

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, October 16, 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: Peter Throop and Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer

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 (TNOZ I Chapter 245, section 15.3). The Groundwater Protection Overlay Zone (GPOZ Chapter 245, section 14) also applies. Both overlay zones modify the underlying

The General Residence District allows residential uses by right. The TNOZ-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 TNOZ 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%**.

Chair Stewart called the meeting to order at 5:00 p.m. “Good afternoon” he said “this is a continuation of 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. Chair Stewart then introduced the members and staff, read the Rules of Procedure and (as Mr. Leishman had not yet arrived) appointed Ms. Monahan to sit. He also noted new evidence in the form of a memorandum had been submitted by Attorney Tom Hanna and a schematic of the Groundwater Protection Overlay Zone (GPOZ) and the Traditional Neighborhood Overlay Zone (TNOZ I) had been submitted by Attorney John Ratigan.

Attorney Hanna began by reminding the members of the proposed notice of decision he'd distributed at the October 2nd meeting. "I am not going to read it tonight but I would like you to please refer to it" he said. He also noted the last line of the Applicability section of the TNOZ I (245-15. 3 C) stating "however all other relevant provisions of the zoning ordinance shall still apply" adding "this means the provisions and protections of the Groundwater Protection Overlay Zone still apply to the Traditional Neighborhood Overlay Zone. (and) "According to the Performance standards of the GPOZ all new residential development with a density of greater than one unit per acre shall be connected to the town water and sewer and clustered on the site so the impervious surfaces are not more than 20% of the land area." He looked to the Board and said "the fact that the development must be clustered demonstrates that TNOZ I is not allowed. The GATO subdivision is a traditional four-lot subdivision, it is not clustered. Traditional neighborhoods are not clustered, a cluster is *not* traditional."

Chair Stewart asked if anyone in the audience would like to speak. Planning Board member and current Chairman Ivy Vann stood and introduced herself and began by noting (as she recalled) the Planning Board's intention when creating the TNOZ I was that it would or should override the guiding principles of the underlying zoning. "And to the extent that we said this is going to override the underlying zoning it did not occur to us that there would be a conflict with the aquifer protection zone." She went on to say "four houses on 20,000 square feet in the Rural Zone would certainly be clustering but what we envisioned was the creation of more parts of town matching the historical density we have. That was the intent of the use of this ordinance, allowing smaller lots with smaller buildings that connect the neighborhoods of Peterborough. That is all I have to say." Ms. Vann concluded by telling the members "I did not vote on the ordinance, I recused myself but I was there for all the conversation and that is what I remember."

As Kitty Perullo introduced herself as an abutter and as she asked about the percentage of common ground for a neighborhood development built in a GPOZ Chair Stewart interjected "we are not here tonight to interpret anything other than to decide if the Code Enforcement Officer made the right decision as far as the ordinance goes."

A brief discussion about the definition of *cluster* followed with Attorney Hanna telling the members “cluster is a term of art in land use.” GATO Project Manager Chad Branon (Fieldstone Engineering) introduced himself and asked to speak to the definition of clustering. He went on to explain what he believed was the misuse of the terminology as it related to TNOZ I. “This is a development question, it is not focused on the zoning” he said adding “and it is clear the regulation was adopted to promote infill development. You can look at clustering in a number of different ways.”

Attorney Andy Prolman introduced himself as the attorney representing GATO Properties, LLC. He read a short passage from a decision from the New Hampshire Supreme Court and how they interpret statutes. He spoke of the plain meaning of the language and referenced the intent described by Ms. Vann earlier. “That is what is being proposed by GATO” he said. He noted the idea to have all this information in the TNOZ I and not have it be allowed was illogical. “To have an ordinance just for fun does not make any sense” he said adding “It just doesn’t make any sense to adopt an ordinance that cannot be implemented. Mr. Carrara’s administrative decision should be upheld.”

From the audience Stephanie Hurley introduced herself as a former abutter (having owned 57 Union Street) but that she was now involved with the Contoocook River Local Advisory Committee. She went on to note her concern with groundwater and its protection. “I agree smaller lots with minimal impervious surfaces are important but not more important than protecting the groundwater. Protecting the groundwater is primary, I hope you take that into consideration” she said.

Mr. Branon briefly reviewed the stormwater management design with Chair Stewart noting while those considerations were important “they are concerns for the Planning Board and site plan review.”

Attorney Hanna stood and read his memorandum, Mr. Prolman reiterated the plain meaning of the language of the ordinance and the intent of the ordinance.

A motion was made/seconded (Stewart/Leedberg) to move to Deliberation with all in favor. Chair Stewart read the deliberative statement.

Deliberation:

Chair Stewart began with “OK we’ll start with a straw poll.” He went on to say “the intent is clear that the ordinance is for infill in the district, however what is written is confusing and we have to make a determination. I believe the Groundwater Protection Overlay Zone modifies the underlying zoning and must be adhered to. I vote to overrule Dario’s decision in favor of Mr. Hanna’s appeal.”

Ms. Monahan noted she was in favor of granting the appeal as well. “Dario did a good job interpreting the evidence and the conflict” she said adding “the fact is the GPOZ is

an overlay district and when applied modifies all other zoning districts.” She went on to say “the TNOZ I is also an overlay district and when the two compete the more restrictive regulation prevails and the performance standards for the overlay must be met. I vote for granting Mr. Hanna’s appeal.”

Mr. Chatfield began with “I am in the same place, our job is to decide what ordinance takes precedence, which is the more restrictive one. I agree with the appeal.”

Ms. Leedberg stated “I agree with the understanding that we are talking about the importance of paying attention to which district applies.” Mr. LaRoche also agreed noting “the stricter regulation applies.”

The members took a 15 minute recess to draft their decision with town counsel present to assist them. When they were done they called the audience back and Mr. Chatfield began by reading the following from Chapter 674 Local Land Use Planning and Regulatory Powers: Zoning Board of Adjustment and Building Code Board of Appeals:

“The Zoning Board of Adjustment shall have the power to hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16 (and) in exercising its powers under Paragraph I, the Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.”

Chair Stewart read their decision:

NOTICE OF DECISION

Appeal 2017-01

October 16 2017

You are hereby notified that in the matter of the **Appeal of an Administrative Decision** filed by Thomas R. Hanna, Esquire on behalf of Joni Doherty pursuant to RSA 676:5 of the zoning regulations in regards to the decision letter of Dario A. Carrara, Code Enforcement Officer and Zoning Administrator for the Town of Peterborough, dated June 27, 2017 the Board makes the following decision:

The Groundwater Protection Overlay Zone (GPOZ) is an overlay zone which applies to ALL underlying districts. The Traditional Neighborhood Overlay District (TNOZ-I) is also an overlay district that modifies ALL underlying zoning districts. When overlay districts conflict, the more restrictive provision shall apply.

The Board disagrees with the assertion in the Appeal that clustering excludes multiple small, contiguous lots that meet the density and dimensional requirements of the Traditional Neighborhood Overlay District. There are many ways to cluster homes, lots or development and that is for the Planning Board to review and decide.

Signed,

James Stewart, Chair

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.

A motion was made/seconded (Chatfield/LaRoche) to approve the decision with all in favor.

The meeting adjourned at 5:50 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant