

Official as of 10/10/06

**HOOKSETT
ZONING BOARD OF ADJUSTMENT
Minutes
September 12, 2006**

HOOKSETT LIBRARY

CALL MEETING TO ORDER

Chairman Tracy Murphy Roche called the meeting to order at 7:08 pm.

INTRODUCE MEMBERS OF THE BOARD

Tracy Murphy Roche, Chairman, Chris Pearson, David Boutin, James Levesque, James Gorton, Council Rep.(non-voting), Roger Duhaime, Larry Abruzzesa, Voting members Tracy Murphy Roche, Roger Duhaime, Larry Abruzzesa, David Boutin, and Chris Pearson

CONTINUED PUBLIC HEARINGS

MICHELLE GAGNON

71 Whitehall Road, Map 26 Lot 114-1

Special Exception from Article 26 Section C4 to add a 17x20 family room onto a legally non-conforming use.

Ivan Gagnon, representing Michelle Gagnon
A certified plot plan was shown and reviewed.

I. Gagnon read criteria (see file)

D. Boutin questioned the difference on the agenda for a 17-foot addition and the plot plan states 17 ½.

I. Gagnon stated that 17 ½ is correct.

C. Pearson asked if the application should also include the farmer's porch.

I. Gagnon said it was added later and it can be left off if it's a problem.

C. Pearson: We can review that on the site walk if you intend to do that.

M. Bonsteel: You must specify all construction and will be reviewed at the next meeting.

Open Public:
None

Site walk scheduled for September 18th at 6 pm.

HOOKSETT DEVELOPMENT

Thames Road, Map 14 Lots 14-58 & 34

Special Exception from Article 18 Section E, which impacts 15,710 sq ft of wetlands to build Granite Heights South.

D. Boutin recused himself – James Levesque - voting

Nancy Rendall, Blue Moon Environmental presenting Hooksett Development: We came before the board in July and have had three site walks. We are seeking final approval tonight.

The wetland impact is 15,800 sf. The Planning Board requested we add access to the open space via a trail. We maximized the use of existing trails and minimized the wetland impact both direct and indirect. We propose hooking into the existing trail. There are no wetland impacts with those. Five parking spaces are proposed with three wetland impacts. Two are 40 sf. The third is 50 sf. The proposal is to keep these trails in a natural state and restricting access to motorized vehicle. We propose trail crossings of these areas as stated in handout. (see file)

The proposal would be to span the entire wetlands in all areas and I understand that these are permitted uses for poorly drained soils and very poorly drained soils.

The total revised wetland table was distributed (see file)

Per the handout:

Area B increased from 560 up to 830 due to a change in slope

Area C decreased from 1180 to 380 due to slope changes

Area I changed because the Conservation Commission wanted a wildlife crossing and then the wildlife commission wanted the natural contour and the wildlife preserved.

Area I increased from 130 to 750.

Increase from original submittal of 290 sf. As a result of the trail the impact is 200 sf.

The Planning Board asked that the trails be maintained in perpetuity by the homeowners association. The maintenance will be in the conservation easement deed.

There will be signage. The Planning Board asked they be at all intersections of the road network. The design is contingent on the conservation easement deed access. The signs will be maintained in the conservation easements as well.

R. Duhaime: Is the drainage designed for a 100-year storm, specifically with regard to area P.

Mike Leo: Initially it as designed for 25 year storm and we are looking at design changes for 100 year storm and I would like to have that conversation with the PB.

That change would not further impact the wetland areas.

Stantec: We have recommended that all drainage be designed for 100-year storm.

M. Leo: The current town standard is for 25-year storm.

C. Pearson: I request the opinion of CC representative

Tim:

Of all the impacts, having reviewed a number of times, I'm satisfied with all the crossings and the new ones are a plus for everyone. The CC has been satisfied with this project.

T. Murphy Roche: There appeared to be a lot of wash out in an area where the road doglegs, has that been addressed?

N. Rendall: The proposed road is going to be upgraded.

M. Leo: If there is any additional erosion, we are willing to take a look at it. There are a couple of areas, which are getting washed out. We will be cleaning this up and fixing it by the construction of the road.

Open Public:

D. Boutin, 1465 Hooksett Rd:

When you travel on Thames Road to the intersection with the dirt road, to the right is a wetland area that now looks like a beach from all the runoff. I think that should be cleaned up and restored to its original state. I ask the board if this is the intent of the applicant.

M. Leo: It is near the pool, we will be paving the missing piece of the road and am willing to clean it up if necessary.

D. Boutin: Is the gravel road on Granite Heights property?

M. Leo: It is on Granite Hill property but we have right to access and therefore can correct erosion. It is probably from the recent heavy rains we've had.

R. Duhaime: I believe that there were a lot of vernal pools on Thames Road when we walked that area and Mike said they would clean it up after construction.

M. Leo: We agree

Close Public

Site walk required for the 4 additional impacts.

N. Rendall stated she believed that you might not require a site walk because it is a permitted use.

Stantec: It is the decision of the board to make the determination if a site walk is necessary

The consensus of the board was to waive the site walk

R. Duhaime: Will you do the 100-year storm at P?

M. Leo: We will at P only.

C. Pearson: What is on the table from Stantec is 100 year for the entire site.

M. Leo: I would like it to be a Planning Board issue.

J. Levesque: What guarantees that these wooded crossings won't get rotted out.

N. Rendall: We are specifying that the homeowners maintain. The roads are private and the trails will be part of that system.

C. Pearson motioned to approve Hooksett Development for 16000 sf of wetlands to build Granite Heights South and repair the destroyed portion along Thames Road and as was discussed regarding trails and signage and the maintenance of both would be in Conservation Easement.

R. Duhaime seconded.

Voted unanimously in the affirmative.

Chairman T. Murphy Roche left the meeting and Chris Pearson took over as chair at 8:00 pm

James Levesque will vote.

MTS ASSOCIATES

West River Road Map 17 Lot 37

Appeal from an Administrative Decision

Variance from Article 19 Section 8.D to allow a sales & service facility in the Groundwater Resource Conservation District.

