

ZONING BOARD OF APPEALS OF RIDGEFIELD

MINUTES OF MEETING

March 7, 2016

NOTE: These minutes are intended as a rough outline of the proceedings of the Board of Appeals on Zoning of Ridgefield held on March 7, 2016 in the Public Meeting Room, Town Hall Annex, 66 Prospect Street, Ridgefield. Copies of recordings of the meeting may be obtained from the Administrator at cost.

The Chairman called the meeting to order at approximately 7:30 p.m. Sitting on the board for the evening were: Glenn Smith (Chairman), Duane Barney (Vice Chairman), Sky Cole, Carson Fincham and Dwayne Escola. Mr. Creamer was unable to attend the meeting and asked Mr. Fincham to replace him. Mr. Choplinski was unable to attend the meeting and was replaced by alternate Mr. Escola, as Mr. Stenko was not available.

ROTATION OF ALTERNATES

The rotation for the meeting was: first, Mr. Stenko; second, Mr. Fincham; third, Mr. Escola. As Mr. Fincham sat for Mr. Creamer and Mr. Escola sat for Mr. Choplinski, the rotation for the next meeting will be: first, Mr. Stenko; second, Mr. Fincham; third, Mr. Escola.

NEW PETITIONS

**Appeal No. 16-001 – Petition of Litchfield Hills Marble and Granite
605 Ethan Allen Highway**

Attorney Robert Jewell represented the applicant Litchfield Hills Marble and Granite. Also present was the owner Claudia Damasceno, whose business was a tenant of the property owner J. Gerard Rooney. Ms. Damasceno's business takes up about ½ of the main retail building off Route 7. Mr. Jewell explained that the current application was asking for 208 sq ft of display space in front of a building on the property to display marble or granite slabs. Mr. Jewell stated that he made two appearances before the Planning and Zoning Commission to ask for a zone change for this property from RAA to a business zone. This was recommended by a ZBA member at previous hearings for this property. Mr. Jewell stated he was told by the commission that a zone change would not be granted.

Mr. Jewell stated that the property has had retail use back to the 1920's before the enactment of zoning in Ridgefield in 1946. He further stated that the introduction of zoning and various changes to the zones over the years has created a hardship. Also, most of Route 7 was in retail zones or able to conduct retail sales due to variances. Mr. Barney asked what kind of merchandise would be displayed. Mr. Jewell stated it would be marble or granite slabs and would agree to a condition in the variance that only slabs could be displayed. Mr. Smith stated that granting this variance would be expanding a nonconformity. Mr. Jewell replied that the retail use on the property was non-traditional with space used for workshops and design, not merchandise display. Also the property was not the traditional retail establishment with customers frequently in and out of the building.

Mr. Cole asked how many parking spaces did the site plan show. Mr. Jewell stated that it showed 13 spaces and the proposed display area was never used for parking. He states that the Zoning Enforcement Officer likely stated a parking variance was needed because

the number of spaces was already grandfathered because of the nonconformity and the display area in question could be used for parking. Mr. Fincham asked if the ZEO, Richard Baldelli, told him how many parking spaces were required. Mr. Jewell replied no. Mr. Smith stated that an expansion would usually require more parking. Mr. Jewell replied only if construction or addition was occurring for more retail space. Mr. Jewell also stated that the previous application, that was withdrawn in March 2015, asked for two different display areas, this application only requests one 208 sq ft display area.

Mr. Fincham stated that the hardship presented was not enough to justify granting an expansion of a nonconformity. Mr. Jewell responded that not all the retail space was being used due to workshops and design space, so therefore it was not an expansion. He further stated the applicant would convert up 208 sq ft of retail space to non-retail space inside to gain the display space outside. Mr. Smith asked if there was any case law on these issues. Mr. Jewell referred to the “baby elephant case” or case law that allows for a business to expand. Mr. Jewell referred to variance, #91-073, which was granted to 346 Ethan Allen Hwy for the outside storage of items. Mr. Smith reviewed that variance and read details to the Board. Mr. Barney asked how big the display slabs were. Ms. Damasceno replied that the largest was 10x7 ft. and the display area in question can hold up to eight 10x7 slabs. Ms. Damasceno also stated that in the 1 ½ years at this location, the display of slabs have been important to the success of her business.

No-one appeared to speak for or against the petition, and the hearing was concluded. The decision may be found in the end section of these minutes.

