

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, February 23, 2015 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, David Sobe, Peter LaRoche, Bob Lambert, and Loretta Laurenitis

Staff Present: Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer

Chair Stewart called the meeting to order at 7:00 p.m. “Good evening” he said “this is the stated February 2nd meeting of the Zoning Board of Adjustment that was postponed to tonight because of weather. My name is Jim Stewart and I am the Chair.” He then went on to introduce the members and staff and read the Rules of Procedure for the meeting. This included reviewing the process of reading the application followed by a presentation by the applicant; questions from the Board; questions/concerns from the audience (in favor then opposed); rebuttal and closure of the hearing followed by deliberation and decision. He concluded by noting anyone interested in speaking about the case please state their name, address, and relationship (abutter, agent, concerned citizen) for the record. He then read the case telling the audience “I apologize, this is long and will take a minute.”

Case No. 1211 Peterborough Highland Farm LLC is requesting three Variances and a Special Exception. The property is located at 63 Old Street Road, Parcel No. U002-039-000, in the Family and Rural Districts. The requests are for:

A Variance to allow a multi-family residential use of ten dwelling units in an existing structure, in the Family District, as regulated by the zoning ordinance in Article II, Sections 245-6 A 1 and 245-6 B 1.

A Special Exception to allow crossing the Shore land Conservation Zone, as regulated by the zoning ordinance in Article III, Section 245-12 D.

A Variance to allow a greater density of 12 dwelling units in an Open Space Residential Development, as regulated by the zoning ordinance in Article V, Section 245-26 D 4.

A Variance to allow buildings closer than seventy-five feet to the perimeter of the tract in an Open Space Residential Development, as regulated by the zoning ordinance in Article V, Sections 245-26 D 6 a ii and 245-26 D 7.

He looked up and asked “are there any corrections or changes to the posting?” With none he continued by noting he would like to consider the application as four separate requests and review each one individually. He suggested they re-name the application Case No. 1211 A, B, C and D and asked the applicant to begin their presentation.

Phil Runyon introduced himself as the representative and presenter for Highland Farm LLC. He told the Board the LLC was held by Stan Fry (who was present in the audience) and Brad Malt “who lives in Boston but has property on the end of Carley Road.”

Mr. Runyon went on to review several of the projects Mr. Fry had been involved including Depot Square and most recently the renovation of the old Sandhill building at 36 Grove Street. He also introduced Jeff Kevan, Project Engineer for TF Moran. He told the members Mr. Kevan was before the Board in 2008 when the Stone Barn was seeking approvals for development. “He was involved then and he is here tonight for largely the same thing” he said. Mr. Runyon noted that while the project is one of real estate development “the primary goal is to enable the Stone Barn to be saved” adding “development involving living units there is necessary as it is not financially feasible to save the Barn alone.”

Mr. Runyon proceeded to give a brief history of the Barn noting it had been built in 1910 as a part of Highland Farm (which was a huge undertaking by the Cheney Family starting with Ben Cheney in 1880). He told the Board the farm was worked until the early 1940s with the Barn being used for dairy operations and housing the animals. “Since then the Barn has largely just been falling into disrepair” he said adding “there has been no significant use in the past 70 years and the weather and vandalism have brought the Barn to a precarious point.” He told the members Mr. Fry and Mr. Malt bought the structure as an investment last fall “and I venture to say it would be a pile of stone right now without any kind of structure left if they had not.” He projected photographs of the barn’s decaying condition as he informed the members “this is one of two stone barns left in New Hampshire and it is the largest by far.” He concluded “this is a unique structure and we hope the town is interested in preserving it. He noted Mr. Fry and Mr. Malt, given the investment in the Barn so far “certainly feel so.”

Mr. Runyon noted an approval in 1986 for 22 residential units in the Barn. He went on to a span from 1990 to 2003 and to what he called “the water wars” with multiple and various proposals for trucking water off the property. He noted court appeals back and forth “but there was never any effort to make repairs to the Barn

itself.” He went on to an approval in 2008 or restoration of the Barn and the addition of residential units out back. Chair Stewart asked “how many?” Mr. Runyon replied “10 in the Barn and 12 in the back” adding “and our request is almost identical to that tonight.” He told the Board the owner in 2008 did some repairs but like all his predecessors ran out of money. He noted the Barn had been cannibalized in recent years with its slate roof removed. Mr. Runyon looked to the Board and said “if re-approved this time the repairs and renovations of the Barn will finally carry through to fruition and be a useful property for the neighborhood.”

