



TOWN OF LITCHFIELD

LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire April 14, 2021

DRAFT - Revised

Regular meetings are held at the Town Hall at 7:00 pm on the 2nd Wednesday of each month.

ZBA Members in Attendance (indented if absent):

Laura Gandia, Vice Chairman

Albert Guilbeault

John Devereaux

Thomas Cooney (alternate)

Eric Cushing (alternate)

Greg Lepine (alternate)

Mark Falardeau (alternate)

Kyle D'Urso (alternate)

I. CALL TO ORDER AND ROLL CALL

Laura Gandia called the meeting to order at 7:00 pm. Laura Gandia took a roll call attendance.

II. CHAIRPERSON OPENING REMARKS

Laura Gandia reviewed the schedule for hearings.

● **APPROVAL OF MINUTES**

Laura Gandia made a motion to approve the minutes of March 10, 2021. Mr. Devereaux seconded. The motion carried by roll call vote: Laura Gandia, abstain; John Devereaux, yes; Al Guilbeault, yes.

Case Number: 2021-03

Name of Applicant: Theroux Properties, LLC

Address: 12 Colby Road, Litchfield, NH 03052

Owner of Property: Theroux Properties, LLC

Location of Property: 522 Charles Bancroft Highway, Litchfield, NH 03052, Map 22, Lot 11

Appeal Requested

The Applicant seeks a special exception from LZO Section 1208 to impact 27,200 sq. ft. of no-disturb buffer to wetlands in order to gain access to the back of the property and to accommodate the proposed storm water management areas for the intended development project.

Case Number: 2021-05

Name of Applicant: Richard Charbonneau, Trustee of the Richard Charbonneau Revocable Trust

Address: 401 Charles Bancroft Highway, Litchfield, NH 03052

Owner of Property: Richard Charbonneau

Location of Property: 457 Charles Bancroft Highway, Litchfield, NH 03052, Map 20, Lots 18 & 20

Appeal Requested

1. The Applicant seeks a variance from LZO Section 1253 to allow construction of 18 multi-family units consisting of three apartment buildings, containing 6 units each and three separate garage buildings containing 6 stalls each in the aquifer protection district.

2. The Applicant seeks a variance from LZO Section 801 to allow construction of 18 multi-family units consisting of three apartment buildings, containing 6 units each and three separate garage buildings containing 6 stalls each in the aquifer protection district.

III. PUBLIC HEARING AND DELIBERATION

Notices of the Public Hearings were posted and published in the Union Leader. Notice of the meeting and agenda were posted at the town hall and public library.

Case Number: 2021-03

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Owner of Property: Theroux Properties, LLC

Location of Property: 522 Charles Bancroft Highway, Litchfield, NH 03052, Map 22, Lot 11

Appeal Requested

The Applicant seeks a special exception from LZO Section 1208 to impact 27,200 sq. ft. of no-disturb buffer to wetlands in order to gain access to the back of the property and to accommodate the proposed storm water management areas for the intended development project.

Morgan Hollis, Attorney, representing the applicant and owner in Case #2021-03 indicated the case was continued from the last meeting. He commented that he sent a letter to the Board requesting continuance of the case to May 12, 2021.

Laura Gandia commented she would have recuse herself from that case since she has a conflict with the applicant.

John Devereaux made a motion to continue Case #2021-03 until May 12, 2021. Al Guilbeault seconded. The motion carried 3-0-0.

Thomas Clooney arrived and the Laura Gandia appointed Thomas Clooney to the Board, resulting in a four member Board.

Laura Gandia asked Mr. Charbonneau if he would like to proceed with the four member board or postpone his case.

Mr. Charbonneau indicated he would like to proceed with the four-member board.

Case Number: 2021-05B

Name of Applicant: Richard Charbonneau, Trustee of the Richard Charbonneau Revocable Trust

Address: 401 Charles Bancroft Highway, Litchfield, NH 03052

Owner of Property: Richard Charbonneau

Location of Property: 457 Charles Bancroft Highway, Litchfield, NH 03052, Map 20, Lots 18 & 20

Appeal Requested

1. The Applicant seeks a variance from LZO Section 801 to allow construction of 18 multi-family units consisting of three apartment buildings, containing 6 units each and three separate garage buildings containing 6 stalls each in the aquifer protection district.

