

Official

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, March 10, 2015

HOOKSETT MUNICIPAL BUILDING

CALL TO ORDER

Chair Chris Pearson called the regular meeting to order at 6:34 pm.

PLEDGE OF ALLEGIANCE

ATTENDANCE: Chris Pearson (Chairman), Roger Duhaime (Vice-Chairman), Michael Simoneau, Richard Bairam, Don Pare, and Jim Levesque, Council Rep.

STAFF: Matt Lavoie, Code Enforcement Officer.

EXCUSED: Phil Denbow and Gerald Hyde.

APPROVAL OF MINUTES

January 13, 2015 – *R. Bairam motioned to approve the January 13, 2015 regular meeting minutes. Seconded by M. Simoneau. Motion carried unanimously.*

NEW PUBLIC HEARING

Potential Properties Corporation Case #15-01

Rowes Corner Lane/6 Rowes Corner Lane Map 15, Lot 72/Map 15, Lot 72-1

LDR

Variations are requested from (1) the minimum lot area and (2) the minimum lot frontage requirements of Article 4, Section C.1 of the Zoning Ordinance to allow for a lot line adjustment, as shown on the Conceptual Lot Line Adjustment Plan.

Roy Tilsley (Bernstein Shur): I am joined by Mike Gallo who is the principal of Potential Properties. What we are proposing is to take two non-conforming lots of record and end up with one conforming lot and one non-conforming lot, but provide frontage for both of those lots. For the variance, on the non-conforming lot we would have 70' of frontage where 200' is required. We will also have a 1.27 acre lot where 2 acres are required. We currently have two existing lots of record. We have a front lot and a back lot. The front lot is Lot 15-72-1 and it is 1.19 acres. It is too small under the ordinance. The back lot is Lot 15-72. It is 2.31 acres. It has sufficient size, but has no frontage which makes it non-conforming under the ordinance. The intent is to divide the two lengthwise to provide 70' of frontage to the new lot so both lots will have some frontage. We would have to have easements to develop the back lot and have variations to do both. The other lot will be a conforming lot. It will have 200' of frontage and have 2.26 acres. The end

result is taking two non-conforming lots and getting one conforming lot and one non-conforming lot. We view the non-conforming lot as being closer to conforming because it will have some frontage and right now we have a lot with no frontage in the back.

C. Pearson: What is the lot number on the one that would be conforming?

R. Tilsley: We have not assigned new lot numbers to them yet. The front lot is 15-72-1 which is non-conforming for area. The back lot is 15-72 which is non-conforming for frontage.

C. Pearson: The objective is two lots, two houses?

R. Tilsley: Correct. Rather than seeking variances for the two existing lots of record, we thought we would try this to minimize the nonconformities and present you with something that is as close as we can get to being in compliance with the zoning ordinance. These are existing lots of record. My client did not purchase them at the same time. He picked up the front lot from a neighbor. When he bought the back lot he thought he was getting frontage and, through some title problems, realized that he did not and eventually picked up the front lot. He now has two existing lots of record. We thought it was appropriate to go for one lot and that is why we are here with this plan. We are confident the proposal meets the five part test for a variance. There will be no diminution of surrounding property values. Mr. Gallo is a realtor. He has looked at this closely to make sure that what he is developing will maintain property values in the neighborhood and he feels confident there will be no negative effect.

R. Duhaime: Why are you doing a 2.26 acre lot and not a 2 acre lot and adding the remainder to the other lot?

R. Tilsley: There is not enough to do two 2-acre lots.

R. Duhaime: I understand, but you are doing 2.26. Why not just do 2 acres and add the remainder to the other lot?

R. Tilsley: I suppose we could add some in the back to make the 1.27 acres 1.53. There is not much practical effect.

R. Duhaime: I would make it a 1.5 acre lot.

M. Gallo: We could do that.

J. Levesque: What will happen to the back part?

R. Tilsley: That will be part of the house lot. The house will be closer to Rowes Corner Road. That will be part of the property and the homeowner will choose what to do with it, but we don't envision much will happen with that.

