

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**TOWN OF PETERBOROUGH**  
Monday, December 5, 2011 – 7:00 pm  
1 Grove Street, Peterborough, New Hampshire

**Present:** Loretta Laurenitis, Matt Waitkins, Sharon Monahan, David Sobe, Alice Briggs and Peter Leishman.

**Also Present:** Dario Carrara, Code Enforcement Officer; Laura Norton, OCD Administrative Assistant. Steve Leone abutter

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The meeting was called to order at 7:00 p.m. Chair Laurenitis introduced the Board and Staff. She reviewed the process of reading the application followed by a presentation by the applicant; questions from the Board; questions from the audience (in favor or opposed) and closure of the case followed by deliberation and decision. She also asked anyone speaking from the audience to please state their name for the record.

Chair Laurenitis noted the only case this evening was a continuation of Case No. 1176 Robbe Farm Road, LLC for a Special Exception to allow an elderly housing use and increased density to ten (10) units per acre. She re-read the request and appointed Mr. Leishman to sit. It was noted that at the end of the last public hearing the Board asked that certain questions be addressed and additional information be presented in the continuation of this case.

Craig Hicks was present and began with “I had an assignment and as I understood it you wanted a topographical map and I have done that.” He presented a plan with topographical lines and Plan References and Notes that were in a large font and easy to read. The members took a moment to review the plan. Chair Laurenitis asked if the plan was the site prior to the excavation already done with Mr. Hicks replying “yes.” Another member noted that both the DPW and Fire Department reports mentioned maximum grades on the site. Mr. Hicks replied “that is a Site Plan issue” adding “it is a cut and fill and will accommodate the requirements of the Planning Board.” A brief discussion about the grade of the parcel followed with Mr. Hicks concluding “there is plenty of room for an engineer to design it to what Site Plan Regulations desire.”

The members moved on to the question of Section 8 Housing. Mr. Hicks explained that his research on the Section 8 criteria was massive so he concentrated on senior housing and the Fair Housing Act and the Senior Housing Exemption. He specifically noted several select pieces of information including the fact that HUD has determined that the senior dwellings are specifically designed for and occupied by elderly people under federal, state or local programs; the units are occupied by people 62 years of age and older and that at least one person is 55 years of age or older in at least 80% of the occupied units and adheres to a policy that demonstrates the intent to house people who are 55 years and older. He concluded with “therefore, housing that satisfies the legal definition of senior housing or housing for older persons as described can legally exclude families with children.” A brief discussion about the definition of elderly housing followed. Ms. Briggs asked if the planned project was going to be Section 8 Housing with Mr. Hicks replying

“no, but you asked me to bring in information on Section 8 so I have. I think it is more important to define who is eligible for elderly housing.” Ms. Briggs replied “we are bound by the zoning ordinance as to who is eligible” with Mr. Hicks replying “55 (years old) plus and that is what I have given you.”

Chair Laurenitis acknowledged Mr. Hick’s definition of elderly housing and asked “does that comply with Peterborough’s definition?” Mr. Hick replied “55 plus.” Chair Laurenitis noted “so there could be families with children in the house.” Mr. Hicks reiterated the definition in the Senior Housing Exemption and the legal ability to exclude families with children. “That is the definition of senior housing that also goes along with our definition” he said, adding “that is the intent we are talking about (55+ years) which goes with the definition you have in your ordinance.” Chair Laurenitis replied she felt there was some conflict with what Mr. Hicks had just described. Ms. Briggs noted they had town counsel opinion to consider. Mr. Hicks immediately asked what that opinion was. Ms. Briggs replied “counsels’ opinion is for the Board” with Chair Laurenitis adding “that is our information.” Mr. Hicks interjected “not when it deals with what I am presenting to the Board” adding “why is it you cannot tell me what it is?” Chair Laurenitis replied “it is privileged information.”

Mr. Hicks turned to the Minute Taker and noted “then I would like it on the record that I disagree with that” adding “if the Board is aware of something different you should share that so the applicant can respond or have their attorney respond. You are acting for the Town of Peterborough.” Chair Laurenitis replied “it is privileged information with Town Counsel and it is up to this Board to decide if that information is to be released.”

Ms. Monahan noted she has tried to research the topic of elderly housing as well and noted the existence of surveys that must be done periodically to assure the housing is compliant. Mr. Hicks interjected he had no objection to that being a condition of approval in his case.