Attorney Hollis indicated he is representing the owner and applicant in this case. He introduced Jim Petropolis, project engineer with Hayner & Swanson.

Attorney Hollis made the following statements:

This property is identified as two lots with an approximate total of 7.5 acres and located in the northern commercial district and aquifer protection district. Most recently the property has been used for overflow parking for Mel's Funway Park / Spooky World. The property was previously used as a sand and gravel excavation site. Based upon residential uses directly to the south and the north, the restaurant and Mel's across the street, and with consideration with town master plan, the client decided that the most appropriate use is a multifamily use, which is not permitted. A variance is needed to permit multifamily housing in the northern commercial district, as well as a variance for the aquifer protection district. The property will consist of three separate apartment buildings, each containing 6 units and a garage space for each unit, as well as additional parking spaces on pavement.

Jim Petropolis, project engineer, provided an aerial map of the property that reflects the property is abutted by single family homes both to the north and south. The property is partially cleared and partially wooded. Lot 20 is isolated wetland and not near the development. He referred to the site plan that showed access to the property would be provided by two curb cuts off Charles Bancroft Highway. Three separate garage spaces are proposed with additional parking spaces on the pavement. The development will be located primarily within the cleared areas. The buildings will be serviced by Pennichuck Water with subsurface sewage service for each building, and will include lighting, landscaping and garage collection. Each building will be two stories with a pitched roof, containing 6 units, and finished with clapboard and shingle siding. The garages will be similar in character. Residential units will range from 1200 to 1400 square feet and there will be no wetland impacts.

Attorney Hollis provided a map of the Town of Litchfield, which highlights the northern commercial districts and multifamily overlay districts located in the northern area and the southern area of the town. He noted on the map the location of the property at 457 Charles Bancroft Highway in relation to the northern overlay district. He indicated that a portion of the northern commercial district lies within the overlay district and that the town historically decided multifamily housing should be located in commercial districts. He commented a similar, but smaller project developed by Charbonneau is located in the southern area (Calawa Court).

Attorney Hollis pointed out the property has some unusual characteristics and is the best use for a multifamily project. There is fairly significant commercial activity across the street from this proposed project. Considering what might be built in this area, it was speculated that four commercial buildings with 87 parking spaces could be built on this property; however, it would not be a good answer for this town as it would result in developing a mass traffic generation if built out to the proposed use by zone.

Attorney Hollis addressed the criteria in the application for variance:

- 1) The variance will not be contrary to the public interest because his lot is currently vacant. The proposed use is to construct 18 multi-family residential units in three buildings consisting of six units in each building and three accompanying garages with 6 stalls each on a 7.78 acre parcel off of Charles Bancroft Highway. The property is located across the street from Mel's Funway Park ("Mel's") and was previously used for overflow parking for Mel's. The proposed use will not alter the essential character of the neighborhood as the other uses in the immediate area are mixed uses consisting of commercial uses, including Mel's and Litchfield Food Mart together with single-family residential homes. The proposed use is serviced by water from Pennichuck Water Works and new onsite septic systems will be installed. There is excellent road access and sufficient lot area for stormwater drainage capacity. The use will not be a threat to public health, safety or welfare as new New Hampshire Department of Environmental Services compliant septic systems will be designed and installed. Domestic wastewater poses less of a threat than commercial user wastewater.

- 2) The spirit of the ordinance is observed because, while the ordinance does not permit multi-family residential housing, there are numerous single-family residences within the district and nearby and residential homes as part of commercial business are permitted. Additionally, the performance standards in this zone require that site design elements should be compatible with small New England Village character, yet there is no multi-family component to this desired village character.

Granting the use will provide the necessary residential component. This use as multifamily unit buildings on a large lot will not change the essential character of the neighborhood. The garages will act as a buffer to the residential buildings from the highway and the two access points to Charles Bancroft Highway will provide safe access to the roadway network. The proposed use will meet the required setbacks. The multifamily use is an excellent transitional buffer use between Mel's, the Litchfield Food Mart and other single-family residences. There will be less traffic impact than nearby other permitted uses (see report prepared by Stephen G. Pemaw & Company, Inc.)

