

# **Zoning Board Public Hearing Minutes**

**Middleton, NH**

**August 26, 2021**

**Call to Order: 6:30 pm**

**Pledge**

**Roll Call: Lorri Gunnison, Vicki Croteau, Ken Anderson, Jimmy Keegan, Joe Varga (BOS) and the towns attorney Laura Spector-Morgan**

**Ken made a motion to have Jim Keegan our alternate to vote this evening due to being short a member , Vicki and Lorri both second this - all in favor**

**Ken read the public hearing notice and the 7 variances being discussed this evening.**

**CSNH Development, LLC for a proposed 5.9 acre lot located on Kings Highway (Tax Map 17, Lot 23), owned by Therriault's Landing, LLC, located in the Middleton 4 Corners District.**

**A variance from Article 6(B)(3) to allow a front setback of 85 feet where a 100 foot setback is required.**

**A variance from Article 6(B)(5) to allow a greenbelt of 20 feet along the right of way to the adjacent street where a 30 foot greenbelt is required.**

**A variance from Article 6(B)(7) to allow a building height of 43 feet where a 35 foot high structure is allowed.**

**A variance from Article 6(B)(7) to allow a water tower of 66 feet where a 35 foot high structure is allowed.**

**A variance from Article 5A(D)(4) to allow a drive through facility where such is prohibited.**

**A variance from Article 25(F)(a) to allow 34 residential units on one lot where 2 are permitted.**

**A variance from Article 25(F)(c) to allow 34 residential units of workforce housing in one building where 8 units are permitted.**

**Ken**

**The way we will run this meeting we will hear from the applicant and if we have questions on the criteria, the board will ask. Ken immediately went over the procedure- we will get our information from the applicant and we will make an analysis.**

**We will discuss each one separately then we will give the audience the chance to discuss first those in favor or those against, the public can respond to his remarks. (please got to podium) state name and if you are an abutter**

**Mr. Therriault will have the ability to discuss why he wants these variances and you will be able to respond to his remarks**

**After the Public responds to his remarks, Ken will issue a summary of what we heard and move to the next variance**

**6:38 Chuck Therriault--Gave a brief intro on the workforce 34 unit building by the Alpaca farm and his plans on placing a daycare and convenience store on the first floor, along with a coffee/sandwich shop drive thru. He asked Ken what else and Ken said just a brief overview**

**Discussion regarding variance from Article 6(B)(3) to allow a front setback of 85 feet where a 100 foot setback is required**

**Ken said can you address why you need this 85 foot set back**

**Chuck talked about the difference of conflicting set back requirements**

**Chuck- the residential side is 50 feet, and the commercial side is 85 not the 100 the town requires, the reason to move it forward I have a slope out back and it would be a financial hardship, to bring in a lot of fill and to move it up could be a savings of \$300,000 to \$400,000. The difference is most towns have 75 feet for commercials, which is why I thought 85 was good.**

**The board had no questions**

**Ken asked Chuck to address the variance criteria.**

**Chuck said this be in keeping with the spirit of the ordinance and not be contrary to the spirit of the ordinance because other commercial buildings on abutting properties are really close to the road; this will be set back more but there are safety/sight distance issues. He said substantial justice is done because it would be difficult and expensive to move the building back. He said he does not believe this will decrease surrounding property values because it is further back and other towns require 75 feet; and he said the unnecessary hardship was the slope of the land.**

**Ken asked from input from those in favor. There were none.**

**6:45 Jason P- (abutter) I am against your 100 feet boils down to money. It doesn't matter what other towns require or where other buildings are. He said it didn't matter how far down you go I don't want it.**

**Jill Brown resident – This land has 150 acres this set back is based on finances She noted that Chuck had provided no supporting documents to support his claims regarding other buildings. It is a magnitude, and you are skimping based on finances I am choosing against this variance**

