a retail store; for many it is. This group is not comprised that way; that wasn't the motive. If it were, they wouldn't be asking for a variance for a 12 x 12 space. The move to 411 Nashua St. was to provide larger studio space to give more space for the artists' tools and more working space. This building was uniquely constructed for that because it didn't require modification; the rooms were good size, with a closet in each. That was what made this building appealing for this project.

S. Bonczar asked about the definition of a co-operative.

M. Wilkerson said it varied.

S. Bonczar said she had stated the specific definition as it pertained to this particular application. He asked the overall square footage of the building.

M. Wilkerson said it was 2,043 SF.

S. Bonczar said this was about 5 percent of the whole, so someone could come in front outside and decide to purchase a piece of artwork.

M. Wilkerson said they would encourage that. Business days will be 6 days a week, closed on Monday. Most of the hours will be 12 to 4. Saturday would be 10 to 2 and Sunday 12 to 4. Artists could work anytime they wanted. That was why they had the studio. Occasionally, an instructor will have a morning class before official business hours at student convenience, etc. That didn't occur every day. It was a developing organization. There were a lot of classes on the website that had not had enough sign-up for them to run, but were hopeful for more interest as it developed.

S. Bonczar said the building didn't have a kitchen.

M. Wilkerson said it did not. It had a ½ bath. Two small rooms in front, one of which would be a studio and the other would be the gallery.

S. Bonczar asked the maximum number of artists using the facility at one time.

B. Crawmer said everyone has their own working schedule. She is always there. Maximum would be two, besides her, at the same time. Could have up to five in there, but not at the same time.

S. Bonczar asked when the gallery would be open.

M. Wilkerson said during business hours.

W. Campbell asked how many students in a class.

M. Wilkerson said maximum she has seen there was five. It may be as few as one. Better for students to have smaller class size.

S. Bonczar said he would imagine, based on the information from the front office, the majority of the space would be easels, etc. What they were looking was purely an art gallery in front. He asked Robin Lunn, if it

was approved for a retail art gallery, would it be restricted to that? Or if they deemed necessary, would there have to be a condition that the space be used for a gallery.

R. Lunn said they were asking for variance for a retail space for a gallery. With no condition, any retail space could be in there.

S. Bonczar said as the application stood, as it stated retail art gallery, the fact was that any approval of this variance would be for retail, period. The fact was that this application was going to use it as an art gallery.

R. Lunn agreed. There was nothing in the ordinance at that time that talked about different kinds of retail operations.

J. Dargie said it was limited to 12 x 12.

S. Bonczar said it would not open up the whole building to retail.

J. Plourde ask if applicants if they would have showings on nights or weekends.

B. Crawmer said probably for the gallery they would, but would have to work it out with the league that uses the ball field across the street. She was given kind of the hours they have reserved that field and would have to work around those.

J. Plourde said for the parking.

B. Crawmer said yes. S. Bonczar said there was parking in the back.

B. Crawmer said yes, parking in the back for the day to day things. But if they did something else they would have to use parking across the street. On Saturdays, the field is reserved from 8 to 4. They would have to have an agreement to use it other hours on Saturday.

J. Plourde said they would coordinate that.

B. Crawmer said yes.

S. Bonczar asked the Board for any more questions. None. He opened the meeting for public comment.

Gerald Dusseault, owner of the adjacent lot at 407 Nashua St., the variety convenience store, thought they had a great idea. Thought the usage would be low and would fit that particular location very well.

S. Bonczar didn't see any other members of the audience wanting to provide comment. He asked the Board for any further questions.

J. Plourde asked, re classes, that would not be in the front part where the gallery would be?

B. Crawmer said no.

J. Plourde asked S. Bonczar if their view of the project was just for that front.

S. Bonczar said for the 12 x 12 area because the non- retail use in the back are was already allowed.

J. Dargie asked if there was lighting in the back.

B. Crawmer said there was something there; not working right now.

S. Bonczar closed the public comment and proceeded to deliberation of the criteria.

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

J. Dargie – granting would not be contrary to the public interest. Already retail there. Small amount. Didn't think there would be a lot of traffic.

S. Bonczar didn't see adverse effect on public interest.

W. Campbell – yes

J. Plourde thought it was a great entranceway to the downtown on Nashua St. So many different uses; you didn't have anything that said "Look, art." It was a unique thing. Good for the town.

2. Would granting the variance violate the spirit of the ordinance.

S. Bonczar read the ordinance re intent of LCB. Didn't see huge impact. It didn't violate the basic objective to provide business activities. As Joan stated, impact to the neighborhood would be negligible. He was leaning toward it would not go against spirit of the ordinance.

J. Plourde agreed. Thinking about allowed uses. You have the ball field across the street, urgent care facility down the street. They head from an abutter promoting it. They were talking about a non-intense use in a 12 x 12 space; actually they're looking for smaller.