- 3) Substantial justice will be done because there will be no harm to the general public or to any other individuals in that the proposed use is on a large lot with sufficient parking and storage in a commercial area. As a result, there will be sufficient buffers to the residential abutters. The residential use will create less traffic into and on the property and less impact upon the surrounding neighbors when compared to many of the other permitted uses. Allowing the construction of multi-family residential units is a reasonable use in a commercial district with no harm to the public.
- 4) The values of surrounding properties are not diminished because there is adequate setback to the road and will not be in full view from the road, it will generate less traffic, less noise, and generally less activity than other permitted uses.
- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because wetlands to the northeast. It is directly across the highway from one of the largest commercial uses in this area of Town and is the lot most impacted by that business. The property is unique. The general purpose of the ordinance is to provide for an accessible well-planned area for local community shopping functions, including clusters of shops or small-scale shopping centers as well as individual shops. The objective is that such commercial uses be clustered together in an appropriate area. However, because of its specific location and the abutting uses, enforcement of the ordinance prohibiting multifamily use as to this property, bears no fair and substantial relationship to the general purpose, in that more commercial activity is more likely to create traffic congestion and cause safety concerns and will be, in fact, causing development of additional intensity and not the small New England village character.

The proposed use is reasonable as it is more passive and less impactful than permitted uses, which is typically deemed compatible with commercial uses and providing a buffer between commercial uses and single-family uses and results in more of a true village design of mixed uses in the Northern Commercial District.

Attorney Hollis commented if the Board does not grant a variance on this criteria, it will most likely not grant the other variance.

Al Guilbeault asked why the Board is looking at two lots if only one lot will be developed.

Attorney Hollis indicated both lots are under the same ownership and will be consolidated.

Al Guilbeault commented there will be no work done on the second lot.

Attorney Hollis verified that the second lot will not be developed. He noted the lot is landlocked and can

only be accessed through the first lot.

Laura Gandia indicated the acreage for the second lot allows density for the first lot.

John Devereaux asked if multifamily housing criteria allows 2.5 units on one acre. Laura Gandia provided information and calculation to indicate that is allowed.

Attorney Hollis commented the reason he went into the multifamily overlay district is to not only decide if the use meets the spirit and intent of the commercial district, but of the multifamily overlay itself.

Laura Gandia noted there is a portion of the commercial district that is located in the overlay district.

Attorney Hollis indicated when the overlay was created, it was located on the easterly side of Charles Bancroft Highway, but there is limited land for multifamily use in the northern end.

Tom Clooney commented that the northern part of the overlay area shows a portion of commercial bordering the overlay district and wondered why that was done.

John Devereaux noted that Attorney Hollis mentioned he felt the commercial use of this property would be worse for the wetlands because of the impact of septic discharge.

Attorney Hollis explained that there would be more parking area and more commercial traffic, which would pose more risk of pollution both from vehicles and drain off of the site to neighboring properties. He indicated the impact of septic discharge is domestic waste water vs commercial waste water. He noted that pollution problems are at more times created by commercial projects because someone is not paying attention to what they are doing.

Laura Gandia commented that two curb cuts are shown on the property coming off Charles Bancroft Highway. She asked if both have been approved by the Department of Transportation on the state road.

Attorney Hollis commented that no permit has been applied for, but there are two existing curb cuts there now and they have existed for some time.

Laura Gandia commented that the curb cuts are not currently approved.

Attorney Hollis indicated he did not know as he has not yet researched any permits. He noted that there have been historical curb cuts for the excavation pit.

Jim Petropolis indicated they would apply for the DOT permits at the planning level.

Laura Gandia asked if there is a sewer connection proximity to that lot.

Al Guilbeault believes there is no sewer there currently.

Laura Gandia asked if the residential units proposed will be condo purchases or rentals.

Richard Charbonneau indicated they will be rentals.

Case Number: 2021-05

Name of Applicant: Richard Charbonneau, Trustee of the Richard Charbonneau Revocable Trust

Address: 401 Charles Bancroft Highway, Litchfield, NH 03052

Owner of Property: Richard Charbonneau

Location of Property: 457 Charles Bancroft Highway, Litchfield, NH 03052, Map 20, Lots 18 & 20

Appeal Requested

1. The Applicant seeks a variance from LZO Section 1253 to allow construction of 18 multi-family units consisting of three apartment buildings, containing 6 units each and three separate garage buildings containing 6 stalls each in the aquifer protection district.