**Bonnie Gagnon -resident – I am concerned for safety vs your financial hardship- you want a daycare, convenience store closer to the road with many safety issues. We are not other towns. We are Middleton I am against!**

**David Dufrane- I agree with the safety concerns and that this is a money thing. I don't have anything new to add i just want you, I am against this.**

**John B - I concur with what everyone else is saying. Chuck has provided no documents regarding what it would actually cost to comply. He understands you can't have a regulation that prevents workforce housing, but this regulation doesn't. This is what everyone has to do.**

**Tammy Bailey-On the matter of safety, you are talking about having a daycare, I have a licensed daycare. This project just seems ridiculous. Thank you**

**Paula Proulx, - I am concerned with the safety of Daycare and people living here. The section 8 housing project will not be safe.**

**Ken -We want to address the variance at hand, then she replied - we have two different types of scenarios here and feel this should be combined together or done.**

**Ken asked the developer to respond to these concerns.**

**Chuck said we have a conflict in our zoning because it requires 100 feet from a paved road but 50 feet right of way, which is what most towns do. He noted that the project will be 65 feet from the right of way but that it was likely that the traveled way was not centered so he can't meet the 100 feet requirement.**

**There was discussion regarding what a right of way is.**

**Tammy Bailey If that's the case I want to second that I think he is going to make mega money and should spend 300,00 thousand and move this plan back!!**

**Ann Donahue resident- I have many concerns about this, the same as my fellow residents. First the tax map is confusing, the paperwork, I am not sure of the exact location, this diagram does not show us. Will it have frontage on Kings Highway? I am seriously concerned and struggling about where this is. When I look at the tax map it is not clear. and about the safety of this project. Where exactly is this location?**

**Chuck tried to and explain where the project is to be located.**

**Ken noted that his development is a 5 acre that is a proposed lot; it actually has not been created.**

**Jill Why are we not being provided with the paperwork? We are not seeing this in the tax map on that board. Ken it is right there on his diagram**

**Jill - Is that legal? I don't see the 50-100. Is someone going to investigate and see for sure if this is conflicting in the town's ordinance book? Why is this**

information not provided, - Is the board going to investigate and research what he is saying

Ken the board will investigate and let's ask the applicant what documentation or information he has, what documentation do you have to prove this is conflicting.

Laura read the applicable portion of the ordinance.

Ken That will be the standard the board will be investigating. I am going to close on discussion on this and summarize

Ken I can see most people are concerned that this set back is not a valid hardship and the safety of the citizens is of top concern. There were considerations for safety of children and the daycare the developer stated he has some hardship with the land and the slope of the land

Requested variance from Article 6(B)(5) to allow a greenbelt of 20 feet along the right of way to the adjacent street where a 30 foot greenbelt is required.

Chuck noted that there will be a 20 foot greenbelt on his property and that there is another 10 feet of greenbelt within the right of way so the total of 30 feet will be met.

Ken asked Chuck to address the variance criteria. Will the variance be contrary to the public interest or the spirit of the zoning ordinance? No—there will be 30 feet of green belt. Usually greenbelts are required between commercial and residential properties, but for commercial properties you do not want a berm so that you can have the appropriate sight distance.

Is Substantial justice be done by granting this? - yes because you need the sight distance—if there is a deeper green belt you need more sight distance.

Will it reduce surrounding property values? Chuck said he does not think so.

Is there an unnecessary hardship? Yes, because it would be hard to maintain sight distance with a deeper green space. He noted that the green belt will not

**have any trees—just flowers. He said that the greenbelt has to be smaller based upon the location of the building, sidewalk and parking.**

**Jim Keegan the reason for reducing the greenbelt in your opinion is it to have better vision of the business or a safety**

**Chuck - both**

**No one spoke in favor.**

**David . this variance is not needed if he does not get the first one (front setback).**

**Ken said you make a good point**

**Ann Donahue \_ can the applicant please show us on the diagram where this greenbelt is? Where are these trees or greenbelt can he show us on the board? I can only assume they are in front of the building. Do you go through a berm you build it up then turn it up again? What is going on in the front space does he rip up the land and turn it up.**

