



Approved 2/26/13

**Zoning Board of Appeals
Meeting Minutes
January 22, 2013**

Members in attendance: Mark Rutan, Clerk; Richard Kane (arrived at 7:15PM); Fran Bakstran; Robert Berger, alternate; Jeffrey Cayer, alternate

Members excused: Richard Rand, Chairman

Others in attendance: Kathy Joubert, Town Planner; Fred Lonardo, Building Inspector; Fred Litchfield, Town Engineer; Elaine Rowe, Board Secretary; Attorney George Pember; Kevin Kieler; John Grenier, JM Grenier Associates; Dan & Helen Griffin, 21 Pinehaven Drive; Don Veitch, 31 Pinehaven Drive

Mark Rutan, acting Chairman in Richard Rand's absence, called the meeting to order at 7:00PM. He indicated that all members present will vote on tonight's hearings.

Public Hearing to consider the petition of PAMJAM Realty, LLC for a Variance/Special Permit to allow the use of two duplexes on two lots in the Residential C District, on the property located at 15 Pinehaven Drive, GIS Map 82, Parcels 12 & 13

John Grenier of JM Grenier Associates discussed the request for a special permit, which is required for a multi-family dwelling in a Residential C zone. He also noted that a small portion on the easterly side of lot 2 falls within the Groundwater 3 area.

Mr. Grenier stated that both lots meet the minimum lot requirement of 20,000 square feet. He explained that the existing house at 15 Pinehaven Drive will be raised for the creation of two lots. He noted that the existing house is served by private septic, but the new homes to be constructed will be served by town sewer and heated by propane.

Mr. Grenier stated that the applicant had appeared before the Groundwater Advisory Committee (GAC), who has provided a comment letter to this board including their request for infiltration to recharge roof runoff into the ground. He noted that the applicant has agreed to the conditions recommended by the GAC, with soil testing needed in order to size the recharge chambers appropriately. Mr. Grenier commented that the proposed project is similar to the units nearby in the Cyrus Brook development and will be an improvement on the lot and to the neighborhood.

Ms. Bakstran asked about the existing house located on two lots. Mr. Grenier explained that the project will blend two properties to create two lots. Ms. Joubert noted that the lots have

not yet been created because the applicant wishes to confirm that he can obtain approval for the project as proposed before doing so. Ms. Bakstran asked if the units will be two stories high. Mr. Grenier stated that there will be a garage on the ground level with a second story. Ms. Bakstran questioned the height of the units. Mr. Grenier stated that they will be the height of a standard 2-story home. Ms. Bakstran asked about the grade of the property, and commented that she would not like to see the buildings tower over the smaller homes nearby. Mr. Grenier commented that the area is relatively flat.

Mr. Grenier explained that the applicant has had some discussions with the neighbor at 21 Pinehaven Drive and has entered into an agreement to provide some additional landscaping.

Mr. Rutan asked if each unit will be owned independently. Mr. Grenier confirmed that they will be. Mr. Rutan asked if there will be separate condominium agreements. Mr. Grenier indicated that there will.

Mr. Rutan read the comment letter from the Groundwater Advisory Committee, dated January 8, 2013 (copy attached), into the record. Mr. Grenier reiterated that the applicant is willing to comply with the conditions requested by the Groundwater Advisory Committee.

Dan Griffin, 21 Pinehaven Drive, stated that the plan does not show the grading and questioned whether the steep hill on the lot will be altered to accommodate the construction. Mr. Grenier confirmed that the grade will be changed for the foundations, and some of the hill will need to be removed in order to provide a suitable back yard.

Don Veitch, 31 Pinehaven, voiced several concerns with the project. He did not agree that the proposed construction is in line with the neighborhood, and raised issue with the additional traffic on a street that is used as a cut-through from Route 20 to Lincoln Street.

Dick Kane arrived.

