

Official

**HOOKSETT ZONING BOARD OF ADJUSTMENT
Tuesday, July 10, 2012
HOOKSETT MUNICIPAL BUILDING
35 Main Street
MINUTES**

CALL TO ORDER

C. Pearson called the meeting to order at 6:30

ATTENDANCE

Chairman C. Pearson, R. Duhaime, G. Hyde, R. Bairam, M. Simoneau, and J. Roy.
P. Denbow (excused), D. Pare (excused)
J. Levesque (Council Rep.) attended virtually

ELECTION OF OFFICERS

*R. Bairam nominated C. Pearson as Chairman. Seconded by R. Duhaime.
Vote unanimously in favor.
R. Bairam nominated R. Duhaime as Vice Chair. Seconded G. Hyde.
Vote unanimously in favor.*

APPROVAL OF MINUTES

June 5, 2012

*R. Bairam motioned to approve the minutes of June 5, 2012. Seconded by M. Simoneau.
Vote unanimously in favor*

June 12, 2012

*M. Simoneau motioned to approve the minutes of June 12, 2012. Seconded by R. Bairam.
Vote unanimously in favor.*

CONTINUED PUBLIC HEARINGS

PALAZZI CORP/RITCHIE BROS.

39 Hackett Hill Road & 350 West River Road, Map 13 Lot 51

- A Variance from Article 20-A:B.11 (Table of Standards) to allow a 400 square foot freestanding sign to be erected along the Everett Turnpike where 32 square feet is allowed and 49 feet in height where 10 feet is allowed.
- A Variance from Article 20-A:B.10.a(2) to allow a freestanding sign to be constructed without a business address
- A Variance from Article 20-A:10.b to allow a freestanding sign that is neither a monument sign nor a directory type sign.

- A Variance from Article 20:C.1 and Article 20-A:B.11 (Table of Standards) to allow a second site sign to be a flag where only an American and State flag are allowed and only one sign per lot.

M. Simoneau motioned to continue the public hearing to August 14. Seconded by R. Bairam. Vote unanimously in favor.

NEW PUBLIC HEARINGS

NEURO RESTORATIVE OF NEW HAMPSHIRE

33 Prescott Heights, Map 42 Lot 13

Special Exception

A Special Exception per Article 5:B.3 to allow handicap housing in the Medium Density Residential District.

Variances

- A Variance from Article 7:B.2(a) to allow the conversion of a single family dwelling with 3.15 acres into a home for the handicap where 4 acres are required.
- A Variance from Article 7:B.2(c) to allow a handicap housing development on a lot with 50' of frontage where 200 feet is required.
- A Variance from Article 7:B.5 to allow a handicap housing development on a property with a private and well and septic where public water and sewer is required but not available.

Lisa Saba: We filed an application for a Special Exception to convert a single family dwelling into handicap housing. We are looking for a Special Exception from Article 5:B.3 to modify an existing house to handicap housing. There are also 3 variances needed. (Listed above)

C. Pearson stated that the Special Exception requires Planning Board comments and site walk.

Lisa Saba: As a company, we provide various homes with a supportive environment for individuals with brain injuries. This is an alternative to a long term facility. We try and integrate patients back into the environment. This will be their residence and we would provide support and increased accessibility for bathrooms and wider hallways.

C. Pearson: Is it typical to go into a neighborhood and convert a house?

Lisa Saba: Yes, this is a way for them to integrate back into the community. They are part of the community.

C. Pearson: How many people will this house support?

Lisa Saba: We are thinking of 6 individuals. We would also be licensed through the State. There will be 2 staff on site 24 hours as well to provide assistance. The house is now a 4 bedroom with an in-law apartment. There is 2900 s.f. of living space.

R. Bairam: Will this be long term?

Lisa Saba: Yes.

J. Roy: Is there a specific age for the residents? Will any of them be school age?

Lisa Saba: We only service adults with a median age of 30-40. We wouldn't work with anyone under the age of 18.

