

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, March 5, 2012 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Present: Alice Briggs, Loretta Laurenitis, Jim Stewart, Sharon Monahan, and Peter Leishman

Also Present: Dario Carrara, Code Enforcement Officer; Laura Norton, Office of Community Development

The meeting was called to order at 7:03 p.m. Chair Laurenitis introduced the Board and Staff. She appointed Mr. Leishman to sit for the continuation of Case No. 1176. She and Ms. Briggs noted the hearing was a public hearing but a continuation of their deliberation and closed to public input.

Ms. Briggs noted she had prepared a draft decision “that encapsulated our conversation with town counsel.” Mr. Leishman noted “this gives us a starting point, thank you Alice.” Chair Laurenitis noted the members had begun deliberation last month but decided to seek the advice of the town attorney. She noted they had met with the attorney and the draft distributed was a result of that meeting.

Mr. Hicks was in the audience and interjected “excuse me I just want you to know that I am recording this” as he placed a tape recorder on the table.

Ms. Briggs began “as suggested in the past the lack of data with this application has given us very little concrete information to go on. We requested more information but it has not been forthcoming.” She added “we do not have enough facts on the record to make a determination about the proper density here.” Ms. Monahan interjected “I just want to make it clear that it is not in the criteria that an applicant is required to provide a site plan” adding “but we have no information, it is such a frustration.” Ms. Briggs added “no, it is not specifically mentioned in our criteria” adding “and the applicant has pointed out several times he is asking for a *use* permit, but it also requires a density determination that we do not have the facts to make.”

Chair Laurenitis agreed noting “basically the Planning Board said the same thing.” Mr. Leishman added “my concern is that (from the Planning Board Minutes of January 17th) they said they did not have enough information provided by the applicant.” He added “I think it is a suitable use but with what we have now I am very uncomfortable deciding on a density.” Mr. Leishman went on mention the lack of research/studies/facts on traffic, drainage and safety issues. “We just have no facts,” he said.

Ms. Briggs noted the proposed draft decision before them would allow the applicant to move forward “while reserving this Board’s view on density.” Chair Laurenitis noted the small tree-lined street “with houses close to each other and the road, and the parking problems the street endures now. She noted “the traffic on that road is a *real* consideration.”

Ms. Monahan interjected “I agree with both of you that it is still the responsibility of the ZBA to have the ultimate decision on density.” She went on to note “the Planning Board thinks of density in terms of the site, we have to be concerned with and make the decision if it will impact or overwhelm the neighborhood.”

Ms. Briggs noted the draft decision would allow the Planning Board to do the Site Plan Review “then we have the opportunity to review density.”

The members then reviewed the draft and discussed and adjusted its language. An individual from the audience asked if they might have a copy of the draft with Ms. Briggs replying there would be no copies distributed until the Board voted on the draft.

The members reviewed language definitions while they (as Ms. Briggs explained) “tried to characterize the density allowed without a Special Exception.”

Mr. Carrara confirmed the lot was zoned rural and with subdivision (with a minimum of three acres per lot) would allow up to 4 dwelling units without a Special Exception.

At one point Mr. Leishman noted “with respect to the applicant I think we need to act on this. This is our fourth meeting for this case.” Both Chair Laurenitis and Ms. Briggs agreed out loud. One member noted “we are doing the best we can with difficult conditions.”

Ms. Monahan asked for clarification on several points with discussion following.

It was mentioned several times that the Board did not have enough information to make a real decision or determination on density “but the decision would allow the applicant to proceed to site plan.” Mr. Leishman agreed “it is important to move forward” adding “we accept the fact it is an appropriate site for elderly housing but we cannot get our hands around the density.”

Ms. Briggs interjected “so the ZBA requests, assumes, encourages?” adding “I am not sure what the verb is that the Planning Board consider the architectural scale of the neighborhood. The members spend a significant amount of time discussing Condition #5 (requiring the applicant shall go to the Planning Board for site plan review and return to the ZBA for a final decision on unit density prior to final site plan approval by the Planning Board) as well as #6 (at an appropriate unit density of elderly housing, the proposal’s benefits to the Town, the neighborhood, and the applicant will outweigh any adverse effects for the Town or the neighborhood because) and section H (an appropriate unit density will not require a significant departure from the architectural scale of buildings on nearby premises. The buildings on nearby premises are all one and two story single family homes). Ms. Monahan was very clear that she felt the development should be compatible with a residential neighborhood. Mr. Leishman noted “I am a bit naïve, Madam Chairwoman,” adding “but may I ask if there is any sort of board that makes recommendations about conforming to the neighborhood architecture? So it is somewhat in keeping with neighborhood?” He went on to note “I assume they would put up something attractive.”

Ms. Briggs replied “those assumptions can be dangerous.” She went on to ask Mr. Carrara about the building height requirements to which he replied “the town regulation is 50 feet (averaged or around the building). It was noted that that a story height was typically 10 to 12 feet. Another member interjected “that would be reviewed at site plan.”

The draft was projected on to the screen and read aloud as the member did a final review. As Ms. Monahan read the conditions she asked “do we have to keep saying *appropriate unit density*?” with Ms. Briggs replying “yes we do, we have to make it clear.”

In conclusion Mr. Leishman noted “I propose we have done the best we can.”

A motion was made/seconded (Briggs/Leishman) to grant the Special Exception with the conditions listed with all in favor.

Other Business:

Mr. Stewart (recused from Case No. 1176) joined the members. Chair Laurenitis noted the Board had received a correspondence from Tom Weeks regarding the decision in Case No. 1177. In this case the Board approved a Special Exception for Sequoya Technologies Group to replace a pre-existing nonconforming use with a different nonconforming use at 25 Community Lane in the Rural District.