David McCurdy owner of MTS Associates: for 20 years. I have been in the business of selling and servicing golf carts for 20 years. The smaller portion of the business is servicing forklifts. We are looking to become good partners in the town of Hooksett.

Atty Panciaccio: MTS sells and services golf carts, which are classified as electric vehicles. This is a growing market with energy concerns increasing. MTS has 50% of the market share in selling these vehicles, which are used at campgrounds, universities, and golf courses. They are looking to occupy a property in the commercial district and the ground water conservation district. These low speed vehicles fall within what the ordinance proscribes. We provided the definition of the low speed vehicles. Tonight I supplied you with the description of what fluids are used in these vehicles. The first issue is if this falls within the ground water restriction.

D. Boutin: We got a letter dated Aug. 29th from our counsel, Upton and Hatfield which used a common dictionary to define automotive and automotive repair service. I found that disconcerting because the terminology we use in describing things in the zoning ordinance is different than the dictionary. I went to SNHP and looked at definitions assembled by the American Planning association:

Automobile is a self propelled and licensed and hold not more that 6 people.

Automotive repair: furnish repair to the general repair to automobiles

Garage repair: any building land that which a business service or industry

The point I'm making is that forklifts and golf carts are not an automotive vehicle and the service is not an automotive shop. The issue of administrative appeal I believe is warranted. Ive formed the opinion that based on this research; the board can conclude this is not an automobile as referenced in our zoning ordinance. This is a low speed vehicle. Any vehicle, which travels less than 20 mile per hour, is not an automobile.

C. Pearson: My opinion, what is more important, is it is a service area in a ground water resource area, in Article 19, section d, there are other issues this brings up. One is disposal of material other than brush or stump. Storage of hazardous substances such as the oil from the carts and burnt. We should look at the other points in 8D and see if this is the proper space for a service in a ground water conservation district. If they had the opportunity to confirm if it is in an aquifer.

Marc Vancon: We looked at the State aquifer zoning map and the location from the river and as a result it is likely to have aquifer conditions.

C. Pearson: There are other issues that come to light in having a service area. M. Bonsteel, where these issues addressed (disposal of material and proper handling)?

M. Bonsteel: Two, five-gallon receptacles were discussed as well as the storage of carts on a paved area. The mitigation designed by the engineer to include catch basins were discussed at TRC.

Attny P: My understanding is there is minimum solid waste which will be handled by licensed individuals. The oil from the cart will be used to heat the building. Therefore there isn't any solid waste.

M. Bonsteel: I think you're referencing tires and metal disposal.

C. Pearson: I think we are talking about a service shop, not necessarily an automotive. It is in ground water conservation.

M. Bonsteel: The town's attorney agrees with me that this referred to as an automotive service. The code as discussed is lacking and ambiguous. IN discussions with the applicant, if they eliminate the service, they can have 100 carts or a car lot. This is absurdity of this code. When interpreting a code as flawed as this, I believe the code enforcement must take the most conservative approach and therefore I refer to this as an automotive repair shop.

C. Pearson: I would rather error on the side of caution and look at it from a variance standpoint.

D. Boutin: I think that you have valid points about the site, and I think that although it isn't our jurisdiction, they meet all the requirements. I think the code enforcement was appropriate in acting conservatively and bringing the question to the board.

Is there a basis for the administrative appeal? If we support the administrative appeal, it would go to the Planning Board where I believe they belong. They are clearly not automotive or automotive repair. That is the only question.

J. Levesque: The sheet with the amount of potassium, forklifts mirror automotive except for hydraulics. In maintaining the forklifts, how much oil is removed?

C. Pearson: When the applicant approached, in section D #7, the disposal of hazardous materials is listed. There are a lot of questions. Maybe a variance was the wrong reason to be here but there are other issues that need to be addressed here.

D. Boutin: I think the areas of concern, if you look under the permitted use, storage and use of 5 gallons or more, under paragraph D. The information tonight states the total of fluid used is 4.5 gal.

C. Pearson: We are talking about recycling fuels.

M. Bonsteel: That was discussed with the Fire Department and is included in the plans.

Stantec: There are a number of concerns with volatile hydrocarbons with removal from a vehicle. Obviously, those would have to be addressed here or at the Planning Board level.

R. Duhaime: I've been to the location in Bow and the vehicles are not all on pavement. Do agree to store all vehicles on pavement here in Hooksett.

D. McCurdy: Yes, we will have all vehicles on pavement.

James Levesque: There is bigger equipment in Bow.

D. McCurdy: It is not mine.

R. Duhaime: Have you contacted DES regarding the washing?

C. Pearson: We must address the appeal for Administrative decision first. Then, if denied we would then move forward.

***B. Boutin motioned that the appeal for Administrative decision be sustained.
Fail to be seconded, motion failed.***

***L. Abruzzesa motioned to deny appeal Administrative Decision.
Seconded by R. Duhaime.
Vote 4:1 with D. Boutin opposed***

Variance Application:

Atty Panciacco:

Since the last meeting MTS and the engineer have met with town officials and its associates to answer questions about the site. Any recycling of solid waste is incidental and subordinate to servicing the carts. This is a regional type business. The industry growth is in its electric power.

C. Pearson: Are the batteries changed out?

D. McCurdy: The battery company, which we buy from, takes back all used batteries. We typically carry between 40 and 60 batteries at a time. We order as needed.

Atty Panciaco: All service will take place in the building. All vehicles will be parked. The precautions the applicant has taken have addressed all concerns.
Variance criteria (see file)

R. Duhaime: Can you address the issue with regarding to washing the vehicles?

Gary Dickson, (Manufacture waste water evaporation): We guarantee that water is returned to the environment in a clean state.

C. Pearson: With regard to seasonal storage in the winter, is there space for 700 carts?

Marc Vancon: We did a quick calculation of the size of a cart and how they are parked and came up with over an acre of paved storage, which is more than adequate to park 700.