**Chuck we limited the number of residential units to get the commercial units in, which limits the amount of income from the property. By moving it forward so we decreased the available land for greenspace. All the variances make the project viable.**

**Jill -- the financial burden on you does not constitute granting a variance from the board. The applicant has property to meet the requirement but is choosing not to due to the slope. The berm is a design choice; it doesn't have to be there.**

**Jason – interpretation of the safety/berm is grossly exaggerated. We have setbacks to avoid safety issues.**

**Bonnie- I agree with Jill , when it comes down to money, not safety. Every foot closer is a little less safe for the children running around.**

**Tammy Bailey--This is a lot of money, but we should not put safety on the line. Tammy runs a daycare and would never want her business or any kids that close to the road.**

**Paula—The greenbelt is a visual buffer to those who live nearby. You talk about coming down to the money and this building looking like it should. What about us abutters? I came here to look at the country I don't want to look at this property every single day.**

**Kevin - This is an unpleasant project closer to the road. It will diminish the property values. No one wants to see these variances granted. There is no justice—law enforcement, EMS need to be able to respond and there will be accidents with children closer to the road. The lack of a greenbelt is a hardship for the tenants and the residents as well.**

**Ken replied we are moving away from the subject of this hearing, some comments have been spot on and relevant but now we are moving away from the subject**

**Charlie Allard - I agree 100 percent, if you are worried about 10 feet moving just move it back.**

**Ken let's all hear from the developer.**

**Chuck noted that the daycare drop off is in the rear of the building, as is the drive thru; it is 200 feet from the road. The front of the building will be a convenience store and entry for residences.**

**Ken said could you address the abutters from across the street about her concern of the visual.**

**Chuck said that 10 feet won't make a difference in screening the building. He can't just put in tall trees. If it was just residences, there would be no need for the buffer, so there is no net gain or loss.**

**Ken She felt that a commercial building in a rural area was something she did not want to see**

**Chuck - responded with the building size of 80 feet wide the convenience store is at the south end and if the difference of 10 feet it would not make a view difference. It would still be a commercial site. He said he already reduced the number of units so it would not be a burden to the school**

**Ken any questions from the board**

**Joe Vargus how big is the parking lot in back part in the rear part—Chuck said they are the same.**

**Dan asked Chuck to clarify the mortgage cost—Chuck said the rent is set and the cash flow has to work to make the project viable.**

**Someone from the audience noted that there was enough area and land to do the requested buffer.**

**Chuck was asked if he would consider moving the project back and he said no.**

**Request for a variance from Article 6(B)(7) to allow a building of 43 feet where a 35 foot high structure is allowed.**

**Ken noted that he had asked the fire chief regarding the town's ability to respond to fires but the chief had not yet responded in writing and was not there.**

**Ken asked Chuck to address the variance criteria. Chuck said that the variance is not contrary to the spirit of the ordinance or the public interest because the latest design is to have a top ceiling height of 28 feet, but to have it look like a barn, the peak is 38 feet. He noted that different towns measure height differently. He stated he could build it with a flat roof and meet the height requirements but it would be ugly. With regard to substantial justice, he reiterated that he could built it and meet the height requirement. He said he doesn't believe 3 feet would make a different in property values. He said that the unnecessary hardship is that we're in a rural area and not a city. If we were in a city he would build a flat roof. He said he's trying to satisfy the architectural design standards and the building is sprinklered.**

**No one spoke in favor.**

**Those opposed noted:**

**Jill-The height of the building goes to the visual aspects of the project. Chuck asked to move the building forward because of the slope in the back, but he wouldn't need this variance if he used that slope.**

**-several members of the public encouraged the board to get fire department input before making a decision on the variances.**

