

Unofficial

**HOOKSETT ZONING BOARD OF ADJUSTMENT
MINUTES
Tuesday, April 13, 2010
HOOKSETT MUNICIPAL BUILDING
35 Main Street**

CALL TO ORDER

Chairman Chris Pearson called the meeting to order at 7:02 pm

ATTENDANCE

Chairman C. Pearson, R. Duhaime, G. Hyde, J. Levesque, R. Bairam, D. Pare, P. Denbow and Town Council Representative J. Gorton.

Staff: P. Rowell, Code Enforcement Officer

APPROVAL OF MINUTES

March 9, 2010

R. Bairam motioned to approve the minutes of March 9, 2010. Seconded by J. Levesque. Vote unanimously in favor. C. Pearson abstained

REQUEST FOR REHEARING

CROWN COMMUNICATION

210 Whitehall Road

Map 15, Lot 86-1

Industrial Zone

An appeal of the Zoning Board of Adjustment's decision to grant the Special Exception as specified in Article 11, Section B.2 to install a wireless communication facility in the Industrial Zone and the Variance request from Article 28, Section O.5:a which requires a front, side and rear yard setback equal to the height of the tower. The proposal is to construct a 150-foot monopole tower. The center of the tower is a greater distance than the height of the tower from the front and rear yards, but is 113.67 feet from the side yard to the east property line.

The motion for rehearing was reviewed by D. Pare, R. Bairam, R. Duhaime, C. Pearson, and J. Levesque.

A motion was filed by Robert Casey, representing property owners that abut 210 Whitehall Road, for a rehearing of the February 16, 2010 decision by the Town of Hooksett Zoning Board of Adjustment to approve the Special Exception requested by AT&T based on the following:

- Failure to meet the requirements for a Special Exception
- Lack of proper notice
- Potential conflict of interest.

The Board discussed the timeline for the notices to abutters.

Timeline:

Initial abutter's notice sent – July 14, 2009

Board denied the applicant's request for a Special Exception – November 10, 2009

Received request for rehearing from applicant – December 8, 2009

Sale of 22 Farrwood Drive – December 11, 2009

Board granted request for rehearing – January 12, 2010

Recorded deed change by Town of Hooksett – January 13, 2010

Updated Town Printed report in Assessing – January 14, 2010

Abutters' notice for February 16th, 2010 rehearing sent – February 3, 2010

A discussion ensued regarding the merits of the appeal for rehearing. The Board stated that during the prior hearings, a great deal of evidence was presented by the applicant as well as two (2) independent studies conducted by the town prior to making the decision to grant a Special Exception. The decision to grant a variance for the drop zone would only affect one abutter who raised no objection. The issue of "Failure to give Notice" was discussed and considered by members of the Board as a possible issue, however did feel that notice was posted in the Newspaper, the Town Hall, and the Library as well as general knowledge in the neighborhood. The Board did not feel any conflict of interest was breached in the hiring of the Stanhope Group, which conducted an independent impact study for the town.

R. Bairam motion to rehear the application for Crown Communication. No second. Motion failed.

CRANTON VERNON, LLC

8 Avon Road
Map 14, Lot 14-3

An Appeal of the Zoning Board of Adjustment's decision to deny the Variance request from Article 5 Section C(1)(a) of the Zoning Ordinance to permit the construction of a workforce housing project consisting of seven (7) separate lots, with lot sizes of the seven lots ranging from 3,617 square feet to 13,361 square feet where 32,670 is required and frontage on six of the seven lots ranging from 16 feet to 82.53 feet where 150 feet is required.

The motion for rehearing was reviewed by P. Denbow, D. Pare, R. Bairam, R. Duhaime, J. Levesque.

A motion was filed by David Rayment on behalf of Plus Fifty-Five, LLC, agent for Cranton Vernon, LLC, for a rehearing of the March 9, 2010 decision by the Town of Hooksett Zoning Board of Adjustment to deny the Variance requested by Cranton Vernon, LLC based on the following:

- Unreasonably and unlawfully discriminating against single family workforce housing
- Unreasonably and unlawfully discriminating against all workforce housing in general
- Unreasonably and unlawfully refusing to provide realistic and meaningful opportunities for the development of workforce housing
- Unreasonably and unlawfully speculating about what children who may or may not live in the residences ay or may not do, when and if the drivers on Avon Road and Thames Road may or may not obey the posting speed limits.