J. Levesque: Is the yellow in the plan you are showing us incorporated in the 2.26 acres?

R. Tilsley: Yes. It goes all the way back.

R. Duhaime: What is the width of the lot in between the two lots, in the narrow area? Is that sustainable for a driveway?

R. Tilsley: Approximately 50', however, I don't know if we envision a driveway going back through that far.

J. Levesque: Is it correct that the property line in the way back is 45.57'.

R. Tilsley: Yes.

J. Levesque: What is the comparison between how wide that is and the other property line?

R. Tilsley: Maybe it is 40' rather than 46', but it is similar. If a homeowner wants to do something out back, and put a driveway through there it will need to meet all the requirements of the code. There is a building envelope out front that would allow someone to do something without having to go way out to the back. That was our intent of this plan.

C. Pearson: Matt, do they need to be here for a variance for a lot-line adjustment?

M. Lavoie: They cannot create a non-conforming lot. My assumption is they are trying to make a lot that is buildable so they need these variances.

R. Tilsley: That is why we are here. The variance would allow us, assuming we can meet the rest of the requirements of the ordinance, to build on a non-conforming lot.

C. Pearson: Wouldn't they go to the Planning Board for a lot-line adjustment and then wouldn't they come to us for a variance to make a buildable lot on a non-conforming lot?

M. Lavoie: They would not waste their money on going through the Planning Board to create a non-conforming lot if they cannot get the variances to build on it.

C. Pearson: If they get a variance to allow for a lot-line adjustment, how is that a variance to allow them to build on a non-conforming lot, which is what they are creating? We are not granting them a variance to allow them to build on a non-conforming lot. Just because we allow for a lot-line adjustment doesn't mean we are allowing them to build on a non-conforming lot.

R. Tilsley: The intent is that by giving us a variance to create a substandard lot, in terms of area and frontage, that would then allow us to build on the lot as long as we can meet all of the other requirements of the zoning ordinance. When the time comes, Mike would have to pull the permits and show that we can meet all the set backs, etc. Assuming that we can, we have to

come back to this Board and discuss frontage and area. The Code Enforcement Officer pointed out that we don't want to adjust the lot-lines and then find out we cannot get the variance. The point is to know that if we make this adjustment, we can go ahead and develop these properties consistent with the rest of the ordinance.

C. Pearson: In terms of language, I don't know what granting a variance will do.

M. Lavoie: The granting of the variance for that second lot is needed for them to adjust the lot-line to make a buildable lot.

C. Pearson: Either way I would like the correct language used to make sure that what we give them is sufficient to go forward.

M. Lavoie: I would bind them to the plan.

R. Tilsley: We understand we still have to deal with the Planning Board on the actual adjustment. It is just the approval of the substandard lot that we are trying to get today.

J. Levesque: What was the first lot the owner acquired?

R. Tilsley: The lot next door to the southwest that is shown with a house on it. He brought the house lot and then the back lot. He sold the house a couple of years ago and subsequently a neighbor approached him and asked if he wanted to buy the front lot and he did. They are two different lots that he acquired in two different ways.

J. Levesque: The original Lot 72 was non-conforming?

R. Tilsley: It is non-conforming now. When Mike bought it there was a house on it. I don't what the frontage requirement were when the house was built. You are correct that this property does not have sufficient frontage.

J. Levesque: That is still existing?

R. Tilsley: Correct.

J. Levesque: Was the original long lot that went from Rowes Corner Road back 73' a conforming lot by itself before any changes were made?

R. Tilsley: No, because it had no frontage.

J. Levesque: On the tax map it shows that it has frontage.

R. Tilsley: The tax maps were wrong and the town has corrected that. We included in the packet the tax cards for the property. When Mike had a survey done that identified that there were two

lots. The town now recognizes those as two lots. That is why we have 72-1 and 72. It used to just be 72.

