

**Unofficial as of 3/15/06**

**HOOKSETT  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
March 14, 2006  
HOOKSETT MUNICIPAL BUILDING**

**CALL MEETING TO ORDER**

The acting chairman, Alan Rozwadowski called the meeting to order at 7 pm

**INTRODUCE MEMBERS OF THE BOARD**

Alan Rozwadowski, Ron Savoie, Dan Belanger,  
David Boutin

**CONTINUED PUBLIC HEARINGS**

**SOUTHERN NH UNIVERSITY**

**2500 North River Road, Map 33, Lot 67**

**Variance from Article 18, Section D.1 to allow filling of isolated wetland pockets for development.**

Jeff Kevan: TF Moran representing SNHU- We were here at the previous meeting to present the college's proposal for the 200 acre campus in the area of the two existing dorms and the two dorms under construction in this location on North River Road (indicated on map). We are proposing to construct a 49,000 sq ft building. There would be 2 stories with partial basement and 54 parking spaces for a new dining hall student center. We are only putting 50 spaces in the area adjacent to the building. On campus right now they have 1874 parking spaces and based on requirement of the town they need 1742 spaces giving them 132 excess plus the 54 we are building so it would be a total of 186 parking spaces with some excess. What we are here for is a variance to fill two wetland pockets one being 10,808 sq ft, the smaller area being 4870 for a total of 15,678 sq ft of wetlands. As part of the project we are proposing to set aside mitigation property, this being the proposed bypass and this being Messer Brook (indicated on map). What we are proposing to do is take this 14 acre piece and set it aside as conservation easement so according to state standards I would need to mitigate the 15,678 sq ft plus when they did the dorm they had impacted 4300sq ft, so I would be mitigating that as well. I would be providing mitigation for filling about 20,000 sq ft at a 10:1 ration I would need about 4.5 acres of land and I am proposing 14 at this point. Messer Brook runs down to open space, (according to the wetlands mapping) report to the town. This identifies this as having significant values as far as aquifer, storm water. This is flood plain and it serves as a wildlife corridor and there are some historic values going through there well and identified in the report.

The Packet includes a series of plans first being the sheet that identified the impacts that we are talking about. 2<sup>nd</sup> sheet is mitigation plan that

shows the easement that is about 4 acres of wetland, 10 acres of dry. The state looks for providing significant buffers around the wetlands so that they are not getting a bunch of wetlands that will be developed. Behind that the last time I was here the board asked about alternative locations with less impact. This plan shows a proposed site. This is the mitigation land. This has about 5.5 acres of clearing in order to accomplish this. One of the keys for us is to drop the lot down a full level, about 10 or 12 feet below road grade and saving the trees and actually planting and enhancing them so you are not looking at parking lot. The second sheet as someone had asked, couldn't I put it someplace where there wouldn't any wetland impact. If you pick it up and move it further into the site you can see the lighter green is the wetlands on the property and if you move it creates a longer road and I have to come in dodge the wetlands, come back provide a little bit more parking and I would be on a knob so that I have to flatten the knob in order to accomplish this. This shows about 11.5 acres of clearing. From our standpoint it starts pulling it away from the core of the campus, which is a negative from the schools prospective. We feel from an environmental side it clears a lot more trees, and would still end up going past this wetland area but don't impact it but I do have to go past it in order to get back through there. I would have to put more parking that would create a situation that would be a little less viable as far as being a walking facility.

Alan Rozwadowski: What is the wetland impact under that plan?

Jeff Kevan: There is no wetland impact.

Alan Rozwadowski: How much further back is it?

Jeff Kevan: The facility is about 700-800 feet back further then the other one as far as walking distance. The other alternative is to slide it down to the access road to the dorms keeping it somewhat in the same location. Terrain is on the top and this puts it on the hillside, which creates more clearing. It would be about .5 acre more of clearing.

Problem is that we would end up having to clear everything on the side of the road and it won't hide parking or dorms as well. It impacts about 8750 sq ft of wetlands. It would go from 1500, about half as much wetlands and obviously it is still somewhat in the core of the campus and create more clearing. I feel the negative is instead of being on top of this drainage area; it slides it down to be running parallel with the stream. From our prospective, the first one definitely provides a lot more value or better environmental value here and keeps it in the core. It keeps it adjacent to the center of the academic buildings and it accomplishes what the school is looking for. The executive summaries in the front of the report and everything in the back is a lot of wetland scientist backup material talking about where the analysis came from. The main value of these two pockets is that it provides storm water storage. It slows the water down before it gets into the stream. The difference in pockets are a foot or 18 inches deeper or a depression, it is not a big pocket. I don't see it providing a lot of value. Wildlife value really isn't there because there isn't a lot of vegetation. In the report it talks about, prior to the college owning the property, there was some debris being metal buckets and sinks. In the upper portion of this wetland part of the project would be to clean up that area. I haven't included it in mitigation but that would count as mitigation as far as the state is concern. The other item the board had asked for was a letter from Conservation Commission and the Town Planner Charles Watson. I would be glad to answer any questions that you have or I can go through the criteria for the variance.

Alan Rozwadowski: We should go over the criteria for the variance.