Chair Laurenitis reiterated her concern with the issue of 55 years and older noting “teenage children may be allowed, my understanding is that could be the case.” Returning to the Senior Housing Exemption that Mr. Hicks quoted from, Chair Laurenitis noted “this ordinance says at least one person who is 55 or older in at least 80% of the occupied units and adheres to a policy that demonstrates intent to house persons who are 55 or older.” Mr. Hicks replied “this says your ordinance says *one* person must be 55 years old, correct.” Mr. Hicks again turned to the Minute Taker and noted “I would like to point out for the record that this is no reason to turn me down.”

Ms. Briggs interjected “let’s move on” and asked “how many units?” Mr. Hicks replied “78” then added “the Chair said I could speak so I would like to move down my list.” Chair Laurenitis replied “I object to the way you are treating this Board” with Mr. Hicks replying “I was given an assignment, I have a list.” When Ms. Briggs asked “does anyone have any questions about the Fire Chief’s report?” audience member and abutter Steve Leone introduced himself and said he did. Chair Laurenitis reiterated the process the Board would like to follow (presentation, Board questions, those in support, those in opposition and general questions). Ms. Briggs added “we will get to you, don’t forget your question.”

Chair Laurenitis asked about sprinklers for the building. It was noted sprinklers would be necessary. Ms. Monahan noted she did not see any fire hydrants noted in the report and a brief discussion about the New Hampshire State Building Code followed. Mr. Hicks noted "it should be a condition of your approval that both DPW and the Fire Chief are fully satisfied." Mr. Leishman asked if Mr. Hicks had an opportunity to discuss the Fire report with the Chief. Mr. Hicks reported he had just received the reports that day so he had not. "I have not discussed anything" he said.

The discussion moved on to discuss the road upgrades that would be necessary if the project were to go through. They discussed the potential location of fire hydrants (or a fire prevention stand pipe of some kind) on the road as well as utility upgrades and road grading and resurfacing. When site access was brought up it was noted the two major problems were overhead electric wires and trees. They discussed the potential of removing some trees and underground utilities.

Ms. Monahan asked for clarification on the DPW report. She noted the road was reported to be 22 feet wide and could accommodate 1500 vehicle trips per day. "Can you give me a definition of a vehicle trip?" she asked. Mr. Hicks replied ""a vehicle trip is one way." Ms. Monahan asked "is there some standard of how many trips per day a typical family makes?" Mr. Hicks replied "there is one and it is 10 trips per day." He went on to say "so can a 22 foot wide road handle 78 units? I think it can. If it were a concern, the Fire Department and DPW would have said so."

Chair Laurenitis asked who would be financially responsible for the road upgrades with Mr. Hicks replying "the road is a 1956 subdivision road and it needs work. I would be (financially) responsible and I have agreed to it." He went on to add "the Mercer Ave. reconstruction would be per DPW requests. I have no problem if that is a condition in your decision." Mr. Hicks also noted the upgrades at Mercer Ave. would benefit the general neighborhood by installing larger water lines and fire hydrants for fire protection capabilities up to Webb Road.

"Go on with your list" interjected Chair Laurenitis. Mr. Hicks noted the site visit by the Board on November 19<sup>th</sup>. A brief discussion about the grade and elevation of the site followed. Chair Laurenitis noted her concern about elders accessing the building itself "you are going to have ADA apartments so to me that means some residents will be handicapped or be in wheelchairs." Mr. Hicks noted "once again we have not agreed this is a ZBA question." He spoke briefly on the number of ADA units for the proposal as well as the proposed number of one and two bedroom units (currently two-thirds one bedroom and one-third two bedroom). Mr. Hicks also noted all the apartments would be *ADA adaptable* meaning the units would be built with the anticipation of becoming ADA. This includes 18 inch off-sets in doorways and bathrooms as well as support mechanisms for grab bars are all included in the construction versus having to put them in at a later date. Mr. Hicks noted only 5% of the units were required to be ADA compliant. When challenged on that percentage, Mr. Hicks noted his attorney had supplied that information to him. A brief discussion about the flexibility of the building being totally adaptable with 5% of the units being ADA compliant followed. Mr. Hicks also noted the building would be single story to avoid two or three elevators and lobby areas. He concluded by reiterating his concerns that much of the discussion was not in the purview of the ZBA and should be addressed by a site plan review process. "I am not comfortable with these questions" he said adding "these are not use questions, they are site plan questions."