Lisa Saba read from the application for the criteria for a Special Exception (see file)

C. Pearson: This will be six (6) bedrooms on the main floor and office area over the garage? Will you be getting rid of the garage?

Lisa Saba: Yes

M. Labonte: A septic design was prepared by an engineer to accommodate the new proposed use. They did not require any waivers from the State or Town.

G. Hyde: Have you looked at any other areas in town?

Lisa Saba: Yes, working with a realtor, this seemed to fit best.

G. Hyde: Have you had any issues with people leaving the property?

Lisa Saba: Yes, we have had issues with people leaving the property but no one is dangerous.

Lisa Saba: We have two (2) other locations; one in Chichester, which is an eight (8) bedroom home and one in Loudon, which is a 3 bedroom home. Chichester was established a number of years ago and Loudon is less than one year old.

C. Pearson: Have you gotten any feedback from those communities?

Lisa Saba: We took over the Chichester location after it had been established within the community. Loudon has some initial concerns since we have only been there less than one year.

C. Pearson: Do have a local office?

Lisa Saba: My office is in Braintree Massachusetts.

G. Hyde: The plan shows 11 parking spaces.

Open Public:

Don Armstrong, 9 Prescott Heights: I own the 16 acres behind this property. I haven't heard a couple things that should be considered. Over the years, there have been many meetings held to grant variances and the same subject comes up and that's the issue of water. There are facts that go along with the name Misery Hill. Many people have had water problems and several have put in Artesian Well. Some have been fortunate and others not. I would hope the Board will look into the effect of increasing the number of people living in that dwelling and its' effect on these wells. I know a couple of wells are 1000 feet deep and the property formally owned by the Barbeau family was sold after investing money in a well but couldn't use the water. I would like the Board to look into the effect on the people that live there. We've lived there since 1947 and have heard only horror stories. Since it sits on a hill, there have been septic problems with seepage. I think the whole idea might be a good one but it does deserve continuance and we need to know the absolute number of dwellers and that number must be limited and policed. I would like the Board to set up one or two of you to verify with the other two homes that are already owned and check with the neighbors and see the effect. There is also a traffic problem. There is a traffic problem where it meets Smyth Road and I have to believe this will increase that problem due to visitors, medical personnel, and rehab personnel.

C. Pearson: Can you address the traffic issue?

Lisa Saba: You will have the traffic from staff coming on and off shift for set times; 7-3 3-11 and 11-7 with two cars. No one in the house would drive. They would go to work or a day activity and that transportation would be on-going. There is a level of visitors. It is hard to predict how often they get visitors with no set visitation time.

C. Pearson: Can you address the water problems?

Lisa Saba: We will be using the existing well.

M. Labonte: There is no data to go by.

C. Pearson: Septic problems?

J. Roy: Do you plan to do the septic upgrade immediately?

Lisa Saba: We will install the septic immediately.

C. Pearson: Do you have a set number of people that will be living in the house?

Lisa Saba: We would only be licensed for six (6) individuals and would not be allowed to increase without further licensing.

Mr. Armstrong: Would any of your residents have mental issues that would raise concerns with neighbors that have families in the area?

Lisa Saba: We screen people. We don't want anyone that is high risk in the neighborhood or risk to other individuals in the home.

C. Pearson: I think it is a good idea to check on other sites.

Don Armstrong: We are not questioning the capacity for the well and septic for the residents but rather the effect of the increased usage on the other wells in the area.

James Tondreau, 31 Prescott Height: I am concerned because the seepage from that building comes in to the wetland that is a brook on my property now. The trees that she is talking about are on my property and my septic is back 10 feet from their property line. My water supply, since they built that house has dropped. I want to know how they can put a parking lot there. The value of the houses will go down.

R. Duhaime: They can do a zero run off. The water issue is with the drainage and you can do some mitigation.

Jesse Lindland: The parking lot will not be expanded and the roof will not be increased. There is significant parking on the site now.