Jeff Kevan: The proposed use would not diminish any surrounding property values and again the wetlands are very low value wetlands. What this is going to do is allow SNHU to create a new student dining center facility in the core of the campus, increasing tax base. The loss of the wetlands is easily mitigated by putting the conservation easement on the land along Messer Brook. Parking would be hidden from view on North River Road, nice view from end of building, not looking at the massive part of building. Granting the variance would be a benefit to the public interest because this would allow or remain it to promote being a walking campus, having less traffic or cars driving from one portion of the campus to the other which is an environmental benefit and it would decrease traffic going into the road, and increasing tax base and value of property.

Denial of variance would result in unnecessary hardship to the owner because of the zoning restriction as applied to the property interferes with a reasonable use of the property, considering the unique setting.

The proposed development is keeping with the intent of the ordinance because it is protecting the high value wetland and maintaining the buffer on those wetland areas. The wetlands to be disturbed are low value wetlands that only function to store runoff, which can be mitigated with the proper drainage system.

No fair and substantial relationship exists between the general purpose of the ordinance. Again the intent here is to promote or protect the wetlands and we feel that in this area keeping the development pushed into the corridor, which preserves the back area, and cut less trees and the values that these little pockets are providing will be mitigated in our drainage system. It will be swales that mitigate or duplicate the functions that are occurring. That variance would not enter the public or private rights of others because SNHU owns the land surrounding the development area and the development will not affect any abutting landowners. The proposed development plans to maintain much of the existing trees along the public roadway and provide supplemental landscaping between the proposed building and parking and the existing roadway to screen the proposed parking and loading areas.

Granting the variance would do substantial justice because the college is promoting a walking campus, and preserve a high value of wetlands. The use is not contrary to the spirit of the ordinance because we feel the spirit of the ordinance is to preserve a high value of wetlands and that is what the project will do.

David Boutin: At the last meeting that is reflected in the minutes, I asked about the wetland area running from the access road down to a stone wall. I wondered about having a conservation easement similar to the one that is on the east part of the site and your answer was yes it could be done but I don't see it on any of these new plans.

Jeff Kevan: The college would be glad to put some type of deed restriction or preservation on that area. The tough thing with any easement is I have to convey it to someone and for me to put an easement in the middle of my property and convey it to someone who will actually want to take care of it or will be the steward for it has been the difficulty.

David Boutin: All I am looking at is a restrictive easement or deed to prohibit any future development.

Jeff Kevan: You are talking about that stream as it runs from the access road behind the property to the stonewall. I don't see a problem with the college putting a deed restriction on the property and if you want to make it a condition of this we would be glad to put a deed restriction on that. I just didn't think I could find a holder. I have had trouble throughout where I am trying to give even five or ten acres to someone in an isolated area but we could put a deed restriction on it.

Ron Savoie: Reading the report, you are looking for the right to reserve the right to use some of that wetland for future mitigation as far as impacting wetlands.

Jeff Kevan: From the state's perspective normally you again would need 4.5 acres so that if I am setting aside 14 depending on how they see it. If they see 6 acres in this particular location that satisfies their requirements then potentially I could use 8 of it in the future mitigation.

Ron Savoie: Isn't there a sewer line that goes up through Messer Brook.

Jeff Kevan: There is a sewer line that runs parallel to the brook now.

Ron Savoie: So the town already has an easement going through there.

Jeff Kevan: There would be a sewer easement in that area.

Ron Savoie: So basically if we take that out, what are we talking about for acreage for your easement for your mitigation purposes because the town already has an easement on that property.

Jeff Kevan: It would be a 20-foot wide easement. I would say about 2 acres of it.

2 or 3 acres off the top of my head. If you feel that this 14 acres should stand-alone for this project we could live with that.

Ron Savoie: Well you are giving us something that we already have.

Jeff Kevan: A little bit out of the 14 acres yes.

Ron Savoie: I would like to bring that point up. I have a problem with that whole area as far as Messer Brook goes. I have said this before and I have walked that land many times and where they are proposing that bypass road and where you are squeezing it in between your ball fields and the dormitories I don't think it is going to fly. You have been out there, you know as an engineer that there is a lot of problems and there is rough terrain there.

Jeff Kevan: There is no doubt that there is rough terrain, as far as along Messer Brook there are some very steep banks and in fact in Charles's response he wanted to reserve the right to say that if this road moved towards Messer Brook and I said I don't see that even being a potential.

Ron Savoie He hasn't walked that if he says that.

Jeff Kevan: So I don't see this road if anything is going to pull away from here. I am not claiming to have designed it or laid it out, this is where it was given to me as being an approximate location for future.

Ron Savoie: The last time I was aware of before I saw this print, the road was straight. That curve wasn't there between the dormitory and right there. It is college property and it is a change.

Jeff Kevan: I don't know

Ron Savoie I agree it is all speculation right now and I agree with you. For future reference I am trying to keep an eye open on which way that is going to go.

Jeff Kevan: I agree with you this is going to pull away from Messer Brook.

Ron Savoie That would bring it closer to the dormitories.

Jeff Kevan: Yes it would

Ron Savoie: That is not a good situation either.

