

Unofficial

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, December 10, 2013

HOOKSETT MUNICIPAL BUILDING

CALL TO ORDER

Chair Chris Pearson called the meeting to order at 6:32 pm.

PLEDGE OF ALLEGIANCE

ATTENDANCE: Michael Simoneau, Gerald Hyde, Don Pare, Richard Bairam, Roger Duhaime, Chris Pearson, and James Levesque, Council Rep.

EXCUSED: Phil Denbow and Jackie Roy

STAFF: Matthew Lavoie, Code Enforcement Officer

APPROVAL OF MINUTES

November 12, 2013 Regular Meeting – *G. Hyde moved to approve the November 12, 2013 regular meeting minutes. Seconded by R. Bairam. Motion carried unanimously.*

CONTINUED PUBLIC HEARINGS

STERLING HOMES, LLC/SUMMIT VIEW SUBDIVISION Case #13-14

South Bow Road Map 12, Lots 1 & 24

LDR

A Special Exception is requested from Article 18, Section E (1a) of the Zoning Ordinance to permit construction of a road that crosses a wetland.

Peter Julia (Keach Nordstrom Associates): We have been here before, you have seen the application, you have accepted it, we have conducted and you have attended the site walk. I am here to offer and answer any comments or questions you may have about the process.

C. Pearson: Are there any questions or anything that has come up after the site walk?

R. Duhaime: My only concern was some of the homes buffer the wetlands. Did you show leach fields and wells on the plan set?

P Julia: Within the plan set there is the well radius on every individual lot.

R. Duhaime: Did you show that on the map?

P. Julia: It is shown within the plan set.

R. Duhaime: That was my only concern. The boundary markers are within the wetlands. We have run into this before where people build a shed or something like that in the wetland buffer, because if you have a leach field or wells then they push it out.

P. Julia: This particular special exception deals with the roadway construction only and that is the only anticipated wetland disturbance throughout the project.

R. Duhaime: You are going to create a wetland, correct?

P. Julia: No.

R. Duhaime: You are creating a pond that is within the property lines. That is my concern.

P. Julia: I understand. That is correct. The pond touches the backside of some of the parcels.

R. Duhaime: Is there any way we can push that back or move it around to avoid that? Being in zoning, I am just telling you this is what happens. You have somebody that goes and builds something and they don't realize they are in a wetland buffer.

C. Pearson: I think that is Lot 23 and 24. Correct?

P. Julia: The big gray shaded area on the exhibit is the lower portion of the pond that is expected to retain water. The area unshaded is the back-slope. The area in green is undisturbed woods. These lots are reasonable representations of developed parcels with driveways that meet the town standards. These are 2500 sq. foot homes with two car garages. The areas that surround them in white are areas enough for septic. Along the back side there is a line that represents open space and there will be placards every 50', likely at the top of the slope.

R. Duhaime: If I remember that is a pretty steep slope. Correct?

P. Julia: This is 2: 1 and it will be fenced.

R. Duhaime: Do you know roughly what size the lots are?

P. Julia: A half acre is the minimum size in the conservation subdivision project. However there is no lot less than 7/10 of an acre and there are several lots that exceed one acre. Some lots, because of there geometry, approach one acre. Lots 23 and 24 are very near an acre.

Open to Public

No Public Comments

Closed to Public

G. Hyde motioned to grant the special exception to Article 18, Section E (1a) of the Zoning Ordinance to permit construction of a road that crosses a wetland. Seconded by R. Bairam.

C. Pearson: For discussion, can we add the sq. footage to that?

G. Hyde motioned to amend the original motion to include the total square footage of wetlands crossing at 6,410 sq. feet. Seconded by R. Bairam. Motion carried unanimously.

MANCHESTER WATER WORKS Case #13-16

700 Quality Drive Map 29, Lot 64-2

MUD3

A Special Exception is requested from Article 14, Section B of the Zoning Ordinance to permit the installation of a well/water facility on the property that will draw water from beneath the river for an added water supply to their overall system. A Public Utility Facility is listed under Permitted Uses by Special Exception.

