

Unofficial as of  
12/05/06

HOOKSETT

ZONING BOARD OF ADJUSTMENT  
MINUTES  
DECEMBER 5, 2006

**CALL MEETING TO ORDER**

Vice Chairman, Chris Pearson called the meeting to order at 7:00 p.m.

**INTRODUCE MEMBERS OF THE BOARD**

Vice chairman Chris Pearson, Dick Johnston, Ron Savoie, Larry Abruzzesa, James Levesque, David Boutin, Roger Duhaime, and James Gorton (Town Council Rep.)

**NEW PUBLIC HEARING**

**THE DOLBEN COMPANY/ 3A DEVELOPMENT**

*Hooksett Road-University Heights Map 14 Lot 1-12*

*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 with Brown Eng.**

Karen O'Rourke requested a Special exception for a parcel 1-12 created under University Heights Development. They have subdivision approval and the Master Plan allowed for 204 units on this site. In March of 2006, they asked for a Special Exception to fill isolated wetlands. At that point, a decision was made to come forth to the board and request a variance to Article 22 to allow more than twelve units per building. On May 9, 2006, a variance was granted for 9 units with 24 units per building. The plan has been redone the wetland impact reduced to 1370. Two wetland areas have been saved with this change. The Zoning Board completed a site walk and looked specifically at these wetlands. The right to fill the 1370 sf of wetlands was requested.

On December 4<sup>th</sup>, 2006 the Planning Board voted unanimously in the affirmative to send a favorable letter to the ZBA. They are scheduled before the Conservation Commission on December 6<sup>th</sup>, 2006.

K. O'Rourke read the criteria (see file)

D. Boutin asked if the Conservation Commission had ruled on this site.

K. O'Rourke stated that she spoke to the chair and they didn't believe there would be any issues.

Open Public:  
None  
Close Public

C. Pearson pointed out that this was something that the town moved the Dolben Company towards achieving and the reduction in the wetland is a bonus.

***D. Boutin motioned that Dolben has met the criteria for a Special Exception and allow filling of 1370 sf of wetlands. Seconded by R. Savoie Voted unanimously in the affirmative. (L. Abruzzesa voted as alternate)***

**RICHARD BOISVERT**

1554 Hooksett Road Map 18 Lot 2

***Variance from Article 3 Section p to allow a filling station less than 1,000 feet away from another filling station. Variance from Article 19 Section D.8 to allow for a gas station in the groundwater resource conservation district.***

D. Boutin recused himself as an abutter.

R. Duhaime will vote as an alternate

Bobbi Hantz and Mani Pailo

B. Hantz, Attorney: This proposal was first before the board in 2000 and Planning Board approval was granted in 2001. There was litigation in 2004. The Supreme Court asked us to come back and review this application to establish a record. The proposal submitted by Mr. Boisvert reference two ordinances passed at the time of litigation. In 2002, the distance between gas stations shall be 1000 feet. With regard to this ordinance, the legality of the original petition is in question. The second is the ground water ordinance which was amended in 2002 to add a provision to eliminate gas stations from the ground water provision. It leaves in fuel tanks over 1000 for public use. (Article 19, section D – 2)

We are here for a variance from Article D-8. The conflict is between D-2 and D-8.

D-2 discusses not permitting storage of 150 gallons or more for distribution unless all best management practices are used. There is an allowance of over 150 gallons if best practices are used. In D-8 there is an absolute prohibition regardless of best practices. Seeing that this applicant would use best practices, since we are here for a variance, there is permissiveness under D-2.

L. Abruzzesa: What type of business is being proposed?

B. Hantz: The request is for a Convenience Store with a Gas Filling Station. There would be gas pumps.

L. Abruzzesa: You are looking for a variance under D-8, then how would this apply under D-2. D-8 specifically describes the uses.

B. Hantz: This use is also described under D-2

L. Abruzzesa: If it is specific under D-8, you must go under this use.

B. Hantz: There has been another change since that plan was here before. We are now proposing a Cumberland Farms. The plan is displayed on the board. There would be a redevelopment of the site. The lower plan is the proposed plan for the previous 7-Eleven.

