

Board of Appeals  
October 27, 2016  
Minutes

**Board Members Present:** John (Jay) Bradshaw (chair), Norma Blazer, Richard Bourne, Richard McCarthy, Alexander Wall, Valton Wood, Ernst Merckens, Nicholas Poole (secretary)

**Town Officials Present:** Gary Mahler, Mike Barrett, Cheryl Cook, Gary Fuller, Bill Pulsifer, Peter Rushton

**Legal counsel:** Lee Bragg, Esq., Zachary Brandwein, Esq.

**Applicants Present:** Andrew Comollo (Lisciotti Development), Austin Turner (Bohler Engineering)

The meeting was called to order at 7:00 PM.

Jay Bradshaw welcomed those who attended. Board members then introduced themselves and disclosed if they had any prior involvement with any of the parties involved. Jay then asked Gene and Catherine Burgess and the developers if there were any concerns about potential conflicts of interest with any member. There were no concerns expressed.

Jay Bradshaw then reviewed the purpose of the hearing, which is that Lisciotti Development d/b/a Belgrade DG, LLC, submitted a building permit application to develop for commercial purposes property owned by Gene & Catherine Burgess and identified on the tax map as Map 7, Lot 55-B.

That application was denied by Gary Fuller, Belgrade Code Enforcement Officer in a letter dated September 1, 2016, because the property did not comply with the Belgrade Commercial Development Review Ordinance, for the following reasons:

- Minimum lot size; commercial development requires a minimum of 60,000 square feet
- Form Factor; the property must be able to contain a 90' radius circle
- Impervious space; lot coverage shall not exceed 50%

On September 19, 2016, the Town received an appeal of the CEO's denial and in the appeal provided the forms and documentation required to have the matter reviewed by the Board of Appeals.

The Board of Appeals has the authority to conduct the hearing and render a decision based upon:

- Belgrade Commercial Development Review Ordinance
- Belgrade Minimum Lot Size Ordinance
- 30-A MRSA § 2691 and § 4353.

Notice of the hearing was sent to the applicants, Lisciotti Development and Bohler Engineering, to abutting landowners, the Planning Board, and the Board of Selectpersons. The Hearing Notice was also posted at several locations in Belgrade and published in the Central Maine Morning Sentinel and Kennebec Journal on October 18, 2016.

The type of review being conducted is a variance waiver of:

- Minimum lot size
- Form Factor
- Impervious space

The requirements to grant a variance is cited in (30-A MRSA § 4353.4):

*“...the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner’s property would cause undue hardship. The term “undue hardship” as used in this section means:*

- a) The land in question cannot yield a reasonable return unless a variance is granted.*
- b) The need for the variance is due to the unique circumstance of the property and not to the general conditions of the neighborhood.*
- c) The granting of the variance will not alter the essential character of the locality.*
- d) The hardship is not taken as a result of action taken by the applicant or a prior owner. “*

The chair then invited the applicants, Mr. Turner and Mr. Comollo, to make a presentation regarding their proposal to develop the property for commercial purposes. The presentors stated:

- The project is to build a 9,100 ft<sup>2</sup> Dollar General retail store with parking for 30 vehicles on the property between the Town Office and the Post Office on Route 27 on Map 7 Lot 55-B
- The property is owned by Gene and Catherine Burgess. The other portion of the Burgess’ property is Map 7 Lot 55-A, which includes the Burgess’ residence
- The property is zoned for commercial development
- The project has received approval from the Maine Dept. of Transportation for a business entrance on Route 27
- The variance is necessary because the lot in question cannot comply with the requirements of the Commercial Development Review and Minimum Lot Size Ordinances, which thus creates undue hardship.

Gary Fuller, CEO, and the chair commented that Belgrade does not have a zoning ordinance. Peter Rushton, Planning Board Chairman, clarified that the town does use the term *Commercial District* in the Comprehensive Plan to serve as a guide for future consideration.

Public comments included concern about the impact to the rural nature of Belgrade with such a retail store; however, the chair reminded those present that the Board's decision must be based only on the factors contained in the ordinances and Maine law.