Appeal No. 16-002 – Petition of Omar Vargas
46 Minute Man Road

The property owners Omar and Inmaculda Vargas represented themselves. Also present was Chris Lang from Lang Pools. Mr. Vargas explained to the Board that they wanted to construct an in-ground pool on the south side of the property near the same spot a previous variance was granted in 1972 to build an above-ground pool. The proposed location was 24.3 feet from the property line in a RAAA zone. Mr. Smith asked what the hardships were. Mr. Vargas replied that the south side of the property was the only suitable location to build since the property had a creek, a pond and wetlands to the rear with septic fields, ledge and a large drop off. Mr. Vargas further explained that the south side was flat and close to the stone patio adjacent to the house. Mr. Cole asked in the pool could be constructed behind the septic fields. Mr. Vargas replied construction there would require many trees to be cut down resulting in less privacy and upsetting wildlife in the area. Mr. Vargas entered into the record the minutes from the July 1972 ZBA meeting in which the trees on the property were discussed. Mr. Fincham stated that the proposed location would actually be a decrease in nonconformity as the 1972 variance that stated the above-ground pool could be built 23 feet from property line, current plans place the in-ground pool at 24.3 ft. Mr. Fincham also asked if the pool could be built closer to the house away from setback. Mr. Vargas replied that the pool needed to be 25 ft. from the septic system. Mr. Smith suggested that the Vargas get the septic fields staked to determine the exact location of the septic fields to confirm if the pool could be construction closer to the house away from the setback.

Neighbor Peter Gasparo of 76 Minute Man Road spoke in favor of granting the petition and stated he did not want the pool located in the rear of the property as suggested by the Board members. Mr. Gasparo did have some fencing concerns around the pool. The Vargas replied that they have no firm plans about fencing yet. Mr. Smith stated the ZBA does not control types of fencing. No-one appeared to speak against the petition.

The hearing was continued until the April 4 meeting so the applicants could present additional information on the property septic fields.

DECISIONS

The Board voted the following actions:

**Appeal No. 16-001 – Petition of Litchfield Hills Marble and Granite
605 Ethan Allen Highway**

REQUESTED: variances of Sections 8.1.A.3 and 8.1.A.4, nonconforming uses, and Section 7.3.B.5, number of parking spaces, (1) to expand a nonconforming business use in a residential zone by permitting the outside display of merchandise in the front of the property; and (2) to allow a reduction in the number of parking spaces as a result of the outdoor display of merchandise in the parking area; for property in the RAA zone located at 605 Ethan Allen Highway.

DATES OF HEARING: March 7, 2016
DATE OF DECISION: March 7, 2016

VOTED: To Grant, with conditions, variances of Sections 8.1.A.3 and 8.1.A.4, nonconforming uses, and Section 7.3.B.5, number of parking spaces, (1) to allow limited outside display of merchandise for a legally non-conforming business use in a residential zone; and (2) to allow a reduction in the number of potential parking spaces as a result of the outdoor display; for property in the RAA zone located at 605 Ethan Allen Highway.

VOTE: To Grant: 5 To Deny: 0

 In favor Opposed
 Barney, Cole, Escola,
 Fincham and Smith

CONDITIONS:

 This action is subject to the following conditions which are an integral and essential part of the decision. Without these conditions, the variance would not have been granted:

1. The outside display area shall be limited to an area 208 square feet in size, directly in front of the two-story residential structure on the property, as shown on the site plan made a part of this decision.
2. The display shall be limited exclusively to granite and/or marble slabs, numbering no more than eight, and each no larger than 10 feet x 7 feet in size.
3. An equivalent 208 square-foot area within the retail building shall be dedicated to non-retail use (where office space in support of retail shall be considered a retail use), such as a fabrication or manufacturing workshop.

The Board voted this action for the following reasons:

1. The property has been nonconforming as to use for many years due to both the initial enactment of zoning regulations as well as the subsequent changes thereto. Further, this property location on Route 7 was long ago established by the Board as more suitable for retail use than for residential use. These facts, when combined with the non-expansion of the use created by the exchange of exterior display space for interior retail space, justify the granting of a variance in this case.

2. The number of parking spaces on the property are grandfathered with respect to zoning for this legally non-conforming use and, as such, the location of the exterior display (in a former planting bed) will not have any impact on parking.
3. The proposal is in harmony with the general scheme of development in the area and will have no negative impact on surrounding properties or on the Town's Plan of Conservation and Development.

As there was no further business before the board, the Chairman adjourned the hearing at approximately 9:20 pm.

Respectfully submitted,

Kelly Ryan
Administrator

Filed with the Town Clerk on March 15, 2016

Posted on Town's website March 15, 2016 at approximately 11:30 am