C. Pearson: What about the other acreage, is that going to be used for storage?

M. Vancon: No, it is just additional area in the commercial district.

R. Duhaime: Is there any similar facility that we could visit?

Mark: Not that I know of. We set a high bar. We came up with the oil burning and the water boil off. It is expensive equipment. D. McCurdy came back with this suggestion from Samsco. We only have pamphlets to show.

M. Bonsteel: At TRC, we heard testimony of what an automobile is, I would like the applicant to review what will be on site and reference what we can go back to.

D. McCurdy: The speeds are maximum of 14 miles per hour.

With the electric you can increase to a maximum of 19 miles per hour and required to sign an agreement with Yamaha that we wouldn't allow to go over 19 miles an hour. The forklift is maximum 9-10 mph.

Top speed of utility vehicles is maximum 19 mph.

Open Public:

Bernice Jitta: I support this and I own a flight school at Manchester Airport. I can't imagine that they wouldn't be allowed to maintain the golf carts. It is business for the community. It is generating revenue. Do you visit the golf courses where this is done?

I would like to see you give them a second chance.

Mike Sorel: Would you get clarification on utility vehicles? I understand John Deer and Kawasaki makes some.

D. McCurdy: I cannot sell or distribute the higher-class vehicle that is distributed by motorcycle.

Close public

R. Duhaime suggested to table until more information is available with regard to the boiler units.

Mark stated that the boiler units could be viewed. There are over 400 units in the state.

Rep from Sansco stated he would be visiting a facility in Hudson tomorrow.

L. Abruzzesa stated he is not clear on if this is a motor vehicle or automotive. I prefer to table to give the applicant a chance to further discuss.

C. Pearson: Once we establish the variance, we agree we are viewing this as automotive and repair.
I would believe the applicant that there are hundreds in the area and have gone before Stantec and TRC.

R. Duhaime motioned to table until there is opportunity to visit a site with the Samsco unit operating.

L. Abruzzesa seconded.

Vote: 3 – 2 passed

D. Boutin: If three or more members visit a site, it must be published and the public must have the opportunity to attend.

Samsco: It is difficult to schedule a date and time without knowing who will attend. I need to find a place where a customer will allow and take the time to demonstrate.

It was decided that Roger Duhaime and Larry Abruzzesa will attend. The public does not need to be notified since only 2 members will be attending.

STEVE KORZYŃIOWSKI

329 West River Road Map 13 Lot 50

Special Exception from Article 26 Section C.4 to add a 3-season porch and a 20x20 addition

S. Korzyniowski: This is an addition to a residential home, which is in a Commercial district. At the last meeting, You requested I provide a certified. The Planning Board has reviewed this and looked favorably upon it.

C. Pearson: A site walk was done.

S. Korzyniowski read criteria (see file)

Open public:

Close public:

D. Boutin motioned to approve the special exception to add a three- season porch and a 20 x 20 addition. Seconded by L. Abruzzesa Voted unanimously in the affirmative.

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NEW PUBLIC HEARING

PAUL MARCHÈSE

5 Kennedy Drive, Map 11 Lot 76

Special Exception from Article 26 Section C.4 to add a 15.5x15.5 deck onto a structure that sits on a non-conforming lot.

P. Marchese, owner: I am requesting an addition of a 15.5 x 15.5 deck with the potential for future enclosure on 5 Kennedy Drive. Site survey was turned in.

D. Boutin: The applicant is applying for a specific special exception with specific dimensions, but then states 'I may make this a permanent enclosure'. Does that create a different basket of apples?

M. Bonsteel: If it were a variance, it would be clear because it runs with the property. With special exception, and the way our zoning is structured, I have to keep track of any additions for special exception. My advise to the applicant would be that he get the special exception for the 3 season porch even if he only puts on the deck.

P. Marchese: That is exactly what I did per the building department's recommendation.

M. Bonsteel: I would renote it for an enclosed room. There is no time limit on a special exception, it runs with the property.

P. Marchese read criteria (see file)

Open public

Close public

Site walk 9/18 at 6:15 pm

Note: New plan specifying the porch and building plans required in order to approve.

CLIFFORD JONES

1 Bert Street Map 6 Lot 95

Special Exception from Article 26 Section C.4 to enclose an existing deck on a non-conforming lot. Also in the future add a second floor and enlarge garage.

C. Jones requested a special exception to add a second floor and enlarge the existing garage at 1 Bert Street.

D. Boutin: We need clarification on the plans.

C. Jones explained the future potential plans to add a second floor and enlarge the 1-½ car garage to a 2-car garage.

C. Pearson: You have no plans to do at this time?

C. Jones: I was told that because this was the only time at the well, I should include it in my request. I don't know what I'll need for space. I've written a letter to the town to acquire a right of way.

C. Pearson: This is premature for us to add this part to it. We are ok for the deck, but the other items cannot be acting on now.

M. Bonsteel: This is like the last application. The way the zoning code is structured, you only get one shot at the well. In the older neighborhoods, they are in a non-conforming zone. The intention of the code was good, but the implementation is not. The building inspector is charged with tracking all these changes and making sure they never come back in. Charles Watson and I have talked about changing this in the zoning code to allow for a reasonable use of their property. This is something that must be reconsidered by warrant article.

C. Pearson: Do we, as a board, have the ability to allow him to come back again?

M. Bonsteel: You could make an approval not to exceed so many feet or allow them to come back at a some future date.

C. Pearson: If the language in the town is such that we are handcuffed, can we add that language.

Stantec: The zoning board is to allow relief from unjust zoning ordinance. You have the ability to waive those regulations and allow them to come back if he asks for that.

D. Boutin: The only reason this is premature is because he doesn't have a plan. He only needs to show a plan for the addition and the enlargement.

C. Pearson: The applicant may not be prepared to do that because there are variables which will change in the applicant's life

C. Jones: I meet all the setbacks except for road frontage, which instead of 150 ft, I have 106 feet.

Renotice for the next meeting with proper language.

Open public:

G. Vaillancourt (abutter): Apparently the state says we have right of way, which they don't, and I have no objections to this application. He is a good neighbor.

Close public

Site walk 9/18 at 6:45 pm

1663 HOOKSETT RD LLC

1701 Hooksett Rd, Map 14, Lot 1-2

Variance from Article 22 to build a single building with 72 units.

C. Pearson announced the meeting would be extended to 10:30. Asked applicant to keep presentation to a 10-15 minute timeframe.

Peter Holden, Holden Engineering: Hi, good evening, my name is Peter Holden from Holden Engineering. What we are here tonight for is to seek a variance to allow the construction of a multifamily building behind the existing Mt. St. Mary's building.

What this plan is the MUD2 zone master plan which shows the existing or former Mt. St. Mary's building, the library, the Alex Vailas' property and the driveway that goes around the back of the library, the parking for the former school, and the driveway that goes out to Route 3, and the driveway that goes to the Healthsource building across the street. The rest of these roads are roads proposed as part of the development of the balance of the original Mt. St. Mary's property. The property we are talking about is the property outlined in this aqua color.

We had applied for an approval from the Planning Board about one year ago for a condominium conversion of the Mt. St. Mary's building into condominiums. It was originally a school, and then it was turned into apartments, and those apartments were turned into condominium form of ownership. As part of doing that, we had to go to the Planning Board. When we went to the Planning Board, we presented this plan along with floor plans.

Just to orient you again, this is Route 3; this is the new road they are building across the street. This is the driveway you drove up tonight. This is the Mt. St. Mary's building and this is the library building. The property line is shaped like this. In front of this building is a lawn that I think everybody has seen. As part of that condominium site plan approval, the Planning Board was very interested and we agreed to agree that the lawn area in front or west of the building would be labeled as open space, would always be considered open space would be allowed to calculate density for other housing units that we could build on this property. But we agreed, and we noted on the plan, and memorialized it in the condominium documents, and in a deed from the former owners to the present owners that all development would occur east of the existing building, and none of it would occur west of the existing building. So this is the plan we got approved by the Planning Board with those conditions.

C. Pearson: You mentioned that you were allowed to keep that as part of the density. Did that occur at the last Planning Board meeting?

P. Holden: That was at the Planning Board meeting, yes. As a matter of fact, it is in the minutes of the meeting, which I think I included along with the application. I think I

can find it for you.

It does say in the minutes of the meeting that I would be allow to use the entire 14.5 acres to calculate our overall density, which when you calculate that, we can have 143 housing units on this property.

D. Boutin: Mr. Holden, what is that shaded area on the plan?

Mr. Holden: That is an existing riprap area.

J. Duffy: Can I ask a question at this point?

C. Pearson: No.

P. Holden: This is the same property layout.

One of the things we did when we came to try to prepare a site plan, we said we want to preserve the front area, again this is Route 3 and the driveway that comes up to the Mt. St. Mary's building. We want to preserve this area that we said we would remain as open space. We want to put the balance of the units on the back of the property. So we came up with this layout, which is six buildings with 12 units in five of those buildings, and ten units in one building. We could make it fit on the property and we could develop the back of the property.

If we wanted to do this, we actually wouldn't have to come to the Zoning Board of Adjustment, we could just go the Planning Board for site plan approval. But we thought that there wasn't much opportunity to do much else besides this.

We have these buildings lined up here and we have this one odd building, and this area over here is the parking lot behind this building. This is part of the driveway and parking, I suppose we could have put some of the buildings in this area, although, the town library has the right to pass through here, and we could have put parking someplace else, but there wasn't much opportunity except to develop this property in this area and not much opportunity except to develop in this manner because of the restriction of the 12 units per building. We have the buildings, the right spacing apart.

We have parking in front of the building and we have parking underneath the building in order to get sufficient parking. It is a feature that is pretty desirable when you buy a unit that you can park under the building and not have to go outside. We developed this site plan as a concept to see if that is something that we wanted to develop that way. We decided we really didn't want to do that. We wanted to have something that was better. So we respectively took those six buildings and made one building out of it. It again has parking underneath. It has a parking lot in the front and has less impact because we don't have that building in this corner. We are further away from the existing building and we thought we could do a better job of buffering the two buildings from each other by having it in one building and further away from the back of this building. So what we are looking for is the ability to build all of the units in one building, instead of all of the units in six buildings. What we are looking for is relief from the definition, which is in Article 22, definition of multi-family dwellings, which is an apartment house, condominium, or building creating three or more dwelling units, but in no event more than 12. What we would like to be building is all of the units in one building.

I think it would be good if I answered the questions in the application by reading them so they would be in the minutes of the meeting. As far as are affect on adjacent properties, etc. We included the application, but we always referred to a separate page, because the answers were rather long. The first question under Section 3....

L. Moynihan: Are you reading right from the application?

P. Holden: I am reading right from the application.

L. Moynihan: OK, that's what I wanted to know because you said you added something.

P. Holden: The proposed use would not diminish the surrounding property values.

If you go back to the Master Plan, you can see that this is our property here and this property adjacent to it is the library property and this property is intended to be industrial or commercial property. This property around this side right behind our site is known as industrial/commercial property. We don't believe we will have an adverse affect on adjacent properties to the rear of us. Reading right from this master plan, the abutting property on the east side is zoned as industrial/commercial. The new building is proposed to be built east of the residential condo building.

There will be little or no view of the building from Route 3 or properties west of Route 3 because the existing building blocks most of the view and the existing vegetation....

(member of audience): What about our view?

C. Pearson: We are not open to the public.

P. Holden: To demonstrate this, what we did is we took pictures from Route 3 of the building site and those pictures are shown here. This is view A, B, C. This is from the south. B is head on and C is up in front of Alex Vailas' property. You can see the property here. Even though they have taken down vegetation, there are still a lot of tall trees and the property is some distance away from Route 3.

