



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application

TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-23-23

DATE FILED 6/23/23

COI

ZONING BOARD CLERK

Applicant:

MPG Corporation

E-mail: jarnold@orr-reno.com

Phone: 603-223-9172

Applicant Address: Orr & Reno, P.A. 45 South Main Street, Concord, NH 03301

Property Owner (if different): Waterstone Little Falls LLC

Property Owner Address: 250 First Avenue, Suite 202 Needham, MA 02494

Variance Address: 4 Little Falls Bridge Road

Map Lot and Block No: 0216/0012/0000

Description of Property: The property is approximately 1.9 acres, located in the Granite Ridge Development Zone, on the corner of Little Falls Bridge Rd and Farmington Rd

Proposed use or existing use affected: retail motor fuel outlet with convenience store and drive through coffee shop

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section 20.2.F(5)

and asks that said terms be waived to permit to allow a fueling canopy to be approximately 6' from the side lot line, where 20' is required

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. **I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.**

Signed: 

Attorney for Applicant

Date: 6/23/23





City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

1) Granting the variance would not be contrary to the public interest because:

see attached

2) If the variance were granted, the spirit of the ordinance would be observed because:

see attached

3) Granting the variance would do substantial justice because:

see attached

4.) If the variance were granted, the values of the surrounding properties would not be diminished because:

see attached

5.) Unnecessary Hardship:

a. Owing to special **conditions of the property that distinguish it from other properties in the area**, denial of the variance would result in an unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

see attached

And:

ii. The proposed use is a reasonable one because:

see attached

b. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

see attached

NARRATIVE IN SUPPORT OF VARIANCE APPLICATION
MPG CORPORATION COMPANY

This variance application is related to the property located at 4 Little Falls Bridge Road in Rochester (the "Property"). The Property is approximately 1.9 acres, and is located in the Granite Ridge Development Zone. It is on the corner of Little Falls Bridge Road and Farmington Road.

The Applicant seeks to construct a retail motor fuel outlet with convenience store and drive through coffee shop on the Property, which is a permitted use. The development will have a shared access and interconnection with a proposed carwash on the adjacent property, 105 Farmington Road. The overall development includes a lot line adjustment to annex approximately .2 acres to the Property from 105 Farmington Road to accommodate the shared driveway and diesel fueling station on the Property.

In the Granite Ridge Development Zone, there is a 300' required front setback and a 100' required rear setback. The Property's maximum depth is approximately 270'. Accordingly, none of the Property is outside of the required setbacks, and the Property is not buildable without relief from the required setbacks. The Applicant has designed the site to locate the structures centrally on the Property, and to maximize the setbacks that can be provided.

As such, the Applicant seeks the following variances:

- 1) Variance from §275-8.5.B(10)(a)[2] to allow a front setback of 6', where 300' is required;
- 2) Variance from §275-8.5.B(10)(a)[1][b] to allow a rear setback of 56', where 100' is required;
- 3) Variance from §275-20.2.F(3) to allow fuel pumps and equipment to be approximately 10' from the side lot line, where 30' is required; and
- 4) Variance from §275-20.2.F(5) to allow a fueling canopy to be approximately 6' from the side lot line, where 20' is required (requests #3 and #4 are collectively referred to as the "Fuel Setback Variances").

1. The variances will not be contrary to the public interest.

A variance is contrary to the public interest if "it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance's basic zoning objectives." Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the Board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. Id.

Here, allowing the reduced front and rear setbacks¹ will pose no threat to the public safety, health or welfare, or alter the essential character of the locality. The proposed building setbacks are consistent with the building setbacks provided on all of the nearby properties on this side of Farmington Road. Notably, the 6' requested front setback is being measured from the underground fuel storage tanks. The City made a determination that the setback applies to the tanks even though they are underground and not visible in any way. The closest above-ground structure to the front lot line is the fuel canopy, which is set back approximately 35', and nearly identical to the existing fuel canopy setback at the Shell station across the street.

With respect to the Fuel Setback Variances, the diesel fueling canopy and pumps are located approximately 6' and 10' (respectively) from the side lot line to accommodate maneuvering of large trucks. The proposed location is the only feasible location for truck traffic to enter the site from Farmington Road and access the pumps. The layout is driven in part by the shared access and parking lot interconnections between the Property and 105 Farmington Road (proposed carwash), which interconnections are express objectives of the Granite Ridge Development Zone. The location of the diesel fuel canopy is understood and acceptable to both property owners and users and will not threaten public safety, health or welfare in any way. Thus, the reduced setback for the diesel fuel pumps is not contrary to the public interest.

