

**Town of Boscawen, NH  
ZONING BOARD OF ADJUSTMENT  
Boscawen Municipal Complex**

**MEETING MINUTES  
Tuesday, February 26, 2019 at 7:00 PM**

Members Present: Dr. Gail Devoid, Chair, Ann Dominguez, Tracy Jo Bartlett, Doug Supry, and Ed Cherian Jr.

Others present: Kellee Jo Easler, Planning & Development Community Director and Recording Secretary Rose Fife.

Absent: Roger Sanborn

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Meeting opened at 7:00 pm.

Roll Call by Secretary.

Open the public meeting.

Dr. Devoid: A letter from the trust is necessary in order for the attorney to present the case. It needs to be in by week end.

**New Business:**

A request for a **Special Exception for a private cemetery** submitted by **The Association of Bosniaks of NH, 125 Londonderry Turnpike, Hooksett, NH 03106**, for the **Shirley McKerley Revocable Trust of 2012, 510 Random Road, Hillsville, VA 24343**, with a location of **233 DW HWY, Boscawen, NH 03303 on Map 47, Lot 8** in the **RI zone**.

Attorney Mark Puffer presented. He represents The Association of Bosniaks of NH. Also present to testify were Nedim Suljevic, President of the Association and Dave Iason, Real Estate Broker.

Attorney Puffer presented. The Bosnians who have relocated to the United States do not have a place to bury their deceased. At this time they are sending their loved ones back to Bosnia to dispose of them.

Nedim Suljevic testified. Most relocated in the mid 1990's. They moved to the US as youngsters and have now aged and have need for a cemetery. It is a significant cost for families to send their loved ones back to Bosnia to be buried. The cost ranges from \$7,000 to close to \$30,000. To bury them locally would cost them \$5,000 and no time lost to family from work to travel, etc. They've searched for approximately a year and this location seems to be a perfect location. There is already a large cemetery in the area. They are looking to use only about 20% of this parcel. That would alleviate this problem for them for the next 100 years. They would propose a wooded buffer area on 3 sides of the property. This will be a minimal impact on the area. They would have a parking area, an access road and a large undisturbed area in the back. This will not be a burden to the municipality as they would

be using their own funds to build and maintain this facility. They would be using a local funeral and local landscaping services.

Attorney Puffer noted a private cemetery is allowed by Special Exception in an R1 district. Of all the uses allowed by right or Special Exception, a private cemetery is one of the least noisy, least impactful uses. Nedim noted they have 7 to 8 deaths a year. Services are about 45 minutes. Puffer explained that other uses allowed by right include nurseries, orchards, minor home business and public cemeteries. Among uses allowed by Special Exception are private cemeteries, commercial green houses and garden centers, airport/heliport, daycare facilities, etc. Dr. Devoid wanted confirmation it was a private cemetery, not a public cemetery.

Attorney Puffer and his client believe it is an appropriate use. This area mostly dominated by the state Veteran's cemetery. There are also single family dwellings along that road. It's located about a mile and a half north of where Route 3 and Route 4 divide. The state Veteran's cemetery entrance is about ½ mile south of their entrance. The end of their proposed cemetery is about ¼ mile from their entrance. Special Exception criteria: It is allowed by special exception in an R1 district. Does it impair the integrity or character of the area or is it detrimental to public health and welfare? The state Veteran's cemetery already exists in this area. That cemetery defines the character of this area of Boscawen. The Veteran's cemetery website states that in January of this year they had 36 burials. In December 2018 there were 62 and November 2018 there were 59 and then October 2018 there were 114 burials. Public Health and general welfare: the proposed use will have very little noise. There are no bands, music or loud speakers. The use will not produce smoke or dust. It is not detrimental to the morals of the community. The specific site is an appropriate location: the subject property is only a short distance from the state Veteran's cemetery. The remaining McKerley trust property remains undeveloped. On the other side of the highway is a large undeveloped track. There are 3 adjacent parcels that contain single family homes. The character of the adjoining uses will not be disturbed. There will be a 50 foot buffer from where the graves will be located. The graves will not be visible from DW Highway or homes on either side. Parking will be located near the front of the property along the highway. There will be no problem with parking. Diminution in value: Dave Iason, a ReMax broker testified. He looked at the property. He got a good feel for the area and abutters. He looked at the proposed cemetery from different angles. There is a large buffer. Even in the winter with no foliage it's not bad. If they put the graves away from lot 47-7 that would enhance the view for them. Spring, Summer and early Fall the abutters will see foliage in their back yard. Dr. Devoid asked which buffers are already established. He said one between 47-8b and 47-7. There is some tree line there. On google maps you can see the old dirt road going through the property. Ms. Bartlett asked if it was the old shooting range. Kellee said it is. Mr. Iason said the values in that area already have the 'cemetery factor' established. That is not the only thing that affects the value in that area. If there were no Veteran's cemetery there and this was the first one in the area there would be a lot more possible detriment, but there is already one there. He doesn't see any detriment to the values of surrounding property. People may not like to live next to a cemetery but that will not affect the value. Dr. Devoid asked if he spoke with the abutters. Mr. Iason said no.

