

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, October 2, 2017 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: James Stewart, Loretta Laurenitis, Sharon Monahan, Peter Leishman, Peggy Leedberg, Peter LaRoche and Seth Chatfield

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 October meeting of the ZBA.” He then introduced the Members and Staff and read the Rules of Procedure that would govern the cases. Chair Stewart read the first case:

Case No. 1238 Charles Babb is requesting a Variance to construct a garage within the 30-foot front building setback, as regulated by Chapter 245, Article II, Section 6, B, 2 of the zoning ordinance. The property is located at 148 Hunt Road, Parcel No. U008-010-000, in the Family District.

“Are there any changes or corrections to this application?” he asked. With none he asked the applicant to proceed. Mr. LaRoche recused himself and sat in the audience.

Charles Babb introduced himself as a resident living at 148 Hunt Road. “I am looking for a Variance to the 30-foot front setback in the Family District so I may build a garage” he said. Mr. Babb told the members his home was built in 1962. “It is a raised ranch with a small garage under that sits on a hill on the corner of Hunt Road and Currier Ave.” He went on to note the house is on a private road serving three houses and using a graphic went on to show the members (given the slope of the lot) the only logical location of the garage was at the front of the property, adjacent to his current driveway. He pointed out several other homes that did not meet setback in the older neighborhood noting his request would put the garage within 20 feet of the front property line.

When Ms. Monahan asked about the proposed garage meeting side and rear setbacks, Mr. Babb replied “we meet the side and rear setbacks.” Mr. Babb then

reviewed the Variance criteria for the members and with no further questions from the Board Chair Stewart opened the hearing to the audience.

Janet O'Neil introduced herself as an abutter and told the members she did not think this should be done. "I don't think this is a good area for a garage" she said. Surprised Chair Stewart interjected "a garage in the Family District?" Mrs. O'Neil replied "not an auto shop" Mrs. O'Neil went on to tell the members "it was my understanding this was going to be a garage business." Mr. Babb interjected "I do hobby work." Mr. Chatfield replied "we have no intent of a home-based business" with Chair Stewart adding "we are authorizing a garage (for parking) in the Family District." Ms. Laurenitis asked about the size of the structure. Mr. Babb replied "24 by 26 feet, it is a two-car garage." Citing the attached garage under the house Ms. Laurenitis asked "so you will have three garages spaces?" Mr. Babb noted the attached garage was very small. "It is where I keep my motorcycle and lawn mower" he said adding his truck would not fit into the space. Mr. Babb then reviewed the proposed driveway to the garage (16 by 26 feet located in front of the proposed garage). A brief discussion about both the garage and the driveway followed with Mr. Babb noting the need for snow storage on the lot.

Mr. Leishman asked about any restrictions from the road itself with Mr. Babb replying "no, it is a private road maintained by the three home owners."

With no additional comments Chair Stewart asked "so are we ready? Do we have enough information, do you want a site visit?" Mr. Leishman replied "let's go to deliberation." A motion was made/seconded (Stewart/Leishman) to close the public hearing and go to deliberation with all in favor. Chair Stewart read the deliberative statement and appointed Alternate Laurenitis to sit in Mr. LaRoche's seat.

Deliberation:

Chair Stewart began with a straw poll stating "I see no issue with it, zoning calls for 30 feet of setback, we are giving leniency of 10 feet and a garage is consistent with the neighborhood." Noting other homes encroach the setback Mr. Chatfield said "I feel the same way. It meets the criteria, I am for it." Ms. Leedberg noted her initial concern when she saw the clip art graphic of the garage, "It looked like a huge monstrosity" she said adding "but it does meet the criteria and having a single door makes it look more agreeable aesthetically, I am in favor." Ms. Laurenitis asked about the second floor of the proposed garage. "Are you going to do anything with that?" she asked. Mr. Babb explained the second floor was an attic trust (12 feet wide and 8 feet tall) and that it

may be used for storage. Ms. Laurenitis also noted her concern over the second driveway to the proposed garage. “That kind of bothers me” she said adding “I would feel better if it was moved over toward the house.” A very brief discussion about *why* the driveway was located where it was (angle entrance etc.) followed. Mr. Leishman noted he was in favor of the request but suggested a reference to a *residential* garage be added to the decision. Chair Stewart noted “a residential garage is a reasonable and permitted use.” He referenced the New Hampshire OEP Zoning Handbook and read a brief statement about granting variances that would not be contrary to public interest, having the spirit of to the ordinance meet with substantial justice done and without alteration of the character of the neighborhood.

