

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**February 6, 2019**

**MEMBERS PRESENT:** Matt Keiser Chair, Richard Brooks, Coty Donahue,  
Brad Fredette

**MEMBERS ABSENT:** Donald Routhier

**STAFF PRESENT:** Shanna B. Saunders, Director of Planning and  
Community Development

The meeting was called to order at 7:00 PM.

**1) APPROVAL OF THE MINUTES OF DECEMBER 5, 2018.**

Brooks moved to accept the minutes as presented. Fredette seconded the motion. The motion carried 4-0.

**2) OLD BUSINESS**

A) Any old business that may come before the Board.

No Discussion.

**3) NEW BUSINESS**

A) Monroe Muffler Brake, Inc. is seeking a variance from Table 5.A.1 of the Zoning Ordinance to place a structure within rear setbacks on property located at 497 High Street, in the Residential Commercial (RC) District, Assessor's Map 90 Lots 54C and 54CC, ZBA #01-2019 – PUBLIC HEARING.

Saunders gave an overview of the requested variance. She stated that there was a question regarding which use category this structure would fit. City staff placed it under Category 2 "Accessory Buildings" under table 4.A.3, which is typically the category under which dumpsters would be placed. There was a question about whether it should be placed into the category for outdoor storage, maintenance and utilities areas and facilities which is not an approved use in this zone. Saunders stated it was the choice of City staff to place it into category 2, as an accessory building and invited discussion from the board.

Keiser noted that based on the definitions in 1997 and 1994, accessory buildings typically have a roof supported by columns or walls, while an outdoor storage area is an unroofed or fenced-in area.

Fredette stated that the application for variance noted that the request was for a fenced-in area for storing old tires. He inquired how it ended up as an accessory building if there was not going to be a roof on the enclosure.

Saunders clarified that City Staff typically places dumpsters under this category because it doesn't make sense to put them under category #4 when it is only allowed in the Industrial zone. It was determined that this wasn't the intent of the ordinance. If there were a dumpster, fencing would be required anyway. This is essentially a dumpster structure without the physical dumpster so it can be more accessible for storing old tires.

Brooks asked if dumpsters are allowed to be within the setbacks. Saunders stated that dumpsters are not allowed within the setbacks.



Fredette stated that the application indicates that the issue is presented as a parking problem as opposed to a setback issue. He inquired if that should play into the Boards' decisions.

Saunders stated that parking is within the site plan regulations, so it is a planning decision. It was discussed with the applicant prior to application which is potentially why it was mentioned in the application, but it is not within the jurisdiction of the Zoning Board of Adjustments.

Keiser stated that a building is allowed in the RC district whereas outside storage is only allowed in the Industrial district. Therefore to place outdoor storage in anything other than an industrial district, a variance would be required.

Fredette asked if there were would need to be a separate variance.

Saunders clarified that if the Board moved forward with the structure under category 2 as City Staff has recommended, there would not be a separate variance required. If the board disagrees and believes the structure belongs is use category 4, then the applicant would need a second variance.

Donohue indicated he would defer to the recommendation of the City Planner.

Fredette expressed concern that the fenced-in area would be highly visible from the road. He stated that if dumpsters have always been handled in this manner, he would agree with that decision.

Saunders clarified the different types of structures permitted under category 2 and stated that a roof is not necessarily required to be permitted in this category.

Keiser restated that the Board needed to decide whether to allow this structure under category 2, or determine that this is outdoor storage under category 4 which would require a separate variance.

Saunders clarified that dumpsters are typically placed under category 2 because it is permitted in so many zones. Staff does not feel the intent of the ordinance for outdoor storage including dumpsters should only be allowed in the Industrial Zone.

Brooks stated that the enclosure seemed as though it was outdoor storage, but the intended use would be the same as that of a dumpster.

Fredette said that he felt the difference between the proposed structure and a dumpster is the permanence. Once the fence is erected, it is more permanent whereas a dumpster can be easily moved.

