In attendance at New Boston Town Hall: David Craig – Chair, Anthony Olivier, Michael Dahlberg, and Lorraine McKim, alternate

Staff present: Shannon Silver, Planning Coordinator

David Craig, Chair, called the meeting to order at 7:00 pm at Town Hall, with a Pledge of Allegiance.

*Lorraine McKim was promoted to a full member for this meeting.*

**PUBLIC HEARING(S)**

* Application for a **VARIANCE** to the terms of Article II, Section 204.2, of the New Boston Zoning Ordinance. The applicant/agent is TMS Holdings 3, LLC, for property located at 666 North Mast Road, owned by TMS Holdings 3, LLC, Tax Map/Lot # 3/64, in the Commercial “COM” District. The applicants are requesting permission to encroach in the front yard setback to add an additional 1380 sq. ft. building on the property.

Maria Dolder, Hebert & Dolder, PLLC, and Dan Higginson, Higginson Land Services, LLC, addressed the Board.

Ms. Dolder explained that this property is located within the Town’s Small Scale Planned Commercial Zoning District. The use of the property is for automotive equipment and truck repair, bodywork, and sales, is already existing, and this will not change. The area around the property is commercial in nature, and the proposal will keep with this. The proposal is to construct an addition for the current operations, as the owner cannot fit all of the existing operations in one building. The property is unique because it is covered by an extensive utility easement. This takes up most of the buildable land on the property. There is a triangular shape of the building that extends into the setback, not the entire building. The applicant has already obtained a renewed driveway permit from DOT for the addition.

In response to a question from Chair Craig regarding the rear setback, Mr. Higginson stated that the rear setback is much smaller than the width of the easement. The easement area is for PSNH to access its poles. Originally there was a joint use easement with PSNH and the previous owner of the site for the right to store vehicles and inventory on that site. The joint use easement was rewritten to allow for parking in that area instead for TMS Holdings.

Mr. Higginson noted that the DOT had no concern regarding the reduced setback in terms of the driveway permit.

Ms. Dolder addressed the variance criteria:

1. The proposal does not alter the essential characteristics of the neighborhood. The use of the property is existing and will not change. This will also not affect the public health, safety, or welfare. The property is located along Route 114. A 38’ setback will still be maintained, even if the variance is granted. The majority of the building will be kept outside of the 50’ setback. The road itself has a 200’ right of way, so the property line is already 100’ from the center line of the road. Even with the request for variance, there will be a significant setback provided for this building. The NH DOT did issue the updated driveway permit and noted that the conditions of the property have not been substantially changed from the initial permit. Due of all of this, this proposal is not contrary to the public interest.
2. The use itself is not contrary to the spirit or intent of the Zoning Ordinance, as it already exists on the site. The addition to the building still meets the purpose. It is located in a busy, commercial corridor, consistent with this use. The purposes of setbacks are to allow for spacing and proper buffering between adjoining properties. These do not apply, due to the unique nature of this site. A minimum 38’ setback can still be maintained. The encroachment of this building will not be noticed due to the setback and it thus, does not conflict with the intent of the ordinance, nor is there reason to require strict conformance with the ordinance.
3. Any loss to the individual not outweighed by a benefit to the public is considered an injustice. The existing use is already established on the property. There have been no complaints against the property. Due to the utility easement, there is a small building envelope and there is no other place to put an addition without encroaching on the setback. The applicant is trying to keep the addition a reasonable size so there is not a larger encroachment. Denial would create a large loss to the applicant, without gaining a significant benefit to the public. This proposal will not negatively impact the surrounding property owners. This is not a request to move the building closer to any of the abutting buildings, but only to the front setback.
4. The proposed building will be consistent with the existing building, and thus fit into the neighborhood. This will not have an impact on the neighboring properties and will not negatively impact their values.
5. This property is unique in several ways. The utility easement encompasses most of the buildable area of the property. This creates a triangular shape on the property, which further limits the amount of buildable area. The applicant would like to continue to work on the existing site but has outgrown the one building and needs more space. There is no reasonable fair and substantial relationship between the general purposes of the ordinance and the specific application for this property. The variance will not alter the essential character of the neighborhood, or negatively impact the area. Denying this application would be a significant hardship posed upon the applicant.

Mr. Higginson explained that TMS purchased the building for body work and repairs, as well as sales. This extra space will be used for storing multiple projects at a time.

Michael Dahlberg stated that the applicant is requesting a dimensional variance, but the plan is not signed and a note states that a dimensional boundary survey has not been completed. Mr. Higginson stated that he tied into the State Highway Plan so all of the dimensions are correct on the plan. He has not researched the site enough to stamp it as a boundary plan, but he has confidence in the plan. Michael Dahlberg stated that a stamped plan is needed. Mr. Higginson stated that he will do so but the critical measurements will not change.