The new plan has updated engineering which has gone to the Building Department and has not yet been submitted to the Planning Board pending approval by this board. No plans were submitted for the use variance. We are displaying the plans for your view only.

C. Pearson: I would like to see the particular plan more closely as well as the exact use.

B. Hantz review the plan showing the egress and roadways with 6 pumps up front and tanks off to the side and have been reoriented by Cumberland Farms so that delivery will always be from a Northbound exit. These changes were made as a result of input from the Planning Board. There will be a turning lane added to Memorial Drive. This convenient store building is set back from Route 3. We are here for the gas station piece of the plan. The current property has access to Memorial Drive. The major change is the reorientation of the storage tanks and the adding of the turning lane on Memorial Drive.

M. Bonsteel: This is a new application and has not gone to TRC yet.

L. Abruzzesa: What is the significance of the deliveries from the north.

B. Hantz: It is a change by Cumberland Farms for ease of access.

This is more of a traffic control and safety issue. Cumberland Farms regulates the routing pattern of the drivers at each specific station. We believe this meets the five (5) criteria

M. Bonsteel: This is a Commercial Zone in the Ground Water Protection district. That is not a scientifically determined district; it is an arbitrarily determined district through the use of overlays. This was developed with drinking water in mind.

Everyone picked up the Ground Water Protection Act and dropped it into their codes.

They have the ability to do their boring tests, as have other applicants to see if they meet the criteria to fall into the water zone or seek a variance.

Prime wetlands are more restrictive with a 50-foot setback.

J. Levesque asked about the prime wetlands located at Hanna Hoe Pond.

M. Bonsteel stated she had not reviewed these plans.

B. Hantz: There is a 75-foot buffer for this property. Currently the plan doesn't change the pavement. Under prior reviews, there was never an issue with setbacks.

Open Public:

Abutters:

Don Hebert representing Mr. Thomas

I would like to hear the criteria before addressing the board.

Gordon Graham rep. School District made the same request.

B. Hantz read from criteria (see file)

(Copy of appraisal was submitted by Norwood Group)

There is someone present from the Water Precinct to speak to this issue.

Roger Hebert: Never will we build a well or use the water.

We will never use water out of that pond. Forty or fifty years ago, we tried and there's nothing we can do with that pond. Anything in there will only go down to the river and south. It's not in our water protection because there's nothing there to protect. That is a dead pond, there's no way we could do anything with it.

R. Savoie: Does Granite Hill drop their drain water there.

R. Boisvert: I spoke with Mr. Hebert about the aquifer. He explained that he drilled from the river to Bow and there's no way he can get water there.

R. Hebert: We put in 14 test wells and went from Bow to Martin's Ferry and there's nothing we can use there for water. On the west side we have two wells and we are testing by Webster Woods and down in the valley. There's nothing we can do on that side at all.

D. Boisvert:

In 2001, when 7-Eleven did their test borings, they went down 17 feet and hit ledge and they came up with clay and silk and the engineer then said this is not considered an aquifer. I would like to show on a map that in 2002 there were eight gas stations on this side of the river on Route 3. The Exxon Station closed in the South. There is a Mobil Station 300 feet across the street. The CW Fuels at the Supreme Plaza also closed. Texaco, that was Buffy's, closed. The Mobil Station by AutoFair closed and I think the pumps have been removed.

You have the Shell Station across the street and then 2 miles to the next station and 3 miles to Bow to the next station. The Irving Station by Granite Hill closes at 8 pm and then you need to go 2 miles to Shell or 3 miles to Bow. There are several developments going on here and there are only a few stations to take

care of a five-mile stretch.

L. Abruzzesa: What are you saying when you say these are closed?

D. Boisvert: The significance is, when you enacted the ordinance there were eight and now there are only five.

L. Abruzzesa: Are you implying the ordinance has reduced the number of gas stations in this town?

D. Boisvert: No, these people went out of business. I was in the hardware business for fifteen years, and if I didn't do a good job, I went out of business. These stations were the same. Now we have 4 drug stores, one less than the gas stations.