Keiser said that the sense of the board indicated that the applicant would not require a separate variance and the board could proceed as City staff recommends.

Keiser opened the Public Hearing at 7:10 PM.

George Jarrett, Director of Development for Monroe Inc. which operated Tire Warehouse, addressed the Board. Mr. Jarrett said that they are seeking to place an 18' x 18' enclosed dumpster area to store spent tires prior to pick-up. This enclosure would consume 2 parking spaces at the southwestern corner of the lot. The proposed enclosure would be chain link with privacy slats and a plywood or metal liner to protect the fence from tire damage.



Keiser welcomed abutters to come forward and address the Board. No abutters were present.

Keiser gave Mr. Jarrett the option of not continuing with his case for variance this evening and coming back when all board members were present. In either scenario, an affirmative vote would be needed from 3 board members. Mr. Jarrett opted to move forward with the case.

Fredette asked Mr. Jarrett to go through the five criteria considered for a variance, and describe why his property is unique.

Mr. Jarrett said that the property is unique because it had been a Midas Muffler business prior to Tire Warehouse's ownership. Mr. Jarrett was unsure of where Midas had stored their dumpster, but believed it had been out back without an enclosure.

Mr. Jarrett stated that Tire Warehouse did not feel that it would be detrimental to the community or would devalue neighboring property to allow the variance. There would still be adequate parking on site.

Keiser noted that the variance was because the enclosure would be within the 30-foot side setback on the property. He requested that the applicant address the five criteria with the setback issue in mind as opposed to parking, which is not violating any codes.

Mr. Jarrett stated that the area in which the location would be constructed is already a paved surface and they would not be creating any impervious area.

Donohue asked Mr. Jarrett why Tire Warehouse needs a dumpster.

Mr. Jarrett stated that Tire Warehouse is currently storing their old tires inside the building in the same location in which new tires are stored. This causes a reduction in the new inventory which can be maintained at the store. It also causes the tire hauler to have to increase their number of pickups.

Donohue asked if there was any other location on the property in which a dumpster could be placed.

Mr. Jarrett stated they had investigated using the rear of the building, but locating it there would reduce the area to one travel lane, only allowing one vehicle at a time to pass. There is already a 3-yard roll-off dumpster for waste product on the rear of the building. Access to this area for tires would be difficult.

Keiser asked if it would be better to put the tire enclosure on the paved surface or the dirt surface adjacent to the parking spots.

Mr. Jarrett stated that it would be preferable to put the tire enclosure on the paved surface because there would be less incursion into the setback. If the enclosure were built on the dirt area, there would need to be a concrete pad to create an impervious surface.

There was a clarification made on the description of the variance, which stated the enclosure would encroach on the side and rear setback. Saunders said this phrasing was a mistake; it was only the side setback which would be affected.

Fredette asked which body of water was pictured in the documentation behind the Monroe property. It was stated that the water behind Tire Warehouse is Willand Pond.



Fredette asked how close to Willand Pond the tire enclosure would be and if there would need to be any consideration made to wetlands.

Saunders stated that there was no additional impervious surface being created, so there was nothing that needed to be changed for wetlands.

Fredette asked how often the tire enclosure would be emptied and asked what the likelihood was of tires building up outside of the enclosure.

Mr. Jarrett stated that a pick-up would occur when the enclosure became full. He did not anticipate tires would ever be placed outside the enclosure, but requested that City code enforcement contact him and he would ensure that it doesn't happen again.

Saunders stated that to her knowledge, this property had never had any code compliance issues.

Keiser closed the public hearing on 497 High Street at 7:19 PM.

Donohue stated that his understanding was that the shape of the property made it unique in the sense that there was no other location for the tire enclosure to be placed other than within the side setback. He asked if this was the sense of the rest of the board.

Keiser said he had driven around the property and that there is no other plausible location for the tire enclosure which wouldn't require either a cement pad thus increasing the area, or wouldn't interfere with entrance ways to the building or flow of traffic around the property.