Jeff Kevan: No I agree. Like I said this isn't my layout, this is what I was given.

Alan Rozwadowski Were those dorms built?

Jeff Kevan: Yes. These are the two that exist and these two are under construction right now.

David Boutin: Is this mitigation meant for the state or does it benefit the town.

Jeff Kevan: It goes to the town but it has to please the state on filling in wetlands. It doesn't go to the state. The Conservation Commission will get it I assume.

Ron Savoie: I believe all the conservation easements go to the town itself under the direction of the conservation commission.

Dan Belanger So if there needed to be further mitigation down the road it already exists.

David Boutin: If you take out what Ron is talking about, the 2 acres that is already given to us

Ron Savoie: In the future, right now with what we have in front of us we have ample mitigation. If they come with another plan that requires additional mitigation then they may not and will have to provide it someplace else. For tonight's hearing, there is ample for now and in the future, with that road. I would just like to be able to drive it once before I have to give up my driving privileges.

Jeff Kevan: This isn't to say that in the future they could come in with another project that someone says isn't up to mitigation, we would need to provide more.

Alan Rozwadowski: Any more questions for the board?

Abutters:

We are here to talk tonight about the impact on the wetlands. I will restrict any comments to that.

Carol Lessard: 35 Donati Dr. My first question is that you said that on one of your plans you were going to basically stay the flow of water because of the grade of the parking lot that you were doing.

Jeff Kevan: Are you talking about run off? Runoff will stay the same it is right now. It all goes into a stream channel that is at a high point just at the corner of the development. We are treating the runoff in this area as required by the State of NH. Discharging it and allowing it to come down and it runs into the river.

Carol Lessard: What about the use on salt from parking lots?

Jeff Kevan: Again it is a small parking lot and you could limit or restrict the use on salt if the ZBA or the Planning Board feel that it is warranted. There is really no specific treatment that takes that out, the gravel and swales basically take care of it and other contaminants.

Carol Lessard: For oil and all that. The other question I had you said there were approx 150 parking spaces to put in.

Jeff Kevan: No 50

Carol Lessard: This would make it 180 over

Jeff Kevan: 180 overall campus in excess

Carol Lessard: I am wondering if there is a proposal to limit the number of parking places.

Jeff Kevan: We are kind of being torn in both places, there are a lot of people that say there is a parking problem out there because I can't park close enough to the area that I want to go and there are other people that want limit the amount of parking. We are trying to satisfy both of that. We are putting in a small lot that you could have ADA access to the building to park and some parking for staff but not for large functions.

Carol Lessard: My concerns are, so many parking spots for a walking dining hall student center. 50 parking spots, where I work it would be ideal to have 50 parking spots for staff to park in. It just seems a little excessive when we do have that lot directly across the street and you are trying to make it a small walking community,

Jeff Kevan: We have a lot of people on the other side telling us it isn't enough. We tried to pick a number where it is small enough and there won't be a lot of excess parking to encourage students to drive or faculty to drive but there is enough to deal with staff and some over flow as far as ADA.

Carol Lessard: I would like to comment on we are kind of having a squeeze play on the environment that has been untouched. With the future bypass if it is to go through at some point , that is a really radical impact on that amount of land and then you have this dining hall and what is next in ten years. I am concerned that we are in a galloping state of development here and I would just like to say that is a concern of mine.

Jeff Kevan: Keep in mind we are talking about a 200-acre piece, which is this parcel, and it does not include the other side of the road. We are proposing to impact about 5.5 acres. We are trying to keep it in the center of campus and maintain the buffer and natural vegetation with the bulk of that land.

Carol Lessard: I appreciate the proposal but I am concerned with the run off and the lights and the future impact of this. I think it is opening the door for a lot of fast development and I am concerned about that.

Public discussion closed

***Ron Savoie made a motion to grant the variance, David Boutin second the motion. Stipulation that the streambed area form access road to stone wall that there be a permanent restriction form further development.***

***Motion Carries, 4 in favor, none apposed.***

**DTR HOOKSETT PROPERTIES**

**1631 Hooksett Road, Map 14, Lot 32**  
**Variance from Article 22 to permit a 60 dwelling unit where 12 is permitted.**

*Asked to be continued to April 11th*

**BEAVER BROOK DEVELOPMENT LLC**  
**Jacob Ave & Londonderry Tpk, Map 48 Lot 26 & Map 49, Lots 49&58**  
**Variance from Article 18, Section G.2.a to disturb the land situated within a 25-foot wetland setback.**  
**Special Exception from Article 18 Section E.1.a to allow for wetland crossings.**

Steve Keach:

Presented this application for special exception and there is also a variance application portion of it as well. We had the opportunity on successive Saturdays to have site walks. Alan was able to make it one week and the balance of the board members that are here tonight. We saw the area in question with the special exception that being the meadow area. That was situated along the north side of the stonewall bordering the property. Since the last time we were before you with this, we did have the opportunity to appear before the Planning Board and Conservation Commission. I suspect that you have copies of the letters from both boards speaking in favor of our special exception.

Alan Rozwadowski: Yes we do.