L. Abruzzesa: Then the reduction had nothing to do with the ordinance but because of bad business. The ordinance didn't reduce the number of businesses.

D. Boisvert: I think it does have an effect in limiting, because only one has opened since the limiting.

L. Abruzzesa: That has nothing to do with the ordinance.

D. Boisvert: I was showing you visually where the gas stations are in town.

B. Hantz:

I don't know if you can draw the correlation to the ordinance but there hasn't been an increase but rather a decrease in the stations since the ordinance and allowing this would not be contrary to the spirit of the ordinance.

R. Savoie: One went out of business because the tanks were leaking and they didn't want to spend money to repair them.

B. Hantz:

The intent was not to have too many and you have decreased the number and you are not going against what the public wanted and not allow too many.

L. Abruzzesa: Why does Cumberland Farms want that exact site?

B. Hantz: It is well suited for it for a number of reasons. Mr. Pialo can speak to market issues. It is a traffic signaled intersection with high volume. There is a permitted use in a commercial district. There is a development across the street. I don't know the reason for the ordinance to limit except to limit the gas stations.

L. Abruzzesa: Are there other sites just as suitable?

D. Boisvert: A signaled intersection is most desirable.

If you look at Hooksett and go through the lights, there isn't another intersection that has available space. If this weren't a signaled intersection, they wouldn't even be here. This is similar to CVS at the intersection of McDonalds.

L. Abruzzesa: Irving is a large corporation; they are not at a signaled intersection, what is the difference in philosophies?

B. Hantz: This is a major road and traffic safety requirements have changed.

D. Boisvert: I don't think the Irving Station is owned by Irving. I think it is owned by these people and they buy their gas from Irving. It is not a Blue Canoe like on the other side of the river.

L. Abruzzesa: The assessment said the best use is a filling station.

B. Hantz: The highest and best use is a filling station. That is what it said.

They used an income approach and they looked at comparable lease rates for a tenant paying per square foot. There is an increase in value if you have a convenient store square and a filling station.

L. Abruzzesa: Can I assume that Convenient Stores/Gas Stations are the highest income per square foot?

B. Hantz: This is what this assessment stated.

L. Abruzzesa: My point is there are other uses that could go in here.

The convenience store would increase the property value because now people have to go to Manchester.

B. Hantz: The proximity to services is something buyers look at when purchasing property.

L. Abruzzesa: Hardship with a unique setting.

B. Hantz: We are not looking for a variance from the permitted use in a commercial district. It is across the street from many people who could use the service. Except the 1000-foot restriction, it is a good, safe spot.

C. Pearson: Have any traffic studies been done? There is a school with buses turning.

B. Hantz: There were extensive studies with the previous plan and that lead to the development of the turning lane. Because of the age of the students, there are no student drivers or walkers.

D. Boisvert: I sat in the parking lot one afternoon and the traffic starts at 3:20 to 3:45 and there were 15 buses and 75 cars in that period. There were no children walking so that was not an issue. The school handbook states that it is strongly recommended that you do not walk.

B. Hantz: The curb cut approvals are in hand which did set limited hours for fuel delivery. Any permitted use would create traffic.

C. Pearson: Gas has a particularly high frequency in the morning when school is starting.

B. Hantz: That is an issue for the Planning Board

L. Abruzzesa: With the Ground Water Conservation District, even if this won't be used for drinking water, aren't we supposed to protect rivers and streams.

B. Hantz: The defined limitation is ground water protection in article 19.

It encompasses the stratified drift aquifers. This is only for the underground water resource. There was drainage engineering done for control and management of surface drainage, which is not part of article 19 and will be addressed by the Planning Board.

L. Abruzzesa: Read from article 19 (see file). This references the river.

B. Hantz: You must back up. They are using the river as a geographic location. If you look at the definition of a drift aquifer (page 89 of the ordinance).

Actually page 107....

Read from ordinance (see file)

The test borings done by the water precinct, regardless of the map indicate it's not here.

L. Abruzzesa: Article 19 D-2 and D-8 is that it is specific to D-8 and is specific to your operation and the law doesn't allow you to go somewhere else.

B. Hantz: D-2 establishes specific criteria and is that a more specific criteria under the umbrella. I don't know, but it raises some conflict in interpretation.

L. Abruzzesa: I think we need a decision on that.

B. Hantz: It doesn't need an interpretation, it just allows for a different interpretation.

R. Duhaime: With a unique setting and the hardship, why is it unique.

B. Hantz:

It is unique because it's 1000 feet away but it is a good location because it's at a signaled intersection but it's unique circumstance is that it's 1000 feet away from another station. The ground water is we are sitting in a district; the reason to protect will never be fulfilled.

R. Duhaime: It is a resource that is hard to predict and is hard and harder to find.

B. Hantz:

There is no resource here to protect, even if there were, with the provisions and DES regulations and the practices provided by major operations with containment and drainage, there is such a slim chance of contamination on the site, slim to none off the sight and none under the site, it's a non-issue.

J. Levesque: I would like to hear about containment.

Paiva, Planning Department Manager with Cumberland Farms:

When Cumberland came on board to convert this to Cumberland Farms, I will explain the safeguards.

The first thing we do is have a Safety Officer that is responsible for the tanker entering, filling the tank, and leaving the site. We didn't like the position of the tanks in the 7-Eleven tanks. We spinned the tanks at a 90 degree angle.

Cumberland is also unique because its drivers have trip cards, which shows the entrance and exit.

NH DES mandates the fuel system; we use Bohler Engineering (Southboro MA), generate all the tank and pump standards. The State knows Bohler and Cumberland Farms. The NH DES is so detailed oriented that each piece of the filler must be noted and approved. Prior to tanks being backfilled, they need to sign off with the State. These are double wall fiberglass tanks. This is monitored for punctures from the outside in or inside out. It would set off the monitor and would be alarmed inside the store. There is a 25-gallon spill containment bucket off the edge of the site. The proposed vent pipe is just behind the tanks. That is just the vapors from the tank when the fuel truck dispenses.

There is no proposal for diesel. There will be three tanks. There will be only two grades for fuel with the third being a mix.

The frequency of testing is State mandated; I believe it is every year.

The DES regulations require a flat area around the pumps. The canopy was decreased from 90 to 72. The canopy and the building run off which is considered clean is filtered directly to a manhole and piped to the back of the site.

The entire site is relatively flat and we have one basin that goes through a gas trap that separates any oil debris from the water. Then the basin runs to a separation structure and then another manhole that has another device (3 devices).

Reopen public

Abutters:

Don Hebert, Attorney representing Mr. Thomas:

The stated purpose of the zoning amendment in Article 19 is in the interest of public health to protect preserve and maintain Ground Water Supply and recharge from further development and protect surface waters that are fed from ground water to regulate use.

We would submit that the nature of the protection of water supply that the request is not in the public interest.

The second condition is the hardship, as the court stated in Simplex, the requirements for the unnecessary hardship are 1. – it must interfere with reasonable use and its setting and there has been no testimony that states the reasonable use is hindered at all. We heard that this could be used as a convenience store. If that were the case, there would be no variance required.

It is simply the gas station being requested which is in violation that drives the need for the variance. There is no relation to the restriction on the property. The reason is to protect the water supply and the application fails because it is located in the aquifer therefore the purpose of those two ordinances are in conflict of the request.

Third is injure the rights of others. The ordinance is to protect the water and public interest. It does have the potential to injure the private rights.

Finally we state that it is in conflict to the spirit of the ordinance. It is specifically prohibited under the two ordinances. The intent of the ordinance was to protect the ground water in town and if contaminated, to more quickly identify the source of the contamination

L. Abruzzesa: We heard this site would never be used for water resource...how do you interpret that?

Hebert: Without a geotechnical engineer to speak to this, it's difficult to address.

But common sense tells you if you dig a hole and the water flows here and you don't find it here now who knows where that water is going to go.