Going back to accessibility Chair Laurenitis again noted the grade of the parcel and noted her concern that “it is not really accessible unless you drive the car up to the unit.” Mr. Hicks replied “let’s go back to the probable, possible and practical.” He asked the Board “is anybody going to get wheeled around anywhere in this town?” He went on to mention “not at the Hospital or at Summerhill. It is just not practical.” He pointed out that the RiverMead community has a bus that transports its resident into town.

Mr. Leishman pointed out that having substantial room was important and used RiverMead as a good example of a facility” having lots of areas where people can venture out” adding “there is very limited room to go around this particular project.” Mr. Hicks replied “that is not accurate” and pointed out the limited areas of Harborside Healthcare, the Scott Farrar Home and Woodland Heights. Mr. Leishman noted “with all due respect you are very argumentative with this Board” adding “we are just trying to address, to make sense of another facility with very little access to handicapped people.”

Mr. Hicks replied “OK” and noted “I would like to see people who sell their homes be able to continue to live in and enjoy the town they raised their families in. I brought that up last time.” Mr. Leishman relied “yes you did” with Mr. Hicks concluding “people are looking for good one-floor living. He mentioned Colonial Square and Governor’s Square complexes as not being compliant with ADA regulations. “Not even close” he said. He continued by asking “ask yourself, does this fill a need not served and do the benefits outweigh the negatives?” Mr. Leishman replied “no one is debating the need but is this a good site to fill that need?” Mr. Hicks briefly reviewed the Master Plan Steering Committee efforts to create infill closer to town adding “this site is better than almost any other site available. I question where else you could possibly do this.” Mr. Leishman replied “we have heard about elderly housing at MCH” with Mr. Hicks replying “absolutely but they are not in front of you right now. I am.”

Ms. Monahan asked if the units would be rented with Mr. Hicks noting they would “right now people are having a hard time selling their homes, these would be market rate apartments from \$1000.00 to \$1200.00 per month with heat. Chair Laurenitis asked “any lower income units?” with Mr. Hicks replying “no, we need market rate apartments people want to live in.”

Mr. Hicks went onto answer several more questions about ADA compliance versus ADA adaptation that included the 18 inch off-sets for the doors and bathrooms. “So 100% of the units are adaptable?” asked Ms. Briggs with Mr. Hicks replying “yes.” Ms. Briggs again asked about the origin of the required ADA units being only 5% of the total. Mr. Hicks noted he was not sure what regulation that number came from and would follow up.

Ms. Monahan pointed out the maximum density for the elderly housing special exception is 10 units per acre and asked Mr. Hicks if he would be open to fewer units. Mr. Hicks explained that throughout the area the perfect market number “is 80 units. That is what the developers are asking for.” He added “this suggests 78 units is an important number when the norm is 80. Going south of that is not a good idea.” Chair Laurenitis asked what that general information was based on with Mr. Hicks replying “general research. I went out and asked about it and 80 seems to be the common threshold.”

Chair Laurenitis asked “do you have anything else on your list?” Mr. Hicks briefly reviewed the need for infill and the advantageous location of the parcel. He pointed up to the graphic on the screen and said “that white spot right there in between the yellow (Family District) and stripes (Village Commercial District) is not Rural. It is an appropriate location.” Mr. Hicks also mentioned the Plan New Hampshire VDC Charrette in 2005 (a professional association bringing together those focused on the built environment and interested in community development for a series of brainstorming sessions resulting in conceptual plans and designs). He told the members “they identified my (white) parcel as something different than where a duplex should go.” They talked about infill, this is perfect for infill” he said.

Mr. Sobe asked about any concerns about aquifers with Mr. Carrara interjecting “I don’t think there is a concern.”

With no other questions from the members Chair Laurenitis opened the meeting to the audience and asked “is there anyone who would like to speak in favor of this proposal?” there was no response so the chairman went on to ask “is there anyone who like to speak in opposition to this proposal?”

