

**Town of Milford
Zoning Board of Adjustment Minutes
June 2, 2016
282 Route 101, LLC
& 37 Wilton Road Milford, LLC and
MAC Milford Realty, LLC
Case #2016-09
Variance**

Present: Kevin Johnson, Chairman
Mike Thornton
Joan Dargie
Len Harten
Jason Plourde

Absent: Katherine Bauer, Selectmen's Representative

Secretary: Peg Ouellette

The applicant, 282 Route 101, LLC & 37 Wilton Road Milford, LLC and MAC Milford Realty, LLC for the property located at 30 Wilton Road, Milford, NH Tax Map 6, Lot 14. Variance Application request from the Milford's Zoning Ordinance, Article V, Section 5.08.3, to permit a self-service storage facility within the Integrated Commercial Industrial Zoning District.

MINUTES APPROVED ON 11/3/16

Kevin Johnson, Chairman, opened the meeting and informed all of the procedures for the meeting. In view of the fact that there were only four Board members present, applicant's representative, Attorney Andrew Prolman asked about continuing this case.

K. Johnson explained that the Board can no longer continue for lack of a full Board, unless they needed time to prepare new information.

Attorney Prolman said they were ready, decided to proceed. However, he said he felt it was a disadvantage to the applicant without a full Board. State law doesn't address it.

K. Johnson agreed that State law doesn't address it. Nor have the courts. A number of jurisdictions state if there is a quorum they can conduct business. They have a quorum.

A. Prolman said they would proceed, but wanted to put it on record that he didn't think that was proper procedure.

K. Johnson read the notice of hearing into the record. The list of abutters was read. 37 Wilton Road, Milford LLC, MAC Milford Realty, LLC and Fieldstone Land Consultants were present.

K. Johnson stated this case was for a Variance and explained, for the public, the difference between a Special Exception and a Variance. This case is for a self-storage facility in ICI District. They are only allowed in Res. District. He read allowed uses for ICI District. The proposed use, a self-storage facility, is not allowed use and requires a Variance. He then asked applicant to present the case.

Attorney Prolman came forward on behalf of applicants. He mentioned two submittals to the staff

-- K. Johnson said the Board had that.

A. Prolman said there was a letter from a neighbor with no objection to this proposal.

K. Johnson said he was sure he saw that.

J. Dargie didn't have either one. A. Prolman went to get them and passed copies to the Board.

A. Prolman would read them. For the record, they object to having to proceed without a full Board -- believed they have a right to a full Board. He introduced Chad Brannen of Fieldstone Land Consultants, Project Engineer, Mark Prolman and Eli Levine, members of the LLCs, and Matt and Andrew Ciardelli who are also applicants, who will be building out the proposed self-storage facility. This is a straightforward variance. Two lots involved, abutting Town of Wilton on other side of Souhegan River on Lot 6-14 is on railroad track. Lot 6-15 will come into play which will be donated to the Town as recreation or conservation area. Property all tied into Hillsborough Mill.

Subject to easements that come into the middle of the property. It is subject to shoreline setbacks on Souhegan River side and typical front and side setbacks on road. Wide right of way, Pan Am Railways, on back. There is an easement that continues across eastern part of 6-14. While originally tied to Hillsborough Mills it still has issues and constraints. 6-14 is little over 7 acres in total area. Area they propose to build is approx 4 acres east of the penstock. He explained what a penstock is. He showed 1979 plan prepared for the previous owners of the property. At that time there was a canal from the dam in Wilton through the property underneath the railroad tracks and toward the mill. It was powering the mill and a turbine in the mill that is still there. It kicked back into the electric grid and still operational today and part and parcel of the Pine Valley Mill project. In about 1982 the canal turned into a penstock which is 8 ft pipe that carries water. That is still flowing today. It follows canal and to the western boundary of the property and crosses under the mill. The penstock-- when the Pine Valley lots were developed and built out, easements were created across entire property and back up to Wilton. The penstock easement goes with the penstock and approx 15 ft on either side. Wide area that current owner and applicants cannot touch.