Attorney Hollis addressed the five criteria for the variance:

- 1) The variance will not be contrary to the public interest because:

This lot is currently vacant and mostly cleared. The proposed use is to construct 18 multi-family residential units in three buildings consisting of six units in each building and three accompanying garages with 6 stalls each on a 7.78 acre parcel off of Charles Bancroft Highway. It is in the public interest of Litchfield to have multi-family residential housing in appropriate areas, and given this area has been developed as a commercial area, multi-family housing is a reasonable use of this lot. The proposed use will not materially alter the essential character of the neighborhood as the surrounding area consists of a mix of commercial uses including Mel's Funway Park ("Mel's) across the Highway and a convenience store to the north as well as residential uses. The proposed use will not threaten the public health, safety, or welfare as the use will generate less traffic and have less potential adverse impact on the aquifer by its septic systems than those uses which are permitted in the underlying Northern Commercial District, and there is adequate area and soils for septic and leach fields and Pennichuck water is available. Typical domestic wastewater from residential uses is less of a threat to the aquifer than commercial use wastewater for other permitted uses.

- 2) The spirit of the ordinance is observed because:

Construction of a multi-family apartments will not materially alter the essential character of the neighborhood nor will it threaten the health safety or welfare of the public as set forth in #1 above. The potential impact to the aquifer is less than if developed for other permitted uses.

- 3) Substantial justice is done because:

Developing this property for permitted uses is neither practical nor reasonable given the intense commercial use already existing across the street. The proposed multi-family use is consistent and a compliment to with the area's present uses and will have less of an impact on the groundwater than many permitted uses and will be serviced by Pennichuck water and a new septic system. The residential units will create less traffic and pollution for the surrounding neighbors than many of the other permitted uses such as a restaurant or indoor theater. Allowing the construction of multi-family residences on this size of property is a reasonable use in the aquifer protection district with no harm to the public.

- 4) The values of surrounding properties are not diminished because:

The value of surrounding properties will not be diminished by the proposed multi-family apartment buildings as the use is compatible with existing uses and will be less of a threat to the aquifer and generate less traffic than other permitted commercial uses.

- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:

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

This lot is large, vacant and mostly cleared lot, abutting wetlands and across the street from Mel's. Its size and location make it unique. The general purpose of the ordinance is to ensure that the aquifer ground water is protected. There is no fair and substantial relationship to the general purpose of protecting ground water and permitting many types of commercial development, but prohibiting multi-family apartments which generate only domestic waste water and will be serviced by municipal water and a new septic systems.

The proposed used will be appropriate given the presence of Mel's, the nearby commercial development

to the north and the single-family residences in the area, creating the village concept with a use which will have no greater impact on the aquifer than permitted commercial uses.

Attorney Hollis indicated that much research has been done regarding the aquifer protection district in the Theroux case, with much information provided to put a gas station and convenience store in the aquifer protection district. He noted currently there is no further risk of PFAS in the northern district because Pennichuck installed a pipeline for residential water use and the Conservation Committee has supported that project. He commented the multifamily use is a better use and less risky use in terms of impact for the aquifer.

Jim Petropolis agreed with Attorney Hollis. He added in terms of the storm water impact of commercial development, the residential project will have less impact on the aquifer.

Hearing no further discussion, Laura Gandia opened public input.

Wayne Caulfield, co-owner Funway Park, commented he has not seen the full set of plans for the multifamily project, but he has no objections to the project.

Hearing no further public input, Laura Gandia asked for motion to close public input.

John Devereaux made a motion to close public input. Al Guilbeault seconded. The motion carried 4-0-0.

Laura Gandia indicated the Board would deliberate through the criteria.

1. Variance from LZO Section 801 to allow construction of 18 multi-family units consisting of three apartment buildings, containing 6 units each and three separate garage buildings containing 6 stalls each in the aquifer protection district.

Laura read the Zoning Ordinance permitted uses in the northern commercial district.

- 1) The variance will not be contrary to the public interest:

Laura Gandia was concerned about the curb cuts for that many units. She indicated if the variance is granted the stipulation would be to require the applicant to obtain a permit for two curb cuts vs one curb cut.

The Board agreed.

- 2) The spirit of the ordinance is observed:

John Devereaux commented the concept of multifamily use on the edge of the commercial district does not present a bad location for the multifamily project, but just a different edge of it.

- 3) Substantial justice is done because:

Laura Gandia commented the gain to the public would be keeping that property commercial.