Mr. Kevan stood and introduced himself. He reiterated the Planning Board and ZBA approvals of 2008 and gave the Board succinct information regarding the property (32.18 acres with 5.67 in the front Family District and 26.51 in the back in the Rural District). He pointed out the wetlands (an impact of 2607 square feet), a stone box culvert and a temporary wetland crossing, approved by DES, that had been created to enable test pits in the back of the property. He told the members that while they would have to reapply they had held an approval for septic systems and planned to extend municipal water service to the units. He noted electric and telephone wires would be underground. He spoke about what was a reasonable number of units to justify the cost of restoring the Barn and creating a fairly long road to the back portion of the lot.

Mr. Runyon projected an aerial view of the site pointing out it was completely surrounded by vegetative woods. Chair Stewart asked for clarification on the septic systems with Mr. Kevan replying “we had a septic system designed and approved by the State of New Hampshire.” Chair Stewart asked if they planned to have the access road become a town road with Mr. Kevan replying “no, it will be a private road maintained by the development.” Chair Stewart then asked about the elevation and Mr. Kevan pointed out the elevation changes going to the back of the property and around the loop of proposed housing units. Mr. Runyon concluded by reiterating the approval of 2008 and the similarity of their request this evening.

Chair Stewart opened the hearing to the audience. Janet Shea introduced herself noting “I live next to the Barn” and adding “and I agree this is a good idea and a good use.” Ms. Shea went on to ask about the existing structure and the location of the parking garage. “I assume it will be rebuilt” she said. Ms. Shea pointed out the driveway to the back of the property and said “it runs along my property line and it is quite steep there” and asked about moving it bit further south. Ms. Shea’s last comment was that a Condition of Approval in 2008 was that the units the Barn be completed first “and I think that is a good idea” she said.

Mr. Runyon responded by noting that Condition of Approval was over a concern that the back units would be completed “and they would never get to the Barn.” He reiterated the investment made so far noting “they have spent well over six figures to shore up the Barn. That demonstrates their commitment to this project.” He went on to say that there had not been any substantial plan or decision on which (units) to do first “but we request that not be a condition of approval.”

Ms. Shea noted the Barn was in the Family District and approved for residential. “And residential is a perfect use” she said adding she did not want to see proposals for uses that had been suggested in the past. When asked what she meant Ms. Shea replied “like a restaurant, a hotel” Mr. Fry interjected “a brewery.” Ms. Shea concluded “this proposal conforms with legal zoning so there is no spot zoning here.”

Virginia Lee Miller stood and introduced herself and Howard Howard Hitchmough and said “we have always loved the Stone Barn and we are also in favor as abutters.” Nicole MacStay introduced herself as an abutter and voiced her support for “this excellent project.” Mr. Fry told the Board he and Mr. Malt had bought the property as an investment “but we focused on how to keep it standing.” He showed photographs of the structural damage (and partial collapse) on both the north and south wings the building as well as some of the structural reinforcement interventions. “We really focused on keeping it standing and being structurally sound” he said adding “and I would like to mention Cy Gregg has also become a partner in this project.” He told the members they had hired contractors skilled in doing high quality development and that they had exceeded the six-figure range in expenses.

With nothing further from the audience Chair Stewart suggested they take each request and review the criteria individually. Mr. Runyon replied “let’s start with the ten units in the Barn.”

1211-A. Request a Variance to allow a multi-family residential use of ten dwelling units in an existing structure, in the Family District, as regulated by the zoning ordinance in Article II, Sections 245-6 A 1 and 245-6 B 1.

He distributed a prepared decision for the request based on the 2008 Public Hearing and Notice of Approval. Mr. Runyon reviewed the lack of diminution of value of the surrounding properties, how the request would not be contrary to the public interest or the spirit of the zoning ordinance, how substantial justice would be done by granting the Variance and how strict enforcement of the zoning

ordinance would prove an unnecessary hardship on the applicants. He reiterated that the Barn itself was a unique feature and that strict compliance with the permitted uses would require the applicant to tear down the historic structure at great expense rather than renovate it. Mr. Runyon also reviewed the Conditions of Approval that including limiting the number of units in the Barn to ten, that the exterior structure be preserved in its historic appearance and access, parking, lighting and landscaping all be substantially in keeping with the plans submitted unless altered by the Planning Board.