Fredette stated that it made sense that an auto repair shop would need an area to store bulk waste and that it does impose an unreasonable hardship to not allow the variance.

Donohue inquired if the Tire Warehouse was a conforming use in this district. Saunders stated that the use "Motor vehicle repair garage" is allowed in the RC zone by special exception. A special exception was likely given in the past when the property was owned by a different repair shop or the use is grandfathered at this stage.

Donohue felt that this variance was not contrary to the spirit of the ordinance, nor would it decrease value of surrounding properties.

Brooks said that he felt the enclosure is no different than a dumpster or a recycling bin and he does not object to the variance request.

Donohue stated that the applicant's description of how the enclosure would be constructed as well as the lack of abutter objections lead him to believe that this is being done in good faith.

Donohue moved that after review of the application, the file and all the information presented to the Board, he feels that all five criteria have been satisfied per the discussion and he moved that the request of Monroe Muffler Brake, Inc. for a variance from Table 5.A.1 of the Zoning Ordinance to place a structure within side setbacks on property located at 497 High Street, in the Residential Commercial (RC) District, Assessor's Map 90 Lots 54C and 54CC, ZBA # 01-2019 be GRANTED WITH THE FOLLOWING CONDITIONS: The enclosure must be per the submittal including in size, shape and color.

Brooks seconded the motion.

Fredette noted that the phrasing should be changed to amend "rear setbacks" to "side



setbacks.”

Donohue moved that the amended request be granted.

Brooks seconded the motion as amended.

The amended motion carried by a 4-0 hand vote.

- B) 200 Main Street, LLC is seeking a variance from Table 4.A.1 superscript 2 of the Zoning Ordinance to allow new residential use on the first floor on property located at 200 Main Street, in the Business (B) District, Assessor's Map 09, Lot 282, ZBA #02-2019 – PUBLIC HEARING.

Keiser opened the public hearing at 7:26 PM.

Keiser asked if the applicant wanted to proceed with 4 board members or if he would prefer to postpone until the following month. The applicant opted to move forward with their case this evening.

Saunders said that the applicant is requesting a variance to allow new residential units on the first floor of the property closest to the railroad. Per the City assessor, the building is approximately 6,108 sqf.

Fredette clarified that, based on the zoning map, the property in question is in the MillYard district, not the business district as it is being presented.

Saunders concurred that this information was a typo. The property is in the MillYard. The criteria for businesses on the first floor also applies to the MillYard.

Jeff Duchesne, Chinburg Properties and 200 Main Street LLC, said that they are requesting residential use on the first floor of one of the properties which they own. There have been fires over the past several years in two of the other building on this property, rendering them unusable.

Mr. Duchesne said that it is not feasible to have commercial space in this building. They have had difficulty renting commercial space in Building 2 just down the street and currently have 35,000 sf, or 41%, of vacant commercial space in that property and no vacancy of residential space.

Mr. Duchesne said that allowing residential units in this space would increase the property values of surrounding properties by updating a formerly dilapidated property. It would bring more residents to the area in turn helping the businesses on Main Street. Mr. Duchesne also felt that with the building being occupied there would be less likelihood of another fire to the property.

Mr. Duchesne also clarified that due to other residential properties between Main Street and this building, there would be no visibility from the street for any commercial properties wishing to occupy the space, making it very hard for a business to succeed in this location.

Keiser invited abutters of the property to address the board.

Mary Annette McDurmon, River Street, said that her property faces the entryway to the building in question. Ms. McDurmon questioned whether the second and third floor would be renovated for residential use or if it would only be the first floor.



Ms. McDurmon expressed concerns regarding access to the property; would it just be the narrow road which comes off River Street? She inquired if the parking lot would be opened to accommodate more traffic and if a traffic study had been performed in this area.

Saunders stated that the ZBA is only considering the use and use categories with which the developer can move forward. Issues concerning traffic or potential development of the rest of the building will be addressed at the Planning Board level.

Fredette asked for an approximate square footage of the building. Saunders stated that the tax records show the property is 6,108 square feet.