**-This would diminish surrounding property values because it is more structure closer to the road. It is obviously contrary to the public interest, and Chuck has already said he could have a different roof line.**

**-A flat roof in New England doesn't sound like a good idea.**

**-The board should also speak with the school**

**Chuck noted that to comply with the architectural standards in the planning board requirements he cannot have a flat roof. He also said that the town has a mutual aid agreement with Farmington which has a ladder truck to reach the building and that Farmington is only 11 minutes away. He said you could not get the Middleton fire department to respond that quickly. He noted that the building is sprinklered and that Middleton has ladders that will reach the tallest windows.**

**Request for variance from Article 6(B)(7) to allow a water tower of 66 feet where a 35 foot high structure is allowed.**

**Chuck explained that the water tower is an extra expense but it was included because it can be used by the town for a future water system. He said the water tower was not necessary for the sprinklers—that can be fed with tanks but with the addition to the school he is doing it to mutually benefit the town. The height has to be taller than the building, but the tower may not need to be 66 feet tall if the building height is lowered.**

**Chuck went through the variance criteria. He claimed the tower is in the public's interest, not his. He said the justice is to the town. He believes the value of surrounding properties will increase because of the water source; and he acknowledged that there was no hardship in the land necessitating the variance.**

**No one spoke in favor. Those who were opposed had the following comments:**

**Bonnie was concerned about what would happen to the abutting properties' wells and a comment that this assumed they would have to build an addition to the school.**

**-Jill said it was an eyesore, that it will pull water from the abutting wells, and that it was interesting that Chuck was willing to spend money on this but not on compliance with the other zoning provisions.**

**-Chuck noted that it was \$40,000 more to build the tower vs. the cisterns.**

**-Two people noted that the water tower won't benefit the whole town.**

**-Someone asked if the school had said it needed the tower.**

**-There was a question about what happened if the tower were to break—where would the water go?**

**-Chuck said that there is a surface pond into which the water would flow.**

**Chuck reiterated that if the water tower is made into a community water system it can serve others.**

**-A member of the public suggested that the town deny the variance because the objective can be met in another way.**

**Requested variance from Article 5A(D)(4) to allow a drive through facility where such is prohibited.**

**Chuck said that drive thrus are not allowed because Middleton copied the Wakefield zoning ordinance and that did not allow them; but now Wakefield does allow them. He said there is a need in town for a coffee shop drive through. He said the substantial justice is that the drive thru makes the project more feasible for the convenience store. He said that he believed it would increase surrounding property values but acknowledged that he had not done a study on values near drive thrus, so he cannot tel. He said the hardship is that he needs the variance to put in the convenience store.**

**No one spoke in favor of the requested variances.**

**Those who were opposed noted the following:**

**-Bonnie--The variance is unnecessary because he could have a walk in coffee shop. A drive thru in a densely developed area with children playing close to the road is a safety issue. Surrounding property values will be diminished because the view is now cars, and there is no hardship.**

**-Many people raised safety concerns with both the day care children and the resident children and asked how you would ensure the traffic flow that is proposed.**

**Chuck noted that he has 1.4x more parking than is required.**

**-Concerns were raised regarding the drive thru conflicting with the day care drop off since both were in the back of the building, particularly since there was no real plan showing how this works. It was also noted that people drop off their kids at day care around the same time people would drive thru to get coffee and the residents would be leaving for work.**

**-There were concerns about the cars queuing for the drive thru—how many can queue? Would it impede access to the property by EMS?**

**Chuck estimated that 20 cars can queue and that there is another entrance to the property. He said that he has laid out the site to keep traffic where it should be with curbing and a side walk.**

**-Someone raised concerns about fumes from the cars queued in the**

**drive thru reaching the apartments.**

**It being 9 pm, Joe Varga moved and Vicki Croteau seconded a motion to continue the public hearing to September 22 at 6:30 pm. All voted in favor.**

**The meeting was adjourned at approximately 9 pm.**