Gordon Graham, attorney for School District:

G. Graham distributed a letter from Superintendent Littlefield.

G. Graham stated that he was present to represent the School Board who could not attend the meeting. The School District is an abutter with the Memorial School grades 3-5. The School Board had some concerns.

1. A filling station will create a serious traffic hazard and propose a danger to the students. This is the main entrance, and there is only one way in and one way out. This is a situation of concern due to the fact that this is highly volatile fuel at the entrance of the road.

2. The convenient store will be in conflict with traffic and busses. There are a high number of parents that drive in. There are 75 to 50 cars each day in the morning and afternoon. There are 15 to 17 buses plus athletic buses or field trips.

In addition, this is a community property that is used evenings and for various athletic events.

C. Pearson: What does the school see as a good use there. I agree the gas station is unique with a high level of morning traffic.

G. Graham: It would have to be something that is permitted there, and this is not. This is restricted because of the groundwater and the 1000-foot restriction.

R. Savoie: You could put in a convenience store with a Dunkin Donuts that would be just as much traffic.

G. Graham: The largest issue is there is only one access to the site with the loading and unloading of fuel and gasoline being sold there.

L. Abruzzesa: As long as there is not a gas station, anything else would be acceptable?

G. Graham: Anything that would be allowed by the ordinance.

G. Graham: Any leak that would result from the fuel tanks would be a concern to the Hanna Hoe Pond. The ordinance limits the specific use in this area. The district, in writing this letter, addressed the potential delivery of gas.

They've expressed the concern with the selling of tobacco and alcohol. I agree that retail establishments could sell these items as well. The issue is that is not a permitted use but for this ordinance. The 1000 foot area restriction is to protect the overcrowding of gas stations and limit the delivery of volatile compounds. It would be contrary to the spirit and would alter the character of the area with the added traffic and safety issue of the fuel being delivered. With Ground water

conservation, Article 19, D-8 limits the gas stations that dispense more than 150 gallons. That makes a clear prohibition in the groundwater conservation area. The applicant may test the area and have it remapped. Now, there is no evidence that it does not by the fact they are requesting this variance.

M. Bonsteel: There are specific methods under C to determine where the groundwater protection falls. There is a mandatory procedure to dispute this. The ZBA may deny the variance and the applicant can take the opportunity to prove it is not in the groundwater conservation through borings.

G. Graham: It would be contrary to grant that because it could contaminate the ground water. There are changes in needs that arise from the expansion of uses and sometime in the future, the town may decide how to protect its resource.

How they've done that is drawn that map and if they are not accurate, there is a procedure to deal with that. There is only one use not permit and that is the selling of gasoline.

The relationship as we sit here is in the groundwater protection zone and relief from the groundwater protection zone.

The question is what is unique that makes it less suitable than any other use in that zone.

What is the hardship that the only proper use is the dispensing of gasoline?

They are not showing that other retail uses couldn't be a proper and reasonable use.

D. Boutin: I am an abutter at 1465 Hooksett Road.

I want to say I have two grandchildren going to that school in a couple years and I have no concerns with that property. That property is now an eye sore. I hope that something can be done with it. The underlying zone is commercial and if you strip away the overlay, the use would be commercial. The hardship is the overlay district. The ordinance does give someone a way to prove the accuracy of the boundary but it very expensive to do. We heard testimony from someone who has been involved with Hooksett water for many years and I'd put my money on him before an outside engineer. There is nothing to protect. If you deny this, what have you protected? I would, and may others where I live, would appreciate a facility like this. After 8 pm, we have to go to Shaws to get milk or medicine for our kids. I'm here as a direct abutter who drives by that intersection and I have no concern with traffic.

While in Manchester, I've see a hundred of these and these stations are more regulated than nuclear power plants. Back in the 70's, these were not regulated and leaked everywhere. This is no longer the case. There are alarm systems that go off if a drop of fuel is released. I'm speaking as a resident of Granite Hill. You have the basis to grant this based on unbiased testimony. Mr. Hebert has nothing to gain from this.