All members confirmed they had received a copy of that correspondence, as well as Town Counsel’s opinion. Mr. Stewart noted “there is not much more to discuss” with Ms. Briggs adding “there is no need for a re-hearing” adding “our decision was appropriate.” Mr. Leishman concluded “we took everything into consideration.” Ms. Briggs noted “since no one here wants to raise the issue of a re-hearing, we are done.”

Mr. Leishman once again thanked Ms. Briggs for her time and attention in preparing the draft decision they just finished. Ms. Briggs replied “(town) counsel was clear about this, I just took good notes.”

Chair Laurenitis also noted her appreciation for the timely distribution of the draft to the members. Chair Laurenitis then went on to note a few housekeeping items. The first item being a ZBA report for the town report. She noted that it was due by March 12th adding “it is the standard stuff, but let me know if you have anything you would like to mention.” Chair Laurenitis noted a note of thanks to retired Code Enforcement Officer Tom Weeks for his years of assistance to the Board would be appropriate for the report as well as a welcome to the new Code Officer Dario Carrara.

Chair Laurenitis concluded by noting both Alice (Briggs) and Jim (Stewart) are up for re-election this year. Mr. Stewart confirmed he would run for re-election but Ms. Briggs noted she would not re-up for a full member seat. “My 55 hour-a-week job prohibits I,t” she said. Ms. Briggs did agree to stay on as an alternate. All the members were pleased to hear this and all commented on her valued experience and dedication to the Board. Mr. Leishman noted he would continue as an alternate as well but could not commit to a full member seat due to the demands of his job. Mr.

Leishman suggested “maybe Matt (Waitkins) will run again. In response to that another member simply said to the Chair “encourage him Loretta, encourage him.”

Minutes:

A motion was made/seconded (Leishman/Briggs) to approve the Minutes of February 6, 2012 with all in favor.

With no further business the meeting adjourned at 8:35 p. m.

Respectfully Submitted,

Laura Norton
Administrative Assistant

ZONING BOARD OF ADJUSTMENT**NOTICE OF DECISION****Case Number 1176****March 5, 2012**

As specified in RSA 674:33, you are hereby notified that the request of Robbe Farm Road LLC, for a special exception, for an elderly housing use, as set forth in Article VIII, Section 245-43 of the zoning ordinance, on property located at the end of Mercer Avenue, parcel number U022-002-000, in the rural and family districts, is hereby **GRANTED**: with potential density of not more than 10 units per acre, **with the conditions that**:

- (1) the applicant shall return to the ZBA for a final determination of unit density prior to final Planning Board site plan approval;
- (2) every unit on the property shall comply fully with the requirements of the Americans with Disabilities Act (ADA);
- (3) prior to final Planning Board site plan approval, the applicant shall provide the ZBA with appropriate covenants that address the continuity of the use as elderly housing, such covenants to be subject to the approval of the ZBA and its legal counsel; and
- (4) such covenants shall include a mechanism for annual census reporting to confirm compliance with the occupancy requirements of the Town's elderly housing age restrictions. In granting this application, subject to these conditions, the ZBA does so in reliance upon the statements and representations of the applicant.

The ZBA finds:

- (1) Elderly housing is a use permitted in the rural district under Section 245-43 subject to certain conditions.
- (2) The applicant has not provided the ZBA with enough information to determine appropriate unit density.
- (3) The ZBA requires that the applicant shall go to the Planning Board for site plan review and return to the ZBA for a final decision on unit density prior to final site plan approval by the Planning Board.
- (4) The ZBA retains the authority to reduce the unit density determined by the Planning Board.
- (5) At an appropriate unit density of elderly housing, the proposal's benefits to the Town, the neighborhood, and the applicant will outweigh any adverse effects for the Town or the neighborhood because:
 - a. At an appropriate unit density, this lot can provide adequate water, sewage, and drainage without posing special public problems because the lot has 7.8 acres.
 - b. The site can accommodate an appropriate level of unit density without further substantial environmental damage given that it is 7.8 acres and has been already cleared and excavated.
 - c. An appropriate unit density will result in minimal risk to air, land or water because the lot is 7.8 acres.
 - d. The land does not appear to have special qualities suiting it for agricultural uses because the ZBA received no evidence that the lot has ever been farmed.

- e. An appropriate unit density will not negatively affect the neighborhood because the applicant, with appropriate subdivision approval, may be able to place up to four dwelling units on the property without a special exception. In addition, elderly housing is a residential use.
- f. An appropriate unit density will serve the Town's housing needs by providing more housing restricted to the elderly.
- g. An appropriate unit density and site location can minimize the visual impact of the proposed development because while the site is steeply sloped it still has some vegetative buffer on the bottom and sides of the lot.
- h. An appropriate unit density will not require a significant departure from the architectural scale of buildings on nearby premises. The buildings on nearby premises are all one and two story single family homes.
- i. An appropriate unit density will not entail congestion or hazard on Mercer Ave because, although the road currently has only five residential dwellings on it, it is 22 feet wide.
- j. An appropriate unit density will allow pedestrian and vehicular movement that will not disturb the abutting properties because the applicant, with appropriate subdivision approval, may be able to place up to four dwelling units on the property without a special exception, and Mercer Ave is 22 feet wide.
- k. Compensatory actions should be taken to reduce any negative effects on the abutters.

Signed

Loretta Laurenitis, Chairperson

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.

Approved with typos April 2, 2012