John Devereaux commented that the hardship criteria is the only item he is struggling with.

- 4) Values of surrounding properties are not diminished because:

John Devereaux commented that the residential use greatly increases surrounding properties vs the sandpit that has existed.

- 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:

Laura Gandia indicated the Board has to establish the uniqueness and fairness to apply the ordinance. Attorney Hollis mentioned the lot is unique in its size, but does the uniqueness make applying the zoning

ordinance fair? Also that the uniqueness gives to no substantial relationship to the ordinance and applying it to that particular property.

Tom Clooney commented he is leaning toward that the multifamily use is the best use for the property. He indicated it would depend what type of commercial use was developed on that site, such as a small strip mall, which would result in more asphalt and more site water flow.

Laura Gandia indicated this is the last large lot for development; it abuts a large area of wetland, and is directly across the street from largest commercial uses in town and it is unique. She contemplated if the lot is impacted by that. She noted that the ordinance states *the general purpose is to provide for a well-planned, accessible area for local community shopping functions, clusters of shops or small scaled shopping centers, as well as individual shops. The objective is such use be clustered together in an appropriate area. Because of the specific location and abutting uses, enforcement of the ordinance prohibiting multifamily use of the property bears no fair and substantial relationship to the general purpose.* She noted commercial use is likely to create traffic congestion and development of additional intensity. Laura Gandia indicated the property is impacted by the area, Mel's and the wetlands to make it unique and that is what has to be considered.

Al Guilbeault commented if commercial property were to be built there, Lot 20 would be an unbuildable lot and you would not be able to access that lot because there are houses behind the little store next to the property, which would create a hardship on that lot. He indicated we are talking about Lots 18 and 20 together.

Laura Gandia noted that on the deed there are two separate lots listed. She indicated the ordinance states "because of the specific location and uses".

John Devereaux asked if that is true for multifamily zoned areas that have been used as commercial zoned?

Al Guilbeault commented that he does not know that is true and we cannot base a decision on previous occurrence, if any.

Laura Gandia indicated if we look at the multifamily purpose, the intent is to identify ideal areas for commuters living in the town. She noted if we take that purpose and look at where the town has zoned it, it tends to make sense.

Al Guilbeault made a motion to deny a variance from LZO Section 801.00 to permit 18 multi-family use in the northern commercial district that is prohibited. John Devereaux seconded.

John Devereaux commented proving the hardship is the problem. He indicated he is in full support up to that point.

Al Guilbeault commented there would be less impact if a small community local bank or small strip mall were constructed on that property.

John Devereaux commented with questions about traffic, water runoff and wastewater, in that situation it is debatable if there will be more impact or not. He indicated the issue is that the property does not have the hardship you need for multifamily use vs the need to set up commercial use on that property.

Laura Gandia commented in the presentation it was pointed out the property is unique, but she was not sure if that is unique to the other properties around it, as they are all unique. She believes there is fair and substantial relationship to the purpose of the ordinance in keeping those issues intact in applying that particular ordinance to that property.

The motion to deny the variance carried by roll call vote: Laura Gandia, yes; Al Guilbeault, yes; John Devereaux, yes; Tom Clooney, yes.

The variance is denied.

Laura Gandia asked Attorney Hollis if the applicant would like to continue with the second variance or withdraw.

Attorney Hollis indicated that they will withdraw the second variance for Case #2021-05B.

Laura Gandia indicated she will write up the decision with detail and send it to the applicant. She noted the applicants have 30 days

IV. COMMUNICATIONS AND OTHER BUSINESS

Al Guilbeault suggested sending an email to Troy Brown, Town Administrator, to post communication for more board members. He welcomed Tom Clooney as an alternate member.

Laura Gandia announced Richard Riley has resigned from the Zoning Board and thanked him for his service and the inordinate amount of hours performing the administrative work of the Board. She mentioned that Mark Falardeau and Kyle D'Urso are also alternate members. She noted that the Town will post vacancies for two full member positions.

V. ADJOURNMENT

John Devereaux made a motion to adjourn the meeting and Al Guilbeault seconded the motion. The motion passed by roll call vote: Laura Gandia, yes; John Devereaux, yes; Al Guilbeault, yes; Tom Clooney, yes.

The meeting was adjourned at 8:40 p.m.

Respectfully submitted,
Michele E. Flynn