

Planning Board
December 18, 2007
Approved February 19, 2008

Members Present: Barbara Freeman, Chair; Bill Weiler, Vice-Chair; Travis Dezotell; Jim Powell, Ex-Officio; Tom Vannatta; Ron Williams; Ken McWilliams, Advisor.

Mrs. Freeman called the meeting to order at 7:15 p.m. The Board reviewed the minutes of November 20, 2007 and made corrections.

Mr. Weiler made a motion to accept the minutes of November 20, 2007 as corrected. Mr. Williams seconded the motion. All in favor.

CASE: 2007-023: Conditional Use Permit – Joseph Goodnough Revocable Trust – Bay Point Road – Map 06 Lot 1190115 & 06-120-127

Notice is hereby given that the Planning Board will receive submission of an application from Joseph Goodnough Revocable Trust for a Conditional Use Permit for a new single-family residence located on Bay Point Road, Tax Map 06-119-115 & 06-120-127 (to be merged), on Tuesday December 18, 2007 at 7:15 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the accepted application will commence at the same meeting.

The Board reviewed the application for completeness.

Mr. Dezotell made a motion to accept the application as complete. Mr. Vannatta seconded the motion. No Discussion. All in favor.

Mr. Goodnough explained that he lives at 213 Bay Point Road and owns the land across Bay Point Road as well. He would like to build a small house on the land across Bay Point Road for his grandchildren when they come to visit. The land across the road has a significant amount of wetland.

Pierre Bedard, Surveyor and Soil Scientist, presented a plan of lots 06-119-115 and 06-120-127. These lots are proposed to be merged to create one lot of 1.24 acres. The Plan delineated the zoning and wetland setbacks. The proposed dwelling is as far away from the wetlands as the right-of-way and side line setbacks will allow. The existing garage near Bay Point Road is proposed to be removed in order to accommodate the access to the proposed house. The driveway will be regarded so that the run-off will head away from the lake toward the road into a catch basin. There will be silt fencing for temporary erosion control during construction. The proposed septic is placed in an area that is compliant with all regulations and not in the wetland buffer area.

Mr. Vannatta asked Mr. Bedard to explain the proposed driveway composition.

Mr. Bedard explained that the driveway will be gravel or bluestone and graded in such a way to prevent runoff from going toward the lake. The assumed elevation of Bay Point Road is 505 ft., and the assumed elevation at the garage is 511 ft.

Mrs. Freeman asked Mr. Bedard why there is so much hard surface.

Mr. Bedard explained that there is proposed a three-car garage to accommodate winter storage of boats and cars. The additional space will be needed for turning around.

Mrs. Freeman asked Mr. Bedard if there are plans for plantings or a vegetative buffer.

Mr. Bedard commented that Mr. Goodnough would like to keep the area as close to its natural state as possible, which does not include a lot of vegetation.

Mrs. Freeman pointed out that there will have to be some disturbance of existing vegetation in order to build and at least that much should be replaced.

Mr. Dezotell commented that it will be difficult to get a four bedroom house on less than two acres.

Mr. Bedard stated that the site satisfied the State loading conditions. The septic plan has not yet been submitted, but the soils on this site were conducive to the proposed use.

Mrs. Freeman asked Mr. Goodnough if there was any other place that may be considered to build this house.

Mr. Goodnough explained that this was the least impacting place on these lots. He commented that he understands how important wetlands are to the environment and has taken great steps to make sure this proposal works well and does not have a negative effect on the environment.

Mrs. Freeman read a letter signed by 10 of Mr. Goodnough's abutters.

The undersigned feel that the proposed project should not be approved for the following reasons:

- 1. The proposed project requires that a significant variance from Newbury's Zoning regulations be granted. In Article VIII (Wetlands Conservation Overlay District), it is clearly stated that the purpose and intent of these regulations is to protect wetlands and ultimately the integrity of Lake Sunapee. These regulations have been carefully constructed to protect the general welfare, not just the abutters, and we believe that it would be improper to consider the proposed variance.*
- 2. The undersigned have direct experience as to how improper development and clear cutting of trees have resulted in unabated run-off into Lake Sunapee. The Lake should be a cherished asset of our community from both environmental and economic points of view. Because of the requested significant variance to the wetland boundary and expected run-off, we view*

the proposed project as adverse to the environment and ultimately to our community's economic future.