2. The spirit of the ordinance is observed.

The New Hampshire Supreme Court has determined that the requirement that a variance not be contrary to the public interest "is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance." Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 580 (2005). As such, this criterion overlaps with the public interest requirement. For the reasons set forth above, the spirit of the ordinance will be observed. Further, the spirit of the ordinance is to allow reasonable use of property, and absent the requested variances, the Property could not be developed at all.

3. Substantial justice is done.

Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See Malachy Glen Associates v. Town of Chichester, 155 N.H. 102, 109 (2007). That is the case here, as allowing these variances would cause no harm to the general public. The proposed front and rear setbacks are consistent with other properties in the area, and are still ample to provide meaningful separation between structures and uses on adjacent properties. The Fuel Setback Variances are necessary to provide safe and efficient access for large trucks, and will have no impact on the public generally. Denying the variances would cause harm to the public because prime commercial property would remain vacant and undeveloped, rather than being put to a productive use that will contribute to the tax roll. Additionally, the benefit of the variances to the Applicant is substantial, given that the Property is undevelopable without the setback relief.

¹ The proposed 7' front setback and 56' rear setback are measured from the improvements located nearest each respective property line. However, as shown on the enclosed plan, all proposed improvements on the Property are within the required setbacks, as the Property lacks sufficient depth to accommodate both setbacks.

4. The value of surrounding properties is not diminished.

Granting these variances will not diminish surrounding property values, for the same reasons cited above. Absent the variances, the Property would remain undeveloped, which would negatively impact the surrounding commercial property values. Bringing new business to the Granite Ridge Development Zone will foster economic growth and help to drive up surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The Property is unique in that it is a relatively small and shallow lot in the Granite Ridge Development Zone. When the required setbacks are applied, there is no buildable area remaining. Most of the properties in the Granite Ridge Development Zone are much larger and deeper, and while there are a few adjacent properties of similar dimensions, those have largely already been developed. Absent relief from the required front and rear setbacks, no reasonable use can be made of the Property. The proposed use is reasonable because the structures are modest in size, and situated centrally on the Property to maximize the setbacks to the extent possible.

With respect to the Fuel Setback Variances, there is no substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the Property. The general public purpose of pump and canopy setbacks is to provide adequate separation between fueling uses and abutting properties. But in this case, the abutting property (105 Farmington Road) is being developed in conjunction with the Property such that there will be a shared access, and interconnection between the parking lots. The location of the diesel fuel pumps has been agreed upon by the owners and users of both properties, and will not cause any disruption or negative impact on the abutting property. Further, the Property cannot be reasonably used in strict conformance with the required fuel pump setback. Due to the size and shape of the Property, and the location of the curb cuts, there is no way to locate the diesel fuel island in compliance with the 30' setback that would allow large trucks to safely navigate the site. Having a diesel fuel island is a reasonable part of having a fueling station, and provides a beneficial service to motorists.

275-20.2 **Conditions for particular uses.**

F. Gas station.

(5) The minimum setback for all portions of canopies shall be 20 feet from all lot lines or the required district setbacks, whichever is greater.



4 Little Falls Bridge Road

City of Rochester, NH

1 inch = 94 Feet



www.cai-tech.com

June 22, 2023



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

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CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)								
Element	Cd	Description	Element	Cd	Description							
Style			Solar									
Grade			Central Vac									
Stories			Nbhd Modifier									
Units			MH Make									
Frame			MH Serial #									
Foundation			Color;Mdl #:D									
Exterior Wall 1			CONDO DATA									
Roof Structure			Condo Main									
Roof Cover												
View			Adjust Type									
Interior Wall 1			Condo Floor									
Interior Floor 1			Condo Location									
Basement Flo			COST / MARKET VALUATION									
Bsmt Garage			Building Value New									
Finished Bsmt			Year Built									
FBLA			Depreciation Code									
Rec Room			Remodel Rating									
Electric			Year Remodeled									
Insulation			Depreciation %									
Interior/Exterio			Functional Obsol									
% Heated			Economic Obsol									
Heat Fuel			Trend Factor									
Heat Type			Special Adj									
AC Percent			Condition %									
Bedrooms			Percent Good									
Full Bath(s)			RCNLD									
3/4 Bath(s)			Dep % Ovr									
Half Bath(s)			Dep Ovr Comment									
Extra Fixture(s)			Misc Imp Ovr									
Kitchen(s)			Misc Imp Ovr Comment									
Extra Kitchen(Cost to Cure Ovr									
Total Rooms			Cost to Cure Ovr Comment									
Fireplace(s)												
W.S.Elues												
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)												
Code	Description	L/B	Qty	Dim 1	Dim 2	Grade	Condition	Yr Blt	% Gd	Unit Price	Grade Adj.	Appr. Value
04	GARAGE FR	L	1	28	40	C	AV	2004	90	25.75	1.00	26,000
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undepreciated Value						