K. Johnson said, not just current owners, but any future ones. Clearly an impediment to the land.

A. Prolman said in future if this was conveyed to the Town that would be subject to the penstock easement forever, until such time as owners of the mill say they don't want it and will shut it down, but that probably won't happen. He continued, there was a proposal years ago to develop residential property that was approved by the Planning Bd and ZBA but financing became prohibitive. They are now staying away from penstock. Will be fencing along it to prevent accidental drive-over or anything like that.

K. Johnson said penstock area is part of this development. Under terms of the easement, they could put landscaping in the easement?

A. Prolman said probably, but no heavy trucks.

K. Johnson said barrier landscaping could enhance the easement without obstructing it. It is to protect something underground.

A. Prolman said it is, pipe never designed to carry much weight.

K. Johnson asked if they were not putting parking on top of it.

A. Prolman said not at all. It is very thin corrugated pipe. He continued, that is overview.

Proposal is six self-storage units. But building to house the units. The Ciardellis have other projects like this in town. Would be access across street from the new access installed with Pine Valley lot. Would include future bus stop area which is important because when they were working into approval and looking at the nearby residential area, the then Planning Bd Chair said it would be good plan for the future to preserve it for a turn-out. They agreed. It is part of this parcel. Part of the parcel, should this go forward, 17 acre parcel of Lot 6-15 would be proposed to be granted to the Town at no cost for conservation and recreation. Would be a great asset along the river. Great to preserve entrance into the town as it is today. Proposal itself is self-storage facility. Very low impact to a town. Very little traffic, very little police or fire. Very low-impact use being proposed. Current owners acquired property in 2009 and have been trying to do something with it between the residential that was considered. They tried to market it. Has been an empty, dormant lot since 1979 which is perplexing because it has water and sewer. The prior owners tried. It is difficult site. Thinks they have good application before the Board. Re penstock, the Ciardellis will tell them a good portion of the customers of self-storage facility live within a mile of its facility. In Milford they are at capacity with their other facilities.

Ordinance speaks to them in residential area. Want them near residential area. Fifty residence units across the street close to full capacity. Falcon Ridge and Wilton area. Residential component on North River Rd. Falcon Ridge and Pine Valley lofts. He understands the Bd approved similar variances at other sites in town outside of residential area. Know each case must stand on its own, but seems to be flexibility in town that are not averse to this facility. He showed conceptual drawing of the building. Requires landscaping and buffering along front which are included in the proposal. Buildings will be parallel to the street, buffered with landscaping. He suggested Chad Brannen speak to some design issues.

K. Johnson asked for questions from the Bd.

J. Plourde said he is a traffic engineer. When they are generating traffic at these type of developments, the closest land use code in the Institute of Transportation Engineers Trip Generation Manual is a mini-warehouse. This satisfies criteria for a self-storage facility. Based on these, you are talking six trips in morning, ten in afternoon on a Saturday, twelve total trips. Low traffic. As far as acceptable uses, under Sec. 5.0.8.1 N it is warehouse. Can see that. It is a self-storage, not allowed in this use. However, ordinance under 10.2.4 under self-storage facility has specific requirements. Are they satisfying those?

A. Prolman said other than the zone, the district, the answer is yes.

C. Brannen of Fieldstone Land Consultants came forward to speak on some of the design elements. Starting with existing conditions of the site. Heading toward Wilton a large gravel parking area and a hot dog stand and old barn on northeast corner. An old garden and old foundation attached. All located relatively close to river. Part of proposal is to remove that and restore bushes in that location. Access to the property ultimately accesses the dam. Site on other side of railroad has been used over time for processing materials and stockpiling. They have done some preliminary work and feasibility of removing material. Nice to hear potential for conservation.