C. Pearson: To start could you please read the application to record and address the change as well.

Jeff Kevan (TF Moran) read the application to record

R. Duhaime: Have you come up with an area of where the well is going?

J. Kevan: It is about 85' off the property line. We talked about pushing it a little further north than it shows. That will be dependent on boring's as we do additional testing prior to construction. The set back is 25'. We are 85' from that property line. We will add some evergreen plantings there. The nearest house is about 15' off of that property line but we will add some screening.

R. Duhaime: You will have a black vinyl fence?

J. Kevan: That is the thought. I think that disappears better than regular chain link.

R. Duhaime: You didn't show the hedge. Are you going to build an evergreen?

J. Kevan: We will put some evergreens in there and work with that neighbor. The neighbor has been utilizing some of that land, parking his boat, and Manchester Water Works has been working with him. The intent would be they would continue to work with the neighbors on what that previous plan was but that is separate as far as access, where the private drive goes through the middle of their property. We would continue to deal with the three landowners at the far end and see if we can work that out. I had coordinated with the Fire Department and Public Works as far as doing a hammer head at the end closing off Kimball Dr. and they didn't have any issue

with doing that. It would satisfy the residents so they would not have the through access up to Quality Dr., but it would give the Fire Department and Public Works the turnaround they need.

C. Pearson: You said the distance is 85'. If we were to say that it would be no closer than 85' are you comfortable with that?

J. Kevan: Yes.

C. Pearson: The shed. Not that you would do this, but if we grant the shed and then the shed turns into something larger, is there a maximum shed size that you would require?

Dave Miller (Manchester Water Works): Would it be necessary for us to put a restriction of the size at this point?

C. Pearson: To say it's a shed and then come back and it is something more than a shed.

D. Miller: I would love to tell you it is going to be 20x20, no larger, and I expect that it probably won't, but I don't think it would be appropriate of me to restrict the size. I just don't have that information and it is quite possible might not be a shed.

J. Kevan: You could restrict it and call it a pump house. That is all we are asking for right now. That way we are not expanding it into treatment or anything like that.

D. Miller: That would be it's sole purpose to house pumps and provide noise attenuation.

C. Pearson: You said you are coming in from Quality Dr. so you are going to be cutting across the private road. Are you all set to do that?

J. Kevan: Manchester Water Works has rights to drive on that road.

D. Pare: Will you be putting a generator on this property around this shed or slab?

D. Miller: Yes. I think that would be a reasonable piece of equipment to have there for back up power.

D. Pare: Something that is going to go off once a week; tested?

D. Miller: We have generators currently that are housed within pump stations and they are exercised monthly.

D. Pare: It is not a very big generator.

D. Miller: Correct. It would be pretty small and it would require some exercising.

D. Pare: I wonder if it would fit in the pump house itself.

D. Miller: I would anticipate that, yes. From a security and safety standpoint it would be better to have it inside. That is what we try to do with new pumping stations that we design.

R. Duhaime: Being that this is a new well, one of it's kind and you haven't worked with it before, this came up about the neighbors wells; if you suck them dry your plan is to provide them with water?

D. Miller: That would be a requirement of the permitting process. We would not adversely impact the neighbors. If there is any impact we would mitigate it by whatever means necessary. If that means hooking up to our system that is absolutely possible and likely.

J. Kevan: Probably, as part of the process they would do an evaluation or document the condition of those wells prior to doing any work out there.

D. Miller: We did that when we did the test well and we will do that with the full production well.

R. Duhaime: You have baseline numbers for their wells already?

D. Miller: Yes we do.

D. Pare: The gentleman that lives just south of there had mentioned that he had to replace a couple of pumps.

D. Miller: I think you are talking about Mr. Godbout. He has a bedrock well, not a dug well, and the meeting a month ago was the first time that I heard he had trouble with his pumps. I told him afterward that I wish I had know that because we could have helped him out.

J. Kevan: This construction process is different and it won't be driving of a well casing. It will be an excavation down so there won't be that pounding.