A motion was made/seconded (Stewart/Leishman) to approve the request for a Variance to construct a garage within the 30-foot front building setback, as regulated by Chapter 245, Article II, Section 6, B, 2 of the zoning ordinance. The property is located at 148 Hunt Road, Parcel No. U008-010-000, in the Family District with all in favor.

Chair Stewart noted the next agenda items were a continuation of agenda items from the stated September meeting. “We had a quorum but not a full Board and both applicants opted to continue for a full five-member Board” he said.

NOTICE OF DECISION

Case Number 1239

October 2, 2017

You are hereby notified that the request of Charles Babb, for a **Variance** to Chapter 245, Article II, Section 6, B, 2 of the Zoning Ordinance, to construct a garage within the 30’ front building setback, on property located at 148 Hunt Road, parcel number U008-010-000, in the Family District, is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

1. The variance **WILL NOT** be contrary to the public interest because:

The addition of a residential garage is a reasonable and permitted use in the district and does not alter the essential character of the neighborhood.

2. The spirit of the ordinance **IS** observed because:

The purpose of the setback requirement is to prevent overcrowding. The proposed building is separated from abutting residence, a roadway, mature trees, established vegetation and thus will not create overcrowding. In addition, the proposed residential garage will not be adjacent to the neighbor's house but with that of the neighbors' driveway.

3. Substantial justice **IS** done because:

The property is located on Hunt Road which consist of a series of nonconforming lots and residences which do not meet the setback requirements. The zoning requirements have changed since the house was built in 1962 and the requirements for lot size and setbacks have become more restrictive. The homes built in this area during the less restrictive time periods have been grandfathered to allow the reduced setbacks.

4. The values of surrounding properties **ARE NOT** diminished because:

The addition of the residential garage will increase the value of the property and improve the general neighborhood.

5. Literal enforcement of the provisions of the ordinance **WOULD** result in an unnecessary hardship.

(a) For purposes of this subparagraph, "unnecessary hardship" means that special conditions of the property distinguish it from other properties in the area; **Please describe these special conditions:**

(i) Owing to these special conditions, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

There is a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:

The lot has slopes both behind and on the side of the house and the driveway is located offset from the center of the lot towards the front of the lot parallel with Hunt Road and closer to one property line. As a result, the only reasonable location on the lot for the residential garage is the location that requires the requested variance.

(ii) And, the proposed use is a reasonable one since:

The variance will not change the character of the neighborhood and will not result in overcrowding.

In granting this variance, the Board imposes the following conditions:

1. Substantial compliance with plans and application submitted.
The garage is for residential purposes.

Administrative Appeal: An appeal of an Administrative Decision pursuant to RSA 676:5 of the Decision of Dario Carrara, Code Enforcement Officer and Zoning Administrator dated June 27, 2017.

As he distributed a Proposed Zoning Board Decision to the members and staff Attorney Tom Hanna introduced himself as a land use lawyer located in Keene, New Hampshire representing abutter Joni Doherty. “The proposed neighborhood development is at 59 Union Street, my client owns 57 Union Street” he said.

Chair Stewart asked Code Officer Dario Carrara about the best way to proceed. Mr. Carrara gave a brief summary of a written request for a zoning determination request from Fieldstone Land Consultant’s Project Manager Chad Branon (agent for GATO Properties, LLC) for a proposed development of a lot into a four-lot subdivision using the Traditional Neighborhood Overlay District I (TNOD I). Mr. Brannon noted the underlying zoning district was the General Residence District but the lot was also located in the TNOD I as well as the Groundwater Protection Overlay Zone (GPOZ) and he was asking for clarification as to the intent of the ordinance and how the zoning shall be interpreted (zoning determination). Mr. Carrara responded with the following administrative decision:

Appeal of an Administrative Decision pursuant to RAS 676:5 of the decision of Dario Carrara, Code Enforcement Officer and Zoning Administrator, dated June 27, 2017. The applicant is The GATO Properties. The parcel is located at 59 Union Street, Parcel No. U024-021-000:

The property is located within the General Residence Zoning District. Due to nearby water and sewer system mains, it is also in the Traditional Neighborhood Overlay Zone I District (TNOD I Chapter 245, section 15.3). The Groundwater Protection Overlay Zone (GPOZ Chapter 245, section 14) also applies. Both overlay zones modify the underlying General Residence District.

