

**Town of Milford
Zoning Board of Adjustment Minutes
February 15, 2007
Burns Hill Christian Fellowship/Milford Elm Street Trust
Case #5-07
Variance**

Present: Katherine Bauer, acting chairman
Bob Levenson
Fletcher Seagroves
Ron Pieper, Jr.
Richard Westergren - alternate

Secretary: Kathryn Parenti

The applicant, Gary J. Williams, representing Burns Hill Christian Fellowship, along with Milford Elm Street Trust, owners of 37 Wilton Road, in the Integrated Commercial-Industrial "ICI" district, Map 6, Lot 13, are requesting a variance from Article V, Section 5.081 to permit a temporary church in the Pine Valley Mill.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

K. Bauer, acting chairman, opened the regular meeting of the Milford Zoning Board of Adjustment at 7:30 pm. She then stated that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. She continued by informing all of the procedures of the board. She then introduced the board. She continued by reading the notice of hearing into the record. She also read a letter from the owner of 37 Wilton Road, Pine Valley Mill, Heidi B. Robichaud into the record. In addition, she read Gary Williams' letter to Kevin Lynch, Zoning Official, into the record. She then read the abutters list and none were present. She invited Gary Williams, applicant, to come forward to present his case.

G. Williams stated that Burns Hill Christian Fellowship was proposing to use a portion of the second floor of the Pine Valley Mill as a temporary home for their church meetings until the renovation of the barn that will be used as the church is finished. He stated he had already come before the board to request a variance for the operation of the church on Burns Road and it was approved. The church had been meeting at the Knights of Columbus but that building has come up for sale and they needed to find another temporary home. He originally thought the Mill was zoned as Commercial and not Integrated Commercial-Industrial. His plans are to make no structural changes except for a demising wall to separate the space. There will be no exterior changes except for the addition of a sign. He stated that church services will be held during off peak hours at the Mill.

K. Bauer asked if he had discussed signage with K. Lynch yet.

G. Williams stated he had not.

B. Levenson asked how long they planned on using the space.

G. Williams said that they have signed a lease for three (3) years with an option to increase it to five (5) years. He said he hoped to have the barn renovated before that.

K. Bauer stated that the board had to determine what type of variance was involved here.

She stated it would appear to be a use variance as the application was filled out that way.

She then invited G. Williams to go through the five (5) criteria supporting a use variance.

1. The proposed use would not diminish surrounding property values because:

G. Williams replied that the existing area will be used for church meetings and functions only. No changes will be made to the exterior with the exception of signage and there will be only minor interior changes – the addition of the demising wall.

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

G. Williams replied that historically, churches have been considered a benefit to the community. The building use is low; the meetings are quiet and are conducted at off peak hours.

3. Denial of the variance would result in unnecessary hardship to the owner because:

a. The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

G. Williams replied that the building is well suited for the intended use. It has ample seating area with adjacent offices and restrooms, ample parking and is handicapped accessible.

b. That no firm and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

G. Williams replied that Article V, Section 5.082 allows for schools and not for profit recreational facilities by special exception. He felt that churches could be assumed within these categories.

c. The variance would not injure the public or private rights of others since:

G. Williams stated the nature of the church is to help and serve the community. It would be contrary to the purpose and intent of the church to injure or interfere with the rights of others.

4. Granting the variance would do substantial justice because:

G. Williams stated that he had done several months of research and found that affordable rentable space for this application is limited in this area. This space is uniquely suited for the desired use and would provide a necessary base of operation for the church.

5. The use is not contrary to the spirit and intent of the ordinance because:

G. Williams stated the ordinance makes exception for uses such as schools and recreational facilities, even including adult entertainment establishments. The proposed use as a church is in keeping with the spirit of the ordinance in light of the other similar uses allowed by special exception.

K. Bauer asked if the proposed demising wall would be the only construction.

G. Williams stated it would be the only modification.

K. Bauer asked the board if they had any questions.

B. Levenson asked for clarification regarding the space labeled as a nursery.

G. Williams stated the space would be used for nursing mothers and fussy children and would not be used as a nursery school.

B. Levenson asked about the statement on the copy of the building permit that said "waiting for variance and letter".

G. Williams stated that the letter was the one he had written to K. Lynch that K. Bauer had read into the record.

R. Pieper asked who the owner of the property was.

G. Williams stated the owner is Milford Elm Street Trust.

R. Westergren asked if there were any kitchen facilities.

G. Williams replied there is a sink, cabinets and a refrigerator. They would add a microwave, a coffee maker and a water bubbler.

K. Bauer asked if anyone in the audience had any comments. Since there were none, she closed the public portion of the hearing.

K. Bauer stated the board should establish the type of variance requested. The board voted unanimously that this is a request for a use variance. She then read the five (5) criteria for discussion.

1. The proposed use would not diminish surrounding property values because:

No one had any problems with this item.

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

No one had any problems with this item.

3. Denial of the variance would result in unnecessary hardship to the owner because:

a. The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

b. That no fair and substantial relationship exists between the general

purposes of the zoning ordinance and the specific restriction on the property because:

c. The variance would not injure the public or private rights of others since:

B. Levenson stated he had no problem with any of these items.

R. Pieper stated the Zoning Ordinance addresses business and wondered if there was a reason why this was not addressed. He stated that the ordinance was intended to localize high traffic. He thought that the changing the definition to include houses of worship would work.

K. Bauer stated that the existing building had mixed uses and the church would not conflict with the existing uses. She stated she had no problem with number three (3).

R. Westergren felt that this use would be of very low impact.

4. Granting the variance would do substantial justice because:

R. Pieper felt that to deny this variance would serve no purpose. He felt it would do substantial justice to grant the variance.

R. Westergren felt that the church use fits the situation.

5. The use is not contrary to the spirit and intent of the ordinance

Because:

B. Levenson stated he felt that the spirit of the ordinance is not being compromised. There is no fair and substantial relationship that exists between the general purposes of the zoning ordinance and the specific restriction on the property.

R. Pieper read the definition for Integrated Commercial-Industrial District, Section 5.080 of the Town of Milford Zoning Ordinance: *“The intent of the Integrated Commercial-Industrial District is to provide an area for sales and Service activities, both wholesale and retail, as well as industrial activities.”* He felt that the intent was to consolidate these areas in town.

K. Bauer stated it was an existing building with mixed uses. She felt if the applicant was trying to ask for this use on an empty lot, this would be more difficult. She didn't see any conflict here. She then called for a vote.

1. Could the variance be granted without diminishing the value of abutting property?

R. Westergren – yes R. Peiper – yes F. Seagroves – yes B. Levenson – yes
K. Bauer – yes

2. Would granting the variance not be contrary to the public interest?

K. Bauer wanted the board to be clear that if they voted yes on this question, the answer is yes, it would not be contrary.

R. Pieper – yes F. Seagroves – yes B. Levenson – yes R. Westergren – yes
K. Bauer – yes

3. Would denial of the variance result in unnecessary hardship?

F. Seagroves – yes B. Levenson – yes R. Westergren – yes R. Pieper – yes
K. Bauer – yes

4. Would granting the variance do substantial justice?

B. Levenson – yes R. Westergren – yes R. Pieper – yes F. Seagroves – yes
K. Bauer – yes

5. Could the variance be granted without violating the spirit of the ordinance?

R. Westergren – yes F. Seagroves – yes R. Pieper – yes B. Levenson – yes
K. Bauer – yes

K. Bauer asked for a motion to approve case #5-07, request for a special exception.

R. Pieper made the motion.

R. Westergren seconded.

All were in favor.

K. Bauer reminded the applicant of the thirty (30) day appeal period.