Attorney Puffer reiterated that the 'cemetery factor' it's already there. There are about 1,000 burials that take place at the Veteran's cemetery. They would only have 10 here. Undue traffic noise or unreasonable hazards would result: the traffic would be sporadic. Hazard created: the property does have the benefit of being on an almost straight section of DW Highway. Ample parking will be provided. Adequate and appropriate facilities will be provided: no buildings are being proposed. No water or sewer needs to be provided. There will be a parking area, a roadway in and grave sites.

Adequate water and sewer: this use doesn't need a water supply or a sewer system. If a building is ever proposed for prayer or service, the applicant understands he would have to come back to this Board or go to the Planning Board for site review. If this is granted they need to go to Planning Board for site review. They believe this project meets the criteria set forth in your ordinance.

Doug Supry: how will the property be maintained? Mr. Suljevic explained that they will hire a local landscaping company to come in and cut the grass. They will eventually be looking to pave the road and at that point they would have it plowed. Mr. Supry asked if they plan on year round burials. Mr. Suljevic said yes. There will be uniform head stones and uniform areas. It would look neat and presentable. Ms. Bartlett asked if they were only going to use a portion of the property. Will there be expansion into the rest of the unused property. Attorney Puffer noted that the grave sites shown on the bottom of the L shaped property will be enough grave sites for the next 100 years or so. Mr. Suljevic explained that there will be no cremation. Mr. Cherian asked how much acreage is proposed for the cemetery. Attorney Puffer explained it's a total of 25 acres. He's not sure. Dr. Devoid thought it looks like 16% of the total. Mr. Cherian asked how many plots that would yield. Mr. Suljevic noted that based on 3 x 4 plots it would be over 700 lots. Mr. Cherian asked about year round use. Will they maintain it in the winter, etc. Mr. Suljevic said yes and the parking area will be gravel at first. Mr. Cherian asked if they would have mausoleums. Mr. Suljevic said no. Mr. Cherian asked if they had a lease or option to purchase land. Attorney Puffer explained that they have a Purchase and Sales agreement. Mr. Cherian asked if the parking area is going to be flush with the road. Is there a driveway or curb cut access? Ms. Bartlett explained that the curb cut already exists. Attorney Puffer explained there is about 15 feet before you get to the level area for parking. Mr. Cherian noted that the Veteran cemetery is very busy. How will they propose to handle traffic when the Veteran's cemetery is having an event or burial at the same day or time they do? Attorney Puffer explained that they would have to coordinate with the state Veteran's Association. Mr. Suljevic agreed that they would work with the Veteran's cemetery. Mr. Cherian asked if there were a regulation on the number of parking spaces for a cemetery. How big of a lot do they propose? Mr. Suljevic explained they have sizeable frontage. He's guessing they could fit 200 cars. Attorney Puffer explained there is over 600 feet of frontage. Kellee Easler explained that would be addressed during site plan review at Planning Board. Mr. Supry noted there is no site distance issue at this location. Attorney Puffer agreed it is very straight. He also said the northern end of the Veteran's cemetery is very close, but their entrance is about ½ mile away from their entrance. Mr. Cherian asked Kellee Easler if they would need a state driveway permit. She stated they would research if there was an existing one. Mr. Cherian asked if there is a state cemetery permit or license. Kellee Easler noted that there is none that they are aware of, but she believes it can't be less than 100 feet away from a home.

Attorney Puffer doesn't believe there is any state permit required to establish a cemetery. It's regulated at a local level. A state driveway permit would probably be needed as it's a change of use. Ms. Bartlett asked if there is any revenue to the town. Kellee Easler explained it's a private organization and the land will be taxed. The property is in current use right now. It will need to be taken out of current use and incur a land use change tax. Mr. Cherian asked if it was only on the portion you take out of current use. Kellee said correct. All of the property is in current use except 9.2 acres.

Abutters in favor: none.