Fredette noted that the entire property is 5 acres, much of it occupied by burned out or dilapidated buildings which have remained unchanged for years. He inquired what the overall plan for the property in the future and asked how many apartments were being proposed in this building.

Mr. Duchesne said that there is no definite plan for the property, but if they do develop a plan part of it would be to clean up the other buildings on the property. He also stated that there are no set plans for a definite number of apartments to be constructed in this building.

Keiser said that the MillYard district was established to promote a mixed-use district where retail, commercial, industrial, and multi-family residential use could all coexist. The regulations are designed to maintain the historic character of the area and to encourage recreation along the Salmon Falls River. Keiser asked how the proposal met the spirit of the ordinance.

Mr. Duchesne reiterated that they have learned from the # 2 Mill Building that it is hard to rent out commercial space in this area and have it be viable for a business. They feel it is better suited for residential.

Keiser asked if the current plan only involved renovating the one building.

Mr. Duchesne stated that they would be restoring the building as well as the surrounding landscape and entrance way.

Donohue asked how long Chinburg Properties has owned the property and what the plans are for access to the property.

Mr. Duchesne approximated that they had owned the property since 2012. He said there are no definite plans for access yet, but it would likely be off of River Road.

Donohue asked for a breakdown of commercial versus residential space in Mill Building 2. Mr. Duchesne stated that there were 69 residential apartments in the building on the upper floors. There are no residential vacancies. There are 39 commercial tenants.

Mr. Duchesne clarified that the vacancy is calculated based on square footage available. Some commercial tenants are very large while others may only take up a couple hundred square feet.

Keiser asked for confirmation from Mr. Duchesne that the property has no frontage on Main Street and the only access for the public is through Rover Street. Mr. Duchesne confirmed these points.



Keiser asked what the plan would be for the residential units.

Mr. Duchesne stated that they planned on putting mostly studio apartments and one-bedroom units in the building, with a few two-bedroom units. They would renovate the entire building all at once and place the units throughout all three floors.

Keiser closed the public hearing on 200 Main Street at 7:41 PM.

Fredette expressed concern that once the applicant is allowed to construct residential units on the first floor, there is nothing to stop them from doing this in the future. He felt that there should be a more comprehensive plan for the entire site before any variance is granted. If the board allows residential use on the first floor of this building, will it be harder to deny first floor residential use in other mill buildings. He also had concerns with the debris and rubble that have remained untouched from the properties which are unable to be developed.

Brooks stated that he did not believe granting the variance would diminish surrounding property values, and would in fact increase them by cleaning up a formerly dilapidated property. He felt that the variance is not contrary to the spirit of the ordinance because it's authorizing a use which is allowed, just not on the first floor.

Brooks suggested that the variance be limited to the single building under discussion so that if future buildings are constructed on the property it will not be a consideration.

Keiser asked if retail, commercial, and industrial are all allowed on first floor in the MillYard District or if it was strictly commercial use permitted.

Saunders stated that in table 4.A.5, retail is a permitted as well as commercial use.

Donohue asked if there was a demand for commercial space such as this and if business were contacting the City looking for space.

Saunders said that it was a surprise to her that there was so much commercial space vacancy because the City does receive requests for business space. She indicated she would pass the information along to the Economic Development Manager.

Donohue asked if it was within the boards purview to require that a particular percentage of space in the front of the building be used for commercial space.

Saunders stated that the board has made such requirements in the past. She suggested waiting until there were more residents at the site to require such a stipulation. If commercial businesses were to be filled on the property, they would be more successful if they appealed to the residents already in the area.

Saunders suggested the board could tie the variance solely to this building and have the applicant come back with any future build out plans. At that point, the board could look at the potential of requiring a certain percentage of commercial space on the first floor of any future development. This has been required for sidewalk frontage in the past.

Donohue felt that it is contrary to public interest to let these buildings remain developed. He stated that with past applicants, the development they had already performed in the City and the desire to keep the developer doing good work in the area



had contributed to the decision of the board. Donohue felt that was the case with Chinburg as well.

Keiser said that he didn't think it would change the surrounding property values one way or another, whether the building was renovated with commercial and residential or just residential space. He reiterated that the Planning Board would have to take a look at access to the property and traffic. If the entire 5 acre property ends up being developed, the narrow entrance off a residential street could prove to be an issue.

Keiser stated that it could be argued that commercial businesses do not necessarily require foot traffic to succeed, but the minimal access and lack of frontage at the location could make it very difficult. He felt it would do substantial justice and it is within the spirit of the ordinance because it will bring in new residents and eventually allow other mixed use such as business or commercial to be developed in the area.

There was agreement on the board that the property is unique in the sense that it has no major road frontage to develop any retail business or to bring in customers other than those who live in the direct vicinity. One residential business would not be enough to support even a very small business. The board felt this constituted a hardship.

Fredette reiterated his concern that the burned out shell of one of the buildings had remained on the location for 13 years, barricaded, with the area around it untouched. He felt this was a public safety concern when bringing in workers and future residents around the debris and dilapidated buildings to develop the property in question. He felt there needed to be greater oversight and a better plan for the future of the entire site. Once the middle of a property is developed, it changes the ability to do things with the remainder of the land due to the money and effort which had been placed in the center as opposed to trying to clean up the entire property.

Keiser concurred that although Fredette had valid concerns, those were issues for the Planning Board; to require the property to be cleaned up and safe for residents and to develop the land in the future.

Brooks stated that if the board granted the variance allowing residential on the first floor, it does not prohibit commercial space from being placed there in the future if it works better at that time.

Keiser asked for confirmation that this property would be seen by the Planning Board as well.

Saunders stated that it would be seen at the Planning Board. When Planning does look at it, they will not focus solely on the one building but rather the entire site. Any landscaping requirements would apply to the entire property. She felt that regardless of City requirements, based on the developers past history the land would likely be cleaned up and landscaped without the City's requirements.

Donohue moved that, after review of the application, the file and all the information presented to the Board, he feels that all five criteria have been satisfied per the discussion and he moved that the request of 200 Main Street, LLC for a variance from Table 4.A.1 superscript 2 of the Zoning Ordinance to allow new residential use on the first floor on property located at 200 Main Street, in the MillYard (MY) District, Assessor's Map 09, **GRANTED WITH THE FOLLOWING CONDITIONS:** The approval is limited to the building described in the application & the existing footprint.

Brooks seconded the motion.



The motion carried by a 4-0 hand vote.

- C) The 204 Route 108 Somersworth Realty Trust is seeking a variance from Section 6.C.1a of the Zoning Ordinance to expand a nonconforming use on property located at 204 and 208 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 62, Lot 09, ZBA #03-2019 – PUBLIC HEARING.

Withdrawn by applicant

- D) Any other new business that may come before the Board.

Keiser reminded the board of the volunteer dinner. Saunders said that this dinner is on February 28, 2019.

Keiser recommended the board takes a look at approaching the Planning Board in regards to modifying the zoning ordinance by allowing first floor residential by special exception or changing the Business District to allow more residential space on the first floor. There is an issue in the City with first floor commercial vacancies and the City is requiring those wishing to develop other first floor uses to come forward requesting variances.

Fredette agreed that there may be many vacancies, but felt that they should be reviewed case by case because the circumstances can be so different.

Brooks spoke about Main street, which is the area for which the board keeps receiving variances. In the past City Council has stated that it should be primarily commercial. Brooks stated that it is almost all residential in the area which is driven more by supply and demand than by Council decision. He felt that the City is possibly being overly restrictive requiring only businesses in the area.

Donohue would like to discuss in the future the number of parking spaces required for residential units.

Brooks moved to adjourn. Donohue seconded the motion. The motion carried 4-0 and the meeting adjourned at 8:04 PM.

Respectfully submitted, Cassie Givara