A brief discussion ensued regarding the merits of the appeal for rehearing. The Board felt that the application was reviewed thoroughly and the request was too extreme and contrary to the ordinance. It was noted that the proposal was not supported by the Planning Board.

R. Duhaime: I feel we reviewed this application thoroughly.

R. Duhaime motioned not to grant the request for a rehearing of the Cranton Vernon application for a Variance. Seconded by J. Levesque. Motion carried.

NEW PUBLIC HEARINGS

STAN PRESCOTT, LLC

225 Hackett Hill Road
Map 22, Lot 42

A request for a Variance from Article 4, Section C.1 to allow two lots to be created with 140.25 feet of frontage where 200 feet is required.

Stan Prescott representing Philip Scarpone presented an application for a Variance from Article 4 Section C:1 to permit frontage of less than 200 feet.

S. Prescott: We are trying to divide nine (9) acres into two (2) lots, each having 140.25 feet of frontage and one with 4.7 acres and the other with 4.9 acres. This is a result of a court case of adverse possession. The two parties agree because the judge saw some adverse possession and this is the agreement.

Mr. Scarpone is the person who thought he owned the 9 acres (Lot 1). He has agreed to give up half of this land to Mr. MacEachern. He doesn't have a clear title to merge this with the existing adjacent lot.

C. Pearson: We are looking at the creation of two non-conforming lots.

S. Prescott: The zoning says if you have two non-conforming lots, they are to become one.

S. Prescott: There is currently 280.5 feet on the adjacent lot. The piece to the South that Mr. MacEachern and his mother thought they owned had the piece with the camp. The lot with 280 feet of frontage, they have taken 150 feet and Mr. MacEachern mother lives on the balance was bought from the Chagnons. These pieces don't belong here and the deed is wrong. The Court asked us to come here for relief.

D. Pare: We need a clear deed before we can go forward.

Mr. MacEachern: This solution was to be equitable between the two parties. We agreed to this because we said this was equitable possession. This land has been used since 1958. The solution was we each would get a buildable lot regardless of the title problems Mr. Prescott mentioned.

James Harris representing Mr. Scarpone: There was a question raised about a title and we had a two-year piece of litigation to acquire a title. The result of that litigation was to quiet title to that litigation. We are here to formalize at the town level to draw the lines where the court and the parties have agreed to divide the land. This led to the order that was presented by Mr. Prescott. The Judge was aware this was dependent upon the Town's approval. I don't know the boundary lines if the judge has the authority to order these lots. We agreed to this settlement and the Court approved it.

James Harris: The statement regarding the requirement for ZBA approval, was in the case the Board denied this variance.

R. Duhaime: These are not straight lot lines, how was that determined? I would like to see a straight line.

James Harris: That is a reflection of the ledge that exists on the property and that Mr. MacEachern occupies the property to the south.

R. Duhaime: Mr. MacEachern's property should be merged.

James Harris: There is a deed issue that prevents the joining of these parcels.

R. Duhaime: We don't know where a leach field can go with the wetlands and the land.

C. Pearson: We have Stan Prescott representing P. Scarpone, but can he be here representing both lots?

P. Rowell: Mr. Scarpone believes he owns this property but it has been tied up in Court for adverse possession and he is now trying to get this resolved to obtain his land.

C. Pearson: My issue is this is result in two (2) non-conforming lots.

P. Rowell: The 140 feet is not dissimilar to other lots on Hackett Hill Road, but we also know that the surveys are inaccurate.

J. Gorton: Is someone living in the building on that lot? It would seem that if we eliminated the subdivision into two non-conforming lot, is there any value to that building. Come up with an agreement to realign so only one lot is non-conforming.