In response to a question from Michael Dahlberg regarding the approved current hours of operation, Shannon Silver stated that the proposal mirrors those.

In response to a question from Michael Dahlberg, Mr. Higginson stated that he assumes the doors to the new building would likely be on the gable end or facing the powerlines. Ms. Dolder noted that these items are generally hashed out through the Planning Board process.

In response to a question from Michael Dahlberg regarding why a smaller building that conforms to the setbacks is an injustice. Ms. Dolder stated that this would require a very small building that will not meet the owner’s needs.

In response to a question from Chair Craig, Ms. Dolder stated that PSNH will not allow for any building to be placed in their setback.

Chip Cleveland, abutter, stated that he has a dug well 100’ from the property line, along with a ½ acre spring-fed fishpond, and he is concerned with runoff from the proposal. The lighting from the existing property comes directly into his house and he is concerned with more lighting. There is also a concern regarding noise, especially from dyno tuning, from the property, as it has been unbearable at times. There has also been a paint smell emanating from the property.

Ms. Dolder noted that all of those concerns will need to be addressed through the Planning Board process. Existing lighting and noise were clearly approved by the Planning Board in the past, as there was a previous site plan approval.

Shannon Silver stated that the Planning Board will complete a site walk as part of the site plan process and, if there are items on site that do not match the existing approved plan, there will be addressed.

Mr. Higginson stated that the new addition will not be used for dyno tuning.

Chair Craig stated that he does not believe use issues are before the Zoning Board at this time, and he wants the applicant to be careful regarding the jurisdiction of this Board.

It was noted that the Piscataquog River Conservancy does not have concerns regarding this proposal at this time.

Mr. Cleveland stated that he is also concerned with additional vehicle parking and runoff that could be created from the proposal.

Mr. Higginson stated that there has to be a plan in place for spills per the State. There is a level of monitoring through this.

Michael Dahlberg stated that he believes this proposal may be within the Groundwater Resource Conservation District. This is a Planning Board issue.

**Michael Dahlberg moved to close the public hearing.** **Seconded by Lorraine McKim.**

**Voting: 4-0-0 motion carried.**

Chair Craig stated that there are businesses in this area of Town that do not fit in other areas. There are some unique characteristics of the property, including its odd shape and utility easement. He does not believe an applicant has a right to a certain sized building, however he does not have an issue with the proposal, due to the extended setback from the road.

Michael Dahlberg stated that the State took the right of access away and, thus, the front setback cannot be used, so this is technically a side setback. This further limits building area on the property. He believes the Town should promote small business growth. The Planning Board will complete a thorough review of this item.

Chair Craig agreed that the abutter’s concerns regarding lighting and noise should be addressed.

**Michael Dahlberg moved to grant the variance with the note that the variance criteria was appropriately addressed by the applicant, with the condition that a signed plan is provided. Seconded by Anthony Olivier.**

**Voting: 4-0-0 motion carried.**

Chair Craig explained to the applicant how the 30-day appeal process works in case the Zoning Board of Adjustment’s decision was contested by an abutter or other interested party.

**New business**

**Anthony Olivier moved to approve the meeting minutes of May 17, 2022, as written.** **Seconded by Lorraine McKim.**

**Voting: 4-0-0 motion carried.**

**Unfinished business**

**Election of Officers**

**Lorraine McKim moved to nominate the slate of officers as follows: Chairman Michael Dahlberg, Vice Chair David Craig, and Secretary Lorraine McKim.** **Seconded by Anthony Olivier.**

**Discussion:**

**Chair Craig stated that Michael Dahlberg professionally represents people in the community before the Planning Board and he is unclear if this is a conflict in any way to being the Chairman.**

**Michael Dahlberg explained that he does not have many jobs in Town anymore. He would recuse himself from these items.**

**Voting: 4-0-0 motion carried.**

Shannon Silver stated that the Board application fee needs to be amended. The public notice in the newspaper is closer to $100 than $75. Chair Craig asked what the fees are supposed to be offsetting. Shannon Silver stated that they offset certified letters, postage, and notices in the newspaper. The Board agreed that this can be addressed at the next meeting.

**Communication and miscellaneous –** None.

**Other business –** None.

**Adjournment**

**Michael Dahlberg moved to adjourn the meeting at 8:01pm.** **Seconded by Lorraine McKim.**

**Voting: 4-0-0** **motion carried unanimously.**

Respectfully submitted, Minutes Approved:

Kristan Patenaude January 17, 2023