C. Pearson: What is the slope? How high are you up from the Mt. St. Mary's location? Does it slope up substantially?

P. Holden: It does, and I have a profile of that, which I will show you in a second. The scale of this plan is 1":100'. So this view is taken from 1200 or 1500 feet. To the school is about 500'. This view is behind the back of the school, which is 1200 feet long. This is the head on view and this is the view from Alex Vailas' house. This building would be directly behind the building or behind the tall trees. We created a profile through each of these views so that you can see what is there. This is from the south. You can see the existing ground is this field, and then it gets to these trees. We approximated the heights of the trees and drew the building we are proposing behind it. If you were looking from the ground, you could not see the building. You would probably see a hint from it through the trees. You are going to have a screened view of the building as you look. The second one is the head on view. This is a profile of B that goes right through the middle of the building. Again, standing on Route 3, this is the ground, this is the existing building, and this is the proposed building behind. You would not see that building at all. The third one is from the north, which again you have this view. The ground, the lawn area, the trees, and there is the building. In order for you to see the building, you would be looking through the trees. They are evergreen trees. Finishing that portion, the existing vegetation between the proposed building and the land to the east, the industrial/commercial land will be preserved to help block any view from the proposed building from the east.

What we are talking about doing is trying to preserve as much vegetation on this side while still keeping the building back as far as possible so that views from the industrial land would be minimized. Although, I don't know that a view from industrial land to residential property is really a problem. Uses on the property to the east are planned to be industrial/commercial uses and will not be affected by the residential uses.

#2 granting the variance would be of benefit to the public interest.

P. Holden: The applicant and the Planning Board agreed to preserve this land in front of the existing building as it is without ever building buildings out there. The landowner made a commitment to the Planning Board that they would never build buildings out there.

In the interest of preserving the lawn area in front of the existing building, it was agreed to note on the condominium conversion plan that the landowner would be able to use the area of the land west of the existing building to calculate the overall density for this parcel, which allows for a total of 143 units. There are 71 units in the existing buildings and 72 units are proposed to be built east of the existing building.

The land to the east or behind the existing building is not large enough to build six 12 units buildings with associated parking and **have a good layout**. That is part of the sentence that is not in there. We felt it wasn't a good plan to have those six buildings behind the existing building, but instead to put them together into one larger building. By combining all the units into one building and constructing a parking garage under the building, all of the units can be constructed behind the existed building in accordance with the zoning and in accordance with the agreement with the Planning Board. I think that is partly what we are here for. We made this commitment, and everybody was very interested in it.

We made that pledge that we wouldn't build out there, so we are looking for some relief to allow us to build a better building for the units that we can build under our density calculations.

D. Boutin:

Mr. Holden, in the application it says, so I am confused by your presentation, it says here the land to the east of or behind the existing building is not large enough to build six 12 unit buildings with the associated parking, ok. You show us a plan.

Mr. Holden: As I said that, I said part of this sentence, which isn't on there, is to build six buildings and have a layout which we think is a good layout.

D. Boutin: But in your own words, or admission, this site can accommodate six buildings.

Mr. Holden: That's right, we can build those buildings by right.

D. Boutin: So this sentence in your application is inaccurate.

Mr. Holden: Yeah, and I corrected it as I read it to you.

D. Boutin: That's not what we have in front of us.

Mr. Holden: I think my testimony can correct things like that.

D. Boutin: It can, but the fact of the matter is the site can accommodate six buildings with the associated parking.

P. Holden: Yes, it can. Going to #3 under section 3.

The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property considering the unique setting of the property in its environment. I think we all have to agree, this is a very unique setting that a good portion of the property in the front of the property is although allowed to be used for density isn't allowed to be used.

With this steep terrain in this area and the existing building in the middle of the property, we are relegated to developing only this portion of the property into what we can try to make the best use of that building.

Again, we made the commitment; the Planning Board and the applicant agreed that no development would take place on the lawn area to the west of the existing building. The lawn area is unique to this property and actually imposes a hardship due to the esthetic value and the public's interest in preserving the lawn area in its existing condition making the lawn area unavailable for any uses allowed under the zoning.

If this wasn't a unique area, we could have built these buildings, spread them out a little bit, have a much better layout, and we wouldn't be here in front of the ZBA asking for a relief from the condition that was really imposed upon us.

The density calculation for the property allows for 72 multi family units constructed in addition to the 71 units that exist in the current building. The definition for multi family housing in the Zoning Ordinance calls for 12 or fewer units in a building.

To use this property in accordance with the zoning, the applicant would have to build six 12-unit buildings, as we have demonstrated, to comply with the Planning Board agreement not to build west of the existing building. The applicant would have to place all of the units east and behind of the existing building. This is not enough room to build the allowed number of units in this area, again correcting that, and have a good layout that we think is going to be pleasing and pleasant to be in.

C. Pearson: So you would probably want to strike that last sentence in this one as well because you are not going to use this property in accordance with the zoning.

P. Holden: No, and again, just to clarify it, and having a good pleasant layout. I would like to show you a picture of a building elevation. This is a fairly long building. This building exists in Manchester. It has a front entryway. It certainly isn't this building, but that building will probably never ever be built again. So we are looking to have an attractive building that people can live in and not have a lot of buildings divided with space in between the. It consumes so much of the property that it makes it undesirable. The landowner is being penalized for being a proactive good citizen by preserving the front lawn.

C. Pearson: Since you put this picture up here, I was going to address this after, but since you put it up here, I get back to the proposed use would not diminish the surrounding property values because.. I look at the Mt. St. Mary's condominiums as a beautiful building, and then I look at what is in the packet and what you show up there and the building itself without knowing from anybody other than what you have said, how does that not diminish the values of the existing condominiums at Mt. St. Mary's. Because it is not Mt. St. Mary's building. And it is not a very attractive building.

P. Holden:

I think that when the zoning was written and the density calculations were developed and multi family housing was allowed on this property, I don't believe anyone ever anticipated that someone was going to build a second Mt. St. Mary's building.

C. Pearson: I agree with that. It is also part of the zoning variance, that you do not diminish the value of property owners. That being the Mt. St. Mary condominium owners.

P. Holden: Well, if you look at the back of the Mt. St. Mary's building, it is not too handsome. The front is very handsome; the back is not particularly good looking. So if you look at the back of that building and the front of this building, I don't know if there is a lot of difference between the two of them. So, we think we are building something that isn't going to diminish the value, and as you drive down Route 3 and view the building, when you go behind the existing building and go to this building, you will be looking at the back of the Mt. St. Mary's building. It is not very exciting.