Open to Public

No Public Comments

Closed to Public

R. Duhaime: We don't know much about this well. I anticipate the treatment facility may be a possibility down the road but I don't think it is an issue as far as the property goes. There is plenty of room for them to put a building on this property.

C. Pearson: For this application specifically, it needs to be for the well and the pump house.

M. Simoneau: You also mentioned the 85'. Do you want that in there too?

C. Pearson: I would like to make sure we set some sort of boundary.

R. Duhaime: I was focusing on a utility being there. Allowing a utility on that property is a major issue and a good fit and as long as the neighbors are taken care of and it is not too loud. My biggest fear is property values. That is the criteria they have to meet, but if their water is guaranteed and there is screening I think it helps with that criteria.

R. Bairam: What does the buffer have to be between the house and the well pump?

M. Lavoie: In the comments that I sent it is 50' that you can't touch as a buffer and a 25' wooded 8' high plantings, 50 percent evergreens.

J. Kevan: This is different than a normal well in that the draw is going to be out under the river, not where the well is, so the well radius is more projected out where you are doing the draw from.

D. Pare: When you go down, are you going to be drawing by Joe's house or are you going out towards the river only?

J. Kevan: The draw of water is from out under that river.

D. Miller: The laterals will not project under his property.

D. Pare: I was thinking towards the property.

J. Kevan: The well itself, where this well is shown, that is not the draw point. It is the radials out under the river. They are using the gravels to do pretreatment on that water as it is drawn.

M. Simoneau motioned for a special exception from Article 14, Section B of the Zoning

*Ordinance to permit the installation of a well/water facility on the property that will draw water from beneath the river for an added water supply to their overall system. A Public Utility Facility is listed under Permitted Uses by Special Exception. This exception request also may include a pump house which will have a buffer with a minimum of 85' from the nearest neighbor. Seconded by R. Bairam. G. Hyde abstained due to not having attended the site walk. **Motion carried.***

NEW PUBLIC HEARINGS

BRIDGE BAY, LLC Case #13-17

99 Mammoth Road Map 41, Lot 36

HDR

Note: Special Exception for wetland impact was granted on August 8, 2006 for 9,967 SF, but plan indicated 5,498 SF, 325 SF of which was temporary.

A Special Exception is requested from Article 18, Section E of the Zoning Ordinance to permit construction of a single 21-unit, three story, multi-family, residential building instead of the previously proposed 2-12 unit buildings. The site contains separate, existing, 12-unit, three story, multifamily, residential building. The proposed building will reduce wetland impacts from 5,498 SF to 5,173 SF and reduce buffer impact by placing all parking around proposed building.

John Cronin (Cronin, Bisson and Zalinsky, P.C.): With me is Ron Dupont the Principle of Bridge Bay, LLC and Brenton Cole from McCourt Engineering Associates, PLLC. This matter comes before you after some discussion with staff. In 2005, an application was submitted to develop this property. It was known then as Hilltop Village Condominiums. It called for three buildings. One that currently exists up near Mammoth Rd. was built and it originally contemplated a road winding it's way back to the high dry usable land to construct two additional buildings. Mr. Dupont and Bridge Bay have since acquired the property, looked at it to determine it's best use and to minimize the impacts. Initially it was the expectation that the special exception granted in 2006 was still valid and didn't extinguish as a variance does under your ordinance. After some discussion with staff, they thought that rather than debate that issue it would be best to come back before you and seek it again. Initially the new plan is to reduce the number of units compared to what was previously contemplated and put in one structure of 21 units. It has also been revised to take the parking for that unit and put it around the building envelope as opposed to the road. We have submitted our application and will incorporate the narrative by reference. We have spelled out, for each of the criteria, what is necessary to satisfy your test for a special exception. This is a request according to Article 18E of the ordinance and it suggests, indicates and allows, as does the state regulations, that when you have situations for an access road when there is no other feasible way to do it, that you can impact the wetlands. When you take a look at the plan you can see it is a de minimis area. These are not prime wetlands or wetlands that provide any type of environmental specialty. It is for conveyance of storm water which will not be interrupted based on the improvements. This particular layout would have to go before the

Planning Board. It has been before the Conservation Commission. They looked upon this favorably and it is my understanding that, if you have not received it yet, you will be getting a letter which is the typical course. It is current use and proposed uses allowed is a matter of right under the ordinance. There would be no negative impact to the surrounding area. There is a land-lock parcel to the rear of raw land. Sitting to the south is a parcel that I think is owned predominately by the town that it took for taxes. It is well maintained and sits well within the environment. I am willing to elaborate on the criteria if you wish me to.