Chair Stewart asked about the self-imposed conditions with Mr. Runyon replying those conditions were consistent with the 2008 Decision of Approval. Chair Stewart suggested another Condition of Approval be screening for the Shea household. Mr. Kevan interjected “we can do that in the Planning Board process.” Chair Stewart noted the 2008 condition that the Barn units be completed first had been removed with Mr. Runyon replying “yes.”

1211-B. Request a Special Exception to allow crossing the Shoreland Conservation Zone, as regulated by the zoning ordinance in Article III, Section 245-12 D.

Mr. Runyon noted this was a Special Exception request “so there is no criteria but we need to be in keeping with the recommendations of the Conservation Commission.” He reiterated the land beyond the crossing was not designated as wetland, the proposed access was one of minimal detrimental impact “and there is no better alternative route” he said. Chair Stewart replied “well nothing has changed and the ConCom are supportive.” Mr. Kevan told the Board that while they would have to reapply they had secured an Alteration of Terrain permit from the state in 2008.

Mr. Runyon also reviewed the Conditions of Approval that included the road width be in substantial compliance with the plan submitted, a wetlands crossing permit be secured from the New Hampshire Wetlands Bureau prior to any construction and the applicant shall obtain and comply with all necessary approvals for the Planning Board including drainage and erosion control measures.

1211-C. Request a Variance to allow a greater density of twelve dwelling units in an Open Space Residential Development, as regulated by the zoning ordinance in Article V, Section 245-26 D 4.

Mr. Runyon reviewed the lack of diminution of value of the surrounding properties, how the request would not be contrary to the public interest or the spirit of the zoning ordinance, how substantial justice would be done by granting the variance and how strict enforcement of the zoning ordinance would prove an unnecessary hardship on the applicants. He noted the units would be out of sight from Old Street Road as well as any abutter, that the residential use of the property was consistent with the exclusively residential neighborhood, that the additional units would serve to defray the cost of the renovation and preservation of the Stone Barn and perhaps most importantly “the property must be viewed as a whole, not as just an undeveloped parcel in the Rural District.” He reiterated “it is an all or nothing deal, without the additional units there is no realistic way for the property to be used at all – regardless of whether or not the Barn is preserved.”

Mr. Runyon also reviewed conditions of approval including limiting the number of units to twelve (12) detached single-family homes (to be constructed within the Open Space Residential Development ordinance) and the units shall be substantially in keeping with the plans submitted unless altered by the Planning Board.

A brief discussion about increased density and the use of the Open Space Residential Development ordinance followed. Ms. Laurenitis said she did not believe the ZBA had the authority to grant additional density and that the ordinance had its own formula for calculating density. Seemingly in agreement Chair Stewart asked “why are you requesting a Variance?” Mr. Kevan noted twelve units had been approved in 2008 but explained “back then they did not have to remove wetlands and steep slopes to calculate the developable area, now you do and the calculations will not produce twelve units.” Mr. Runyon reiterated the importance of viewing the property as a whole, that the units were to be located on dry land well off the road and that all requests must be approved if the Barn is to be preserved.

Chair Stewart asked for clarification. “How is this different?” he said “I don’t understand the hardship.” Mr. Runyon reiterated the density calculations under the Open Space Residential Development had changed and they felt they were requesting additional density from the appropriate Board, the ZBA. He went on to say “and I guess without the Variance for the twelve units the front project will not be done” adding “it is one big project.” Chair Stewart asked what the density calculation was when the wetlands and steep slope were subtracted with Mr. Kevan replying “somewhere in the range of seven.” Mr. Kevan added “and 2000 feet of roadway to seven units in the back is not worth it.” Chair Stewart asked if the

dwelling would be duplex buildings as previously approved. Mr. Kevan replied “that approval was for eight duplexes or sixteen units. The property owner at the time went to the Planning Board and asked they be detached.”

Puzzled, Ms. Laurenitis asked “why not go through Open Space Residential Development?” Both Mr. Runyon and Mr. Kevan replied “we are.” Ms. Laurenitis noted it strange to be requesting a Variance without having gone through the Planning Board. Mr. Kevan replied “they do not have the authority to grant more units.” Chair Stewart interjected “my only point here is to try to find out what makes this property unique. That is my point.” Mr. Runyon replied “as I said before it is unique from what is there already” adding “that would be the Barn.” He went on to tell the Board it may not have been terribly smart to put money into the structure before coming to the Board “but they did not want it to fall down, it would be a pile of rubble by now. That should not be held against the applicant’s request for the back lot” reiterating once again “this is a package deal.” Mr. Kevan reviewed the fact that the land could support the number of units (septic and load wise) as Mr. Runyon pointed out on a graphic the line separating the Districts noting “much of the property is Rural and it is not an overly intense use of the property.”

