

**ZONING BOARD OF ADJUSTMENT
MAY 4, 2011 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, David Parker, Nicholas Wallner, James Monahan and Rob Harrison. Also present Zoning Administrator Craig Walker.

13-11 David Newell for Dr. Serder Ayan: Applicant wishes to convert and expand an existing building into a 1,275 square foot restaurant and requests:

- 1) A Variance to Article 28-2-4(j), The Table of Principal Uses to permit a restaurant of less than 5,000 square feet of gross floor area with no drive through service or entertainment (Use I-1) where such restaurant use is not permitted; and a
- 2) Variance from Article 28-7-7(g), Setbacks and Restrictions, to permit parking with no setback from the westerly property line when a 5 foot setback is required, for property located at 125 Fisherville Road in a UT Urban Transitional district.

Craig Walker explained the site plan corrections. The second variance for the parking setback is no longer required as they do have the 10 foot buffer between the parking lot and the adjacent property.

David Newell and Deborah Newell testified. They'd like to run a small restaurant. There is parking there. They'd like to do breakfast and lunch and close at 2 p.m. They've talked to abutters behind the property and they plan to put up vegetation behind them. They use to own and operate Summer Freeze for 16 years as a restaurant so they have experience. They always kept that property nice and neat and always tried to be good neighbors and want to do the same thing on this property. They plan to side the building and have a lot of windows. They are renovating – adding onto the front of the building that exists. They will have a handicapped ramp.

Carley – where is the hardship associated with the site? David stated that the property is unique as it has a lot of the set up for this type of business already existing. There is no other property that is like this in the area.

Carley asked how big the parcel is. (Debra stated that the house is 960 s.f. – they are only adding 10 feet by the width of the house.) Walker stated that it was .35 acres.

Carley asked Walker what was allowed in this zone in the way of restaurants. Walker stated that there is a mix of uses allowed there. Restaurants are not permitted at all in the UT district. Harrison asked where the zoning line was located.

Mr. Newell stated that there is a Dunkin Donuts nearby and McDonald's along with the Fisherville Road mall. They would be unique as there is no one else that would be open 6 to 2 p.m.

Parker asked about putting conditions on the hours. Newell stated that was fine with them. Carley asked what was behind their property. (Foxcroft Estates mobile home Park.) There is a buffer between this property and the mobile home park. Carley asked how they planned to handle the dumpster. (Mr. Newell stated that it was shown on the plans.) Monahan asked about signage. (Mr. Newell stated that they haven't worked that out yet.) Monahan asked about outside dining. (None.)

In favor: Collette Mason, live on Douglas Avenue around the corner. This would be a wonderful place for a little restaurant. Thinks the use is needed. There is nothing else in the area but pizza and Chinese food. She and her husband are in favor.

William Roberts, lives in the house behind the property. The only stipulation that they would like is the buffer between their house and the parking lot. They'd like either a fence or shrubbery and a fence around the dumpster. If the business changes hands they'd like it go back before the Board if the hours change.

Katherine Bush, President of Penacook Village Association. Their number one need is a breakfast place. They are in full support of this venture.

Dr. Serder Ayan, aka Dr. Sam who is the property owner. He's known the Newell's for several years. They have run a reputable business in the area for years. They have had other approvals for uses there. He is agreeable to the fence. It won't disrupt traffic. There are turning lanes already there. This is a good use for the area and much needed.

In opposition: none.

Comments from Code Administration: Mr. Walker went through the buffer requirements. It is a change of use and will require minor site plan review.

DECISION: A motion to approve the request was made by Wallner with a condition of the hours being 6 a.m. to 2 p.m. and the buffer conditions are already stipulated in the Ordinance, seconded by Parker and passed by a unanimous vote.

Case #14-09 – 307-311 S. Main Street – Court Remand – Ernest and Lisa Mills – P&M Heating.

Carley gave a brief history of the case. The Board denied appeal for the nursery business. Appellant appealed decision to Superior Court. All issues were resolved between appellant and City except for the request regarding P&M Heating. He had asked for 2 additional parking spaces more than he had shown on the plan for the plumbing business. The judge asked the Board to address that issue. How does the Board address this is the issue this evening. Walker stated that they originally had requested a variance for 2 spaces for commercial vehicles but he believes they were requesting parking for up to 10 commercial vehicles. Carley stated that the Board could rule that the additional 10 parking spaces is consistent with their original approval or they could rule that it is not consistent with the original approval or they could rule that its outside of the scope of the case because it was not part of the original appeal and therefore they can't take it up other than as a new hearing.

Parker feels that they should do the latter of the choices. It needs to be a new case from everything that he could see.

Parker Moves that the applicant needs to come back to the Board as it is a new case, Wallner seconded it and it was passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, Clerk
Zoning Board of Adjustment