We recognize that development around the Lake is a fact of life. However, we strongly feel that this development must be properly controlled and stay within the zoning laws, whose creation has been carefully considered. Otherwise, we will find ourselves on a slippery slope of slow degradation to the general welfare of our community. Once our environment and the Lake are damaged it will be difficult to turn back.

We, therefore, strongly oppose the proposed project.

This letter was signed by Peter Helwing, John Kuusisto, Cynthia Kuusisto, Thomas Hill, Marilyn Hill, Betsy Deasy, Nancy Girald, John Girald, David Blohm and Mary Blohm.

Mr. Blohm commented that he would like to reinforce the seriousness of the proposal. All of the residents in that area have experienced the effects of run-off from the development that has happened up above on Summer Street. The more the Town says yes to these kinds of projects, the more we will be getting into trouble.

Ms. Deasy commented that culvert that goes under Bay Point Road and toward her property drains into her culvert and down toward her house. The water used to be an underground stream, but has now come above ground in some places. Since the development up above Summer Street, the run-off now comes above ground within 50 ft. of her drinking water. It is already a serious problem without additional development. As a result of the additional water, there has been a significant amount of additional vegetative growth.

There was no further input from the public. The Board began deliberations.

Mr. Williams asked Mr. Bedard to clarify the square footage dimensions.

Mr. Bedard stated that the footprint of the house is proposed to be 2,245 sq. ft. with 1,569 sq. ft. in the wetland buffer. The driveway is proposed to be 3,243 sq. ft. with 2,934 sq. ft. in the wetland buffer. The septic system meets all setback requirements.

Mr. Powell asked of the abutters if they are opposed to this particular proposal or any development on this property.

Ms. Deasy commented that she is not opposed to Mr. Goodnough's proposal or desire to build a new home. She is concerned for the wetlands and the run-off which is creating major problems and increasing yearly.

Mr. Blohm commented that he is concerned for the protection of the Lake and its water quality. He informed the Board that he found it necessary to install a water purification system in his house because of poor water quality. He stated that as long as the run-off is controlled properly, he is not against development.

Mrs. Girald commented that as long as the development conforms to the regulations, she is not against the proposal.

Mr. Girald commented that he also is concerned with the run-off and the protection of the Lake.

Mrs. Freeman commented that she is also concerned for the water quality. In the past, the Board has not allowed people to build outside of their building envelope. She stated that it is important to keep in mind that not all lots are buildable.

Mr. Vannatta commented that he is concerned with three issues. One, over time, there seems to be an escalating amount of run-off to and from the wetlands; two, this proposal is adding a large amount of impervious surface very near the wetland; and three, there has not been any mention of permanent erosion control measures to address any additional run-off from the developed area.

Mrs. Freeman commented that the size of the garage seems to be excessive.

Mr. Goodnough stated that initially he did not realize the amount of area the garage and driveway was going to cover until looking at the plan. He commented that the driveway area could certainly be reduced.

Mr. Dezotell suggested that the Board impose a condition of placing certain plantings in specific areas to address the permanent erosion control and run-off issues. Such a condition could actually improve the overall situation.

Mrs. Freeman commented that such a condition would require a landscaping plan in order to mitigate the roof and driveway run-off properly. The Board cannot require the applicant to go to the expense to produce such a plan.

Mr. Weiler commented that this proposal as submitted should be addressed as a variance. The Conditional Use Permit was designed for projects of minimal impact on the wetland buffer. Four thousand, five hundred three sq. ft. cannot be deemed as a minimal impact.

Mr. Williams commented that he agrees that this is a significant impact, and there are other alternatives such as a two-story home which would keep the house outside of the wetland buffer. He stated that further study may show that a dwelling could be constructed on this site without impacting the wetland.

Mr. Williams made a motion to disapprove the application for Conditional Use Permit. Mr. Weiler seconded the motion. All in favor.

Mr. Powell made a motion to recess for a short break. Mr. Dezotell seconded the motion. All in favor. The Board recessed until the next noticed hearing at 8:00 p.m.

At 8:00 p.m., Mrs. Freeman reconvened the meeting.