D. Boutin:

Mr. Holden, aside from the fact that you just insulted all of the condominium owners, let me ask you, that portico and that landscaped area, are you presenting this as a representation of what you are going to do at this site?

P. Holden: They would build exactly this building.

D. Boutin: With the circle around and the roofed area with the cars driving under?

P. Holden: Yes, they own a building like this in Manchester, and they want to build the same building.

C. Pearson: In the past we have asked third parties to evaluate the proposed diminish property values by such structures coming into neighborhoods. Since you have one existing, I think it would be easy to do a study on such a thing, also taking into consideration the difference of that building, as compared to the Mt. St. Mary's building. That is a statement, but we can act on that at some time.

D. Boutin: Let me clarify Mr. Chairman, are you asking for an appraisal report.

C. Pearson: Correct, we have had third party appraisal reports with this type of information in the past.

P. Holden:

Continuing on, Section B under the use variance No fair and substantial relationship exists between general purposes of the zoning ordinance and the specific restriction on the property. The Zoning Ordinance allows for a total density of 143 units on this property.

If the entire property is used for new housing units, 12 unit buildings could be developed. Again, with a clarifying caveat – developing with a good layout. Due to the uniqueness of the site, the lawn in the front of the existing building is preserved from development with an agreement with the Planning Board with the understanding that the entire property could be used for density purposes.

As such, it would be unfair to require the applicant comply with the definition of multi family housing, a maximum of 12 units per building, and not be able to construct the maximum number of housing units allowed under the zoning in a good layout. The applicant would lose partial use of his property as allowed under the zoning. By allowing the applicant to consolidate all of the units into one building, the applicant would not lose partial use of his property.

Tape ended.

L. Abruzzesa: When this property was planning to be developed, was that before or after the agreement?

P. Holden:

It was always planned to be developed, and that's why we made sure that our Planning Board approval included our ability to use the entire site for density calculations.

L. Abruzzesa: But you knew this going in. So this is not a hardship to you. This was not a surprise that you could not develop all of the property.

P. Holden: Well, we agreed that we would not build on the front.

(member of audience): Self-created.

L. Abruzzesa: You are saying this is a hardship, but you knew this going in, something you agreed to. This is not the property making the hardship for you.

P. Holden: Well, the Planning Board made the hardship for us.

L. Abruzzesa: Well, you agreed to it.

P. Holden: We agreed to it, in the spirit of being good citizens that we would preserve that property.

C. Pearson: We have a representative from the Planning staff. I would like their interpretation of that so we are clear.

J. Duffy: Jo Ann Duffy, Planning Coordinator for the Town of Hooksett.

Originally, this land was owned by NH College and there was a master plan approved for this land, which showed a large percentage of the land having a golf course, and on the front lawn area, it was stated that it would be open space.

When the land was transferred from the College to Dick Anagnost, there was a lack of including the open space information in the deeds. This land was always known to be open space back from the time the College owned the land. It wasn't anything that just happened with Brady Sullivan's acquisition. After this master plan, there was another master and there was another. Today we have a master plan that was for the University Heights project. This particular parcel of land, along with the library and the Carroll House was annexed at one time from the entire piece, after the College had purchased it. They had sold off that piece to Dick Anagnost. I think there was a gift to the library, and the Carroll House was purchased by Alex Vailas.

When the 1663, which is the developer's name they go by on the deeds, when they took over, the master plan for the whole site is actually included in with the 3A development master plan. There is not a separate master plan now for the library, Mt. St. Mary's and the Carroll House. It was all one master plan, which was approved by the planning board. Since then, there was a big issue when Mt. St. Mary's came back for the condo conversion, it was discovered that the language was not followed through in the deed. They had approved the condo conversion; they had gone back to the attorney, Mr. Moynihan, and asked that this be clarified because all along it had been included and then it sort of fell by the wayside. My question to Peter would be when this entire parcel went to the Planning Board for the condo conversion; it was the whole piece of 14.5 acres. You made a statement tonight, and it is in your application that it was agreed and noted on the condo conversion plan that the landowner would be able to use the area and calculate the overall density of the parcel. I double-checked the condo conversion plan today and I didn't find any language about that density requirement. I also checked the condo declaration, and it does mention expandable land, but the expandable land only consists of 9.25 acres. So I guess I would ask on behalf of the Town, where are you coming up with the fact that the density was agreed to.

I found nothing in the minutes, I found nothing in the motion for the approval of the Planning Board for the condo conversion, I found nothing on the condo plan, and as I stated before, the declaration stated that 9.25 acres is expandable. So where are you getting that from, I guess, would be my question.

Pause

J. Duffy: I have two other things, if you want to look for that, so we don't waste any more time.

Peter also made a statement that the developer also agreed to never have "buildings" out there on the front lawn, and the language actually says in the corrective deed, "the open space between NH 3... consisting of a grass lawn, shall be maintained in its current condition in perpetuity, without **any changes**, alternations, or improvements thereon". And I noticed on the plans that you received for your hearing tonight, although it doesn't have anything to do with the variance, it should be noted for the record that there was a notation that there would be a drainage detention basin of some sort on the front lawn.

According to the paperwork that I have read, it doesn't appear that that would be allowed.

Another side note to the record, although, again, it doesn't have anything to do with the variance, I'd like it to be known that the 40' easement for the access to the library was not shown on that plan either. It is just some things we are concerned with.

D. Boutin: Mr. Holden, Item 3, b, there is a sentence in here, it says as such it would be unfair to require that the applicant be required to comply with the definition of multi family housing, a maximum of 12 units per building, and not be able to construct the maximum housing units allowed under the zoning. I don't understand that.

P. Holden: Again, you have to use that clarifying statement that I have added to all of those statements that says, “in a layout we find appropriate or desirable”. We just thought it was much more desirable to have a layout with one building with those units in it than to have six buildings with units in it. Again, I don’t think there is anything that precludes us from going to the Planning Board and applying for a site plan approval for those six buildings as undesirable to us as they may be, but we can do that. If I can just step back to something, we talk about value, and if we are able to do this by right, I think there is a certain value associated with that. I think what we are really talking about here is the difference between what we can do with our right and what we can do under the variance, which is building this one building, instead of those six buildings. Would there be....