Steve Keach: I went last month and did take the opportunity to go through the various criteria necessary for the issuance of the special exception. I could do that again if you like if you have any questions.

Alan Rozwadowski: We don't have any questions with regards to that. Is there any specific questions with regards to what we saw on the site walk or comments. Again I will confirm that I do have letters from conservation & planning in favor of the proposal and confirm that the ZBA did infact take the site walk.

Open to abutters  
Public

Close public Hearing

David Boutin motioned for Article 18, Section G.2.a to disturb the land situated within a 25 foot wetland setback for map 48 lot 26 and map 49 lot 49 & 58, Beaver Brook Development be approved, Dan Belanger Seconded Motion.

Ron Savoie: In the letter we got from the Conservation Commission, have you met the request for giving them a sample deed to show the lot owners?

Steve Keach: No we have not. Those have not been created and would have probably been presumptuous. What I told him and other members of the commission is that as you know Ron this is an open space development and will have covenant. What I suggested to them was when those were developed that I would get them copies prior to going back to the planning board. It may be appropriate for you to put a condition on at least one of these items that solidifies that.

Ron Savoie: that is what I was hoping  
Steve Keach: I don't have a problem with that at all.

*Alan Rozwadowski: I have a motion and a second, all in favor motion carries*

*Ron Savoie to grant the special exception from Article 18, Section E.1 to allow for wetlands crossings and I would also like to include a covenant that the conservation commission to review sample deeds for content to that each lot owner will have an individual interest in the land.*

*Dan Belanger second the motion, all in favor.*

## **NEW PUBLIC HEARING**

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### **MIACOMET DEVELOPMENT**

**1794 Hooksett Rd, Map 6, Lot 114**

**Variance from Article 10, Section A to allow for a 62 and older occupancy restriction to be reduced to 55 and older.**

**Variance from Article 10, Section A, to permit a housing development for 55 and older in the commercial zone on the back portion of lot 114 where 62 and older has already been permitted on the front portion of the lot.**

John Ratigan : We have before you two variance applications and I am looking for your lead as to how to address them. We can take them in order and go through the criteria on each on and then open public hearing.

Alan Rozwadowski Review and go through each one separately If we have questions will ask.

John Ratigan: I have submitted to the board a letter dated February 21, 2006, which has all the requirements to the boards application, for your purposes.

I will talk about the property and the project for you and the members of the public. It is located here and it is a residential and adjacent to the river which is not fully captured by the photo, front portion of the project which is phase one which was approved by the board in 1989 and construction was not completed due to a turn in the economy and other reasons. It is under construction right now. It is 40 units of elderly housing. We have a conceptual of what we would call phase two. Obviously the particulars would go to planning board. The planning board would look at issues about design of the site and access but we wanted to show you what it would look like.

When you have a use variance, you need to be concerned about what it is about this specific property that is different from others in town that is zoned for commercial use. Because you have an obligation to uphold the integrity of the fabric of the ordinance and we would submit that you have residential use on this side, residential use on this side and actually the same type of residential use on the front portion of the parcel. I don't think that there is any property in town that is zoned for commercial use or probably any property that is zoned for a use that is inconsistent with all of its neighboring uses as you find on this property. We think really it is uniquely qualified to receive a use variance.

There are a number of commercial uses that permitted for this property but we suggest most of them because of access is going to be through the front portion of the property most are incompatible with the use that is here. There is a nursing home use that is permitted in this zone as well as manufactured housing. We have examined the manufactured housing. We can build that use, we had an open house, we have talked to abutters and they confirmed our judgment They think the proposed elderly housing use will be much more compatible not only with the existing use on the front portion but on the neighboring portion.

Alan Rozwadowski How large is that parcel.

John Ratigan The parcel in its entirety is 40 acres, the front acreage is about 10 and there is 30 acres in the back.

Alan Rozwadowski So you are looking to change 30 acres of commercial property and put into elderly housing.

John Ratigan That is correct. We think that for the types of commercial uses that are allowed in the zone, we think that you just don't want commercial traffic running down Bernice Street, a residential development. We don't think you want commercial traffic going through the front portion of this development given its existing pattern of roads that is developed there. There is not access from the other side or from the back. You can't anticipate the land use changes that will change over time. This is what it is and that is why we come to the zoning board because you have the authority to take into account what is happened to the patterns of land use around a piece of property and to make a decision whether this truly is unique and whether relief should be granted. I will go through the criteria with letter dated Feb 21<sup>st</sup>. The first issue is we believe that having a use that is consistent with the abutting uses will have no diminishing impact on the value of surrounding properties and we think that the commercial uses that are permitted by right in the zone would probably have the effect of more noise, lights and other issues that is traditionally developed with commercial uses. It would diminish the value of surrounding properties. We believe that this will enhance the value; it will stabilize this area as a residential neighborhood. We believe we have met that requirement.

Daniel Belanger: Is Mr. Coco an appraiser or a licensed appraiser?

Ratigan: He is a realtor. He is familiar with sales of residential properties and commercial properties and industrial properties. He came out in conjunction with our request to examine this issue, to look at the property and look at the abutting uses. I don't think that there is any requirement to have an appraiser.

Daniel Belanger: I am just asking not trying to be technical.

Ratigan: Given what is going on around the property that we want to develop, I think it was common sense to suggest that the property values of the adjacent properties would be best protected if there was a residential use and not a commercial use.

Alan Rozwadowski You could make the comment to anyone in town who lives next to commercial property and they would say no to commercial property in town.

Ratigan: I wasn't suggesting that at all I was suggesting that one of the reasons you have zoning districts is to have compatibility of abutting uses and when uses are incompatible, you have a buffer between them. Given the pattern that exists, my suggestion is that residential uses adjacent to residential uses is how it should be.

Alan Rozwadowski We have residential abutting commercial property in numerous places in town

Ratigan: Generally you try to make combinations for that with buffering between zoning districts and I am not aware of any provision to achieve a buffering between the use that is permitted on the property

Alan Rozwadowski: There would be a required buffer that they would have to meet correct?

Ratigan: I am not aware that your ordinance establishes a buffer require between commercial uses and residential uses.

Alan Rozwadowski: I believe it does.

John Ratigan: The second criteria would be that variance would benefit the public interest. The ordinance has made a judgment elsewhere that senior is desirable and we would submit that a continuation of the senior housing that has been permitted on the front portion of the property onto the rear portion of the property would not only meet the need that has been identified most in the master plan and the ordinance to encourage this use. This would be of interest

Alan Rozwadowski: I know your plan is just a conceptual, how many units are you putting in?

John Ratigan: There are 85 shown on the conceptual plan.

Alan Rozwadowski: In addition to the 40

John Ratigan: Yes. I think that what we would say is that this depicts units that are basically the same density as in the front. We are making by proposal to meet the requirements of Article 7 of the zoning ordinance. So whatever those requirements are we will comply with them. We are not seeking any relief from the terms of Article 7, we are seeking to super impose Article 7 onto the back portion of the lot.

Dan Belanger: Do you know off hand whether the density depicted on the conceptual was that incongruence with Article 7?

Phil LoChiatto: It is my understanding that it is.

Ron Savoie: What is the current zoning on the front section where you are already building?

John Ratigan Commercial

Ron Savoie: That is commercial and you are building duplex elderly housing in there right now

John Ratigan: Yes Duplex, 40 units. Once upon a time, the property was zoned to allow elderly housing to be built on the property as a right. There is a long history, a person got a special exception to allow that use on the front portion. Actually the use was allowed on the whole lot but the applicant only came forward with a phase one development plan. Those rights were recognized by the Superior Court after a period of time and that is how the front portion is being built now.

David Boutin: Can you clarify or can you say you had the right to build elderly housing by permitted use or special exception or a variance or what?

John Ratigan The property at the time of the use was sought by special exception and was zone industrial . This was back in the 1980's. Under the industrial zone, there is a provision that allowed for the construction of any use permitted in the commercial zone. In the commercial zone by special exception, was elderly housing. It was age 62 elderly housing.

David Boutin: So it wasn't by right.

John Ratigan: By right in a sense that it was listed by permitted use by special exception and they sought the special exception and they were granted the special exception.

David Boutin can you explain the conditions at the time of the special exception was granted or why it was granted in lieu of what exist today.

John Ratigan: As the applicant made the special exception there was a deed restriction on the property that restricted the use to a residential use.

David Boutin: What I am getting at is at the time looking at the neighborhood several years ago, it was zoned industrial and there was a special exception which had a less threshold to meet for approval and today it is zoned commercial and is not allowed by special exception. In your view what is the characteristics in the neighborhood that make this situation different today then several years ago.

John Ratigan I don't know

David Boutin: Why should something be approved that now it doesn't have the attachment of special exception to it.

John Ratigan I don't know I would think by the age of the homes on Bert and Bernice and Granite streets they were they in the 60 and 70s. That neighborhood was probably there. I think the condominium development on the right hand side, Country View Condo's again I don't know if they were constructed by the 80's or not. I can't speak for that.

The zoning ordinance at some point was amended to change the zone from industrial to commercial and it deleted as a special exception elderly housing.

David Boutin That is what I am asking you why in your opinion was that done?

John Ratigan I don't know, I don't have an opinion

David Boutin: Do you have an understanding why that was done?

John Ratigan: No I don't. I didn't research that. You have residential uses on the front part and the sides and it seems to be an anomaly since access would have to go through a residential neighborhood that you would want commercial use on the back portion of the property.

On the hardship issues for the use variance, as I have discussed, I can't imagine a parcel that has more unique characteristics given the elderly development on the front portion and residential development on the sides and I think that is why you are in power to grant a use variance. For those reasons I think that the board should ask themselves what is unique about this situation and what is different from other properties that is zoned for this type of use. For those reasons the zoning restrictions as applied by the applicants property interferes with the applicants reasonable use of the property considering the unique setting of the property and its environment. Its environment is a parcel of property that is surrounded by residential uses already in existence.

Alan Rozwadowski How much of this is developed? On the conceptual drawing which of the buildings are already there?

Phil LoChiatto: I am the site project manager for Webster Woods, currently the infrastructure is in for phase one, the 10 acres, the approved 40 units. The pavement is in about 75 percent. That includes all the parking around the clubhouse.

Alan Rozwadowski Which buildings are built?

Phil LoChiatto: There are 10 units that are constructed and the clubhouse.

John Ratigan: The second prong of the use variance, hardship is that there must be no fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property. I discuss a case Belanger V. Nashua which stands for the proposition that there is an obligation by the municipality to zone consistently with the existing character of the neighborhood. I would suggest to you that if you take into account what is on Bernice, Bert and Granite Street and the condominiums on the right and the neighborhood that is on the front portion of the property there is an existing character that it is residential use and I think that the commercial use doesn't allow this reasonable use that there is not a rational use between the general purposes of zoning and the restriction of the property.

The third prong of the hardship is that the variance would not enter the public or private rights of others. Simply stated the proposed use will have fewer impacts on neighbors than the other uses that are permitted on the property. This proposed use will have fewer impacts than a manufactured housing use which is permitted in the commercial zone by right and there are other commercial uses that are permitted on the property that is not feasible because of the access to the property.

It will have greater impacts on traffic and noise to the existing residential neighborhoods. There would be no injury to public or private rights. The fourth prong is that the variance would do substantial justice. There no identifiable gain to the public if the variance is denied. I think the public is only benefiting from it. There is abutter concerns, harmony of neighborhood issue that is preserved if you grant the variance and there is substantial tax benefit between having elderly housing which puts no children in the schools and having another permitted use like manufactured housing which is probably the only feasible alternate use because of traffic. The ZBA handbook talks about the standard as on this criteria any loss to the individuals not outweighed by a gain to the general public as injustice. I think we have satisfied that prong by those considerations.

The last prong is that the use is not contrary to the spirit of the ordinance. You can't look at the parcel with blinders on it has to be taken into consideration what is adjacent to it. Given that, the other portions of the property abutting it are developed and the front portion is going towards this use, you really have a parcel that cries out for residential use. We believe that this is not contrary to the spirit of the ordinance. I think if voters were looking at this issue today they would quickly rezone the property to allow a variety of residential uses given the adjacent residential uses.

That concludes my presentation on the first criteria

Just for the record, my clients had an open house to communicate with abutters about the proposed use and they gathered a number of signatures, which there are 40 Hooksett residents and 7 abutters that were in favor of this application. They also have a number of letters which abutters and other concerned citizens were interested in submitting to the board in support of the project.

Alan Rozwadowski: What is the current asking price for these units?

Phil LoChiatto: They start at \$179,000

Ron Savoie At any time in the future do you plan to connect to the condominium units next door?

Phil LoChiatto: We have no plans for that. It is believed that there is no right of way.

Eric Nickerson: I am the principle. There is an easement that goes through across but it is a sewer easement.

Phil LoChiatto: There is a roadway and sewer but no easement

Abutters:

Al Garlan: I think the original developer when he got the density approved for the front lot, they were not going to build in the back. They were going to have one road that came out on Route 3. Now they look like they have one that goes out on Bert Street and Bernice Street. Are they opening up Bernice Street? I think that is what most of the people here tonight are concerned with the traffic on those streets

Eric Nickerson: This is just a conceptual and those roads are just showing the right of way to Bert and Bernice. If they grant us the variance tonight we will have to go to planning board. The planning board will have the ultimate say on traffic circulation. There could be issues about blocked ways. I am not sure what the town will require for other egresses. They could say to put up fire egress there with a gate and an opticom light. If they granted this tonight that would be the time to come out with this. This is just a conceptual plan and a look at what we would want to be doing. All we are we are really showing are the right of ways.

Al Garlan: Where is the sewer easement?

Eric Nickerson: It would come from Bernice St to the end of the condos

Al Garlan: You had a drawing at the outing and there is a little band aid, what is that?

Eric Nickerson: That was our mistake, because this road isn't built and I am not sure the condition of that road. We put the band-aid because we realized that it wasn't a road. It was probably a right of way

Al Garlan: I believe that the right of way was giving to the town in 1960 but they did not accept it.

Eric Nickerson: So that is why we put the band-aid there.

Al Garlan: The big concern is that most of the people that are here are concerned with the traffic.

Eric Nickerson If we get the variance this connection will be a big part of the planning board. It is really a life safety issue to see which way the circulation goes.

Al Garlan: So what you are saying is if you open this up there will be a gate there.

Eric Nickerson: Right, if we got this what you should do is come to planning board and say everyone is concerned with the traffic flow. At that point they will ask us to do a traffic study and do the do the circulation on it.

Al Garlan: I was at the original ZBA meeting and they got a special variance to cluster these houses but they also agreed not to do this.

Eric Nickerson: I don't believe that they did because it was on the plan. This was back in 1989 and I have the original plan it is a permitted use.

Al Garlan: On that little sheet that you have you talk about unrestrictive manufactured housing

Eric Nickerson: It is a permitted use. If we were going to do manufactured homes here we wouldn't have to be here tonight but we don't want to do that. We don't want to do other forms of it.

Dan Belanger: We are dealing with a unique situation because we are bound of the 1988 zoning regulations because of the court order. With that I have a question to whether your total development is limited to 60 units as was the regulation in 1988. That would be something you would want to research.