W. Campbell said it fit with the ordinance.

S. Bonczar said the variance went with the land.

J. Dargie there wasn't going to be retail that would be worth just moving into that 12 x 12 space.

J. Plourde said he was wrapped up in the art part of it, but it was the retail they were looking at. As

J. Dargie said, who would go into that 12 x 12 in the future.

S. Bonczar said they were allowing the property but the 12 x 12 retail for that building. Any other beyond that 12 x 12 would have to have something else from the Board.

3. Would granting the variance do substantial justice?

J. Dargie said by not granting there would be no gain to the public that would outweigh. It would do substantial justice because there would be no gain to the public by denying.

S. Bonczar said the loss to the applicant would be greater than the public would gain. He agreed.

J. Plourde said he liked hearing that coordination efforts already taking place with the ball field across the street. J. Dargie said that was for a limited time of year.

J. Plourde didn't have a problem with it.

W. Campbell agreed.

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

W. Campbell said it would not diminish value of surrounding property.

Others agreed.

S. Bonczar felt it would enhance value of surrounding property and the appeal of the town.

J. Dargie said people will know it is there and maybe stop in.

S. Bonczar said there was retail next door and next to that was the oil facility

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.

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.

J. Dargie said hardship to the building was the building was an odd configuration in an older building. It can't be residential. Hardship of denying retail space when the rest was being used for an artist studio; there would be no way to show their art if that wasn't allowed.

S. Bonczar looked at allowable uses. You could have said at some point that art galleries should be included in the LCB. It wasn't, but it wasn't that far-fetched. They talk about uses – acceptable uses were somewhat narrow and his interpretation of that narrow allowable set of uses was that they didn't want high impact, high intensity retail.

J. Dargie said a B & B was allowed.

S. Bonczar said you could ask if that was retail, to a certain extent. It was a fine line. That was his interpretation of the ordinance and its purpose – didn't want full blown retail there. Retain the character of the street. Compare Nashua St to some other towns outside of Nashua and it wouldn't look as nice as Nashua St as you come into town. There are retail, but homes converted into office space and other allowable uses. Denying would be hardship because there was room for interpretation of what would be allowable in this zone.

J. Plourde agreed. They were talking about 144 SF. What other uses would be going into this space? A school?

S. Bonczar said granting this made the use of the cooperative and office space in back viable.

Others agreed.

S. Bonczar asked for discussion as to whether it was a reasonable use. He thought it was.

It could be an acceptable use in the zoning ordinance if there was a change in the ordinance. It wasn't, but it could be.

J. Plourde said specific to being an art gallery as opposed to retail.

S. Bonczar said they didn't address art galleries as to where they might want them to be. There may be other zones that should be considered.

J. Plourde agreed.

S. Bonczar said even though they hit upon the two items in the first part of the hardship re special conditions of the property that distinguish it from others in the area. J. Dargie hit upon the fact that you couldn't have it turned into a residence; it would be cost prohibitive, doesn't have a kitchen just a bathroom and rooms. Anything else to add?

J. Plourde asked if, after their vote, it would have to be reviewed by the fire department.

S. Bonczar said they have to meet all building codes, etc.

J. Dargie said for a new business. They had to meeting requirement for what they will be doing. Not like construction codes. The usual, clear access, etc.

Anything else anyone wanted to add?

Nothing.

S. Bonczar proceeded to go through the criteria for a variance. He said they were voting on Case #2017-13 variance for 411 Nashua St. to allow for a 12 x 12 retail art gallery space as part of an artists' cooperative

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

J. Dargie – yes; W. Campbell – yes; J. Plourde – yes; S. Bonczar - yes

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

J. Plourde – yes; J. Dargie – yes; W. Campbell – yes; S. Bonczar - yes

3. Would granting the variance do substantial justice?

W. Campbell – yes; J. Dargie – yes; J. Plourde – yes; S. Bonczar - yes

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

J. Plourde – yes; W. Campbell – yes; J. Dargie – 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.

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.

J. Dargie – yes; J. Plourde – yes; W. Campbell - yes; S. Bonczar - yes

S. Bonczar asked for motion to approve Case #2017-13 for a Variance to allow for a 12 x 12 retail art gallery space.

J. Dargie made motion to **approve** Case #2017-13

Seconded by W. Campbell

Final Vote: Yes vote was to approve

W. Campbell – yes

J. Dargie – yes

J. Plourde – yes

S. Bonczar - yes

Case # 2017-13 was unanimously approved.

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

There being no further business to discuss, S. Bonczar asked for a motion to adjourn.

J. Dargie made motion to adjourn.

J. Plourde seconded.

All in favor.

Meeting adjourned at 8:35.