C. Pearson: Have you gone in front of TRC with either of these?

P. Holden: No, we are just here before the Zoning Board of Adjustment.

C. Pearson: Do you know, in fact, if you can do the six, is there anything precluding you from that?

P. Holden: Doing those six buildings?

C. Pearson: Anything with the right of ways, drainage, anything that would preclude you from doing the six buildings?

P. Holden: We don’t think so.

C. Pearson: But you haven’t gone in front of TRC yet?

P. Holden:

No, actually, to do that you would have to file a Planning Board application, and we would be filing a Planning Board application for our large building, and we can’t do that unless we get a variance from this board, that is why we are here first.

C. Pearson: Is that correct, Michelle?

M. Bonsteel:

Every application, we encourage the applicants to appear before the TRC, which is made up of town staff, so that we can address a lot of the issues that would later be discussed by planning and/or zoning when the time comes, which is a tool for the applicant.

It diminishes the time they may spend before the boards rather than lengthen the time they may spend before the boards. There are several issues that town staff has expressed to me with regard to access to the rear building, fire department, especially is extremely concerned due to the narrowness of the egress and ingress driveway that is currently available, just coming to the site as it now exists. That is one issue. Water and sewer have both told me there is no reserve for either for this proposed building; it is simply not available. The list goes on.

P. Holden: I think those are site plan items, whether there is water and sewer, whether we can fit it on there. We are talking about a relief from a definition to allow us to proceed us to go to the Planning Board with one building or with six buildings.

C. Pearson: I will speak for myself, I would disagree. This affects what we are looking at here.

This is a highly sensitive area, and we are looking at two separate plans, possibly. He said he can go here, but he wants a big unit. We don’t know if either are viable options. There is a lot of concern from the Town, I would feel more comfortable getting a lot for this addressed from the TRC before we act on any of this.

P. Holden: I don’t know how you would logistically do that. We would have to apply to the Planning Board. In order for us to really know we can do this, we have to design a plan, know that the Planning Board will approve it, have it reviewed by the Town’s outside consultant, go to TRC.

M. Bonsteel: That is absolutely not the case.

P. Holden: At some point, you get to a point where you need to take that leap of faith, and I guess, what I am saying, I don't see any problem with taking that leap of faith right now. If we get the variance and we are unable to do this, then we won't be able to proceed with the Planning Board, but if we can, then we would.

M. Bonsteel: I don't want to get into an argument with the applicant.

I don't think it is appropriate to engage in an argument with the applicant, but the function of the TRC is to deal in concepts, to guide an applicant along an appropriate route for a development of any property, whether it is commercial or residential. We get concepts all the time; sometimes we never see the people again. That is the function of the TRC, is to have staff input for their benefit. Subsequently, for the benefit of the boards.

D. Boutin: Mr. Holden, again at 3.b., you speak of losing partial use of your property if you were to develop it in accordance with the zoning, but if you were to develop it as proposed there would be no partial loss of your property. Can you explain that to me?

P. Holden: We felt that this layout was not something we really wanted to do, although, we have a 100% right to do that. So we thought, if we were going to do something better, we would probably have to eliminate some buildings, which would mean we would not get the number of units on the property that we are entitled to. We would effectively lose the use of that portion of the property.

D. Boutin: Mr. Holden, do you think that is an appropriate thing for us to be concerned, with your taste in layout in terms of whether you lose partial use of the property?

P. Holden: I guess that is a decision that you need to make.

D. Boutin: I am asking you, do you think that we need to consider that?

P. Holden: I think so. If I could talk about the density for one second.

On the minutes of the meeting of March 21, 2005, I will read the portion of me speaking at a Planning Board meeting, "we would like to concentrate on constructing some type of building in the back because this is residential, this building would be more than likely residential and use all of the 14.5 acres to calculate our density for the total number of units. We would include the existing 73 plus whatever would be allowed under the density calculations to the rear". I didn't write this. This is the minutes of the meeting. When the condo documents were created and reviewed and approved by Bart Mayer, the town's attorney, they included expandable land to the rear. I think it was pretty clear that everyone realized we would be looking to build to the rear of the property and we would use the 14.5 acres to calculate our density.

J. Duffy:

The condo document states that the Declarant reserves the right to the maximum period permitted under the condo act to expand approximately 9.25 acre remaining area of said lot 14-1-1 by creating additional units and structures thereon, subject to site plan and/or subdivision approval by the Town. I am asking the question, how did you come up with the density of 72 units if the expandable land was 9.25 acres.

P. Holden:

Because the discussion we had when we were making the deal with the Planning Board, and I think you have to consider all of that discussion as part of the deal, we said we agreed to the deal if we could use the 14.5 acres for the density.

I said this myself, and I know what I said, and I know why I said it because we wanted to have the density... if we were giving up the front land, we wanted to be able to use the back land and not be penalized for not building in front of the building.

J. Duffy: Chris, I have the approval from the Planning Board here that I would like to submit to you. There is no mention of that in the approval by the Planning Board.

C. Pearson: Peter, do you have a copy of this?

P. Holden: I don't know. It certainly doesn't preclude us. I don't think the approval says we can't build those buildings out there. It may not confirm it, but it certainly doesn't deny it.

L. Abruzzesa: You said you would be giving up that front land. How do you mean you were giving up that front land? Was it yours to give up?

P. Holden: Well, they own it.

L. Abruzzesa: I mean giving it up for development. Didn't that come from deeds before you owned it?

P. Holden: I think it was considered open space in a master plan. A master plan changes all the time.

If they had come in with a master plan with something else to a different Planning Board at a different time, and the Planning Board said they liked that master plan, they probably could have built something out there. It was not a deed restriction. It was never a deed restriction. It was a notation on a master plan.