The General Residence District allows residential uses by right. The TNOD-I also allows residential uses as well, but modifies and increases the underlying density. The GPOZ does not modify the residential use of any underlying district.

The General Residence District allows a maximum 25% lot coverage for dwellings and accessory buildings. The performance standards in the GPOZ, Chapter 245, section 14, E, modify and reduce the maximum allowable impervious surface area to 20% of the land area. The standards in the TNOD-I, Chapter 245, section 15.3, E, 6, also modify the maximum allowable impervious surface area to 35% of the lot. Both the TNOD I and the GPOZ modify the underlying General Residence District.

According to Chapter 245, section 2, the most restrictive regulation, or that imposing the highest standard, shall control. Therefore, the maximum impervious lot coverage is **20%**.

Attorney Hanna noted his reference to the appeal to Fieldstone's Zoning Determination Request #2 *should have* read Request #1 and produced a letter dated August 16, 2017 depicting his inadvertent error. There was a bit of confusion (as Chair Stewart noted he did not receive the letter) and a brief discussion followed with Mr. Carrara interjecting "either way this is not a show stopper." The Board took a moment to review Attorney Hanna's objection to Fieldstone's Request #1.

Attorney Hanna continued his presentation to the Board by noting the applicability of the ordinance was correct (whenever any provision of the ordinance is deemed to be in conflict with any other provision of the ordinance or the requirements of any other adopted ordinance. Regulation, rule of law, the most restrictive or that imposing the highest standard shall control pursuant to the provisions of RSA 676:14). "Dario introduced this well" he said adding "this has little to do with the interpretation of zoning or whether you like it or not. Picture it as having everything to do with the language." He went on to say "59 Union Street is in the General Residence District with two competing overlays districts (TNOD I and GPOZ) the General Residence District states all uses permitted by right in the Family District are permitted in the General Residence District. Other uses may be permitted by Special Exception by the Zoning Board of Adjustment (unlike the Family District where other uses may be permitted by Conditional Use Permits by the Planning Board).

Attorney Hanna told the members GATO Properties, LLC had proposed a four-unit development under the TNOD I ordinance. He reiterated "anything permitted

in the Family District as permitted. is allowed in General Residence but TNOD I is not listed in the Family District. It is a *use* thing, a type of residential development (and) I am here to say it is not permitted in the General Residence District.” Citing page 16 of Chapter 245-7 he noted permitted uses either outright or by Special Exception “and TNOD I is not there.”

A brief discussion about permissive zoning followed. (Most zoning ordinances in New Hampshire are of the so-called permissive variety. That is, in the absence of a variance or special exception, such an ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use). Attorney Hanna noted “permissive only uses expressly listed uses as permitted or by Special Exception in Peterborough and cited a Supreme Court Case involving the Stone Barn in Peterborough. “If it is not listed it is prohibited” he said adding “it is not expressly permitted outright or by Special Exception in the underlying District.”

Attorney Hanna continued by noting that since the TNOD I is not expressly permitted outright or by Special Exception in the General Residence District (and since the ordinance states that only uses permitted by right or allowed by Special Exception in the underlying zoning districts are permitted in the Groundwater Protection Overlay District, “a Traditional Neighborhood District Overlay development is not allowed on this particular lot.”

