

Unofficial

HOOKSETT ZONING BOARD OF ADJUSTMENT MINUTES

Tuesday, October 11, 2011

**HOOKSETT MUNICIPAL BUILDING
35 Main Street**

CALL TO ORDER

The meeting was called to order at 7:00 pm by Chairman Pearson.

Pledge of Allegiance

ATTENDANCE

C. Pearson, R. Duhaime, R. Bairam, D. Pare, Alternate M. Simoneau and Council Rep. J. Levesque.

Excused: P. Denbow and G. Lee

Absent: G. Hyde

APPROVAL OF MINUTES

September 13, 2011

D. Pare motioned to approve the minutes of September 13, 2011 as presented.

Seconded by R. Duhaime.

Vote unanimously in favor.

REHEARING

FALCON BROOK

49 Mammoth Road

Map 45 Lot 33

A rehearing on a request for a Variance from Article 5:C.3.b to allow the construction of 20 freestanding single family condominiums where a density of 14 units is allowed.

E. Bussiere, representing Falcon Brook and D. Maguire, Woodland Design.

C. Pearson: The variance is for Article 5:c.3.b to allow for multifamily dwellings.

P. Rowell: I spoke with counsel regarding the definition of multi-family and his interpretation is a Multi-family is an apartment, a condominium, or a building containing three (3) or more dwellings. He confirmed my interpretation of multi-family as more than one (1) dwelling in all cases.

C. Pearson: One reason for the rehearing was clarification on that issue. We received feedback from legal counsel and Peter and we wouldn't move forward with Article 5:c.3.b.

P. Rowell: This looks like a cluster subdivision which our ordinance requires 20 acres and they could request a variance for 14 acres and then move to a cluster subdivision or apply for a subdivision using single family dwellings. Then, if you need a different density, after you submit a subdivision plan to the Planning Board, you can apply for an increase in density.

C. Pearson: Any questions.

E. Bussiere: We were here two (2) months ago and this exact issue came up. Mr. Rowell gave the same opinion and we went through the definition and nothing has changed. I understand that Mr. Rowell got counsel's opinion on what the intent is. The definition says an apartment or condominium containing 3 or more dwellings and we are proposing a plan with three (3) or more dwellings. Dan Tatem said that this is a multi-family dwelling. It doesn't say that each must contain 3 or more units and if that was the intent, the definition would have said.

C. Pearson: The error was we should have gotten a clearer definition from counsel and the rehearing was to get clarification. We rely on our staff to interpret the ordinance. It is clear to me that this is a single family unit and not multi-family dwellings. We got advice that this is not multi-family and we must take our lead from counsel and code enforcement.

D. Maguire: The two suggestions for handling this don't apply to this plan and when I talked to JoAnn and Dan, we determined that the difference between the single family and this is this is a site plan because there are no lot lines on the site. These are not individual lots but part of a condo association. Because of that, we went to multi-family because the multi-family is considered a site plan with a private road and a private site coming off a public road. The only difference is these are separate and I got JoAnn and Dan to agree that this is a multi-family site plan. We are definitely in the right idea and we are not trying to go around the ordinance and there is nothing more specific that it would fit into. I respect Peter's concern and maybe it doesn't fit there but it also doesn't fit into a single family development.

C. Pearson: I think you got support for the plan itself, but we need to follow the ordinance. Our counsel and Code Enforcement Officer feel that this is the wrong variance that you are seeking.

E. Bussiere: What should we be asking for in a variance? You do not have an ordinance that would deal with this type of development.

C. Pearson: I read it like Peter and counsel that it is three (3) or more dwellings. Until we are told differently, we cannot act on this variance.

P. Rowell: The general Provision "H" states, *a single family or two family in any residential or mixed may contain only one building used for dwelling purposes and we are trying to crowd 20 on this one (1) lot.*

E. Bussiere: This specifically deals with a single or two family house lot. We are proposing 20 homes. We discussed that last time.

P. Rowell: Our ordinance does not provide for this type of development. There is a cluster provision but this does not follow that. The elderly development does allow for multi-family and condos.

C. Pearson: The error was made by the ZBA and we should have gotten clarification prior to rendering a decision but we must make sure this is clean and that is why we granted the rehearing.

D. Maguire: Would counsel weigh in because this Board was in favor of this plan. They liked this better than the previous plan. The Planning Board was also in favor. This type of development also limits accessory uses. What would be suggested that we do?

P. Rowell: Take it to the PB with 14 units and see where it goes.

E. Bussiere: You are saying that this is not a multi-family and therefore we do not have the 14 units allowed.

P. Rowell: The Planning Board had no issue with this type of development so go to the Planning Board with the 14 original.

D. Maguire: What density are we trying to get. Elderly housing would allow 42 units.

P. Rowell: You have a single family house lot. If you want to use it as something else you must meet those provisions.

C. Pearson: If you had a meeting and this wasn't clear, it is not for the ZBA to clean up. You didn't have counsel. We need to act on clean application. We erred in the first meeting and that is why we are rehearing this application. You must work with the town with an application for the right variance. Until then we cannot act.

E. Bussiere: Back in July, we were requested to go back to the Planning Board for input and we got a positive response from the Planning Board. We started by asking the town's engineer which way to go.

C. Pearson: We need to have the language cleared up and it is confusing to this Board.

P. Rowell: We had a meeting and at the end it was unclear where to go. This plan doesn't fit into our ordinance. They are trying to put more than one dwelling on one parcel of land. The ordinance restricts that. They want to put 20 units on one lot. They could get a

variance for that. They could get a variance for open space which requires 20 acres. To call this multi-family, I don't feel comfortable with this and they should not have dealt with him on this issue.

E. Bussiere: Is that something that you would like to see is a variance from the provision from one lot.

C. Pearson: We would like to act on this, but it is not up to us to give the guidance for a variance. If after the meeting, there was a specific direction on where to go, we would be more comfortable.

D. Maguire: The difficulty is Peter had a different view than JoAnn and I think we would get a positive response from the Planning Board.

R. Duhaime: I just don't think this read right. I look at my experience on the Board and it doesn't fit into the variance and legal advice tells me it doesn't fit.

C. Pearson: We cannot act on this. We can't tell you where to go. You must work with the staff.

D. Maguire: Has there been any relief granted from the elderly housing ordinance. We are not looking for 44 units. Would they give relief to the age restriction?

R. Duhaime: Until it is challenged legally, we don't have the answer. There is no precedence; even from another town.

C. Pearson: Work through Peter and Lee Ann and get the direction and Article you need to apply for a variance from. This should have been resolved two (2) meeting ago and we apologize for the delay.

***R. Duhaime motioned to not accept this application because it does not meet the criteria for Article 5:c.3.b. Seconded by D. Pare.
Vote unanimously in favor***

MISCELLANEOUS

The "All Boards Meeting" was held by council at the Library. There were some good points and the information was distributed.

ADJOURNMENT

The meeting was adjourned by the Chair at 8:30 pm.

Respectfully submitted,

Lee Ann Moynihan