K. Johnson said, to clarify, the yellow lines from right to left, are the railroad easement?\?

C. Brannen said yes, and other yellow lines are for Old Wilton Rd. They are proposing two large curb cuts – gravel pretty expansive and don't have great site lines. Looking toward Milford is restricted by guard rail on the bridge. Proposing to move proposed access to a line with and

directly across from access to the Pine Valley line. One of the nice parts of Ciardelli facilities is they have 25 ft spaces between buildings. Feels comfortable when you travel and more comfortable when moving through with a vehicle. Rough 40,000 SF of building space. Checked all dimensional requirements and satisfied those and all vehicle turning requirements. Maintain slope of land so storm water runs from north to south and capture it on southern boundary and into storm water management system. Will meet all local criteria and State Alteration of Terrain and permit requirements under Shoreline Protection Act. Would consist of razing barn and foundation and restore buffer area to the river. Fair amount of landscaping. Regulations require 30 ft. front setback. Proposed is 85 ft. Designed to set buildings and improvements back as much as possible to maintain landscaping along Wilton Rd and proposing landscape berm adjacent to site. Site is relatively flat with good soil so doesn't foresee any issues with design requirements. He asked for any questions about layout, design.

J. Plourde, re site distance, liked idea of moving drive because of curve of road and guard rail. By locating drive did they measure to see whether it met actual requirements?

C. Brannen said they checked local requirements. Not sure they lined up with ASTRO. With speed limit there he believed they would meet those. If they need to adjust, they will.

J. Plourde said, as long as they are meeting town and ASTRO, it is important for safety.

K. Johnson, to clarify something – application is simply for a self-storage facility within the ICI District. It doesn't specify six buildings of 40,000 ft. If Planning Dept. says they want 5 long and 2 short, he doesn't think ZBA wants to restrict them. Simply considering use for self-storage rather than approving a specific number of units as they have in other cases.

A. Prolman agreed. The Planning Bd may knock out two buildings, or add more.

K. Johnson said, or they may say it's better to angle them down the site. Wants everyone to know the application is to allow this usage but not this plan. Any plan will fall between guidelines of the ordinance, the Planning Bd., etc. and there will be meetings with the Planning Bd.

A. Prolman called attention to the two materials supplied. First, from F & M Appraisal of 5/16/16. Summarizing, John Frank, licensed appraiser, stated in his opinion it would not diminish values of surrounding property or increase traffic. Also, a letter from Earthworks, which is a long-term tenant at the end of Pine Valley Mill. They do high end microphone and acoustic equipment. Applicants provided plans to them and their letter states they have no objection to the proposal. Re variance criteria, - won't read application verbatim, but touch on the criteria.

K. Johnson asked him to read the five criteria responses verbatim.

A. Prolman read from the application:

1. Granting the variance would not be contrary to the public interest because:

The proposed self-storage facility will not alter the character of the neighborhood or present a threat to the health, safety, or welfare of the public. The neighborhood surrounding the site is a mix of residential, commercial, retail, and light industrial. A self-service storage facility will support the surrounding uses. As a result, the proposed use will not violate the basic character of the neighborhood or the objectives of the ICI District.

2. If the Variance were granted, the spirit of the ordinance would be observed because:

The ICI District allows for similar uses: MZO 5.0.8: I – Distribution and Mailing Facilities; N-Processing and Warehousing. [He added they believe they are presenting a similar proposal to other uses allowed in ICI] The project will be developed in compliance with the dimensional standards of self-service storage facilities as allowed by special exception at MZO 10.01.4.A, 2-6, as well as the standards of the West Elm Street Gateway District [especially with respect to the 6-15 donation, protecting the view shed & keeping it in conservation] [He added there will be appropriate screening. If Bd had additional

screening concerns, they would be happy to entertain them. There will be no outside storage. Will be going to Planning Bd. once ZBA approves this. Structures will be 50 ft. back from lot line.] In doing so, the proposed use will not impact the public's health, safety or welfare, nor change the character of the neighborhood.