Attorney Hanna read from 245-15.3 “the following provisions apply to all lots in the Family and General Residence Districts surrounding the Downtown Commercial District within the area designated on the zoning map as the “Traditional Neighborhood Overlay Zone.” The dimensional and use standards contained in Paragraph E (Minimum Requirements) shall supersede the underlying zoning districts upon the granting of a Conditional Use Permit, however all other relevant provisions of the zoning ordinance shall still apply.” When finished Attorney Hanna looked up and said “this language is clear, overlay districts are just that, they sit on top of the underlying district and it is clear the intent is to increase density in town, Dario is not far off on this but I think you need to look at the plain meaning of the language of the ordinance. I do not disagree with the intent but we are not looking at that, it is the intent of the Groundwater Protection Overlay District, not the Traditional Neighborhood Design District.”

Chair Stewart interjected “so the whole Traditional Neighborhood Overlay District is null and void due to the requirements of the Groundwater Protection Overlay?” “Exactly” replied Attorney Hanna.

Ms. Monahan looked into some of the discrepancies (lot coverage, maximum impervious surface allowance, counting or not counting driveway surfaces) and noted that by law the (when two districts vie for dominance) the most restrictive district is applied.

Attorney Hanna also pointed out the Performance Standards of the Groundwater Protection Overlay District which read *all new residential development with a density of greater than one unit per acre shall be connected to town sewer and clustered on the site so that impervious surfaces are not more than 20% of the land area.* “Traditional Neighborhood Design is not a cluster development” he said.

A member asked “are there any other TNOD I projects in town?” Mr. Carrara replied “yes, on Vine Street.” Chair Stewart asked “well how did that happen?” Attorney Hanna replied “was Tom Hanna here then?”

Chair Stewart asked Mr. Carrara to take a few moments to speak on what he’d written in his administrative decision. Attorney Hanna interjected “I am not done with my presentation.”

Mr. Carrara began by prefacing the Groundwater Protection Overlay District and its applicability. He noted “all uses permitted by right or allowed by Special Exception in the underlying zoning districts are permitted in the Groundwater Protection Overlay Zone unless they are prohibited uses under Section F. (Prohibited Uses) and all uses must comply with the Performance Standards unless specifically exempt under Section H. (Exemptions). “It is clear all uses by right are allowed, let’s make that clear he said adding “the questions is in the General Residence District I look at the use of a single family home. Is it allowed? Yes. A Duplex? Is it allowed? Yes. A multi-family home. Is it allowed? Yes. It is yes on all three” he said. “If the uses are allowed by right in the General Residence District and meet the applicability standards, that is all I looked at, it is that simple.”

“It is not a modification of use, it is a modification of density” he said. Mr. Carrara concluded “the questions is what is the impervious coverage of the lot.”

Ms. Laurenitis clarified “so abide by the Groundwater Protection Overlay District Performance Standard of 20% coverage of impervious surface.” “Yes” replied Mr. Carrara adding “it is not my job to say how many buildings or how to achieve the 20% it could be two single family homes or one duplex.”

Attorney Hanna replied “I don’t agree, the TNOD I isn’t anything other than a use that is modified by the Groundwater Protection Overlay.” He reiterated the Performance Standards of the GPOZ noting “density of greater than one unit per acre shall be connected to town sewer and clustered on the site so that impervious surfaces are not more than 20%.” Chair Stewart challenged the language of *shall* asking “is *shall be* the same as *must be*?”

Attorney concluded with the specific differences between Special Exceptions granted by the Zoning Board and Conditional Use Permits granted by the Planning Board. He noted the Fieldstone letter suggests TNOD I is allowed by Special Exception and that is the same as the TNOD I requiring a Conditional Use Permit. “It suggests that essentially they are the same. They are not, they are distinctly different” he said. Mr. Carrara agreed saying “from the beginning I have said that Special Exceptions and Conditional Use Permits are not the same.”

Attorney Hanna reviewed the criteria for a Special Exception established by the municipality. Chair Stewart again questioned what a requirement is and what a recommendation is. Chair Stewart also noted for the record Attorney Hanna submitted the language of both the Conditional Use Permit and Special Exception for comparison.

With no other questions from the Board Chair Stewart opened the hearing to the public.

Kitty Perullo introduced herself as an abutter and pointed out the development should not be compared to the development on Vine Street. “That is different” she said adding “that is a housing cluster.” She noted the grading and excavation of the development would eliminate a natural storm water barrier on Union Street. “The lot is on the highest peak on Union Street” she said adding “and I want to stress it is on a river bed.”

Patty Miller stood and introduced herself as (abutter) Joni Doherty’s sister. She told the members her sister had made every effort to be present but she had a work commitment she was unable to reschedule. “Joni is currently in Ohio and had made flight reservations for every meeting regarding this case” she said. Ms. Miller also noted her sister’s concerns with the general environmental issues including storm water runoff and contaminants.

With no other comments a motion was made/seconded (Stewart/Chatfield) to **continue** the Appeal of Administrative Decision pursuant to GATO Properties, LLC's proposed development of 59 Union Street to October 16, 2017 with all in favor.

Chair Stewart noted the next two agenda items were also a continuation from the stated September meeting. "The applicant for these two cases also opted for a full five-members Board" he said. After he read the case Chair Stewart asked if there were any changes or corrections to the notice (there were none).

Case No. 1237 Rivermead Retirement Community is requesting a Variance to construct a building within the 100-foot setback, as regulated by Chapter 245, Article II, Section 11.2, E, 4 of the zoning ordinance. The property is located at 150 Rivermead Road, Parcel No. R004-003-000, in the Retirement Community District.

Mr. LaRoche had rejoined the Board but announced he was a member of the Board of Directors at another retirement community and wanted Mr. Kevan to be aware of it. "I have no conflict with it" said Mr. LaRoche adding "but I wanted you to know." "That is fine" replied Mr. Kevan with a smile.

Jeff Kevan of TF Moran introduced himself as he distributed a graphic of the Mead Campus of the Peterborough Retirement Community at Rivermead. The graphic showed the location of two twelve-unit apartment complexes (garage underneath) as well as wetlands, the wetland buffer, FEMA Floodplain line, a restrictive easement for an old town well and the property lines. He briefly reviewed Rivermead's Master Plan for renovation and expansion of the original campus. Included in that was Site Plan approval from the Planning Board for additional development on the Village Campus where construction had started.

Mr. Kevan described the complexes having twelve units each. "We call them hybrid units" he said noting three floors with 4 apartments on each floor and parking underneath. He pointed out the encroachment into the 100-foot building setback on the easterly side of the lot. He told the members the setback was highlighted in blue while the wetland buffer was highlighted in yellow as he pointed out the fact that "there really are not a lot of locations to site (them)." He explained he'd met and worked closely with the Office of Community Development "but after meeting with the Conservation Commission we learned they felt the wetland buffer had more significance so to get out of that we slid the buildings forward and down reducing the intrusion from 3500 square feet to 120

square feet of wetland buffer impact.” When a letter from the Conservation Commission was mentioned Chair Stewart announced for the record that the letter was regarding the second case (Case #1238) and should not be considered in the current request. Mr. Kevan pointed out a wooded buffer that would remain between the proposed buildings and the adjacent property line and noted limited visibility between the subject property and the abutting property due to the limited impact in the setback. “There is not a lot of potential for additional development there” he said.

Ms. Laurenitis asked about additional acreage on the other side of the projected graphic with Mr. Kevan replying “I agree” but pointed out the interior development, the setback for the property line, the river, the flood plain to the river, and a protective well radius which all impact potential development. Mr. Kevan noted to accommodate less encroachment in the wetland buffer he had to decrease the setback to the property line. “I could not accommodate both” he said.

With no other questions from the Board Chair Stewart opened the hearing to the audience. Mead Campus resident Peter Rotch acknowledged the compromise in minimizing wetland buffer intrusion.

A motion was made/seconded (Stewart/Chatfield) to move to deliberation with all in favor. Chair Stewart read the deliberative statement and Ms. Laurenitis left the Board to sit in the audience.

Deliberation:

Noting all seemed to be in agreement a motion was made/seconded (Stewart/LaRoche) to approve a Variance to construct a building within the 100-foot setback, as regulated by Chapter 245, Article II, Section 11.2, E, 4 of the zoning ordinance. The property is located at 150 Rivermead Road, Parcel No. R004-003-000, in the Retirement Community District with all in favor.