CASE: 2007-020: Conditional Use Permit – Peter & Erika Helprin – 611 Mountain Road – Map 24 Lot 672-494

Notice is hereby given that the Planning Board will receive submission of an application from Peter & Erika Helprin for a Conditional Use Permit for a driveway located at 611 Mountain Rd., Tax Map 24, Lot 672-494, on Tuesday, December 18, 2007 at 8:00 p.m. in the Town Office Building at 937 Route 103 in Newbury, NH. If the application is accepted as complete, a public hearing on the accepted application will commence at the same meeting.

The Board reviewed the application for completeness.

Mr. Williams made a motion to accept the application as complete. Mr. Powell seconded the motion. All in favor.

Mr. Helprin explained that everything is the same as the last meeting except that the proposed driveway has been moved out of the 50 ft. setback from West Branch North Brook.

There were no questions from the Board. Mrs. Freeman opened the meeting to the public and read a letter that was submitted by Richard and Barbara Marzelli, abutters.

Since my wife and I cannot attend the Helprin hearing on December 18th due to our children's Christmas concerts, we would like this letter to be read at the hearing and placed in the minutes. This also spares us from further attacks like those seen and heard from Mr. Helprin and his "wetland scientist" at the November 6th hearing.

Our concerns are even greater now since we explained how the project in general could compromise our well, the safety of our water and of the surrounding wetlands, as noted in Article VIII; 8.0.1 through 8.0.8.

Our concerns are just, considering the "wetland scientist"; also the septic system designer and the surveyor known as Landmark, could not acknowledge even after being shown a copy of Newbury's Wetland Inventory map at the hearing, that the property itself is in any area of jurisdictional wetlands. The entire property sets within the Shoreland Overlay District (Article 7.2). Second, Mr. Helprin accused us of moving boulders on his land as noted in the minutes; which is untrue. You may want to ask Mr. Helprin if the boulders were there when he purchased the property.

The facts must come out. We realize the town is busy and can't be everywhere; therefore our eyes can shed some light on this situation. Mr. Helprin bought this property knowing it was in wetlands. It is surrounded by permanent streams, bogs, and marshes. We are greatly concerned that three rules and regulations including the one being heard tonight have already been broken and/or circumvented;

- 1. Cutting within the minimum 50' buffer of a wetland (Article 7.6)*
- 2. Filling within the minimum 75' buffer of a permanent stream (Article 8.3 & 8.40)*
- 3. Building a structure prior to obtaining a building permit*

It's clear that everything has been done backwards thus far. Now we must wait to find out if his driveway will start on our property line which is only 70' from West Branch North. After the width of the driveway, the erosion control area, including hay bales is completed and in place; what distance will his driveway be from West Branch North?

If this project does move forward, we will ask the town or whatever board or individual to oversee it with the utmost attention and review the measurements. A project of this size in such a fragile ecosystem requires monitoring. It is susceptible to environmental changes and is listed in the Newbury's Natural Resource Inventory under poorly drained soils and wetlands; maps 6.1 and 7.1.

We are presently locked into winter, and a site review in the spring would be in everybody's best interest. We have documented flooding in this area on video for the past 22 years. Please consider our concerns and all the facts above when basing your decision.

Thank you for your attention to this matter.

This letter was signed by Richard Marzelli and Barbara Marzelli.

Alison Kinsman, abutter, stated that she has nothing additional to add for comments but just wanted to restate her concerns for wetlands.

There were no further comments from the public. Mrs. Freeman closed the meeting to public comment and the Board deliberated.

Mr. Weiler commented that he does not think this new route of the driveway is in the spirit of the ordinance. It passes right through and within the wetland buffer for quite a ways. He asked Mr. Helprin if there was anyway to move the proposed driveway closer to the property line.

Mr. Helprin commented that the proposed driveway is 50 ft. or better from the West Branch North Brook and is also already at the edge of the Marzelli's property line.