Mark L'Heureux, 17 Beacon Hill: I'm within 60-80 feet from the building. The service is a decent service but I have issues with increased activity in the rear of my property with more people and more cars coming and going. I look at the variances and what they are asking for. They got a variance for the frontage and now adding variances for usage in a residential neighborhood. They are not having a hardship. They are trying to stretch the regulations with the acreage and the frontage and the dynamics and character of the acreage. The regulations are in place to have the appropriate spacing. In this case, it is doing me an injustice having more effect on my property.

R. Duhaime: What size is your lot?

Mark L'Heureux: It is 9/10 of an acre. Once you approve something like this, it is forever and never goes back. When they request an expansion, it will be easier and will further affect my lot. I have town water and sewer. It was brought in with the development. I have limited tree buffer on my property. The trees are on their property. I would ask for more buffer and for the record, I'm opposed.

Don Pelissier , 29 Prescott Heights: I echo what Mr. L'Heureux said.

Donna Pelissier, 29 Prescott Height: The traffic from just the single family homes is of concern and I'm concerned about staff changes at 11 at night and at 7 in the morning. In the winter, we see the entire house and have little tree buffer. There have been complaints about traffic issues on Prescott Heights already.

Close Public

A Site Walk is schedule for Tuesday, July 24th at 6:00 pm at the site.

G. Hyde motioned to continue the public hearing to August 14th and requests Planning Board comments for the Special Exception. The Board requests staff to acquire information on a property value impact study for the area. Seconded by R. Bairam. Vote unanimously in favor.

JAMES & RACHEL WELCH

16 Rae Brook

Map 47 Lot 32-8

A Variance from Article 8:G.3 to allow the construction of a third garage within 9 feet of the front property line where 15 is required.

R. Duhaime recused himself. Michael Simoneau, Alternate will vote on the application.

James Welch: We are looking to expand the building to add another garage which would be six feet into the side setback.

C. Pearson: Is there something preventing you from shifting the building towards the open space side. This would prevent you from encroach on your neighbor.

James Welch stated he had no problem with that and will submit a revised plan based on the Board's comments.

Open Public:

None

Close Public

G. Hyde motioned to continue the hearing to August 14th. Seconded by R. Bairam. Vote unanimously in favor

REHEARING

FALCON BROOK

49 Mammoth Road

Map 45 Lot 33

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.

E. Bussiere, attorney representing Mr. Maurais: I would like to give some history of why we are here again. One March 20th, we requested four (4) variances and obtained three (3). We were denied the request to increase in density for 4 more units. We provided designs that would show a design that was pleasing. On April 2nd, I provided a package that showed eight (8) different styles. When we returned on April 10th, the variance was denied and we filed for a rehearing on June 5th which was granted. We are here rehearing the entire meeting. You have already given us permission to do a Conservation Subdivision. We are allowed, per the density requirements to put 17 units on this

property. If we keep with the approved plan, it will be 15 units due to the second crossing in the back. I think if you look at the abutting properties, there are 12 houses that are the same length as our property and our property is 2 ½ times as wide. We are asking for 21 units on a piece that is more than twice as large. It will increase the surrounding properties.

E. Bussiere read from application (see file)

R. Duhaime: We did get to the point of conservation subdivision which helps you with the difficulty of this property. We have given you leeway with this property within the conservation subdivision and now to give more units than what is allowed is not sticking to the spirit of the ordinance. I don't see the hardship in more units because it just adds more traffic. If you can give more clarification...

E. Bussiere: The Conservation is relative to the conservation area.

R. Duhaime: That is fine if you keep to the limited density. If you add more units, you are increasing the traffic.

E. Bussiere: We are still maintaining the same amount of open space regardless of the number of units.

R. Duhaime: You are basically adding more units to that open space. We've allowed less land than required. We keep giving variances that defeat the spirit of the ordinance.

E. Bussiere: I don't know why there is a minimum lot size for a conservation subdivision. I don't think the size of the lot speaks to units.