Steven Woodcock, a resident of Granite Hill: I'm in favor of healthy competition. With regard to gas stations, new stations promote that technology.

Unfortunately, my wife is a staunch environmentalist and disagrees.

I think the ordinance should be reviewed, if it met the requirements of the State with testing, it shouldn't be limited by the feet. Competition is good for the community. I think that denying this, based on footage alone is not the best criteria and we both, my wife and I agree on that.

Tom McGrevey, 1465 Hooksett Road: I'd like to thank the committee for their hard work. I'm at Granite Hill for the convenience and this is convenient and I'm in favor of it. The signaling is an advantage. I'm not concerned with property value and as a business professor, I'm a proponent of competition.

Close Public

C. Pearson: Roger and I have a long history or testing underground storage tanks and have tested many Cumberland Farms operations and the public is right. the standards are extremely high and I am not concerned from that standpoint. I'm familiar with the practices put into place by Cumberland Farms.

R. Duhaime: When there is groundwater available, there is groundwater monitoring. Will this be done?

Piovla: Yes, it will be done on an annual basis or whenever it is requested by the State. The proximity of the tank to the street would give us the chance to clean up any contaminations that might be found during excavation.

C. Pearson: The 1000-foot ordinance was put before the voters and passed.



B. Hantz:

There was testimony in court regarding the 1000 foot ordinance, when passed, those minutes are sketchy and the town reached the point where something has to be done and it sounds like a congestion issue not a water protection issue.

Another clarification, there is a provision to delineate the aquifer. There's a difference between aquifer and surface drainage. We believe the risk of harm is negligible.

Close Public

L. Abruzzesa: Anecdotal survey, anything scientific.

b. Hantz: the public here corroborated the anecdotal evidence.

D. Boisvert: It wasn't scientific; I drove through Granite Hill and chatted with someone walking. I spoke to 6 –12 over several visits.

D. Boutin:

We have a very active board of directors that board I spoke to the management company and they were here for Granite Heights expansion, if there was a concern they would be here and they are not.

***L. Abruzzesa motioned to deny Article 3 Section p to allow a filling station less than 1,000 feet away from another filling station based on the criteria it is not a unique setting and the regulations do not make it a unique setting. By their own admission, it is a desirable location. They stated this is the best use but not the only use.***

***Motion fails without a second.***

***R. Savoie motioned to approve the Article 3 Section p to allow a filling station less than 1,000 feet away from another filling station. Seconded by D. Johnston.***

***Vote 2: 3 motion failed.***

R. Duhaime: I am not comfortable that it is a unique setting.

***R. Duhaime motioned to reconsider and table to the next meeting. Seconded by R. Savoie.***

***Voted unanimously in the affirmative.***

M. Bonsteel: This application has not gone to TRC and it has not gone to the town engineer therefore it is my recommendation that you hold off until you get the input from the town engineer. We have a new engineer with Stantec, and regulations have changed.

B. Hantz: We don't go to Planning Board until we get approval from the zba.

M. Bonsteel: They don't need to go to Planning Board in order to come to TRC.

If the applicant is willing to deposit \$2500 for plan review cost for Stantec review, we will schedule a TRC.

B. Hantz: It is putting the cart before the horse to require Technical Review costs before zba approvals are obtained.

M. Bonsteel: We are talking about groundwater protection, whether you agree that it is in the district or not. We put several applicants through the ringer for that and why would we change now. The use variance is the most difficult to attain and that's what they are asking for.

B. Hantz:

Perhaps the information from our engineer could be available at the next scheduled meeting. In the past, we have requested feedback from our engineers.

M. Bonsteel: They do not need to go through TRC but I recommend this be review by the town engineer.

***L. Abruzzesa motioned to table until review by town engineer and payment by the applicant of \$2500. Seconded by R. Savoie Voted unanimously in the affirmative.***

Both variances requested by Richard Boisvert will be continued to the January 9<sup>th</sup> meeting.

**ADJOURNMENT**

C. Pearson declared the meeting adjourned at 9:50 pm.

Respectfully submitted,

Lee Ann Moynihan