Abutters in opposition: John Butt, 229 DW highway lot 47. His house is south of them on the map. 47-8b. He doesn't agree the 'cemetery factor' is built in. It's basically an Islamic cemetery. His property values will significantly drop. Dr. Devoid asked if he had it assessed. He had not, it's just

his opinion. Dr. Devoid asked about the wooded buffer area between their properties. Is it enough to block views in the middle of summer? Mr. Butt believes so. Mr. Cherian asked if his opposition is that it's Muslim burials. Mr. Butt explained it would impact his property value. Christian or Jewish burials wouldn't impact his property value Muslim burial's would impact his property value.

Tammy Porter, 239 DW Highway. Property values will go down with this next door to them. They do have a wooded buffer area but it would need to be larger. Dr. Devoid asked if they had any professional assessment. Melvin Furbish, her husband spoke.

Non-abutters in favor: none.

Non-abutter in opposition: none.

DECISION: Dr. Devoid reiterated that there is a condition that a document from the trust authorizing Attorney Puffer to come before the Board needs to be submitted within 1 week to Kellee Easler's office.

A motion to approve the request for a special exception with the condition that the authorization documentation is brought to the Community Development office within a week of this decision was made by Mr. Supry, seconded by Ms. Dominguez. Mr. Cherian asked for an amendment which would allow up to 10 burials per year as stated in their application. After the Board discussed this Mr. Cherian withdrew his amendment. Motion was granted by a unanimous vote.

### **Bernard O. Davis Jr. Map81D Lot 8**

Alan Hardy joined the Board at 7:58 pm. Mr. Hardy is here in his capacity as Code Enforcement officer.

Bernie Davis testified. In 1948 his father had a small body shop and it grew to what it is today. In 1961 his mother asked for a new house and he built a garage. When his father turned 62, he and his brother were working for him and they bought the body shop from him. His dad was diagnosed with stage 4 cancer and then they had to apply for a variance, which is the one that was approved. Now because of the covenant that was put on the property with the approval of the variance, he can't sell his house or his business. The bank won't give a loan with this covenant on it. There are 2 septic systems on that property; one behind the garage and one at the north end of the house. This will take away ¼ property value if he has to tear it down. He'd like them to take the stipulation off or he'd have to sell it to a relative or tear it down. Banks have told him they have never heard of such a covenant.

Dr. Devoid did see something in their package about how they can proceed. Mr. Davis noted that the zoning district has also changed. Dr. Devoid understands from Attorney Raymond that there would be a new application. Mr. Cherian said he's uncomfortable with saying that what the Board did back then was wrong. There is an appeal period and that has been closed. A change of circumstances is different and that would be the case to make. It was nonconforming then and now it is less nonconforming. What's on the deed and restriction on family, in his opinion, is not for the ZBA to do. He would not support this type of a condition. Ms. Dominguez asked if because the zoning changed, that would make a difference. Mr. Cherian asked how nonconforming it was then and how did it change now. Is this a material change? Kellee Easler said that the requirements then were front setback

40 feet, side setbacks 20 feet and rear setback 40 feet. Now the side setbacks are 10 feet as it is commercially zone. It's less nonconforming now. Mr. Hardy said it's less nonconforming. Mr. Cherian noted they have granted setbacks of 0 on Jackson Street. This is a setback between 2 properties that the same person owns. Ms. Bartlett asked if they will sell it as one property or two separate. Mr. Davis explained that his brother owns half. Mr. Cherian asked if merging the lot would solve the problem. Mr. Davis said no. Dr. Devoid explained he can file for new zoning relief or a reconsideration. She doesn't agree with requesting reconsideration. She believes he'd need to file for a new zoning application. Kellee Easler explained it would be based on a change of the condition. Mr. Hardy explained that the change is the zoning district has changed. Is this a significant change? The covenant aspect, he doesn't believe they would come to the same conclusion today as they did back then. Kellee Easler explained that if the Zoning Board approved this request, it would go on to Planning Board. Mr. Supry agrees. It's the cleanest way to do this.

Dr. Devoid suggested he applies for a new variance which opens his right to appeal.

Mr. Cherian asked if this were granted would it be for what is there now. Hardy said correct. It's for the configuration that exists today.

Dr. Devoid polled the Board. It was the consensus of the Board that Mr. Davis come back before the Board with a new application.

#### **Minutes:**

Review and Acceptance of draft minutes of 10.23.18. Line 48 remove the second word 'property'. A **motion** to approve the minutes was made by Supry, seconded by Cherian and passed by a unanimous vote.

A motion to adjourn at 8:23 pm was made by Cherian, seconded by Bartlett and passed by a unanimous vote.

#### **Other Business:**

Next Meeting is scheduled for **March 26, 2019**.

*Respectfully submitted,  
Rose Fife, Recording Secretary*