C. Pearson: We feel we have allowed you to shrink the requirement and now you are looking for more.

R. Duhaime: We have already granted a number of allowances for this proposal.

E. Bussiere: The wetland crossing is the hardship and we need to get to that piece of property. Once you granted us the variance, we still had the same restriction to density.

C. Pearson: If we don't grant this, it goes down to 15 and you don't put the units in the back and you don't do the second wetland crossing?

E. Bussiere: This is a unique feature of the property and because of the uniqueness, to make reasonable use of the property, we want the additional units which are the furthest from the abutters. This is a condominium therefore we will have restrictions for out-buildings which will provide a greater protection of the aesthetics of the open space.

R. Duhaime: That is why we allowed the lots. I thought the sewer and water lines were going across the wetland crossing so you have to do it anyway.

E. Bussiere: Doing a crossing for water and sewer is different than a road.

Doug Maguire: Crossing the wetland is one option. We could go with a pump station and connect from Maurais. We have capacity to go either way.

Open Abutters:

George Porter, 40 Castle Drive: I happen to have the easement for their water and sewer. I don't know how you can say this won't have an impact. They are talking about 4000 s.f. lots. They want to put this on less than 5000 s.f. apiece. I have asked how many square feet the houses will be. The houses are 850 s.f. houses which is not compatible to the neighborhood. Castle had to meet 150 feet of frontage. I know it is steep but so was Castle Drive. It is not a hardship. Not having 20 acres is fine but I've always heard 17 houses on 14 acres. You take 15% off the top. I moved into a MDR area so you don't have this density. Somewhere you have to draw the line. Legitimately, if you take the wetland, you have to stay 40 feet away for building. You can't use the 15% in the 50% open. You need to consider the traffic on Mammoth Road by Alice Drive which is the main cut over to the highway. This will be creating another traffic situation and we haven't discussed run off. I've never seen anything financial on what it will do to the neighboring houses.

C. Pearson: What will be the square footage of the houses?

E. Bussiere: On the April submission, we tried to show a wide range of concepts based on what the market will bear. You can have a great looking 800 s.f. house and a terrible looking 1200 s.f. house. I said 1100 – 2200 square feet.

Proper use of open space:

Doug Maguire: The Open Space requirement is 50% of the total parcel and we are providing 74% as open space. There are parts which are required to be unconstrained. The wetlands and buffers are 328,000 s.f. We took out 27,000 s.f. of steep slopes which brought us to 53% required, and we are still meeting the unconstrained as well. Because this is conceptual, we did a block but can tighten those dimensions up when we do the plan and increase those numbers.

E. Bussiere: We are not looking for a variance from the open space.

Dan Blaise, 34 Castle Drive: The statement made by Mr. Bussiere that on previous submissions of April 2012, permitting the Conservation Subdivision was not contrary to the spirit was when the density requirement would still apply. That is no longer applied. The wetlands don't stop at the white lines. There are at least two (2) maybe three (3) on Castle and Golden Gate. To say that the two (2) wetland crossings on this property are unique is not true. The water continues to flow so there is no uniqueness. For the Conservation Subdivision, it states we are looking to minimize land disturbance and to increase it is not in the spirit of the ordinance. You will have to increase your storm water management. To increase the impact on roads, neighbors and community is not in

keeping with the spirit of the ordinance. The wetland is not a unique hardship of this property. Relative to what they might or might not build, if they tweak the concept, they could build a couple more. I think they wouldn't have to make the second wetland crossing and could use the sewer on Maurais. On the hardship, when they asked for the variance for the conservation subdivision, they knew water and sewer were required. If they could get more than 17 with individual septic and wells they wouldn't be sitting here. They can't say you gave it to us so now we have to connect and you have to give it to us. I don't see how this can be a hardship.