J. Levesque: 72-1 is the one that you created?

R. Tilsley: I would not say we created it. We discovered it. It was one lot on the tax map, the survey disclosed that it was in fact two lots. Mike presented that to the tax assessor who agreed and updated the tax cards. The town taxes these as two separate lots. The tax map shows that it is one lot and that is not accurate.

M. Simoneau: Was there any thought given to joining 72 and 72-1 as one lot?

R. Tilsley: Not really now that the state law does not allow the town to force a merger. Mike bought two lots and would like to develop two lots. We view the alternative as seeking a variance for both lots as pre-existing lots of record. As long as we can get an easement to the back lot I would have a decent case, however, we thought it made more sense to make this as conforming as we could and that is the purpose behind this.

R. Duhaime: Are there wetlands on that property?

R. Tilsley: No.

R. Duhaime: Have you checked to see if there is enough room for a leach fields and a well on both lots?

R. Tilsley: We believe there is. We are not asking for approval for that today. We would have to come back for a variance if there was a problem, but we are confident there won't be any issues.

R. Duhaime: Are there any easements across that property?

R. Tilsley: Not that we are aware.

J. Levesque: Are the lots wooded?

Mike: Yes.

R. Tilsley read the application into record.

Open public hearing.

Steve Stockwell (330 Whitehall Road): It is my understanding the acreage is wet. It may be contrary to what we heard that it is not wetlands. I am suggesting it may be wetlands. I did not have a clear understanding of the location of the railroad bed. I think it would be expedient if we

knew if that was parallel or abutting because the railroad bed itself is a usable piece of land. Everything else is questionable.

C. Pearson: When you say it is a wet area, what part are you referring to? The back or front part of the lot?

S. Stockwell: I am familiar with the back area which is all wet. Going from the back corner of my lot to get to the railroad bed, you have to go over wetland and walk on pallets in the spring and summer. In the winter it is frozen. I have owned this for about 30 years and my neighbor would bring in materials to fill the back yard. Back then I don't think there were rules against what he was doing. I would not want to have a house set on it because, over time, it would make my house look bad when that house started cracking. People would think it was the neighborhood. Some of that area is a good back yard area. I am merely suggesting it be looked at, per your question on whether it is wetlands. I have a well and own a house across the street. It all funnels into a culvert that crosses under Whitehall Road, crosses the property, and feeds into Maple Brook wet areas. My well would be pumping anything that is located in that area. There are large granite croppings and a valley where all of the water from the watershed comes through. When we have torrential rains it floods a large section that I have to keep cleaned out from leaves and debris so it doesn't back up on the backside of Whitehall Road. The town had it as one lot. I am not sure how that occurred, but it made sense.

D. Rogers: Matt, do you have the background on that?

M. Lavoie: This area is historical in Hooksett. The land was passed down and it may not have been written down properly or someone lost something. Through different assessors maps have changes here and there. Like Mr. Tilsley said, it was only discovered in 2013 that the lots were laid out differently. Due to the fact that the whole area would have to be resurveyed, and the town will not pay for that, the tax maps have stayed the same.

C. Pearson: The tax maps have one lot, but on record there are two lots?

M. Lavoie: The tax maps have Lot 73 which is not shown there because I don't believe it exists. Lot 73 might have been put on there when it was supposed to reference 72-1.

R. Duhaime: Is there a rock wall between the two?

M. Gallo: A stone wall.

Richard Fitz (8 Rows Corner Lane): I was there last year and noticed survey stakes along that railroad bed and I don't know what they are for. The railroad bed belongs to my sister. My grandmother or grandfather repurchased that section of the railroad bed from the railroad. The rest of that railroad bed stayed with the railroad and then was sold off years later. If those stakes are part of this sub-division they would be wrong. Even though they are out along the edge of the railroad bed, the bed itself is not all that exists. The width of the railroad bed is about 100'

wide. There are stone walls that go along about 50' and I believe there are parts that are over 110' wide and there are areas that are 80' or 90'. When they built the railroad bed they took the stone and made these walls. The wall is the line that went through. When we were kids my father logged through there and the stone walls were the property line. If any of the property on the sub-division is out into that railroad bed, the person that has it now would have to show where he purchased that land. As far as I know, my father did not sell any of that. I would have a question about the land on the railroad bed.