Mr. Weiler stated that there are two articles that apply to this application. One of the regulations requires that development stays out of the 50 ft. setback from a permanent stream and the other addresses development within the 75 ft. wetland buffer, Article 8.6. Article 8.6.5 outlines the Standards of issue a permit: *Prior to issuing a permit, the Planning Board shall be convinced that: 8.6.5.1 the use cannot be implemented outside the wetland buffer, 8.6.5.2 the location in the wetland buffer will cause the least impact, and 8.6.5.3 the method of implementation will minimize the impact to the wetland buffer.* Mr. Weiler commented that in light of Article 8.6, the driveway could cross the wetland buffer in order to get out of the buffer area, but should not run along within it.

Mr. Helprin commented that if he moves the location of the driveway a second time, he will have to completely cut away the basil area and run the whole driveway along the Marzelli's property line, which could require blasting. The current location of the

proposed driveway is well above the flooding elevation and does not pose a risk of wash-out.

Mr. Weiler asked Mr. Helprin what his reasons were for not moving the driveway out of the wetland buffer zone.

Mr. Helprin explained that he does not want to have to blast and this location would not require blasting; and he does not want to completely destroy the basil area by clearing a third time for a driveway location.

Mrs. Freeman acknowledged that there appears to be other options for the location of the driveway which are more outside of the wetland buffer.

Mrs. Helprin expressed her frustration to the Board for the misdirection to the Zoning Board back in October and the misunderstanding of the location of the driveway in relation to the West Branch North Brook. She stated that it is ridiculous that it has been three months since they first applied and no one told them in the beginning what needed to be done.

Mr. Helprin commented that, although the building inspector has been very helpful, he did not make them aware of the wetland buffer. The wetland buffer regulations are not in the building regulations. He stated that it was his impression from the meeting of October 4, 2007 that the Planning Board instructed him that his driveway only needs to be out of the 50 ft. buffer to the stream.

Mr. Helprin and the Board referred to the Minutes of October 4, 2007.

Mrs. Freeman asked Mr. Helprin if the power line has been brought in by Public Service of NH.

Mr. Helprin stated that the power line has not been brought in because the power company is waiting for the driveway to be completed.

Scott Wheeler, abutter, asked if Mr. Helprin will have to apply to the Zoning Board of Adjustment for a variance and if the State of NH has authority over this project because of its proximity to the brook as a result of the Comprehensive Shoreland Protection Act.

Mr. Weiler explained that Mr. Helprin does not have to go to the Zoning Board of Adjustment because the development activity is outside of the 50 ft. shoreline buffer. The conditional use permit language replaces the need for a variance for projects within the 75 ft. wetland buffer. Additionally, the State does not have authority over this project because the CSPA does not apply to third and fourth order streams.

Mrs. Freeman delineated a driveway route on Mr. Helprin's plan that would be acceptable to the Board and explained to Mr. Helprin that the Board's position is that the proposed driveway needs to stay out of the 75 ft. wetland buffer area as much as possible

and the wetland buffer should be staked off so that the Building Inspector/Code Enforcement Officer has a point of reference for inspection purposes.

Mr. Dezotell made a motion that the Board approve the Conditional Use Permit with the following conditions:

1. That the driveway is out of the 75 ft. setback except for the small portion where the driveway enters the Helprin property from Between the Mountains Road for a distance of 50 ft. into the site.
2. That the driveway is constructed in such a way as indicated on the plan on file with the Planning Board and initialed by the Chair of the Planning Board dated 12/18/2007.
3. That the surveyor stake off the 75 ft. wetland buffer boundary line.

Mr. Vannatta seconded the motion. No further discussion. All in favor.

Conceptual Site Plan Review – NESAs – Bill Johnson

Tom Kersey, Director of Handicapped Sports at Mt. Sunapee Resort was present to discuss a conceptual site plan review to relocate the handicapped skiers lodge and parking area. He explained that the program has outgrown its current facility and has been looking at several areas within the park that would be feasible and satisfy their needs. The proposed site is considered the best location relative to the access and trails. The actual building will be located over the town line in Goshen, but the driveway to that building will come off the main access road in Newbury. The NESAs Board is not sure where to start with Goshen, Newbury or the State of NH.

Michael Burke, from JGI Eastern Inc, was also present and is on the building committee for NESAs. Mr. Burke identified where on the map presented the project is proposed to be located. The access to the new building will be beyond the lagoons on the northerly side of the access road. The State has dictated where the driveway will be since that portion of the road is a State road. The proposed driveway is approximately 1,000 ft. long and laid out in an effort to try to minimize the impact of development on a steep slope.

Mrs. Freeman advised Mr. Burke that in light of the steep slope, the Board will be very interested in what is going to be done to prevent rapid run-off.

Mr. Burke stated that he and Mr. Kersey have come before the Board to show what they would like to do and to get feedback from the Board.

Mr. McWilliams explained that the Board tried to address the unique circumstances of the Mountain by creating Article XI – Mt. Sunapee Recreation District that makes exceptions for development on steep slopes. The development that is referred to in the zoning regulations is specifically designated for ski slopes and trails, not buildings.

Therefore a variance would be needed for development on a slope greater than 25% grade.

Mr. Williams suggested a different driveway route that ran parallel to the existing contour lines that would mean less vertical development on the steep slope, thereby limiting the magnitude of the erosion issues and making an easier grade. The wetland will be impacted no matter where the driveway goes.

Mr. Burke commented that he will certainly consider that suggestion.

Mr. McWilliams asked if this project is part of the approved Masterplan for Mount Sunapee.

Mr. Kersey explained that NESAs are separate from Mt. Sunapee Resort. They are two separate lease agreements. Therefore, the Mount Sunapee Master Plan has no jurisdiction over NESAs.

Mrs. Freeman asked if there was another site that would be less problematic regarding steep slopes and wetlands.

Mr. Kersey stated that there is not a place less problematic. This is the only location where new trails would not have to be developed. This site will allow the skiers to ski in and ski out. There is also snow making equipment already near the proposed building.

Mr. McWilliams asked how many parking spaces are designated for this new building.

Mr. Burke stated 98 spaces. The calculations were based on 20 – 25 students per lesson. The student will arrive in one car, probably with an additional family member. If the program grows to the numbers we are projecting, each lesson would then have 30 – 35 students per session. If each student goes out on a lesson, there are commonly two or three volunteers. One volunteer is the teacher and two volunteers act as blockers. That means more parking.

Mrs. Freeman commented that since the volunteers often work a full day, they could park remotely in the employee parking lot and walk or shuttle up to the NESAs building. She emphasized that the developers need to be cognizant of the fragile wetlands.

Mr. Burke commented that he is very aware of the importance of wetlands, but this particular wetland is not considered a prime wetland. It is a low-functioning wetland. There would be approximately 4,000 sq. ft. of wetland impacted. The State DES has given a verbal approval of the project. There is an option to pay a fee to the State in lieu of mitigation, which goes into the watershed fund.

Mrs. Freeman advised Mr. Burke and Mr. Kersey that this project should come to the Newbury Planning Board before the Goshen Planning Board reviews the building site

because they cannot build a building without an access and parking. She added that planting would be a good addition to this project to help protect the wetlands.

Mr. Burke informed the Board that he is also a geologist and works for an environmental firm. They will be utilizing retaining walls to minimize the impact on the wetlands. He presented a cross section of the retaining walls approximately 15 ft. high above ground.

Mrs. Freeman asked Mr. Burke to provide a locus map when they return to the Planning Board that shows where this project is proposed in relation to the rest of the Mt. Sunapee Ski Resort facility.

CASE: 1997-017: David Long – Captain’s 1st Choice – 548 Route 103 – Map 043 Lot 797-526

Mr. Weiler stated that Mr. Long has not done anything that was agreed to on the revised site plan review, but he has erected a light on top of the sign that shines in all directions contrary to what the Board had asked.

Mr. Powell commented that he will ask Mr. LaCasse, Building Inspector/Code Enforcement Officer to look into it.

CASE: 2003-011: Fieldstone Ridge Development – Pickman & Sons – Off Gillingham Drive

Mr. Weiler asked the Planning Board to keep in mind the impact on wetlands when considering subdivision applications. He explained that the Fieldstone Ridge Development has an impact of 47,000 sq. ft. on the wetlands, which is over four times the minimum required for mitigation by DES. He suggested that something be placed in the subdivision regulations that states that the Board will not approve anything over 10,000 sq.ft. of wetland impact.

Mr. Dezotell made a motion to adjourn. Mr. Vannatta seconded the motion. All in favor. Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary