

Unofficial

**HOOKSETT ZONING BOARD OF ADJUSTMENT
Tuesday, June 5, 2012
HOOKSETT MUNICIPAL BUILDING
35 Main Street
Room 204
MINUTES**

CALL TO ORDER

C. Pearson called the meeting to order at 5:43 pm

Pledge of Allegiance

ATTENDANCE

Chairman C. Pearson, R. Bairam, R. Duhaime, G. Hyde, P. Denbow (alternate), M. Simoneau (alternate), J. Roy (alternate) and J. Levesque (Town Council Rep.)
Excused: D. Pare

APPEAL FOR REHEARING

FALCON BROOK

49 Mammoth Road

Map 45 Lot 33

A request for a rehearing on a ruling by the Zoning Board on April 10, 2012 to deny a Variance from Article 8 Section D.5 of the Zoning Ordinance to permit a unit density of 21 units where 17 units are allowed.

R. Duhaime stated that he didn't see anything new or more information which is contrary to the public interest. The fact that this will impact more of the conservation subdivision is contrary to the public interest. If you add more homes you add more impact.

C. Pearson: Point 9 of the request read: "*The Board considered the incorrect initial standard for determining hardship that only requires the applicant to establish that owing to special conditions of the property that distinguish it from other properties in the area ... (i) [N]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the that provision to the property; and (ii) The proposed use is a reasonable one.*"

Point 10: Instead, the Board only considered the hardship test under sub-part B, which places a far more difficult burden upon the applicant.

The applicant has to identify that there are special conditions to the property and that was not identified and that is a reason why we denied the variance.

Point 6: “...it appears that the Board utilized the incorrect standard and placed a heightened standard on the applicant that that which the law requires.”

I don't believe they expressed what the hardship was for the additional 4 units. This was a unique subdivision request given a condominium proposal and the closeness of the structures. I don't think we saw the difference of 17 to 21 houses. I believe that 17 is an appropriate use.

R. Duhaime: If there are no wetlands, you could put 17 units. But the wetland forced it to a conservation subdivision. The jurisdictional wetlands must be subtracted and that is why the lower number and that is part of the property.

G. Hyde: We decided that they didn't meet the burden of unnecessary hardship. But it seems to me, at the time that the special conditions were that they had to cross the wetlands to put the units in the back which made the special condition. The two crossings make it economically unfeasible to not do the extra 4 units.

R. Duhaime: The abutters indicated that they have to go back there for water and sewer anyway so that isn't a reason. I don't know where the utilities are going but I think it will have to be underground utilities. There is a pumping station on Castle Drive.

G. Hyde: That would add to the hardship since they will have to do that crossing anyway and they have to go there to get the front to work.

C. Pearson: In looking at the hardship, it looks like we substantially addressed that. The attorney, at the time, stated that it was read and we discussed that and that is where we drew our conclusion and denied the variance.

G. Hyde: Comparing the minutes to paragraph 8, the only reference to hardship is subparagraph (b) and (a) was not addressed.

C. Pearson: Mr. Maguire stated there were similar dimensions and would fit well into the surrounding property and then went into the criteria for hardship. He summarized the reason for attaining hardship and R. Duhaime asked how this is in the public interest and asked, “Is going from 17 to 21 is in the public interest?” R. Duhaime's point was getting the country feel with fewer units.

R. Duhaime: I think more units are contrary to the ordinance.

G. Hyde: When he does say how to get to the hardship and we start talking about public interest again. From the legal point of view, I'm concerned that an attorney will use our wording against us. Are we using public interest or hardship? It appears we've only addressed that.

C. Pearson: As we go to the law, the applicant must establish that it is unique and R. Duhaime stated that in April. That is what we decided.

P. Denbow: It is a word play. It may be appropriate to rehear and correct the motion.

C. Pearson: We are giving him 17 units on a conservation subdivision.

G. Hyde motioned to grant the rehearing for a Variance request to allow 21 units where 17 are allowed. Seconded by R. Bairam.

Vote 3:2 motion carries.

ADJOURNMENT

The meeting was adjourned by the Chair at 7:39 pm.

Respectfully submitted,

Lee Ann Moynihan