Mr. Fry stood and said “the reason we are tying things together is because it is not economically feasible to develop the Barn by itself.” Chair Stewart replied “I understand that but we have to identify its uniqueness for the record” adding “and the hardship it would cause the applicant if the request was denied.” Mr. Kevan replied “this is a very unique piece of property” reiterating the fact that the Stone Barn in itself was unique as well as the wetlands, terrain, location “and the fact that the density was previously approved.”

Ms. Laurenitis asked about the twelve units in the back. Mr. Runyon replied “we would like to have 25 units but we are just asking for what was approved the last time, we did not want to push the envelope.” He told the members the applicant has true credibility and has done a very nice job so far. “We are simply asking you to re-approve what you did before” he said adding “this is the last best shot for this property.”

Ms. Laurenitis noted the Board had not approved a Variance for the twelve units in the past. A brief discussion about the status of the Open Space Residential Development ordinance in 2008 followed with Code Enforcement Officer Dario Carrara explaining Ms. Laurenitis was correct. “At the time of the 2008 approval a Variance was not deemed necessary as wetlands and steep slopes were not

deducted in the density calculation” adding “that is not the case now, the calculation has changed.”

Mr. Lambert asked if the applicant intended on having the road become a town road with Mr. Kevan replying “no, we are planning 20-foot wide roads to minimize the paving and it will be privately maintained.” Chair Stewart asked “what about meeting the setbacks?” Mr. Carrara replied they did adding “and in reference to the density the applicant spoke with me and OCD Director Peter Throop and we agreed the best course of action was to bring this Variance request to the ZBA. Ms. Laurenitis interjected “I am not even sure if we *can* approve a Variance for this” adding “this should go to the Planning Board as an Open Space Residential Development application and they determine the density.” Mr. Carrara disagreed noting “there is nothing wrong with the applicant coming to this Board for a Variance.” Ms. Laurenitis asked “has town council given advice on this?” Mr. Carrara replied “I don’t remember.” Mr. Runyon interjected “this was not an issue before and Dario is correct, the zoning is more restrictive now.” He went on to say “and essentially I believe the Planning Board would send the applicant right back to the ZBA.”

Ms. MacStay suggested the ZBA could vote not to address the request if it is a point of contention. Chair Stewart replied “probably but this *is* a request before us.” Ms. Laurenitis noted the request could be withdrawn or put on hold. Mr. Runyon immediately replied “we do not want to do that” adding “I disagree that the Planning Board can give the applicant more units that the district calls for.” Mr. Kevan noted “it is my understanding the Planning Board does *not* have the authority to give more (units).” Mr. Runyon concluded “Peter (Throop) and Dario (Carrara) both recommended getting a Variance.” Mr. Carrara explained that the Planning Board has the authority to modify the requirements of the OSRD, however, the OCD Director, the CEO, and the applicant recognize that it is very traditional to ask the ZBA for a variance when it comes to altering the density requirements for a district; density is a core pillar of the zoning ordinance.

1211-D. Request a Variance to allow buildings closer than seventy-five feet to the perimeter of the tract, as regulated by the zoning ordinance in Article V, Sections 245-26 D 6 a ii and 245-26 D 7.

Mr. Runyon reviewed the lack of diminution of value of the surrounding properties, how the request would not be contrary to the public interest or the spirit of the zoning ordinance, how substantial justice would be done by granting the variance and how strict enforcement of the zoning ordinance would prove an

unnecessary hardship on the applicants. He noted two units were closer than the required 75-feet for the boundary line “but they are so far from Old Street Road and any abutter that the public would not be affected in any way.” He reminded the Board of the strict residential nature of the neighborhood and the units being clustered “leaving the remainder open, undeveloped and undisturbed.”

Mr. Runyon also reviewed conditions of approval including there be no more than twelve detached single-family dwellings constructed within the Open Space Residential Development ordinance and the configurations of the units shall be substantially in keeping with the plans submitted unless altered by the Planning Board.

Mr. Runyon looked to the Board and said “last thing, we have got to keep the big picture in mind. This is not just real estate development on this property. In order to save the Barn we need to do this as one complete package.” He told the members “in 1986 when the first approval was granted I was the Chair of this Board. The request was for 22 units in the Barn, we approved it then and I hope you will approve it now.”