3. Granting the variance would do substantial justice because:

The proposed use is a win-win for the Owner/Applicant and the Town. The Owner and applicant will receive the benefit of their long dormant land being put to productive use. The Town receives a bus stop area at no cost as originally contemplated with the development of Pine Valley Mill, and upon site plan approval, a donation of 17+/- acres of passive/recreational land (Lot 6-15) south of the abutting rail road tracks to the Souhegan River [added the balancing test weighs in favor of approval, substantial justice and adverse affect to the Town

4. The proposed use would not diminish surrounding property values:

The land and development costs for the site will be an approximately \$1,600,000 investment into this area of Milford. The buildings will be set back and screened in accordance with Milford Ordinances. A self-service storage facility will add to the value of the mixed use neighborhood. [F & M Appraisal and Earthworks Letter. Presented plan to Pine Valle Mill and heard no objection back]

5. 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:

The location, geometry, and size of Lot 6-14 provide the special conditions of the property such that there is no fair and substantial reason to prohibit self-service storage facilities at this site in the ICI District. The Lot is bisected by a pre-existing penstock and subject to access easements to the dam in Wilton which services turbine in the Pine Valley Mill. The site abuts an unusually wide railroad property, and is subject to wetland setbacks along the length of the Souhegan River. Further, while the neighborhood has historically been mixed use, the past few years have seen residential development in the Pine Valley Mill and the Falcon Ridge subdivision. We respectfully submit Lot 6-14 presents as a near ideal site to service the west side of Milford, and that there is no reasonable relationship between prohibiting the proposed use at that site, and the general purposes of the Milford Zoning Ordinance.

ii) and; The proposed use is a reasonable one because:

The proposed use is a reasonable one because self-storage facilities are a benign, mostly inactive operations. Self-storage facilities generate little traffic. These operations use the bare minimum of public, water, sewer, and other Town services and infrastructure. The project would not impact residential or commercial neighbors while providing a storage facility to the public [and to the residential neighbors in the area].

K. Johnson referred to a couple of pieces of information received to go along with the application. One was the appraisal which A. Prolman already mentioned, which was included in the packet and available for viewing. As applicant stated, he read pertinent portion of the letter from the licensed

appraiser dated May 16: *"In my opinion there will be no diminution of value in the abutting properties by the development of the proposed self-storage facility on Map 6 Lot 14."*

He then read a letter from Earthworks, also dated May 16, 2016, *"To Milford Zoning Board: Earthworks, Incorporated is a longtime tenant of the Pine Valley Mill. We occupy the western end of the mill building. We have reviewed the plans for the self-storage facility being proposed on the south side of Wilton Road. Earthworks has no objection to the Variance being requested to allow the self-storage units. Signed, Heidi Blackmere Robichaud, President."*

K. Johnson then opened the meeting for public comment. There were none. He closed the public comment portion of the meeting.

The Board moved on to consideration of the variance criteria.

J. Johnson said re #1 and 2 the courts have frequently treated them as being tied together, those being the public interest and spirit of the ordinance. Every variance to some degree violates the spirit of the ordinance, or it would not be needed. Need to balance whether this impact is tolerable within the spirit and design of the ordinance, or so outrageous they cannot allow it.

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

2. Is the spirit of the ordinance observed?

J. Plourde – It coincides with the public interest. Need for it. Property current vacant and vacant for a long time. Thinks this project would be nice for the area.

J. Dargie agreed it would not be contrary to public interest. Self-storage facilities do not cause a lot of traffic. No reports with other units in town of crime issues.

L. Harten agreed. Doesn't believe granting would be contrary to public interest. Going to the Handbook for Boards of Adjustment in New Hampshire, the key item for him was a literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to the applicant and as J. Plourde mentioned it has been long vacant land. In his opinion meets usage that will contribute to the value of the surrounding properties. Is assuming applicant has studied situation sufficiently to realize there is need for the facility. Re spirit of the ordinance, speaking to health, safety and general welfare of the community, doesn't believe storage facility would create any problem with health, safety, etc.

K. Johnson agreed. Re Handbook, which addresses five criteria take into account most recent court decision *"To be contrary to public interest it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public"* He doesn't think it alters the character of the neighborhood. It is mixed area, a commercial area, residential. Doesn't see it would alter essential character of neighborhood. Doesn't threaten general safety or welfare. Not an explosive plant for putting forth noxious fumes. Self-storage is pretty benign use. Re spirit of the ordinance, from the Handbook, *"In deciding whether or not a variance will violate the spirit and intent of the ordinance, the board of adjustment must determine the legal purpose the ordinance serves and the reason it was enacted."* In this District there are a number of different industrial or commercial uses that are very similar to the self-storage unit. If it were a commercial manned warehouse it could go in there. Since the self storage falls outside allowed. When approved uses for this type of area went in, question was not can they decide to add to the list. This can be granted and maintain spirit.