Leslie Leahy, 14 Fieldstone Drive: I have multiple concerns. I am happy I'm not at 18 or 22. A point made is that we are lucky we're doing what we're doing. They can't use the open space and now they have two houses in their back yard. In the winter, I can see through the trees. When you talk about this density, you are talking children. I don't see open green space or playgrounds. Earlier plans had green areas and places to play. I'm concerned about fire. I've walked this property and my major concern is drainage. Recently, we've had dry weather but during the floods, there is a lot of wetland they're leaving open but when there is rain, this works as a catch basin. How will the flood areas be affected when these homes are built. I'm concerned with what it will do to the cost of our houses. If I'm at 22 Castle and there are no leaves on the trees, and can see this, why would I pay for a single family lot. They have done nothing to help us and why would I want to move into an area with three (3) homes in my back yard. There were plenty of concerns expressed relative to the regulations. I'm concerned with the property values and the run off and the run off from all the roofs. Those are real concerns and there are ordinances to protect from over expansion and this is an over expansion.

Doug Maguire: Both abutters brought up concerns about drainage and traffic. I want to remind the Board that this is just step one and we will go to the Planning Board with this plan and this will be designed to meet all State requirements and we will get an Alteration of Terrain Permit. Since 2008, there have been more stringent regulation for run off and treatment and peak flow and volume mitigation. We will be looking at those items at the Planning and State level. We will be happy to submit a traffic impact statement. The four (4) additional units will have no impact on traffic and we can show that. I understand the abutters concern with drainage and we will have to mitigate that.

R. Duhaime: The drainage isn't an issue for me but this woman is saying these extra units will result in 2 to 3 homes in people's backyards and if we decrease that we can minimize it. Since we are doing something unique, ...

Doug Maguire: I would like to point out that Mr. Bussiere stated that the four (4) units we are talking about, whether we increase the density or not; we will maximize the front end of the property. I did add an arch to the beginning to increase the buffer. At the Planning level there will be requirements for heavy landscaping and fencing. The density that we are talking about is a matter of the second crossing and making that feasible. If we didn't do that we would be looking at a similar design. The only other available upland is at the second crossing.

E. Bussiere: The variance has been attained for the Conservation Subdivision and the two (2) homes in the backyard have already been granted and the ones we are talking about now will not be seen.

R. Duhaime: If we wanted to spread these units out, could we put more units in this area?

Doug Maguire: That would be difficult due to the open space. You might be able to push these apart a little more. We were approved for 30 feet of separation and I think we will have 35 feet.

G. Hyde: If this variance is not granted, are you going to cross that wetland either way?

Doug Maguire: We don't know if we will be doing that. If the hammerhead approved by the Fire Department were to be pulled in, there would be increase costs and retaining walls and the economics of crossing that wetland would have to be evaluated.

George Porter: If they don't go into the second half, it will be where the other two houses are. They don't know what they are doing.

Doug Maguire: It is possible we could get it in between the wetlands but it would be tight.

G. Porter: I would like to know the size of the houses. They still haven't answered that.

Dan Blaise: Mr. Maguire made reference to the back part where it meets the sweet part. But on the topo, it is the highest level of the property and it is the same as the area he said he couldn't go to. The other side is Lambert's Junk Yard. We will provide a nice buffer for Lambert's Junk Yard.

E. Bussiere: We didn't develop this property to provide a buffer for Lamberts but rather to develop and make reasonable use of the property.

Doug Maguire: I have a lot of experience with this property and have designed it 12 times. We were much deeper into this property with the 28 unit workforce housing plan and I am aware of the cuts and fills. There are a couple of knots of fill but I do feel this area is a sweet spot. My point is it is very steep here and as you recall we had a fully designed project that ended way back here. We have substantially reduced the impact from that point.

Close Public

M. Simoneau as alternate will vote on the application.

G. Hyde: We decided to rehear this variance because we had not hit on the important points of the hardship test. What we established originally was only one point so we need to do both subparagraph a and b.