John Ratigan: We have asked for a variance to allow you to apply Article 7 to phase two of the property. Article 7 would control density or control configuration of setbacks. We are here to seek variance relief and we believe you have the authority to do so.

Dan Belanger But we are under a court order.

John Ratigan: The court order is as I understand it, only addressed to development on the first parcel because the town contended that there were never any rights that were granted by the ZBA to develop the back portion at the same time.

Eric Nickerson: The vested rights

Dan Belanger: And you are limited to 41 there.

Eric Nickerson: Yes, but the original plan, Peter Zohdi, he had the original 1988 plan, and phase two was 130 units total but that was based on a different density. One probable calculation and setbacks which we would change the density today because the setback between units are by today's standards.

Dan Belanger: Obviously we don't have the 1988 ordinance here. My question is did the ordinance at that time limit to 60 units of elderly housing per development?

John Ratigan: The answer is I don't know. Even if the answer is yes, we are here for you to seek a variance which we think you have the authority to give us. When you ask for a variance, we have identified what section of the ordinance we want variance from. It is from the commercial zone that does not permit this use in this zone. We are asking to import Article 7 in its entirety which is today's 2006 standards for elderly housing. We are asking to import the entirety of that Article to the back portion of that lot. We don't have any measuring guidelines in the commercial zones in here because it doesn't permit this use in a commercial zone. The logical way we thought to approach this was to take the ordinance, which you feel is acceptable elsewhere, and approve this use and just import it wholesale. Then we don't have to get into what happened in the past we are just asking relief to follow your ordinance as applied to this portion of the lot.

George Vaillancourt and I am an abutter. In 1988 we signed a release so they can build these houses but this was suppose to be a release to the town that was granted for wildlife. I am sure you can find the papers in archive. I don't know if it was changed but that what was done then.

Ron Savoie: There is a lot of unanswered questions that we need to do some looking into and get some records and information from back then and dig up the zoning records. It probably wouldn't be a bad idea to table this until the next meeting.

Alan Rozwadowski: Do we want to table the whole thing?

Ron Savoie: I would, yes.

John Ratigan: I take it that we would continue the public hearing until the next meeting.

Dan Belanger: It is a continuation so there are no more notifications

Eric Nickerson: If there is anything you wanted us to do to dig up some stuff we can.

Dan Belanger: The building dept here will have some research to do.

Alan Rozwadowski: Do we have some specific items that we should ask them to go look for?

Dan Belanger: I want the 1988 zoning ordinance that pertains to this to see whether it limited the whole development to 60 units.

Ron Savoie: We should also have a copy of the original plot plan. Also a copy of the court case

Dan Belanger: And any easements or conservation land that was granted as part of the original proposal.

Ron Savoie: I will make that part of my motion to table.

Alan Rozwadowski: Is there anything anyone else is looking for that you think we should have so we don't come back next month and say we should have had this.

Dan Belanger: Get request for additional information.

Alan Rozwadowski: If anyone thinks of anything to contact Jessica and ask that you coordinate with the applicants to they know that you asked for additional information.

Eric Nickerson: We are willing to supply anything that we have and I suspect we have far more then the town does.

David Boutin: At least a couple of the abutters suggested that there was a promise to them back 12 years ago that a substantial portion of that back site was going to be open space, conservation land. To that extent I think that we should get minutes, tapes etc.

Ron Savoie: That is part of the request, any information regarding this dating back to 1988 or earlier.

Eric Nickerson: The good new is that there were not many meeting minutes where this was discussed.

David Boutin: You say you have all these minutes, lets say you with regards to the discussion with the abutters. What is your research with regards to this conservation land and what was done?

John Ratigan: I don't see any conditions or notations on the plan nor did I see any discussions or conditions imposed that would suggest that was even a consideration. There are no restrictions to what you are buying in the title. I will show you the title and there are no limitations to development on the second phase other then utility easements.

Dan Belanger: If any of the abutters have any more of these recollections, please let us know about them now. It is important to protect you if it is right and important to protect the applicant.

George Vaillancourt: They were not supposed to open Bernice Street either. They allowed the road to be built so the access for the fire truck would be nice. I have no objection to that. I have no objection to let them sell to 55 and older. 62 I think is a little ridiculous but the other section and I know I signed the paper.

Dan Belanger: Do you have a copy of that?

George Vaillancourt: No I don't.

Dan Belanger: 62 and 55 is contained in the court case.

David Boutin: He said he signed something pertaining to the easement and open space.

Dan Belanger: Recently did you sign it or back in 1988?

George Vaillancourt: I signed a paper when he came to my house to give him permission to build because they changed owners. The other paper we signed for the previous owner. First he wanted to build a nursing home, then he came back and he wanted to build those cluster houses. Because the rules were made in 1961 they build all the streets, Bert St and Bernice Street. They could not build those with out permission and we had to sign a release so they can build those.

Ron Savoie motion to table pending the discovery of information and records pertaining to the 1988 site plan approval, and any other pertinent information that may be available. David Boutin Second the motion, all in favor.