Larry Jones introduced himself as a resident of 20 Legacy Lane in West Peterborough. Mr. Jones began by thanking the members for their service noting “your job is not always easy and you are very professional when dealing with a raised voice.” Mr. Jones continued with noting that he had done some research and found that the applicant in this case (Robbe Farm Road LLC) was listed with a status of Administrative Dissolution with the State of New Hampshire, Secretary of State/Corporate Division. He noted the status of dissolution is usually a result of failure to file reports or pay the yearly fees to maintain the registered agent. He also noted a disclaimer on the website that the public information shown “may not be up to date.” Mr. Jones requested the status of the applicant be confirmed and that the Board “defer the Variance until it is clarified.”

Chair Laurenitis noted the applicant was requesting a Special Exception from the Board not a Variance. Mr. Jones acknowledged he stood corrected and added “OK the application then.” Mr. Jones went on to express his concern over senior citizens entering and exiting through Mercer Avenue. He told the Board that in his “relatively advanced state of youth” his reactions were certainly not as good as they used to be. He noted “vision and depth perception decline with age” and again noted his concern for the safety of senior drivers at the development as well “all the other citizens of Peterborough.” He then requested the Board require a traffic impact analysis by a qualified traffic engineer to be paid by Mr. Hicks. He also suggested if the analysis was favorable the project should be approved but if the analysis suggested improvements or upgrades that Mr. Hicks address them and pay for them.

Steve Leone introduced himself as an abutter to the property. “I live at #3 Mercer Avenue with my wife and two kids” he said. He also noted he was representing the residents of #4 and #5 Mercer Avenue who were not able to be present this evening.

Mr. Leone noted “I don’t have a strong objection to the housing itself, our concern is with the access road through Mercer Ave.” Mr. Leone gave a brief description of his neighborhood that included the lots sizes and close proximity of the houses to the road. He noted “the potential for

1500 cars certainly does nothing to help our property values or insure safety of our children.” Ms. Briggs interjected “do you think this project will change the character of your neighborhood?” Mr. Leone replied “the traffic would certainly change it.” Mr. Leone noted initial construction traffic as well as residential traffic and (with an elderly population) the traffic of emergency response vehicles going back and forth. Mr. Leone and the members briefly discussed several particulars of his neighborhood (including the proximity of houses to the road, on-street parking, overhead electric wires and plowing issues). Mr. Leone concluded with “my biggest concern is, why go through Mercer Ave.?” and asked “can it be accessed by Route 202?” A brief discussion followed with Mr. Hicks concluding “the road is a town road (22 feet wide). The only legal access I have is through Mercer Ave.”

Mr. Hicks also noted that while he believed this proposal was the best use of the parcel he had been to the Planning Board to discuss re-zoning the parcel to the Village Commercial District. “I absolutely believe this project is the best use of the land” he said adding the use in the Village Commercial District would most likely be a commercial endeavor that would seek to gain access from US Route 202. “Residential, I would use Mercer Ave, commercial would be more appropriate for 202” he said.

Another brief discussion about access through the Monadnock Plaza on to US Route 202 followed. An easement over a portion of the parcel was discussed as well with Mr. Hicks noting “someone has a right of way but it stops short at my property line – I am not sure where it goes after that.”

Mr. Carrara reiterated the concerns of the location of fuel storage tanks in the vicinity as well as a porch addition on to the butt end of the building at the Pearl Restaurant. Mr. Hicks again noted “I would rather not get it re-zoned; this (project) is the perfect use.” Mr. Leone asked about weight restrictions with Mr. Hicks replying “the road can handle it.” Mr. Leone also asked about delivery trucks for things food services, laundry or crude oil. “That would come up in site plan” replied Mr. Hicks.

Mr. Leone asked about the possibility of property being taken during the construction phase of the road restoration. Mr. Carrara addressed his question by noting “neither of the reports (DPW and Fire) mentions changing the width of the road.” A brief discussion about the upgrades (grading, drainage, larger pipe and hydrant installation and resurfacing) followed. Mr. Hicks concluded by noting “most of this will be covered in site plan and if the Planning Board deems it necessary a traffic study will be done” adding “I appreciate the abutter’s concerns and I would like to address them.” He went on to again mention infill and “growing from the inside out.” “This is the highest and best use of this land. It is better than a house” he said.

There were no other questions and the Public Hearing closed at 8:35 p.m.

Chair Laurenitis asked “should we deliberate now?” Ms. Briggs replied “I don’t think we can, we still need two pieces of information (referring to the 5% ADA regulation and receipt of a copy of the Plan New Hampshire document). Ms. Briggs also noted “we have to consider it is not a person filing the application. We may have to postpone until we confirm the LLC is legally formed. We can talk about it but we cannot make a decision until we have an owner.” Mr.