C. Pearson: Please read the application into record.

J. Cronin read the application into record

C. Pearson: Back in 2006, our big concern was runoff across Mammoth Rd. coming from that site. I believe when that was granted back in 2006, there were detention ponds or underground detention chambers.

R. Duhaime: Infiltration system.

C. Pearson: What, if anything, have you done to change that?

J. Cronin: I believe it has stayed the same but I will refer you to Mr. Cole to answer that.

B. Cole: The uphill detention area has stayed the same. It will be underground in the parking lot. The downhill storage area has been removed from under the existing pavement and we put it behind the building in an area that it is not paved right now.

C. Pearson: What were sizes?

B. Cole: One was originally 112 chambers. I don't know the sq. footage. Another was 64. One is going to remain the same and one was oversized but they will be similar in size to the previous one.

C. Pearson: Do you know what it is going to be?

B. Cole: I believe right now it is 112 chambers but I don't know off of the top of my head.

C. Pearson: But you are saying you are going to change that, correct?

B. Cole: Ours will be a little bit lower. It will meet all Alteration of Terrain regulations.

R. Duhaime: You have a lot of wetlands and a lot of impervious soil, that is why we wanted to go with that infiltration system. The roof and gutters will all go in there?

B. Cole: Yes. It is a guttered building.

C. Pearson: As far as the application, what are we granting or denying?

M. Lavoie: The application was granted in 2006.

C. Pearson: So what are we here to do?

R. Duhaime: Was it temporary?

C. Pearson: Basically it expired?

M. Lavoie: Yes. There was an RSA that was adopted by the state, I believe in 2012, that expires zoning variances.

J. Cronin: We had a discussion and are here because we figured we would go through the process. We always interpreted a special exception to be different than a variance and there is that whole Doctrine of Common Law vesting which we would prefer not to get into which is why we are back here. For the record, we would reserve those rights if per chance you don't look on this positively.

C. Pearson: Ok. Seeing as it is a new application and special exception we have to do a site walk.

Open to Public

No Public Comments

Closed to Public

C. Pearson: We need to pick a date to set the site walk.

G. Hyde: Can anyone do next Tuesday the 17th?

C. Pearson: It is scheduled for Tuesday, December 17 at 8:00am.

R. Bairam motioned to continue to January 14, 2014. Seconded by G. Hyde. Motion carried unanimously.

OTHER BUSINESS

Amendment to ZBA Rules of Procedure

G. Hyde motioned to adopt the Zoning Board of Adjustment Rules of Procedure. Seconded by R. Bairam. Motion carried unanimously.

C. Pearson: On “Order of Business” we moved the approval of minutes of the previous meeting to right after “Attendance of the Board”. Is everyone comfortable with that? Can we get that changed.

M. Lavoie: Yes.

C. Pearson: I don't know why it is like this. We already made the motion and the change. I just don't think the document is correct because we have been doing it like this.

M. Lavoie: Is there anything else to change?

C. Pearson: If you go to Point 4; Decisions. "The Board shall decide all cases within 30 days. The Board will approve with conditions, deny or appeal or defer it's decision. Notice of decision will be made available within 72 hours, etc." "Or defer," in your opinion, does that keep it so the decision to continue is a decision?

G. Hyde: Yes, that would be deferring the decision like we just did on the special exception.

J. Levesque: They always said take as long as you need.

R. Duhaime: You have a lot of engineering information on some of these.

C. Pearson: My question is if "defer it's decision" covers that part of it.

R. Bairam: Defer could mean put it off to the Planning Board.

J. Levesque: Why don't we take that 30-day line out.

R. Duhaime: We need to take some accountability or we could go on forever.

G. Hyde: Jim, you are saying take the first sentence out?

J. Levesque: Yes.

C. Pearson: If you feel that "defer it's decision" is proper, I am fine with that.

G. Hyde: I guess the only thing we could run into would be if we decide to table a decision because we feel we don't have enough information and the applicant gets upset and decides to sue us over the fact that our procedures say we will decide within 30 days. I think "defer it's decision" gives us that leeway. I think there is probably some statutory limitation on how long we can defer a decision.

C. Pearson: What do you think Matt?

M. Lavoie: Maybe change it from "shall decide" to "shall make a decision" whether it is to defer or vote.

C. Pearson: You could put "The Board shall approve, approve with conditions, deny with appeal or defer it's decision within 30 days."

M. Lavoie: That would make the most sense.

G. Hyde: Remove the first sentence and amend the second sentence.

M. Simoneau: That sounds a lot better. You are basically including those two sentences together.

G. Hyde motioned to amend Section 4; Decisions; of the Zoning Board of Adjustment Rules of Procedure to strike the first sentence which reads: “The Board shall decide all cases within 30 days” and amend the second sentence to read: “The Board will approve, approve with conditions, deny with appeal or defer it's decision within 30 days.” Secoded by R. Bairam. Motion carried unanimously.

C. Pearson: For staff, minutes of all meetings should be open to public inspection within 144 hours. Does that give you enough time?

M. Lavoie: Yes.

C. Pearson: How about final written decisions will be placed on file and available for inspection within 72 hours after the decision was made. Does that give you enough time?

M. Lavoie: Yes.

C. Pearson: Is there anything else?

R. Bairam: The Clerk, under Officers. A clerk shall be elected annually? Have we ever done that?

C. Pearson: I don't think we have ever elected a clerk. We have been provided one. It shouldn't be elected. It should be provided.

R. Bairam: We have never done that but it has always been in there.

C. Pearson: What would staff want? Would you want an elected clerk? We have never elected one.

M. Lavoie: It doesn't matter to me. She is turning in her time card. She is not elected.

M. Simoneau: Can you strike that?

C. Pearson: We need a clerk.

R. Bairam: Definitely but I don't think we should have to elect one.

M. Lavoie: I think shall be provided by the town would work, because they have to be qualified and you are not going to take the time to interview someone to do this.

C. Pearson: You are all in agreement with having it read, instead of elected, “should be provided by the town.”

R. Bairam: Either that or strike the whole thing.

G. Hyde: I am wondering if the intent is to have a clerk from the members. Because a Chairman and Vice-Chairman is among the members, so I am assuming the clerk is supposed to be among the members.

C. Pearson: That is why we put this in. A few years back we did elect a clerk. That is separate from any staff rule.

G. Hyde: So we are not talking about the same duties, the same position?

C. Pearson: No. This is not taking minutes, it is just maintaining records which I don't know that we need a clerk.

G. Hyde: The town by RSA maintains a record of all the meetings, transactions, decisions, reports, etc. So is there any reason for us to double that up unless it is to review minutes.

C. Pearson: We either strike that out or elect one and it is totally separate from staff.

D. Pare: I would like to strike it out.

R. Bairam: Do you have to have one by law?

C. Pearson: Do we have to rule on all of these tonight?

M. Lavoie: Not all of them if you need further defining.

C. Pearson: Why don't we leave this in for now and get further clarification.

R. Bairam: We can defer this until the first meeting in January.

C. Pearson: We don't have to elect a clerk until July so we have until July to fix this.

G. Hyde: I would think we would be able to adopt them and then amend when we want.

R. Bairam: You are controlled by the state too.

G. Hyde: We can amend them though because it is not a state regulated thing.

C. Pearson: Is there anything other than clerk we want to discuss?

Motion to adopt the Zoning Board of Adjustment Rules of Procedure carried unanimously.

R. Bairam motioned to adjourn. Seconded by G. Hyde. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 7:35 pm.

Respectfully submitted by,

AnnMarie White
Recording Clerk