NOTICE OF DECISION

Case Number 1237

October 2, 2017

You are hereby notified that the request of Peterborough Retirement Community, for a **Variance** to Chapter 245, Article II, Section 11.2, E, 4 of the Zoning Ordinance, to construct a building within the 100' building setback, on property located at 150

Rivermead Road, parcel number R004-003-000, in the Retirement Community District, is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

6. The variance **WILL NOT** be contrary to the public interest because:

There is a significant vegetated buffer that will remain. The proposed building encroaching in the setback would not result in the proposed building and buildings on abutting properties in close proximity to one another.

7. The spirit of the ordinance **IS** observed because:

A sufficient, wooded buffer will remain between the proposed building and the adjacent property line. There will be limited visibility between the subject property and the abutting property due to the limited impact in the setback which will maintain the natural buffer between the properties.

8. Substantial justice **IS** done because:

The proposed buildings in the setback provides additional continuing care housing in a more independent environment. The proposed buildings will also have parking underneath which will provide additional spaces for residents and visitors.

9. The values of surrounding properties **ARE NOT** diminished because:

There is still a sufficient buffer between the building line of the proposed project and the adjacent property line. The existing treeline is to be maintained between the building and abutting properties which will reduce visibility to the proposed project area.

10. Literal enforcement of the provisions of the ordinance **WOULD** result in an unnecessary hardship.

(b) For purposes of this subparagraph, "unnecessary hardship" means that special conditions of the property distinguish it from other properties in the area; **Please describe these special conditions:**

(iii) Owing to these special conditions, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the RiverMead development is not in a densely developed area of Town and the proposed developments would not be highly visible to abutting properties or from the public right-of-way. The buildings are sited to avoid the protective well radius and higher value setbacks.

(iv)And, the proposed use is a reasonable one since:

The proposed use is a reasonable one since the proposed building that encroaches on the 100 foot setback is still 50' from the property line and maintains a sufficient wooded buffer due to limited impact in the setback.

In granting this variance, the Board imposes the following conditions:

Substantial compliance to the application and plans submitted.

Case No. 1238 Rivermead Retirement Community is requesting a Variance to construct a building within the 50-foot wetland buffer, as regulated by Chapter 245, Article III, Section 15, H of the zoning ordinance. The property is located at 150 Rivermead Road, Parcel No. R004-003-000, in the Retirement Community District.

Prior to Mr. Kevan's presentation Chair Stewart asked "are there any changes or corrections to this notice?" With none, Mr. Kevan began with "well now you have the background" and noted this Variance request was for the 120 square foot encroachment in the wetland buffer. He pointed out where they had moved off the bank and preserved the vegetative slope with the buildings shifted down and away from the buffer. He also noted they were looking at providing a better storm water management system for the entire complex. Pointing to the graphic he said "now we are out of the wetland buffer except for this 10 by 12 foot area. We did what the Conservation Commission asked us to do." Mr. Chatfield asked "do you have a second letter from the ConCom?" Mr. Kevan replied "no, we just acted on their suggestions." Mr. Chatfield noted he felt better about the encroachment but he would like to hear the ConCom felt better about it too. "We have done everything they asked us to do, I thought all the loops had been closed" replied Mr. Kevan adding "if you deny this Variance I will put up a retaining wall 15 feet long and two feet tall that will not be in the buffer and we will not need a Variance."

Code Enforcement Officer Dario Carrara reviewed the erosion control measures and silt fences going in as well as orange construction fences for visuals. He noted independent inspections from civil engineering companies were also involved. Mr. Chatfield asked about the biodegradability of the material used in the strapping of the steep slopes with Mr. Kevan noting material like hayweed would be used which biodegrades over time not trapping animals like turtles and snakes. When asked about the wood turtle population in the area Mr. Kevan noted the habitat was wooded and shaded, “it is not a normal habitat for them, they like the sun and sandy areas” he said.

Ms. Laurenitis asked if the underground garages and their proximity to the wetland buffer had any significance with Mr. Kevan replying “no, they are completely enclosed.”

