

FINAL



**Town of Henniker
Zoning Board of Adjustment Meeting
Wednesday, June 16, 2021
Community Hall**

Members Present: Chairwoman Doreen Connor, Vice Chairwoman Joan Oliveira, Robert Pagano, Ron Taylor and Selectman Leon Parker

Members Excused: Gigi Laberge

Town Representative: Joseph Devine, Town Administrator

Recording Secretary: Wendy Baker

Guests: Kris Blomback, Matt Harvey, Steve Carson, Sarah Demons, Curt Lower, Meg Carson, Kevin Gallagher, Heidi Aucoin, Tia Hooper, Bill Marko, Lori Marko, Kyle Carson and Corey Little

1. Call to Order / Attendance

Chair Connor called the meeting to order at 7:00pm.

There was a discussion regarding a letter addressed to the Zoning Board of Adjustment from the Planning Board concerning their practice of voting on applications as a whole as opposed to individual votes on the 5 criteria. Chair Connor said she reached out to legal counsel at the NH Municipal Association and confirmed that it is their recommendation that the Board votes on the application as a whole because each application has to pass by three members and if you do individual votes on 5 criteria you can have a majority vote but of different make up therefore, their recommended practice is that they vote on applications as a whole. Also, RSA 674:33 has been amended and if the approach of how the Board is going to review applications is going to change then they would have to put that change in the minutes and the process cannot be changed for 60 days. The current practice is to act on motions as a whole. Chair Connor asked the Board if there was any interest on changing their procedure on how they vote. There was concern over having to give the public 60 days notice to make any changes and it was favored that given the recommendation of NH Municipal Association is the current way the Board is making decisions, Chair Connor suggested that they not change their practice.

Selectman Parker moved to not change the current procedure of the Zoning Board of Adjustment. Robert Pagano seconded. Motion carried. 5-0.

Chair Connor stated that it was also asked that the Board fully vet each of the 5 criteria and she noticed that when looking at the previous minutes, not all was properly recorded.

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2. Public Meeting:

1. ZBA Case 2021:3 Request for a Variance from Article VII, Zone RR, Section 133-26 to allow for the construction of a 12,000 square foot mountain operation facility in a residential zone, Owner/Applicant Pats Peak Ski Area, 686 Flanders Road, Map 1 Lot 588-1.

Kris Blomback presented his team as Matt Harvey, Director of Mountain Operations, Sarah Demons, Assistant Director of Mountain Operations, and Curt Lower, Architect. Kris showed the map of the property and the location of the current buildings and the map with the zoning superimposed over it. Kris pointed out the proposed location of the new building they would like to build as well as the building they will demolish. Kris explained their reasons for the Variance Application including the existing building being approximately 60 years old and does not meet any safety or environmental requirements. The new building is about 150' away and locating it anywhere else on the property would take away parking. This location supports the other building and keeps everything operating as well as helps with fire protection by keeping it that distance from the other buildings. From an esthetics position, recessing it into the new location will dramatically reduce the visual impact by burying the back wall into the land.

It was asked how big the building is, Kris answered 60' x 200', 12,000 square feet.

Kris stated that they have spoken to three abutters and have been asked for some additional tree buffers, to maintain the access that one has through the property to get to their field and to remove a couple of parking lights.

Kris read all of the questions and answers on the variance application for the record:

1. Granting the variance would not be contrary to the public interest because:

This will be an improvement to the ski area that has been at this location for close to 60 years and will not be contrary to the public interest. During those years, we believe that we have existed peacefully with out neighbors on all borders. In fact a number of our employees and season pass holders reside on Stonehenge Drive. Pats Peak is willing to invest in a state of the art facility that will provide our employees who work in Mts Ops with the newest, latest and safest facilities as it relates to carrying out the difficult work of Mt Operations. The facility will not generate additional traffic. There will be a buffer of vegetation for the residence. In addition, the proposed building will be constructed below grade hiding most of the facility from public view. This lot lies parallel to the property and has been in the shadow of existing commercial operations for many years and existing commercial uses exist up to the Peak's lot line.