C. Pearson: Matt, are you aware of the railroad bed Mr. Fitz is referring too?

M. Lavoie: There is nothing on any of the tax maps that shows where the railroad bed is in relation to the plan. Mr. Fitz, if you have a deed that states that, by rights you should claim it. It would be up to you to hire an attorney and claim it.

R. Fitz: My sister owns it. If he claims he owns it he would have to produce a deed showing he purchased that property. She has the original deed that goes back to 1800.

R. Duhaime: I am looking at Tax Map 15, property maps. It appears that it shows the railroad tracks.

M. Lavoie: It is not delineated. It is a shadow of where the tracks were.

R. Duhaime: It doesn't show them on this lot. It shows them to the east.

J. Levesque: You said your sister has a copy of the deed?

R. Fitz: Yes. She has the deed that has the railroad bed on it. There is a separate deed for that railroad bed. I saw it in her papers. It was in the 1850's that railroad was constructed. It was either never used or only used for a short time. There is a deed for the railroad bed itself. I don't think she has it, but I saw in the paperwork that it is in the registry. She could get that to show that is part of her property.

D. Pare: Why do I see a Lot 73 on the town map?

M. Lavoie: The tax maps are wrong. Lot 73 does not exist. We did not redraw the maps because we would need to survey more land in order to redraw the maps accurately. Therefore, they are staying the same for the time being.

D. Pare: So 73 is 72?

M. Lavoie: I cannot say that is true. 73 was created at some point but no one knows why because we don't know when it was created. Lot 72-1 was found to be real, and in a different location, so this is essentially, if you can see the area bound by the stone wall by the road, Lot 72-1.

R. Duhaime: That was Lot 73 before?

M. Lavoie: No. Lot 73 was a sliver off the side.

C. Pare: Can you talk us through what was bought, when it was bought, and how it was bought.

R. Tilsley: The railroad bed is not on the land we own. Neither of these lots involves the railroad bed. As we know it, and relying on what the GIS tax maps show, it is on the abutting lot. It is near the abutting property line, but does not hit the line, and is not something we are claiming to develop.

C. Pearson: What was the house lot when you purchased it?

R. Tilsley: Lot 74. Lot 73 doesn't exist because there is no lot with 80' of frontage in this neighborhood. The house lot and the back lot was purchased in December, 2012. The front lot was purchased in Spring, 2013. We just heard of the railroad matter today, so I have not had a chance to look into it. However, visibly, and what our surveyor say, we are not seeking to develop anything that includes the railroad bed.

C. Pearson: You purchased Lot 74, that was Lot 72, which is old Lot 73, which is now Lot 72-1?

R. Tilsley: We purchased Lot 74 and some portion of Lot 72 and maybe Lot 73, but the portion that does not have any frontage. Lot 73 does not exist on the ground and that is the problem and why they have not adjusted the plans, because they would have to survey it. They have recognized it because they are taxing us and giving us a new map and lot number. The tax cards reflect the correct acreage and configuration. The tax map is just current. It is not as simple as saying we bought 73, because there is no lot that depicts that. Lot 73 and Lot 72, on this plan, are probably a combination of what is owned now. However, when you look at the deeds and the work that we did with the town, what is really owned is the front lot which is 72-1 and the back lot which is now 72.

C. Pearson: You are being taxed at Lots 72 and 72-1 now?

R. Tilsley: Correct.

C. Pearson: Those are two lots of record now within the town?

M. Lavoie: Yes.

R. Tilsley: Regarding the concern about the wetlands, we envision that development will take place closer to Rowes Corner Road and that should not be an issue. We are not asking for any kind of a wetlands variance. If Mike finds out he has a wetlands problem he will have to deal with that at the time.