C. Pearson: We are at 20 of 11. I don't know if we should open it up to the public. Do you want to continue?

P. Holden: We don't mind if you want to recess to another meeting because I think we will be here all night.

?: We don't mind staying.

C. Pearson: This could be a long process than what is allotted in another 15-20 minutes. Why don't you finish your presentation, Peter.

P. Holden: I was on C.

The variance would not injure the public or private rights of others because the abutting property to the east is zoned industrial, which would be developed with uses that are not affected by adjacent residential housing. Other land to the east is zoned public use, however, it is generally wetland and so no uses for this property are likely. That is the land behind the library. The property to the north is the town's library, which is more of a commercial/institutional zone than residential. The proposed single building as opposed to six buildings would have minimal visibility from Route 3 and properties to the west because the view of this building is blocked by the existing building and vegetation.

You would want to add to that, we didn't think the construction of this building would have any more adverse affect than what is allowed without the zoning, which is six buildings. We thought this building would be a more favorable building than having those six buildings. We believe that residential uses next to residential uses should not have any adverse affect on each other.

Granting the variance would do substantial justice – the applicant would be able to fully use this property in accordance with the zoning and the agreement between the Planning Board, which occurred last year.

The quality of the proposed housing would be enhanced that there would be one organized group constructed behind the existing building instead of six 12 unit buildings close to each other. Number 5 – the use is not contrary to the spirit of the ordinance. This applicant would be able to use his property in accordance with the zoning ordinance. The applicant has reserved the front lawn area, which is a valuable asset to the town and the general public.

Further, the applicant is providing affordable housing, which is something that is needed in every town in the State of NH.

L. Abruzzesa: Can you give me a definition of affordable housing?

P. Holden: More affordable than a single-family house on a single-family lot.

J. Levesque: What is the reason why we only had 12 units in a building? Was it for fire regulations?

P. Holden: It was a building in Lincoln Park that brought that out. It was a building that belonged to the Gladstone Brothers in Lincoln Park. It burned down. It was a 24 unit building. I think the Fire Department had difficulty putting out the fire because the building burned flat to the ground. After that, the Planning Board said let's have smaller buildings. They said, let's have 12 units in a building. Since then, the Fire Department is much more capable than it was when it was a volunteer fire department.

L. Abruzzesa: You said there is an existing building like this in Manchester; where is it?

P. Holden: Off Wellington Road there is an existing building. It is called Stone Terrace. I think it is on the north side of Wellington Road.

L. Abruzzesa: Is it similar to the one on the Merrimack River?

P. Holden: No.

R. Duhaime: Will the building be brick like Mt. St. Mary's, or will it have vinyl siding?

P. Holden: This one is clapboard siding; I think that is something we hadn't really talked about. That is something to think about. Maybe it should have a different veneer on the outside. That is something of the Planning Board approval. We were convinced to give up the front lawn, maybe we can

J. Levesque: Moving the six building along with the other side, would that encroach on the building?

P. Holden: There is a vertical slope there. It would be an isolated building. You would have to reorganize the parking.

M. Bonsteel: There are some discrepancies that should be noted for the record.

J. Duffy: This was just brought to my attention by the President of the Condo Association.

The letter that was sent out from the Town to the abutters instead of saying the applicant was requiring a variance it said special exception. The letter that went from Holden Engineering to the Board of Directors said it was sent by certified mail, but it was sent by regular mail, and three of the addresses were incorrect. The number of units actually in Mt. St. Mary's condo Association is 73 because there are two additional units in a separate building.

P. Holden: That is true.

J. Duffy: So that needs to be corrected. And apparently, several of the mailing addresses on the abutter's list were incorrect.

C. Pearson: I am inclined to postpone or adjourn this to another meeting. I would ask the applicant to go back and fix the discrepancies as described by Jo Ann. But also, I would ask the applicant, because this only helps the ZBA, it only helps any board, if you could meet with TRC and we would have better input from the people that we count on. It has been clarified by Michelle that they do deal in concepts.

If she had a better understanding with her staff and TRC, we would have a better understanding of what it is you are proposing. I would also like to add you do need a study for the property value of Mt. St. Mary's by what you have presented. To do it through a third party and present that. It is an easy thing to do. I would like this to include a like neighborhood as well. I would like you to present that so we can feel more comfortable. So, Michelle handed me a note, suggesting we move this to September 19. I don't know if this gives the applicant enough time.

M. Bonsteel: It does give the public an opportunity for the public to address the Board with their concerns. I didn't want to delay it too much because these people have all come out here tonight.

C. Pearson: I would be inclined to push this off to the following month.

The applicant would have time to sit down with TRC and get the third party involved so that we can have more information in front of us.

M. Bonsteel:

As far as TRC, I would establish a special TRC meeting just for this application because we are meeting Thursday of this week, and we won't meet again until next month. In the spirit of cooperation, I will poll the TRC and see how soon we can meet and get the comments to the Board in a timely way.

C. Pearson: There has been a lot of he said/she said with regard to what happened at the Planning Board meeting. I don't know if a joint meeting is required. I would ask the

Chair of the Planning Board if he could attend, and more representatives of the Planning Board to attend. I don't know if that is appropriate.

M. Bonsteel: That has been put before you before by the applicant. A joint meeting would trigger TRC. If you would like to entertain that option of having a joint meeting with the Planning Board then you should take a vote on it and we would have to coordinate with the Planning Board. That would be a special meeting. We would need to coordinate the date and time to get the notices out.

D. Boutin: Mr. Chair, I think we already voted. I don't see any reason for a joint meeting.

L. Abruzzesa: I think we are getting everything from Jo Ann and she has facts.

Continued to October 10, 2006 ZBA meeting.

C. Pearson: It will most likely be here.

Heather Shumway: I will make the library available to you.

Continued to the October 10th meeting.

APPROVAL OF MINUTES OF – August 08, 2006

D. Boutin motioned to approve the minutes of 8/8/06. Seconded by L. Abruzzesa

Voted unanimously in the affirmative.

ADJOURN

Acting chairman, C. Pearson declared the meeting adjourned at 11:14 pm

Respectfully submitted,

Lee Ann Moynihan