

**Town of Milford
Zoning Board of Adjustment
October 6, 2016
Case #2019-20
KBRE Development, LLC
Variance**

Present: Michael Thornton, Vice Chair
Joan Dargie
Jason Plourde
Rob Costantino
Steven Bonczar
Robin Lunn, Zoning Administrator

Absent: Kevin Johnson, Chair
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

KBRE Development, LLC, for property located at 96 Old Wilton Road, Milford, NH, Tax Map 7, Lot 20/C, 6, 7, 8 & 9, in Integrated Commercial-Industrial District 2, is seeking a Variance per the Milford Zoning Ordinances Article V, Section 5.09.3 to allow the construction and operation of a two building self-storage facility which is not an allowed use in the ICI-2 zone.

MINUTES APPROVED 2/16/15

Michael Thornton, acting as Chair, opened the meeting and informed all of the procedures of the Board. He introduced the members of the Board and read the notice of hearing. He stated that because of the full agenda, all cases might not be reached. ZBA rules allow for adjournment by 10 p.m. and continuance of cases, which would be considered at the next regularly scheduled meeting with no additional notice to applicants or abutters. This case was continued from the September 1, 2016 meeting.

Tom Quinn, Attorney for Mark Brown, owner of KBRE Development was present.

T. Quinn had previously presented the case, so M. Thornton said the Board would begin deliberation of the case.

S. Bonczar was not sitting on this case, as he hadn't heard it. Thus, there were four Board members, and three affirmative votes needed for approval.

J. Dargie asked about K. Johnson's notes. Main reason for continuing this case had been because he wanted to put together his notes. R. Constantino agreed.

R. Lunn said it was up to the Bd. how they wanted to proceed. Applicants were present.

T. Quinn asked when the next meeting was at which case would be considered. Was told Oct. 20.

J. Dargie said she would not be here on that date.

J. Plourde said they could have further discussion among the Bd. whether or not they proceeded to a vote. Looking at it in ICI-2 District, didn't have concerns; however, since it was also in Nashua St./Elm St. Corridor District, there were additional requirements, many having to do with nature of the Corridor District and trying to promote multi-modal transportation, bikes, pedestrians. Didn't remember any of those being proposed.

M. Thornton didn't remember any improvements to the road being discussed.

R. Lunn said that was Planning Bd. decision.

J. Plourde cited Sec. 6.05.2 G, E and H re improving transportation efficiency, encourage attractive pedestrian scale development, and promoting alternative modes of transportation, particularly pedestrian and biking. Seemed to be within ZBA purview

R. Costantino said they had two small lots across from condos and can't do much for transportation in that area. Not doing anything to prohibit it.

J. Plourde was hesitant.

R. Lunn referred to Sec. 6.05.1 that stated the Planning Bd had authority to administer those criteria. Question before ZBA was use.

J. Plourde said some notes from staff said to make sure they were looking at this section.

R. Lunn asked if that was to ZBA or Planning Bd.

J. Plourde said in packet to the ZBA. It said Bd. should note conditions in 6.05 when deliberating on this case. Planning Bd approval is also required. He said if they weren't supposed to look at it, fine. If they were, these were his concerns. They were in ordinance for a reason.

R. Constantino said they weren't applicable to these two small lots on the other side of the driveway from the condos.

J. Plourde said it was clearly identified to be in this Corridor district. Need to follow that criteria in that district. Short discussion between J. Plourde & R. Costantino about whether it should apply.

J. Dargie asked how it was in that Corridor. Could see on Elm St., but coming all the way down Old Wilton Rd. which was almost a side street.

J. Plourde didn't know why it was in that district. If it is supposed to be, they should follow the requirements outlined in that district.

J. Dargie asked if he was talking about 5.02.5C.

J. Plourde said 6.05.0 Not listed in ICI-2 district under 5.09 but in the notes provided with application for variance on page 4, the Code Enforcement Officer's comments.

S. Bonczar asked to comment. He said, if he read it correctly, it stated in carrying out this "goal." Key word was "goal. Whether applicable or not. If applicable, in his interpretation, it should be applied. If not applicable, don't apply.

J. Plourde said he wasn't against the project. Within this Corridor district, should they be looking at that, or not? R. Costantino was saying that because of small lot.

R. Constantino said just saying it was not all applicable. Didn't see what it had to do with condos across the drive.

J. Plourde said it didn't say specifically in a residential development; it talked about any development in that Corridor district. Seemed like anybody trying to develop within that district should be trying to meet those goals. Didn't remember anything about the project trying to.

J. Dargie suggested putting in a condition that if this and this is met, they need to do something. Agreed with Rob; didn't understand what they could do to try to meet that goal. Even if they painted a bike thing in their frontage, it is not connected with anything else.

R. Lunn was not sure it was transportation was what she referred to in her comments. Other considerations, i.e. architectural design. When original structures were built they had to conform to architectural standards. ZBA could decide none of this was applicable and say it was a Planning Bd.

decision. There were many things about this performance standard that didn't apply to this particular situation.

J. Plourde said whether or not a property should construct sidewalks, for example. Because there were no other sidewalks out there to connect to. That didn't mean an easement shouldn't be provided for future so the Town doesn't come back in five years wishing they had some property along this stretch to be able to finish the sidewalk already started.

R. Lunn said because this was a condo property. Original development plan would have been the place to have that conversation. Now talking about a particular condo owner on the footprint using that development piece. Not sure individual had the authority to go back to the whole common group and impose.

J. Plourde asked if whole condo group went back to Elm Street. Others said it didn't. He asked how that was part of that Corridor.

S. Bonczar said it was on the map. Went back beyond center line of Elm St.

R. Lunn said it went back this side of Old Wilton.

J. Plourde asked if it was not just this lot but whole parcel? Response was no. Then he didn't know why it was part of Elm St. Corridor.

R. Lunn went and got the map. Showed Elm St overlay which went all the way out and location of the building. It was ICI -2, but was the overlay. Whole parcel part of the overlay.

R. Costantino said it was worth considering but in this case it didn't fit with what they were trying to do.

J. Dargie said, as Robin said, it would have been more applicable when the whole condo was built.

Would be like putting stipulation on one condo in a 50-unit development.

J. Plourde said that went to the ownership of the whole thing. Not opposed to project. Wanted to be sure they were not doing disservice to Town in overlooking the Elm St. Corridor. One of the things brought up was it was up to the Planning Bd, and ZBA were looking to the use. It wasn't that long ago this Corridor district was created. Didn't want to be sitting here years from now saying we wish we had that easement for sidewalks. If rest of the Bd is fine with it and leaving it up to the Planning Bd, he could go with that. Not opposed to the project.

R. Costantino went through questions he had. As for as this being not contrary to public interest and observing spirit of the ordinance, this property was right across drive from commercial condo which he believed were also used for storage. They were across drive from that. Two storage buildings that had similar uses to the condos. As far as changing the character of the neighborhood he didn't think it would. Across the street were Hitchiner and Hendrix Wire and Suburban Propane and car repair down the road. Buildings they are building are lower in height than the building across the drive. Re diminishing surrounding properties, he didn't see that was the case. There were some residential homes on other side from where they were building and didn't believe these units would be visible through the condos from those homes. Due to low number of units, thought there would be little traffic and noise impact. No negative impact. May not think this was appropriate for large, but this was small storage facility. Appropriate for these lots.

M. Thornton said, unlike other self-storage units in town that are for retail – homeowners who have too much stuff – these will be catering to businesses in town.

R. Costantino said they could be, but not sure.

M. Thornton said seemed to be location off highway to do either. Since business creates business. There were two buildings, 63 units total. Didn't see mad rush of traffic being created. He suggested a straw poll. Were members ready to vote? Yes.

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

R. Costantino – yes, it would not be contrary.

J. Plourde – question really about would it alter essential character of the neighborhood. Didn't think it would. Yes, it would not be contrary to the public interest.

J. Dargie –yes

M. Thornton- yes

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

J. Plourde – this was about legal purpose the ordinance serves. Leaving the Corridor District up to the Planning Bd, he would say spirit of ordinance would be observed by granting.

J. Dargie agreed.

R. Costantino – yes, it would be observed. Same as building across the street.

M. Thornton – seemed the area for it. Yes.

3. Would granting the variance do substantial justice?

J. Dargie – yes. Didn't see how not granting would do substantial justice, more for public.

R. Costantino – agreed. Yes.

J. Plourde – agreed. There was no gain to the public by denying.

M. Thornton – agreed.

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

R. Costantino – yes. Thought it could be granted because it seemed in character with other places there and the residents further down the road on the other side he didn't think were impacted.

J. Dargie – agreed. They can already build other condos as planned and not that much different.

J. Plourde agreed. Yes.

M. Thornton – 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. Plourde – yes. It would result in unnecessary hardship if they denied the project.

J. Dargie – yes. With no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of that provision to the property.

R. Costantino – agreed with Joan.

M. Thornton – yes

M. Thornton requested a motion to approve.

J. Plourde made motion to approve applicant's request for a variance from Sec. 5.09.3 of the Zoning Ordinance to allow the construction and operation of a two-building self-storage facility which is not an allowed use in the ICI-2 zone, at the property Tax Map 7, Lot 20/C 6, 7, 8 & 9.

J. Dargie seconded.

Final Vote:

J. Dargie – yes

R. Costantino – yes

J. Plourde – yes

M. Thornton – yes

Case approved 4 to 0.

M. Thornton informed applicant of approval and of 30 day appeal period.