Richard Bourne noted that the two parts (A & B) of Map 7 Lot 55 are identified as a single lot on the property deed and are only identified as separate lots on the Town Tax Maps. Based upon a casual review, it appears that the complete parcel as recorded in the Registry of Deeds may meet the necessary Commercial Development Review requirements.

Mr. Turner provided an explanation on each of the variance requests. The chair indicated that the Board will: 1) review each variance request following the statutory requirements previously described, 2) determine whether that finding supports, does not support, or has no effect on the variance request, and after reviewing all statutory factors will make a motion on each variance request.

Minimum Lot Size. *The property must have a lot area of at least 60,000 ft<sup>2</sup>.* (5.D.1.a)

- a) Can the land in question yield a reasonable return without a variance being granted?

By unanimous vote, the Board concluded that the land could yield a reasonable return as it meets the requirements for residential use. This finding does not support the variance request.

- b) Is the need for the variance is due to the unique circumstance of the property and not to the general conditions of the neighborhood?

By unanimous vote, the Board concluded that there is not a unique characteristic to this property or the neighborhood. This finding does not support the variance request.

- c) Will the granting of the variance alter the essential character of the locality?

By unanimous vote, the Board concluded that this would alter the essential character of the locality. This finding does not support the variance request.

- d) Is the hardship as a result of action taken by the applicant or a prior owner?

- e) By unanimous vote, the Board concluded that there is no hardship and that the need for a variance for commercial use was created by the property owners when they divided the lot.

**MOTION: Enforcing the Minimum Lot Size Ordinance regarding the lot size required for commercial use does not cause undue hardship and therefore, the variance request is denied. (McCarthy; second by Bourne) Unanimous**

Form Factor. *The property must have a boundary line form factor within with a 90' circle can be inscribed. (5.D.1.b)*

- a) Can the land in question yield a reasonable return without a variance being granted?

By unanimous vote, the Board concluded that the land could yield a reasonable return as it meets the requirements for residential use. This finding does not support the variance request.

- b) Is the need for the variance is due to the unique circumstance of the property and not to the general conditions of the neighborhood?

By unanimous vote, the Board concluded that there is not a unique characteristic to this property or the neighborhood. This finding does not support the variance request.

- c) Will the granting of the variance alter the essential character of the locality?

The finding of the Board by a vote of 4-3 the Board found that granting the variance would alter the character of the locality. This finding does not support the variance request.

- d) Is the hardship as a result of action taken by the applicant or a prior owner?

By unanimous vote, the Board concluded that there is no hardship and that the need for a variance for commercial use was created by the property owners when they divided the lot.

**MOTION: Enforcing the Minimum Lot Size Ordinance regarding the form factor required for commercial use does not cause undue hardship and therefore, the variance request is denied. (McCarthy; second by Wall) Unanimous**

Impervious space. *Lot coverage shall not exceed 50% (5.D.3)*

- a) Can the land in question yield a reasonable return without a variance being granted?

By unanimous vote, the Board concluded that the land could yield a reasonable return as it meets the requirements for residential use. This finding does not support the variance request.

- b) Is the need for the variance is due to the unique circumstance of the property and not to the general conditions of the neighborhood?

By unanimous vote, the Board concluded that there is not a unique characteristic to this property or the neighborhood. This finding does not support the variance request.

- c) Will the granting of the variance alter the essential character of the locality?

The finding of the Board by a vote of 5-2 the Board found that granting the variance would not alter the character of the locality because there are other commercial businesses in the area. This finding supports the variance request.

- d) Is the hardship as a result of action taken by the applicant or a prior owner.

By unanimous vote, the Board concluded that there is no hardship and that the need for a variance for commercial use was created by the property owners when they divided the lot.

**MOTION: Enforcing the Minimum Lot Size Ordinance regarding the maximum impervious space allowed for commercial use does not cause undue hardship and therefore, the variance request is denied. (McCarthy; second by Wall) Unanimous**

The chair thanked the Board members, the applicants, and others for their attendance and participation in the hearing. A letter summarizing the Board's decision will be sent to the applicants.

The meeting was adjourned at 8:35 PM

Minutes were approved on 1/26/17.