Mr. Veitch emphasized that there are already traffic problems in the neighborhood, which have been discussed with the Police Chief, and voiced his opinion that having four additional driveways will exacerbate the situation. He also noted that there are flooding issues in the springtime and questioned whether this project will make that situation worse. Mr. Veitch discussed an addition he constructed on his home, and noted that he was limited to the amount of floor space he could add. He commented that the Cyrus Brook development is tucked out of the way, and that the residents would prefer to retain the quiet, old fashioned character of their neighborhood.

Mr. Rutan asked Mr. Litchfield if there are storm sewers in the street. Mr. Litchfield commented that he is not certain how extensive the existing system is. Ms. Bakstran asked about the size of the dwelling units. Mr. Grenier stated that each unit will be 2000 square feet. Mr. Veitch commented that his home does not exceed 1500 square feet.

Ms. Bakstran asked Mr. Litchfield if it is possible to determine what the impact to the groundwater level will be from the proposed project. Mr. Litchfield commented that, since the buildings will be on town sewer, there is no perk testing required so there is no way to discern information about the elevation of the groundwater. He also noted that the proposed infiltration system is not yet designed, so there is no way to know what the impacts will be. Mr. Grenier stated that he had looked at the soil mapping, which shows good soils in the front portion of the parcel with ledge in the rear. Mr. Litchfield stated that the water table probably fluctuates. Ms. Bakstran voiced her desire to ensure that the proposed project will have as little a negative impact as possible on the surrounding area. Mr. Litchfield noted that a hydrological study is costly, and commented that a few perk tests may not provide the required information. He indicated that he would be unable to say definitively whether the project will or will not worsen the flooding situation, and suggested that the issue may be the result of the house having been built at too low an elevation.

Ms. Bakstran reiterated that the board is obligated to condition any approval to ensure that there are no additional issues as the result of the project. Mr. Litchfield commented that the proposed infiltration will introduce more water into the ground than might otherwise have run off, and suggested that the neighbors may prefer that the town not require the applicant to proceed in that manner.

Mr. & Mrs. Griffin both indicated that they have had water problems on their property in the past, typically in the spring, but they have not experienced any issues since converting to town sewer.

Mr. Veitch stated that water flows all the way down the street. He noted that there is a good deal of ledge and rock, and when the ground freezes there is no place for the water to go. He reiterated that he would like assurances that the situation will not be worse following construction of these duplexes.

Ms. Bakstran asked how Mr. Veitch's concerns can be addressed. Mr. Grenier noted that, in trying to be proactive with regards to recharge, the applicant was planning to recharge on both properties but can do so only for the house on lot 2 if that is preferable. Mr. Litchfield agreed that this would be acceptable as an engineering solution but problematic as an ownership issue. He noted that the GAC has jurisdiction on the southerly lot, with the other lot being outside their jurisdiction, so their recommendation to recharge on both lots could be revised to stipulate lot 2 only.

Attorney George Pember, representing Mr. & Mrs. Griffin, reiterated that there is a separate agreement between the applicant and the Griffins and requested that the issues covered in the letter be incorporated into the Board's decision. Ms. Joubert voiced her understanding that trees are to be planted on the Griffin's property, and stated that the board cannot make this a condition of their decision because it is not the parcel before them. Ms. Bakstran asked if the board could reference the conditions of the agreement as a side issue. Mr. Rutan commented that the board cannot make a decision on the application before them contingent on improvements on another property. Attorney Pember suggested that the board could require

screening be provided for the adjacent property, with the stipulation that the details are to be worked out to the satisfaction of the abutter. Mr. Leonardo emphasized that there would be no way to enforce such a condition. Ms. Joubert suggested that the board could make reference to the existence of the agreement under the findings section in the decisions, but reiterated that they cannot condition that work must be done on someone else's property. Attorney Pember requested that the decision stipulate that there is to be no disturbance within 10 feet of the boundary line.

Fran Bakstran made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Kevin Kieler for a Variance/Special Permit to change the use of an existing duplex (2 units, 1 with in-law apartment) to multi-family use (3 units) on the property located at 31A Solomon Pond Road, GIS Map 30, Parcel 30

Kevin Kieler discussed his request. He explained that this is an old building that was slowly converted over the years to a residential dwelling. He noted that there was some confusion in a previous decision that resulted in the structure being recorded as two condominiums, one with an in-law apartment, instead of a 3 dwelling unit, and he is now seeking to correct the situation. He indicated that he had planned to address the issue sooner, but since his parents have been living in the third unit he felt no urgency to do so. Unfortunately, during a recent attempt to refinance, he discovered that he would be unable to obtain funding so is now seeking to resolve the matter.