R. Fitz: The stakes were on the railroad bed itself. That would make a huge difference in the square footage. These people did not take any land, but I am not sure if they are aware of the stakes. They appear to be some type of survey stakes because they go down the railroad bed for a long distance.

R. Tilsley: Mr. Gallo tells me that the railroad bed is on Manchester Water Works land and he has seen them surveying so they are likely their stakes. They are not our stakes.

M. Gallo: I have been down the railroad bed. Manchester Water Works owns a good portion of the land. They have a lot of stakes and I believe they own on both sides of the railroad. Maybe that is what you are seeing?

R. Fitz: No. These are new stakes put in right along the railroad bed within the last year.

M. Gallo: Were they along the stone wall? This shows the stone wall being the property line.

R. Fitz: That stone wall is the line, but there are places where the wall does not exist. The stakes went for a good distance in the back part of the property. The wall was more to the front. There may have been traces of it in spots in the back.

R. Tilsley: The only thing we had set in the back was an iron rod. If he is seeing anything else it is not something we did and is not on our property.

C. Pearson: You have no railroad bed on your property?

R. Tilsley: Correct.

R. Fitz: Those are new stakes and they were put in on the railroad bed. I know where the water works line is. That was something that was put in on the railroad bed and Manchester Water Works does not own the railroad bed. That was my fathers land and now my sisters. Those stakes were put in within the last two years.

C. Pearson: We can only act on what is in front of us as far as the surveyed plot that we get. We have to assume that was done properly and they will develop to these lot lines. If you feel there is an issue you can run that through the Code Enforcement Officer. As far as what we are given, we will act on this plan. The town recognizes the two lots as they stand now.

R. Duhaime: We used to allow variances without a surveyor now, for any variance, we have to have a licensed surveyor survey the property. If there is an issue, it would go back to the surveyor.

R. Fitz: If I could get the name and address of the surveyor, I would like to go over this with him.

D. Rogers: The surveyors information is on the packet.

Close public hearing.

C. Pearson: If we act on a variance, in the positive or negative, for a minimum lot area and frontage for Article 4, Section C.1, to allow for a lot line adjustment, that buys them the ability to do what?

M. Lavoie: My understanding is that the lot outlined in blue would be 72-1. Is that correct?

R. Tilsley: Yes. That would make sense.

M. Lavoie: It would only bind to 72-1, which is currently the one with 270' of frontage.

C. Pearson: That would be 72.

M. Lavoie: No. Lot 72 is in the back.

R. Tilsley: Essentially it would allow us to go to the Planning Board with an actual lot-line adjustment plan. When the Planning Board says our new 72-1 doesn't have enough area of frontage, I can say we have a variance for that.

C. Pearson: If we acted on exactly the way their application is worded, does that give them anything to go to planning as far as a variance concern?

M. Lavoie: It has to be bound to the lot.

R. Tilsley: We referenced the two lots up front. If you come in with a sub-division plan for a 45 acre lot and you are going to create 12 three and a half acre lots, you get a variance first. That is what we are doing. We have told you the lots and what we need a variance from.

C. Pearson: We do not have a definable lot.

R. Tilsley: I think it is there, but if you want us to amend it and phrase it differently we can do that.

C. Pearson: Either in the positive or negative, I want to make sure that what you come away with is workable and definable.

R. Tilsley: I appreciate that and would like something that we can use.

C. Pearson: With the application, as it stands, it is like a blank check we are sending to the Planning Board. They will not know what we are sending them.

R. Duhaime: Matt, I thought we were supposed to get a certified plot plan with any variance. Is this a certified plot plan?

M. Lavoie: It is a certified plan. It shows both lots, but they are not labeled.

M. Gallo: I think they were not labeled because the tax map did not have correct labeling for them already.

M. Lavoie: You can tell on the tax cards that the acreage is different and Lot 72-1 is the one with the frontage.

C. Pearson: For clarity, the one with the 70' of frontage, which lot is that?

R. Tilsley: The new Lot 72-1.

C. Pearson: My concern is that nothing is definable. If they have language to allow for a reconfiguration of the applicants two lots as shown on the conceptual lot line adjustment plan filed, do you feel that language is sufficient?