R. Duhaime: Looking at the units and going back, the objective of the subdivision is to establish a rural character. I don't think these units will make a difference but to add more units will increase the density for the abutters and I think this goes against the spirit of the ordinance.

C. Pearson: It's up to Planning to decide where the units go. We are only here to address the increase of four (4) units.

Criteria: This is the increase in density of 17 to 21.

1. The Variance will not be contrary to the public interest because:

The consensus of the Board was that the Variance is not contrary to the public interest.

2. The spirit of the ordinance is observed because:

R. Duhaime: If you look at the objectives of the ordinance, and grant that and then give them more units, it is contrary to the spirit of the ordinance. We are not sticking to the objectives.

G. Hyde: I agree the ordinance is to maintain rural character but will the four (4) units in the back change the character?

R. Duhaime: Why have an ordinance if you are always going to change it.

C. Pearson, R. Duhaime, and M. Simoneau – agreed the variance is contrary to the spirit of the ordinance.

R. Bairam and G. Hyde agreed it is not contrary to the spirit of the ordinance.

3. Substantial justice is done because:

The Board did not come to agreement on the establishment of substantial justice.

4. The value of surrounding properties are not diminished because:

There was no evidence presented to show that the surrounding properties values would or would not be diminished.

5. Literal enforcement of the provision would result in an unnecessary hardship:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) **The proposed use is a reasonable one**

R. Bairam stated he believes there is a hardship without the extra four (4) units.

G. Hyde – Reading the RSA, even if we take subparagraph (a), if you say special conditions...(b) is if we are taking the applicant at their word, there is a hardship if they can't put those in the back. The applicant said they are not changing the ones in the front. We will be upset if the applicant moves those around.

R. Duhaime: This is a conceptual plan and not an approved plan. We are allowed the 30 foot separation.

C. Pearson: I'm hung up on the special conditions of the property because they can fit 17 units and have reasonable use of their property.

M. Simoneau: I'm in agreement with R. Duhaime and feel there is no unnecessary hardship.

R. Bairam agrees with the applicant because they need the additional 4.

R. Duhaime does not feel there is a hardship due to the special conditions of the property. I don't believe per (a) of the hardship rule, *For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area, the literal enforcement is not an unnecessary hardship, and Special Conditions do not exist and they should be kept to 17 units.*

G. Hyde: I believe that the Special Condition of the property is the fact that the front can be used therefore the rear cannot be used in strict conformance.

R. Bairam and G. Hyde believe there is a hardship.

C. Pearson, R. Duhaime, and M. Simoneau believe there is no hardship and are allowed to build 17 units which is reasonable use of the land.

G. Hyde motions to grant the Variance from Article 8 Section D.5 of the Zoning Ordinance to permit a unit density of 21 units where 17 units are allowed.

Seconded by R. Bairam.

Vote 2:3 motion fails.

The Board denied the Variance for the following reasons:

Three (3) members of the Board believe that the increase from 17 units to 21 is contrary to the spirit of the ordinance given the ordinance which is to maintain rural character and to reduce the impact on municipality, neighboring properties and the natural environment.

Three (3) members of the Board believe that this is not a hardship because there are no special conditions which distinguish this property from others in the area. The wetlands which exist do not preclude the development since the Board has granted a variance to develop the property and build 17 units under the Conservation Subdivision Ordinance and other properties in the area have significant wetlands.

NON-PUBLIC

RSA 91-A:3, II (e) *“Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.”*

M. Simoneau motioned to enter into non-public session at 9:05. Second R. Bairam. Roll Call

C. Pearson – Yes

R. Duhaime – Yes

R. Bairam – Yes

G. Hyde – Yes

M. Simoneau – Yes

The Board reentered public session at 9:25 pm.

R. Bairam motioned to seal the non-public minutes. Seconded by R. Duhaime. Vote unanimously in favor.

ADJOURNMENT

Chairman Pearson declared the meeting adjourned at 9:30 pm.

Respectfully submitted,

Lee Ann Moynihan