Leishman agreed noting “if it is dissolved, the applicant does not exist.” Mr. Leishman went on to note a concern with the overall density. “I am not comfortable supporting it until we get some answers. I cannot sit here in good faith without a basis for the decision” he said. Chair Laurenitis suggested “let’s begin by asking Mr. Hicks to show his LLC is in good standing.”

A brief discussion about the project being consistent with what is located around it followed. Ms. Monahan noted the small lots on the street (quarter-acre lots) and the potential for infill in the neighborhood (two (2) per quarter-acre or eight (8) units per acre). Ms. Briggs replied “infill makes sense here but we do not have enough information.” The members briefly discussed density with Ms. Briggs noting “we do not have the criteria to decide if this density is appropriate there.” Chair Laurenitis suggested getting the Planning Board involved. “Let the Planning Board make the final decision” she said. Ms. Briggs replied “I hate to defer our responsibility as a Board” adding “perhaps if we had a plan rather than a concept we would have more to grasp. I have been struggling with this.” Chair Laurenitis noted “there is a problem with some of the criteria but that is something we can do nothing about.”

Ms. Monahan asked “could we make a decision about the use and not the density?” Ms. Briggs replied “again, I am reluctant to put that decision in the hands of the Planning Board, this is clearly our decision. It is not just the need; we have to decide if it is a compatible residential use.” Ms. Monahan interjected “well I do feel it is compatible use with the neighborhood.” Chair Laurenitis asked “even at that density?” Ms. Monahan replied “I don’t like the density” but reiterated the potential of 8 units per acre in the neighborhood.

The members briefly discussed several items that *could* be associated with such a complex including common space, laundry facility, restaurant and hair salon. Once again Ms. Briggs noted “we just have so little to go on.” Chair Laurenitis “we do not really know much without a plan.” Mr. Leishman noted “I support some elderly housing on the site. He also pointed out several half-acre lots on Mercer Avenue and referencing Sharon’s formula noted “that would be 4 units per acre.” “I am concerned with traffic down Mercer Ave.” interjected Ms. Briggs adding “the testimony of the houses being close to the road, some without adequate off street parking concerns me.” She noted the impact on the value of the properties noting “increased traffic may decrease values.”

The members began to discuss the trips per day when Mr. Leishman noted “I think we should discuss this with the Planning Board, I don’t think we should vote without all the facts.” Ms. Briggs replied “if we give it to the Planning Board we look like we have not done our job.” Chair Laurenitis suggested they could bring it before the Planning Board “as something we can ask their opinion about it” adding “we do not generally deal with density.” The members agreed they had lack of information as well as an option to get the Planning Board’s input without being held to it. Mr. Sobe concluded “I think it is a good thing to involve the Planning Board to some degree.” Mr. Leishman agreed noting “I know it would help *me* to have a joint meeting. This is a big project and when you look at other similar developments you see they are not going through a little neighborhood. We need to protect the applicant, the town and the neighborhood.”

The Chair reiterated the fact that the applicant must come back with some sort of certificate that the LLC was in good standing status with the State of New Hampshire’s Secretary of

State/Corporate Division. She also noted she would be in contact with the Chairman of the Planning Board to discuss a joint meeting. Ms. Briggs requested a date-certain for the next meeting which was determined to be January 4, 2012. Ms. Briggs then asked Mr. Hicks if he could be prepared for the January meeting. Mr. Hicks replied “are you going to make another list for me?” to which Ms. Briggs replied “I am afraid that after the rudeness of the last list I am reluctant to do that.”

It was noted in addition to assuring the patency of the LLC Mr. Hicks needed to secure backup information about the 5% required ADA regulation and the Office of Community Development would distribute a copy of the Plan NH brochure to all members for review. Ms. Monahan also noted the Board needed additional information of the “market number” of 80 units being the norm. “I would like to know where that comes from” she said.

**Minutes:**

A motion was made/seconded (Laurenitis/Monahan) to approve the Minutes of November 7, 2011 and November 19, 2011 as written. Ms. Briggs abstained with all others in favor.

The meeting adjourned at 9:25 p.m.

Respectfully Submitted,

Laura Norton  
Administrative Assistant

**Approved as Written 2-6-12**