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2. Describe how the spirit of the ordinance would be observed by granting the variance:

This is not a new activity that will be occurring. The current facility has housed the same activities for the last 5 plus decades. The proposed new structure has been carefully designed to lessen any impacts that our Mt Ops yard may have been producing. Be it light, noise, view or traffic.

For example, currently garage doors of the old facility open out towards the neighbors (on the west). The new facility will be recessed into the land contours of lot 588-B1 and a garage doors will open up towards the Pats Peak parking lots (on the east). From a view perspective, preliminary estimates are less than 10-151 of the roofline in the back will be above existing grade. There will be no additional traffic, a higher percentage of outdoor equipment will be relocated inside, and any lighting upgraded will be Dark Sky Compliant (<https://www.darksky.org/our-work/lighting/>) Given the location of this lot, it is already heavily burdened by Pats Peak operations, as such the use of a portion of the property for commercial operations will not violate the spirit of the ordinance. A substantial buffer will remain as open space on the subject site. Given the properties shape and location so closely adjacent to this commercial area would create substantial issues for a homeowner given the existing 24n winter operations can occur in this area of the Peak's property.

3. Describe how substantial justice would be done by granting the variance:

Pats Peak was established in 1962 well before zoning districts were adopted. We have a proven track record of operating a good clean ski area for the last 59 plus years. Our current facility is now 59 years old and needs updating. The employees will actually have a better work experience and sound, light, views and traffic will be mitigated by the new design. This will be more attractive to the neighbors. There is no public gain by have the existing lot developed as a residential property, as this use will most likely lead to conflicts being created with the existing permitted commercial use.

4. Describe how values of surrounding properties would not be diminished:

The activities in question (Mt Ops functions such as snowmaking, grooming, snowmobiles, lift maintenance, etc.) have been occurring in the same physical location for the past 5 plus decades, even before the zoning district was established.

The nearest property- Lot 588-B2 sold above listed tax appraisal in 2019 by more than 12%. This is even before the current real estate trends have elevated values. We are not introducing a new use" into the area. Those wanting to buy the neighboring houses know that they are buying next to a ski area and will perceive it as part of the ski area, which has been there for over 50 years. This will modernize the ski area and can only enhance property values of the neighborhood. The use will be mitigated as much of the building will be below grade, obscuring the building from adjoining residential properties. In addition, landscaping is proposed. Given the residential property's location, adjoining and overlooking the existing commercial operation, values of other properties will not be impacted.

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5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship¹ because:

The property is unique because it is adjacent to and part of a 58 year-old ski area, which has served as a landmark in the Town, and provides jobs and revenue.

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

There will be view shed screening. The new building will be much more attractive than the existing building(s) and will allow more equipment to be stored inside and out of sight. There is no other good location to put the new facility and increase necessary parking. The Mt Ops facility is a support role to our snowmaking and grooming operations which occur in other buildings adjacent to this proposed site. The existing narrow residential lot is unique as its shape exposes the entire property to the existing commercial use along its entire side where other lots nearby have their backyards facing the Peak property, providing a greater opportunity to buffer the adjoining uses. Given this unique situation, it would be inappropriate to develop this property for residential uses given its exposed location to an active commercial use.

b. the proposed use is a reasonable one because:

The lot is immediately adjacent to the area that the activity has occurred for the last 58 plus years. There is a road to the north that cannot be moved, to the east is a parking lot and Pats Peak is already parking challenged and to the south there are ski slopes and equipment storage areas. This lot abuts the commercial zone. The proposed facility will improve the situation for the neighbors as it relates to noise, view, traffic, and lights. This proposal is a natural expansion of the historic use of the property, located in a corner of the existing operation which will have minimal negative impacts on adjoining residential properties.

c. if the criteria in subparagraph 5(a) and (b) 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.

Chair Connor asked the Board if they had any questions for applicant. Chair Connor asked if Pat's Peak has any intention on using this lot for any other commercial use outside of this proposed building, Kris answered no.

Chair Connor opened the hearing up to the public for questions and/or comments. There were no questions or comments.

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Vice-Chair Oliveira moved to enter into Board deliberation Ron Taylor seconded. Motion carried. 5-0.

The Board entered into deliberations.

Criteria #1: The Board agreed with the statements made by the applicant.