Chair Stewart opened the hearing to the public with no questions or comments. A motion was made/seconded (Stewart/Chatfield) to move to deliberation with all in favor. Chair Stewart read the deliberative statement and Ms. Laurenitis and Ms. Monahan left the Board to sit in the audience.

Deliberation:

Chair Stewart began with a straw poll and noted he saw a significant reduction in the wetland buffer (3500 to 120 square feet of encroachment). “I am in favor if it” he said. Mr. Chatfield noted he had been concerned with the DES report but having reviewed it he noted “you hear endangered species and you get concerned but that is not what we are talking about, that is not happening so I have no problem.” Ms. Leedberg noted she would like to see another letter from the Conservation Commission confirming their approval of the updated plan. Mr. Chatfield agreed, interjecting “I would feel better seeing one too.” Mr. LaRoche noted the intrusion into the wetland buffer “is not even the size of a car, I am fine with it.” Mr. Leishman agreed saying only “ditto.”

A motion was made/seconded (Stewart/Chatfield) to approve the Variance to construct a building within the 50-foot wetland buffer, as regulated by Chapter 245, Article III, Section 15, H of the zoning ordinance. The property is located at 150 Rivermead Road, Parcel No. R004-003-000, in the Retirement Community District with Chair Stewart, Mr. LaRoche, Mr. Leishman and Mr. Chatfield in favor. Ms. Leedberg was against.

Chair Stewart again suggested they use the language provided by the applicant adding the condition of substantial compliance to the plan submitted and dated September 29, 2017.

NOTICE OF DECISION

Case Number 1238

October 2, 2017

You are hereby notified that the request of Peterborough Retirement Community, for a **Variance** to Chapter 245, Article III, Section 15, H of the Zoning Ordinance, to construct a building within the 50' wetland buffer, on property located at 150 Rivermead Road, parcel number R004-003-000, in the Retirement Community District, is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

11. The variance **WILL NOT** be contrary to the public interest because:

Runoff from the proposed development is to be treated prior to being discharged to wetlands. The runoff from the proposed site is to be discharged at the same location as the existing site (the general flow of runoff will remain the same), which meets the intent of the ordinance. Encroachment is minor (120 SF).

12. The spirit of the ordinance **IS** observed because:

The spirit of the ordinance is observed because a sufficient, wooded buffer will remain between the proposed building and the adjacent wetland. Additional landscape vegetation will be planted to meet the intent of the buffer. Encroachment is minor (120 SF).

13. Substantial justice **IS** done because:

Substantial justice is done because this will allow the construction of the additional independent elderly housing while preserving the large buffer adjacent to the river. Impacts to the wetland buffer is mitigated by the proposed drainage system which provides storm water treatment and some infiltration. Encroachment is minor (120 SF).

14. The values of surrounding properties **ARE NOT** diminished because:

The values of surrounding properties are not diminished because there is still a sufficient buffer between the building line of the proposed project and the adjacent property line. The existing tree line is to be maintained between the building and abutting properties which will reduce visibility to the proposed project area. Encroachment is minor (120 SF).

15. Literal enforcement of the provisions of the ordinance **WOULD** result in an unnecessary hardship.

(c) For purposes of this subparagraph, "unnecessary hardship" means that special conditions of the property distinguish it from other properties in the area

(v) Owing to these special conditions, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The RiverMead development treats storm water runoff before being discharged to wetlands/bodies of water on site. Also, although an expansion to the RiverMead site is being proposed, a large portion of the lot is untouched and is to remain in its natural state. Encroachment is minor (120 SF).

(vi) And, the proposed use is a reasonable one since:

the proposed development that encroaches on the 50' wetland buffer is still 81' from the boundary of the wetland and maintains a sufficient wooded buffer due to limited impact in the setback. Impact to the buffer is mitigated with the proposed drainage system (that provides equivalent function as the buffer). Encroachment is minor (120 SF).

In granting this variance, the Board imposes the following conditions:

2. Substantial compliance to the plans and application submitted.
Incorporate 5 criteria.

Signed,
James Stewart, Chair

Minutes: A motion was made/seconded (Leishman/LaRoche) to approve the Minutes of July 3, 2017, August 7, 2017 and September 6, 2017 as written with all in favor.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant