

Town Council Meeting

July 13, 2015

Minutes

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

Roll Call

All Councilors were present and answering roll call.

Item 1 Ordinance to amend the Zoning and Site Plan Review Ordinance Section 19, to create a special overlay district for 60 Gray Road.

Councilor McBrady gave a brief history of the project – the property owner approached the Council in January 2015 for an amendment to allow parking in the front setback in order to better market the property. The Council has discussed the matter and held a public hearing, a public hearing was held at the Planning Board, and the Route 100 committee has issued recommendations on the lot.

Chair Goldberg opened the public comment period.

Tom Greer of Pinkham and Greer, representing the applicant, gave an overview of the property. The existing buildings are internally focused; all the prospective tenants that have come forward want to be outwardly focused toward Route 100. The right of way in this area is pushed back into this property. They are asking for permission to build on this property as if it were a typical right of way, and hadn't been expanded. It is consistent with the zone; they would be no closer to the right of way than other properties in the zone. They want to add parking spaces and landscaping across the boundary along Route 100. They would still have a fair amount of green space between the property and Route 100. He showed a plan that demonstrated where the new parking would be located. This amendment will help them market the property and meet the needs of future tenants.

Public comment period closed.

Councilor King moved the ordinance and read the language into the record. Councilor Kitchel seconded.

Councilor McBrady spoke about the discussions of the Route 100 committee. He felt this amendment was in keeping with the goals of the Route 100 committee, and the members he spoke to supported it.

Councilor Farber had some reservations. She wouldn't object if the building were never going to change, but she was uncomfortable allowing this change to continue if the building were changed or the property redeveloped. She proposed an amendment to either sunset this to a date certain, or to tie this to redevelopment. She felt the plan was for this to be implemented in the short term, but she was uncomfortable granting this and then the property sits as it is for 5 years.

Councilor King pointed out that this is a form of spot zoning, and it is coming at a time when Route 100 and its uses are being discussed. She questioned why this is being done as an amendment to a zone instead of going to BZA as an exception. She was not in favor of spot zoning.

Councilor Anderson said this change is being requested due to the unique nature of the triangular piece of the right of way that is owned by the MTA; that piece extends the setback beyond what it would normally be. The original request was for a change for the whole MUC, and the Council didn't want to affect all the other properties in the district; that was how this request developed. The Planning Board discussed this going to the BZA, but decided that would not be appropriate. He felt this was consistent with the Route 100 plan, the Planning Board is in favor of it, and it is limited to this one parcel due to a unique situation.

Councilor McBrady said he understood the concern, but setting a date on this would be a hardship on the property owner in marketing the property. He didn't want to limit this to a set time.

Councilor Farber didn't think the Planning Board opined on whether this was suitable for the BZA. She wasn't sure the property owner could have shown the hardship, which would be required for a variance. She wondered if it would have been possible for the owner to approach the DOT and ask to purchase a strip of land. She understood that the DOT property happened prior to the construction of the current buildings; the current property owner bought the land with this situation in existence. Nothing has happened since it was purchased to change the property. She was nervous about zoning out of preexisting conditions. She said the Route 100 committee talks about a short-term parking solution on this property; long-term changes, should the property be redeveloped, should be in keeping with the zoning.

Chair Goldberg asked about the plan to implement the Route 100 recommendations, specifically the timeframe.

Town Manager Nathan Poore said it could be implemented rather quickly.

Councilor McBrady argued that this is not tied into the Route 100 report; whoever the owner is, they should have the ability to redevelop it. The current plan is in keeping with the Route 100 committee's vision.

Councilor Kitchel was unsure about the implementation and build out of Route 100. He reviewed the lot and he felt this was a small change and made sense for the property owner. It will enhance the look of what is there now. While he understood the arguments against spot zoning, he felt it was warranted in this case. He didn't see the risk of any unintended consequences in this case. He felt this had merit.

Councilor King said it was raised at the Planning Board that the owner could apply for a variance. It seems the owner is coming to the Council because they feel they have an economic hardship. She wondered why the BZA process is being dismissed. She felt it would be a good thing to have some flexibility going forward.

Councilor Farber moved to amend the amendment, adding a sunset of October 1, 2017 on the setback permission. Councilor King seconded.

Councilor Hemphill clarified that, if the proposed development doesn't occur by this date, the amendment would expire. Councilor Farber said that was correct.

Councilor Anderson pointed out that if the parking was built out, it would become nonconforming as of that date.

Councilor Farber said technically that is correct. That doesn't mean it would have to be removed. She pointed out that the lot already has parking on the Route 100 side that is nonconforming.

Councilor King pointed out that the ability to construct the parking would go away if it wasn't built by that date. Councilor Farber said that was correct.

Joe Cooper, property owner, said that he restriped the parking recently but it wasn't in conformance with the original site plan. Placing a sunset on the parking meant that, if he ever came in after that date for a site plan approval, the Planning Board would require him to remove that parking. The bigger picture is that the Town has asked for more service and retail development in this section of Route 100. This property and the abutting property are the only ones with the ability to develop that. This request would bring his property in compliance with the rest of the neighborhood. The more stringent this becomes, the less appealing it will be to potential tenants. The Route 100 committee's report states that they want more restaurants.

Councilor Farber asked Mr. Poore if the sunset provision would make this a nonconforming lot; Mr. Poore wasn't sure.

Mr. Greer said that is how they got here in the first place. Their first request on this property was to install a driveway; Planning staff said to do that would require them to bring the whole site into compliance with current zoning. This would be the same situation if this parking became nonconforming. It is difficult to prove a hardship, which is why they didn't go to the BZA. Clients that are interested in this lot are interested in the front building; tearing that building down and redeveloping it would make the rest of the lot not work.

Councilor Farber asked if the proposed driveway and parking would have solved the issues they had with the proposed drive-thru restaurant that was brought to the Council a few years ago.

Mr. Cooper said the reason that deal fell apart was that the tenant wanted an entrance off Route 100 but they discovered the State doesn't allow a curb cut within 400 feet of a turnpike entrance ramp.

Councilor Hemphill asked if they have asked to purchase a strip from the state. Mr. Cooper said they tried to get in touch with the right person at the State but couldn't.

Councilor Hemphill said it was hard to know what is going to happen with the Route 100 recommendations. He didn't think it was an unreasonable request and would make the property more appealing to retail.

Councilor Farber withdrew her motion. She didn't want to trigger nonconformity. Councilor King agreed to the withdrawal.

Councilor King asked if they could sunset the building of the parking lot, so that if it were not built out within two years, the permission to build it would expire.

Councilor Farber pointed out that any Councilor could bring forth a zoning amendment at any time; a Councilor could ask to repeal this in a couple years. She asked Mr. Poore if they could address this at the same time that they review the MUC if they did that in the future. It is similar to Route 1; changes in the zoning would take effect when properties were redeveloped.

Mr. Poore agreed. Redevelopment is defined at a certain threshold; any redevelopment that triggered those would require compliance with the zoning in effect at the time.

Mr. Cooper asked if there was any way to address the setback in the future.

Councilor Farber said since this will be its own special district they will have to explicitly address it. There is no way to guarantee it would stay forever.

Chair Goldberg said spot zoning is always a tricky conversation. He felt this is a unique property in the Route 100 corridor and this change makes sense.

Motion carried 7-0.

Item 2 Presentation of a landowner's request to rezone 342 US Route One from the BP to the RA district.

Mr. Poore explained the location of the parcel and a brief history of the lot. The building was built as a residence, but has also been used as business. There have been many owners of the property, but it has struggled to find a long-term use. One suggestion proposed by staff was to rezone the entire strip along the northwest of Route 295, which consists of undevelopable and conservation land, to RA and bring that zone across 295 to include this lot.

Roger St. Pierre, property owner, explained that the building was originally built as a home, studio business and apartment. He is trying to redevelop it as it was originally intended. He has been trying for 6 years to market it in compliance with the BP zone but it is on a well and septic, it lacks parking, and there is no exposure to the road. It was built as a home.

Mr. Poore pointed out that while BP has always been commercial, and residential use has been discouraged, this lot has unique features. The question is whether the lot could ever have a commercial use.

Councilor Farber said the request letter says business/warehouse use has been in the building, but RA is strict about business being limited. She asked what his intentions are with the building.

Mr. St. Pierre said he would like to revert back to what was originally in the building – some small retail and a residence. He wants to continue what he is doing; some office space and some living space.

Councilor Farber didn't think this request would allow for that. The allowed home occupations listed in RA do not include what he wants to do. She pointed out that the Council could send this to committee; they didn't have to work it out at this level.

Councilor Anderson asked why they need to make a zoning change if he wants to continue to do what he is doing.

Mr. St. Pierre said he wants to run an office out of the residence. He said the prior owners were using it as a residence with an office. He thought he would be able to use it that way under BP. He is finding that people are working from home more, and don't need to rent office space.

Councilor McBrady asked if he was looking to sell it as a home or live in it.

Mr. St. Pierre said the "warehousing" is just his junk. He is looking to move into this as a home, to rent out a small apartment, which has been continually rented out, and to rent out a few small offices. He isn't interested in renting out warehouse space for other people's storage.

Councilor Farber pointed out that this lot would be a pocket of residential property between two BP lots. She read the "home occupation" limitations from the RA district; it would not allow for the rental of office space at all.

Councilor Kitchel said this is an odd property. He asked if the building has a living space other than the apartment. St. Pierre said not currently.

Councilor Anderson wondered if this should be sent back to staff to find a solution. Changing this to RA will not accomplish what he wants to do with the property.

Mr. Poore said there are two options – rezoning to either RA or RB, which would only allow a home occupation and not rental of office space, or a special zone for the lot.

Councilor Anderson asked if the BZA variance process would be appropriate. Mr. Poore said the hardship test is extremely difficult.

Mr. St. Pierre said he went through an appeal process a couple years ago; at that time the Board said they were not in a position to decide and that it should go to Council. At Councilor Farber's request he clarified that he wanted to revert to its original use, which was a private home, with a home based business and a rental apartment. He withdrew his request for rental office space.

The Council referred the request to the CDC for review.

Item 3 Order to authorize the Town Manager to execute a quit claim deed for Map R06, Lot 083, Block 006.

Public comment period opened; no public comment.

Councilor Farber moved the order; Councilor King seconded. Motion carried 7-0.

Item 4 Order to go into Executive Session pursuant to the Laws of Maine to discuss economic development, pursuant to 1 M.R.S.A. § 405 (6) (C).

Councilor Anderson moved to enter executive session; Councilor Farber seconded. Motion carried 7-0.

The Council entered executive session at 8:36 pm and did not return.

Respectfully submitted

Melissa Tryon
Recording Secretary