Criteria #2: The Board agreed that it was a good use for that piece of property.

Criteria #3: The Board had no issues with applicant's statement.

Criteria #4: The Board had no concerns with this criteria.

Criteria #5: The Board discussed how the shape and topography of the lot makes it less desirable for a residential use. Chair Connor's concern with changing a use because it is on a lot line is perpetual creep, that you could go to the next lot and keep pushing it out but she felt the topography of the lot makes this case different and she accepts the applicant's representation that they do not have any plans for this property outside the building itself.

Criteria #5a: The Board's consensus is that the proposal is a good use for the property.

Selectman Parker moved to approve ZBA Case 2021:3 for a Variance from Article VII, Zone RR, Section 133-26 for the construction of a 12,000 sf mountain operations facility in a residential zone. Ron Taylor seconded. Motion carried 5-0.

2. ZBA Case 2021:4 Request for a Variance from Article V, Section 133-22 & Article X Lot Size Regulations, Section 133-40 to allow four residential units on the property which requires 40,000 square feet, 33,976 square feet existing, Applicant Shawn Geary, Owner Holt Funeral Home, Inc. 19 Hall Avenue, Map 2 Lot 160B.

Heidi Aucoin stated the owner of record was present but the applicant was not. She said the owner would like to give permission for her to speak on the application although the application is really for the proposed buyer, Shawn Geary and she is representing the current owner.

Heidi gave an overview stating that the zoning allows 8 units on an acre, the property is .75 acres. The logic for this application was that 6 units would be appropriate and would limit to 2 bedrooms per unit. This applicant is proposing to make one of the 4 units a 3 bedroom.

Heidi read all of the questions and answers on the variance application for the record:

Please give a detailed description of your proposal below.

The property is currently a funeral home with two apartments. I will look to turn the property into 4 residential units. Funeral home portion will become 2 units. I will look to add a bedroom to existing two-bedroom apartment.

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1. Granting the variance would not be contrary to the public interest because:

I will be adding more housing units in a town that needs more supply. Hall Ave has many multi-family properties already.

2. Describe how the spirit of the ordinance would be observed by granting the variance:

The property is close to an acre already and there are many 2+ bedroom apartments on Hall Ave.

3. Describe how substantial justice would be done by granting the variance:

It will allow me to provide more clean and updated housing units.

4. Describe how values of surrounding properties would not be diminished:

Being a 4 unit will be in line with properties on Hall Ave.

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

of the existing multis in the area and Hall Ave.

b. the proposed use is a reasonable one because:

of the existing multis right in the area.

Heidi referred to a previous application in the CV Zone and said there are many multis in the neighborhood.

Chair Connor asked about the current units in the building and Heidi answered that it is currently the funeral home and two rental units and the proposal is to add two units where the funeral home area currently exists and to make modifications to one of the other units which would make 4 total units in the existing building and there would not be any additions or expansions to the building.

There was discussion about the zone the property is in and in reference to the application. Chair Connor said there should actually be two applications, a Variance application with regard to the size that is inadequate and an application for Special Exception for a multi-unit dwelling.

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It was suggested to table the case so that an application for Special Exception can be submitted. The owner of the property asked for Variance application to be tabled. That next meeting will be July 21, 2021.

It was asked if the applicant could submit more information on the Variance application and Chair Connor answered she would need to get an opinion if what was already noticed could be changed.

Chair Connor moved to table ZBA Case 2021:4. Vice-Chair Oliveira seconded. Motion carried 5-0.

3. Meeting Minutes

Chair Connor said on page 2 Mark McMurphy answered a question that she asked about the hardship criteria but her question was not written into the minutes. She would like the minutes to be amended that she asked out the hardship criteria.

Amend Page 2 fifth paragraph down to read: "Gig Laberge asked if there is a need for non-Student housing. Doreen Connor state that is ~~ne~~ not the Board's job...."

Selectman Parker moved to approve the minutes of January 20, 2021. Ron Taylor seconded. Motion carried 5-0

4. Adjourn

Ron Taylor moved to adjourn. Selectman Parker seconded. Motion carried 5-0.

Adjourn at 8:02 pm