Mr. Kieler stated that the building sits on an unusually shaped lot, with 100 feet of road frontage. He noted that there are three other condominium developments within view of the property and, of all of them, his property has a higher ratio of land per unit than the others. He also noted that this is a paper issue only, there are no plans for any further construction, and there will be no impact to the neighborhood.

Mr. Rutan reiterated that there will be no further construction. Mr. Kieler confirmed that he is simply seeking to clarify the original decision. Mr. Rutan asked Ms. Joubert what is allowed in the Residential C zone. Mr. Joubert indicated that a duplex requires a special permit and a variance is needed for a multi-family dwelling.

Ms. Joubert explained that the original decision goes back to 2006 and, for reasons that she cannot explain, the ZBA decision reads that the building is 2 units, one of which includes an in-law apartment. She also noted that there is a letter in the file from Building Inspector Bill Farnsworth in which he states that this would be considered 3 family dwelling units, but Mr. Farnsworth's letter apparently was never read into the record during the 2006 hearing. Since the decision reads that this is 2 units and an in-law apartment, Mr. Kieler needs a variance for multi-family use if it is to be 3 units. Ms. Joubert also noted that a special permit is required under the groundwater bylaw.

Ms. Joubert asked about the existing breezeway. Mr. Leonardo indicated that there may have to be some separation, along with other work, to make it a compliant 3-dwelling structure, and

requested that the board include a condition in the decision requiring the applicant to obtain a building permit to address any building code issues. Mr. Kieler indicated that he would have no issue with such a condition.

Mr. Rutan read the comment letter from the Groundwater Advisory Committee (copy attached) into the record. He also confirmed that there would be no changes to the outward structure or dimensions of the building.

Fran Bakstran made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Bond reduction for Church Street Village – Mr. Rutan read the comment letter from the Town Engineer (copy attached) into the record. Mr. Litchfield explained that the developer has a tri-party agreement in place in the amount of \$182,000, and suggested that the board continue to hold \$100,000 because the town has not yet received the as-built plans and there is some drainage and paving work remaining to be done.

Mr. Rutan voiced concern about the applicant's reluctance to provide an as-built. Mr. Litchfield noted that the 40 unit project is nearly finished, with only one unit not yet released for occupancy. He explained that there is some offsite work that has not yet been done. He also noted that there were things on the as built plan that was submitted in October that are contrary to the as built received in July, so he is anxious to see the final plan.

Mr. Cayer asked Mr. Litchfield how he determined the monetary amount to be retained. Mr. Kane suggested leaving the bond in place as is since the applicant has been slow to respond. Mr. Litchfield noted that he went through the plans to determine what remains to be done, and came up with a figure that would ensure that the applicant would complete the work to the town's satisfaction.

Fran Bakstran made a motion to reduce the bond by \$82,000 as recommended by the Town Engineer. Jeff Cayer seconded. The vote was four in favor and one opposed (Richard Kane opposed).

Minutes of the Meeting of November 27, 2012 - Fran Bakstran made a motion to accept the Minutes of the Meeting of November 27, 2012 as submitted. Richard Kane seconded, vote unanimous.

DECISIONS:

31A Solomon Pond Road - Fran Bakstran made a motion to grant a variance to allow the change in use from two units with an in-law apartment to multi-family use (3 units). Richard Kane seconded, vote unanimous.

Fran Bakstran made a motion to grant a special permit to allow a multifamily dwelling in the Groundwater District in accordance with the Groundwater Advisory Committee's comment

letter dated January 8, 2013 and with the condition that a building permit be required. Richard Kane seconded, vote unanimous.

15 Pinehaven Drive – Mr. Rutan stated that he does not consider traffic to be an issue. Ms. Bakstran suggested that the neighborhood could address the traffic situation through other means. Mr. Rutan noted that the neighbors voiced concern about groundwater issues but, barring a complete study, he does not believe we will ever know if the proposed development will exacerbate the situation. Ms. Bakstran commented that the parcel is located in a neighborhood of much smaller homes. Mr. Cayer voiced his opinion that the proposed project will change the neighborhood. Ms. Bakstran stated that she was pleased to see that the proposal is for somewhat modest homes and not dense. She also suggested that the applicant may be able to reduce the severity of the flooding situation. Mr. Litchfield noted that one of the neighbors had indicated that the water situation improved when they connected to town sewer. Ms. Bakstran asked if it was acceptable for the board to require recharge for only one lot. Mr. Litchfield confirmed that it is.

Mr. Cayer commented that this project will significantly change a 60 year old neighborhood and noted that he became involved in this board because he is not comfortable with the way the town is changing. He stated that this neighborhood is in line with what he finds favorable about Northborough and throwing two, 2-family homes in the midst of it is exactly the direction he does not want to see the town take.

Ms. Bakstran agreed that discussion is warranted, and noted that the bylaw requires that the project be in substantial harmony with the master plan. Mr. Cayer stated that he does not believe that it is.

Ms. Bakstran voiced her opinion that it is nearly impossible to build on a parcel that is not already built on and not have some sort of adverse impact. She stated that she would prefer if the structures were a bit smaller, so that they would be a better fit with the neighborhood. However, she is pleased that the proposal is for only 4 units and not anything more substantial. She commented that the proposal seems to be a reasonable plan for the land.

Mr. Leonardo reminded the board members that they must have a viable reason for denying the project, and must be able to substantiate any claims that it is detrimental to the neighborhood.

Fran Bakstran made a motion to grant a special permit to allow the use of two duplexes on two lots (to be created) with the following conditions:

- Require that two lots be created.
- No disturbance is allowed within 10 feet of the southerly property line of property owned by abutters Daniel & Helen Griffin.

- Increase in post-development net runoff volume shall not exceed existing conditions by more than fifteen percent (15%) or such that the impervious cover of the building lot is increased over existing conditions by no more than fifteen percent (15%) and any on-site sewage disposal is less than or equal to two hundred twenty (220) gallons per day per ten thousand (10,000) square feet of lot area.
- Recharge of roof runoff will be required on the southerly lot based on the size of the proposed building and driveway. An impervious area calculation sheet for the lot has not been submitted with the application and should be required for future reference. Any changes in the impervious cover proposed as the project gets built must be verified by the as-built drawing and will require a new calculation sheet.
- At least two permeability tests should be performed to verify the infiltration rates assumed for the sizing of any subsurface infiltration system. These tests should be performed prior to the start of construction in order to allow for any changes to the plan.
- An Operation and Maintenance Plan for the infiltration system on the southerly lot should be submitted in a Stormwater Report and be incorporated into any approval and should be submitted to and approved by the Town Engineer. The Operation and Maintenance Plan shall include the following:
 - The Town Engineer shall be notified before the work is performed and shall be afforded the opportunity to inspect the work.
 - The Town Engineer and the Groundwater Advisory Committee shall be provided copies of the contract, all inspection reports and invoices for the work performed.
 - All material removed from the drainage system shall be disposed of offsite.
 - The Operation and Maintenance plan should be part of the decision by the Zoning Board of Appeals so that it will be recorded at the Worcester Registry of Deeds and become a permanent part of the chain of title.
- An as-built site plan shall be submitted to the Town Engineer for approval prior to the issuance of a certificate of occupancy. The as-built plan shall include, at a minimum, and as applicable to the project, a permanent benchmark, elevation of all utilities, pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic

copy compatible with the Town's GIS system and the Town's vertical datum (U.S.G.S. Datum of 1988).

Rob Berger seconded the motion. Vote was three in favor and two opposed (Richard Kane and Jeffrey Cayer opposed). Motion denied.

Adjourned at 8:47PM.

Respectfully submitted,

Elaine Rowe
Board Secretary