M. Lavoie: I would say as approved by the Planning Board, maybe.

R. Duhaime: What we would be doing is giving them a variance on that lot, not having the correct frontage or acreage. You are letting them create a non-conforming lot with the lot-line adjustment. By having a non-conforming lot, and giving them this variance, it would allow them to create this lot and it would become a buildable lot. I believe that is how the Planning Board would look at it.

R. Bairam: We are creating a substandard lot.

M. Lavoie: Lot 72-1 would need these variances to be a buildable lot.

C. Pearson: The language should pertain to Lot 72-1, not a lot-line adjustment.

R. Duhaime: Would you move the back line lot to have an acre and a half lot so it is closer to be conforming?

R. Tilsley: Yes.

M. Simoneau: It still doesn't have the frontage.

C. Pearson: Correct. It would still remain 69.35'.

M. Simoneau: What is required?

C. Pearson: 200'.

J. Levesque: Matt, what are the side yard requirements for the LDR district?

M. Lavoie: It is 25'.

J. Levesque: Looking at this map, if you take the 69.35' on the street, and with 50' taken off, it looks like it would be tight putting a house in there.

M. Lavoie: That would be a question for planning, but I see your point.

M. Gallo: There is 90' of the stone wall with 25' setbacks.

C. Pearson: It opens to 90'.

M. Gallo: We are clear that if we can't meet setbacks we would have to come back.

J. Levesque: If you take the mark of 92.49, it would be about 90' to the stone wall.

R. Bairam: If we do this we are creating a small lot and he will be back for one or two more variances before there is a house. It doesn't make sense to create a lot that he will have to come back for more variances, due to space.

R. Duhaime: Do we want to change the frontage? Do we want to create two non-conforming lots? Maybe do 150' of frontage. Give 50' to the other lot?

R. Bairam: That defeats the purpose of zoning in the area.

R. Duhaime: It looks as though there are other homes with that amount of frontage.

R. Bairam: You are affecting an entire neighborhood by doing this.

R. Duhaime: The lot is long and narrow.

C. Pearson: You could add a condition that they must meet all the setbacks.

D. Pare: Matt, what is the setback on the driveway between the property line. Can you be right up against the property line with the driveway?

M. Lavoie: That is a question for the Planning Board. They have their own development regulations on that. Normally it goes by what the best site line is.

D. Pare: If they put a house there that is 40' wide, they are driving into it if it is a 20' setback.

M. Lavoie: That only has to do with structures, not the driveway.

D. Pare: The driveway can be on the edge of the property line?

M. Lavoie: Yes. I have a correction. The correct set-back would be an aggregate of 50' and a minimum of 20' to the side lot line. I originally said 25'. It is an aggregate. You can have 20' and 30'.

M. Simoneau motioned to grant a variance, specific and binding to Lot 72-1, requiring a minimum of 1.5 acres, any building will meet all minimum set-back requirements and adjustments, and 69.35' of frontage will be allowed where 200' is required, for Potential Properties Corporation, Case #15-01, Rowes Corner Lane/6 Rowes Corner Lane, Map 15, Lot 72/Map 15, Lot 72-1, LDR, Variances are requested from (1) the minimum lot area and (2) the minimum lot frontage requirements of Article 4, Section C.1 of the Zoning Ordinance to allow for a lot line adjustment, as shown on the Conceptual Lot Line Adjustment Plan. Seconded by R. Bairam. Voted against by R. Bariam. Motion carries 4-1.

C. Pearson: Jackie Roy has resigned due to personal reasons. If anyone is interested we are welcoming applicants.

R. Bairam motioned to adjourn. Seconded by R. Duhaime. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 7:48 pm.

Respectfully submitted by,

AnnMarie White
Recording Clerk