C. Pearson: To do that Mr. MacEachern would have to merge the lot with his existing property.

C. Pearson: Is that a single family home?

MacEachern: My grandparents lived in that home at one time. I am looking for a building lot. That was part of the equitable solution.

D. Pare: How much frontage do you have on the adjacent property?

MacEachern: I don't know.

S. Prescott: From the historical point, in 1840, there were 3 lots, and this was 280.5 and 280.5 and almost the same size. When someone sold it, they thought they were selling the land down the street, so they went up the street because it belonged to the same family. In 1842, they carved it up and his mother owns a piece and he bought the piece around it. The description was identical in the deed except it was in the wrong place.

C. Pearson: We think you should get frontage to join with the existing lot to make a conforming lot.

James Harris: We spent a day collaborating to meet an agreement and went through multiple drafts. In the first instance, the parties would have to go back to square one and then go back to Court and start the process over, which we have already done.

R. Duhaime: The Planning Board did not like this plan.

Stan Prescott read the application into the record. (see file)

C. Pearson: I want to state that there are lots on Hackett Hill that have 150 feet of frontage, but we have had this ordinance for 200 feet for a while and it is what the town has set for a frontage for a reason. I have an issue using that as a reason for the request. Also, you will be creating not one (1) but two (2) non-conforming lots. I seems we are creating something that the town doesn't want and that Planning doesn't approve.

James Harris: The case law on adverse possession says the Court can carve up and give portions, and case law supports the Judge's ability to carve up the lots. We were there to start the trial and the judge read the information. Mr. Prescott walked us through the entire lot. The Judge said if I carve up the lot, no one would be happy so he said you should at least carve it up in a way that is satisfactory to both parties. I don't know if the Court has constitutional latitude to order non-conforming lots.

Open Public Hearing – Abutters

Mr. MacEachern: I just want to say that I am looking for a buildable lot from that piece and to preserve a certain area. Obviously, I would want the part with the house and the vernal pool in the back. The back portion slopes off and I was trying to preserve that for wildlife.

Close Public Hearing

G. Hyde: I think if someone has tried for two years to resolve this and a judge said do this, I give that a lot of value.

D. Pare: We have a lot of 280 feet of frontage on Hackett Hill, when do we stop carving up these lots?

P. Denbow: I feel the Judge tossed this in our lap with outstanding issues. The Judge should have been aware of the zoning requirements. I think he was aware and that is why he put that condition on the agreement.

G. Hyde motioned to grant the request for a variance from article 4 to allow. Seconded by Turk.

Vote 2:3 motion failed

SOUTHERN NEW HAMPSHIRE UNIVERSITY

Map 33, Lot 67

2500 N. River Road

A Special Exception from Article 18, Section E.1.a for a wetland crossing to allow the construction of a driveway access road with sidewalk and utilities for an operation center at Southern New Hampshire University

Chris Rice, TF Moran, representing SNHU: Southern New Hampshire University has a 203-acre campus and this is one acre that is required and in a mixed use 4 zone. There are buildings highlighted in yellow and the university uses them for their maintenance facility and they propose construction one building to be used for all maintenance. A 2700 square foot building is being proposed and a Special Exception is needed to allow the construction of the driveway to cross a wetland area. There was a 2002 permit approved and this is an impact of 4443 feet. The wetlands have expanded in the past years. There is no impact in the construction area, which is all upland. There will be two (2) 24-inch culverts. As part of the site plan package, we will have all the drainage calculation and we believe that the two (2) 24 inch culverts will be sufficient. There is no need for a critter crossing with sufficient allowable space. This project will be on septic but all utilities will be underground. An inland fee will handle the mitigation.

R. Duhaime: Will there be runoff from the driveway?

Chris Rice: No there will be a couple of detention facilities that will be pretreated before going into the wetland.

P. Rowell: At TRC, there was talk of requiring open bottom culverts.

Chris Rice read the criteria into the record (see file)

Site walk is scheduled for Monday, April 26th at 6:00 pm at small parking lot.

The public hearing is continued to May 11, 2010.

ADJOURNMENT

The Chair declared the meeting adjourned at 9:00 pm.

Respectfully submitted,

Lee Ann Moynihan