J. Dargie agreed.

J. Plourde said, going back and forth based on Handbook which says *"when the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use."* K. Johnson said Jason is new and hasn't had experience of town counsel who said this is one section of Handbook that will stick in the future

because it is not true. The board can grant anything. It continues, *“The board cannot change the ordinance.”* How do you walk that fine line? You can’t. Courts have said that.

J. Plourde said if that is case, then he is good.

3. Would granting the variance do substantial justice?

K. Johnson read from the Handbook re *“any loss to the individual which is not outweighed by a gain to the general public is an injustice.”*

J. Dargie – Doesn’t see gain to the public by denying.

J. Plourde – agreed.

L. Harten agreed. Loss to the applicant would far outweigh benefit to the general public.

K. Johnson agreed. Knowing the history of the property and having sat on the board when other uses came before them, can see no gain to the public in denying. This is an excellent proposed use. Granting would do substantial justice.

4. Would granting the variance diminish the value of surrounding property?

J. Plourde – they have proven, based on documentation provided, that values of surrounding properties will not be diminished.

J. Dargie agreed. Putting in landscaping, look of the property will be much better.

L. Harten agreed. Doesn’t believe any diminishment of surrounding property. Would improve value of surrounding property having this particular development on the site. He is assuming this is a Ciardelli project. He is very familiar with their facilities in east Milford and they do an excellent job –well maintained. Doesn’t believe there would be diminishing of value of surrounding properties.

K. Johnson agreed. No reason to reject appraiser’s conclusion that there would be no diminishment. From personal experience when you have a self-storage unit close it doesn’t affect residential and doubts any affect on surrounding commercial property.

5. Would denial of the ordinance result in unnecessary hardship?

K. Johnson read from RSA 674:33, I (b) (5) (A) quoted in the Handbook: *A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to the 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.”* This is the relationship test. And, *“(ii) The proposed use is a reasonable one.”* That is the reasonable use test. Both must be met.

J. Dargie said no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application to the property, and the proposed use is a reasonable one.

J. Plourde agreed.

L. Harten agreed.

K. Johnson agreed. There are a number of factors that make this property unique. There are a number of easements. It stands out by size and shape, nature, location and easements against it. All of those are characteristics that distinguish it from similar others in the neighborhood. There is no substantial relationship between the specific provisions of the ordinance and applying those to this property.

K. Johnson asked if there were any further questions. There were none. They proceeded to vote on criteria.

Vote on Criteria:

Is the proposed variance not contrary to the public interest?

J. Plourde – yes; J. Dargie – yes; L. Harten – yes; K. Johnson – yes

Would denial of the variance violate the spirit of the ordinance?

J. Dargie – yes; L. Harten – yes; J. Plourde – yes; K. Johnson – yes

Would granting the variance do substantial justice?

L. Harten – yes; J. Dargie – yes; J. Plourde – yes; K. Johnson – yes

Would granting the variance not diminish the value of surrounding property?

J. Plourde – yes; L. Harten – yes; J. Dargie – yes; K. Johnson – yes

Would denial of the variance result in unnecessary hardship?

J. Dargie – yes; L. Harten – yes; J. Plourde – yes K. Johnson – yes

K. Johnson asked for a motion to approve Case #2016-09, making one notation to the application in that Sec. 1 Paragraph 2 refers to 10.2.4, instead of 10.1.4.

He asked for motion to approve case.

L. Harten moved to approve.

J. Dargie seconded.

Final Vote:

J. Plourde – yes

J. Dargie – yes

L. Harten –yes

K. Johnson – yes

Case #2016-09 was unanimously approved, 4 to 0

K. Johnson reminded applicants of 30-day appeal period.