Continued to the April 11<sup>th</sup> meeting.

### **3A DEVELOPMENT**

#### **Hooksett Road Map 14, Lot 1-2**

#### **Special Exception from Article 18, Section E to allow filling in wetlands for the development of a residential development on lot 1-12 of University Heights.**

Karen O'Rourke, Brown Engineering: I wanted to start by giving you an overview, we are here for one portion of the master plan which is a residential development of 204 units. . We received prior approval for this master plan granted 6/04. Recently we were presented with a letter from Michelle Bonsteel, which says that we are grandfathered with this project so we can continue with the process. I would like this letter public record.

Alan Rozwadowski: Read the letter

Karen O'Rourke:

Just to give you a location it is 3 & 28 and apartment complex is approx 1000 feet back from 3 & 28 and 100 feet higher in elevation. The roads College Park Dr and Black Water Dr have yet to be constructed. They will be constructed prior to the apartment development.

The site itself, again this development was approved as part of the master plan. The density was set at 204 units, 17 buildings with 12 units in each building. What we have done is lay it out and kept the site plan to the interior and left a nice buffer. We have 2 isolated small areas we request to fill. We are skirting for the grading of the parking, this wetland the total impact is 3835 feet. I can go through the points that we went through as far as Article 18.

Alan Rozwadowski: Lets wait to hear until we do the site walk

David Boutin: You made reference to the buffer zone the delineated wetland, where is it on the plan?

Karen O'Rourke: It varies and all these buffers were established under the master plan.

David Boutin: All that area in dark green is in buffer?

Karen O'Rourke: It is the tree line.

David Boutin: Can we get the open space spelled out on the plan in a different color?

Alan Rozwadowski: How many wetlands are there in this project?

Karen O'Rourke: Well there is residential development that you have already seen. I can't give you a number.

Abutters

Public Closed

Site walk scheduled for April 1<sup>st</sup> at 8 at the Library

Continued

## **ARTHUR & DENISE YOUNG**

### **13 Morse Drive Map 13, Lot 42-1**

#### **Variance from Article 5, Section E1 to add a 36X26 garage that does not meet front set back.**

Arthur Young: I have Andy Southerland, the builder, here for tech questions. I am here because I would like to change the set back from 35 to 30 feet for a garage to match our existing house. In addition to the garage we would add a breezeway and both would be attached to the house.

Dan Belanger: At the time of the house was built, 30 feet was acceptable?

Andy Southerland: It was 25 feet.

Arthur Young: We feel that by adding the garage it will add to the value of the house and be a tax benefit to the town. We don't feel that there would any detraction to the other property values from the surrounding neighborhood.

Ron Savoie: The plot plan says 50 feet on the sides, is that still the same?

Andy Southerland: No, it would be 47 feet.

Alan Rozwadowski Can it be pushed back?

Andy Southerland: It will be flush with the house and in the rear there is water problems. There is puddling in his yard and if I go too close to that it would cause flooding in the basement. If it is where it is now, I can redirect the water towards the front and out into the street.

Alan Rozwadowski: So it is a topography issue?

Boutin: In your sketches, you show a stairway going to the garage to the attic space, do you have any intention to converting it to livable space,

Arthur Young: Just storage at this time.

David Boutin: So it will remain unfinished?

Arthur Young: Yes

Alan Rozwadowski Do we have any issues with the size?

Dan Belanger: How many square feet is the addition?

Arthur Southerland: 806 sq ft

Dan Belanger: How big is the existing house?

Andy Southerland: 24x32, two stories.

Dan Belanger: 1700 so there isn't any issue with size.

Ron Savoie: Are there floor drains in this addition?

Andy Southerland: We did do drains in the garage because of the water issue. They are foundation drains not floor drains.

Alan Rozwadowski: Any other questions for the board? Can you go over the criteria?

Arthur Young: The specific site is an appropriate location because it is adjacent to the house. There are other houses in the neighborhood with garages, the garage would be 30 feet and flush with the house. The proposed use would not diminish property values because we are adding a structure to our home that would increase our property value. It would increase the value of our property by adding a garage and it would be a tax benefit to the town as well.

Alan Rozwadowski There are other criteria right?

Arthur Young: There is an area variance, there is a 35 foot set back from the front is an adequate estimation to meet our needs and partially due to the slope in our property. By granting the variance it would enable us to build a garage and increase the property value. It does not affect public safety.

Alan Rozwadowski: Any questions from the board and abutters

Michael Dugas 14 Morse Drive, more then anyone else it would impact us the most and I am in favor of this. It will look nice and only add to the property value. It would only benefit of the properties. It should be even with the house, it would only make it look nice.

John Michaud, 11 Morse Drive, I think it is great and it will help the property value and I am in favor for it.

***Dan Belanger motioned to grant the variance from Article 5 Section E.1 to add a 36x26 garage that does not meet the front set back at 13 Morse Drive, Map 13 Lot 42-1. David Boutin Second, all in favor, no opposed.***

## **ADJOURN**

Vice Chairman Alan Rozwadowski declared the meeting adjourned.

## **APPROVAL OF MINUTES OF.**

Respectfully submitted,

Jessica Skorupski