Mr. Runyon concluded by reviewing several of the alternatives that included doing nothing at all, tearing the Barn down (or letting it fall down) or turning it into something with a more intensive use as he noted the “water wars” of the 1990s.

Chair Stewart asked about the order of the criteria in the decisions that that Mr. Runyon had provided. Mr. Runyon replied the order was irrelevant as long as the five criteria were present. Satisfied, Chair Stewart asked the Board “do we have enough information to go into deliberation?” Mr. LaRoche asked for clarification on the setback of the two homes in Variance request 1211-D. with Mr. Kevan noting “the setback is 75 feet and they are 58 feet from the property line.” Ms. Laurenitis noted she was having difficulty in distinguishing the property from other properties in the area as being unique. Chair Stewart reiterated what Mr. Runyon had said about the terrain, its location, its wetland, the size of the property “combined with the uniqueness of the Stone Barn itself.”

With no further input from the public Chair Stewart closed hearing. **A motion was made/seconded (Stewart/LaRoche) to enter deliberation with all in favor.** Noting Ms. Monahan had recused herself and Mr. Leishman was not present he appointed alternates Lambert and Laurenitis to sit and complete a five-member Board.

Deliberation

Chair Stewart read the deliberative statement and said “let’s start with request **1211-A.** Variance request for ten dwelling units in the Barn. “I would to like to start with a straw poll and I will go first” said Chair Stewart. He went on to say “I have no issue with this. It was previously approved and it meets all criteria.” Ms. Laurenitis said she voted for it the last time “and I am in favor of it this time as well.” Mr. LaRoche noted “I am in favor of it.” Mr. Sobe said “I am most in favor of it with Mr. Lambert in agreement noting “I am also in favor.” Chair Stewart recommended a fourth condition of screening along the Shea property (to the north) with Mr. Runyon replying “that is fine. We have no objections we want to be a good neighbor.”

A motion was made/seconded (Stewart/LaRoche) to approve a Variance request to permit ten residential dwellings within the existing Stone Barn with the added condition of additional screening with all in favor.

1211-B. Special Exception request for a Shoreline Conservation Zone for access the rear of the property. Chair Stewart again asked for a straw poll. Going first he said “this has been granted in the past and the Conservation Commission has no issue with it so I support it.” Ms. Laurenitis, Mr. LaRoche, Mr. Sobe and Mr. Lambert all agreed.

A motion was made/seconded (Stewart/Lambert) to approve a Special Exception request to permit crossing the Shoreline Conservation Zone for access to the rear of the applicant’s property with all in favor.

1211-C. Variance request to permit twelve detached single-family dwelling units (constructed as Open Space Residential Development) on the rear portion of the applicant’s property.

Chair Stewart skipped this request and moved on to

1211-D. Variance request to permit two buildings closer than the 75-foot setback for the perimeter of the tract of the Open Space Residential Development. Calling for a straw poll Chair Stewart noted “I have no issue with this.” He looked to Ms. Laurenitis who looked up and said “I am thinking about it.” Chair Stewart then heard from Mr. LaRoche, Mr. Sobe and Mr. Lambert, all of whom were in favor. Chair Stewart returned to Ms. Laurenitis who noted she felt it was an Open Space issue and did not support it.

A motion was made/seconded (Stewart/LaRoche) to approve a Variance request to permit two single-family dwellings no closer than 58 feet from the setback of the perimeter of the tract of the Open Space Residential Development with Chair Stewart, Mr. LaRoche, Mr. Sobe and Mr. Lambert in favor. Ms. Laurenitis was opposed.

Returning to 1211-C. Chair Stewart began with “I just have to say how I feel” adding “normally there is a mechanism in place to grant this type of request but I also feel our Open Space ordinance is quite complicated and it is not a one-size-fits-all.” He added “it all depends on the wetlands, highlands, roads and frontage. Apply the same calculation to two different parcels and you can easily come up with different results.” He looked up and said “I would support this.” Mr. LaRoche, Mr. Sobe and Mr. Lambert concurred with Ms. Laurenitis noting she was not comfortable with granting a Variance without the applicant going to the Planning Board “so I am not going to support it” she said,

A motion was made/seconded (Stewart/LaRoche) to approve a Variance request to permit twelve detached single-family dwelling units as an Open Space Residential Development in the rear portion of the applicant’s property with Chair Stewart, Mr. LaRoche, Mr. Sobe and Mr. Lambert in favor. Ms. Laurenitis was opposed.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant