



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, MARCH 29, 2017

Members present: Patrick Dwyer, Tony Pellegrino, Richard Conescu, Lynn Christensen and Alternate Leonard Worster.

Member absent: Fran L'Heureux

Staff present: Planning and Zoning Administrator Jillian Harris and Recording Secretary Zina Jordan.

1. Call to Order

Patrick Dwyer called the meeting to order at 7:00 p.m. and designated Leonard Worster to sit for Fran L'Heureux.

2. Roll Call

Richard Conescu read the preamble. Patrick Dwyer led the pledge of allegiance and swore in members of the public who would be testifying.

3. Michael A. Klass of Bernstein, Shur, Sawyer & Nelson, P.A. (petitioner) and Land of Goshen, LLC (owner) — Variance under Section 3.08.8 of the Zoning Ordinance to permit a cluster subdivision to be serviced by private septic systems whereas municipal sewer is required. The parcel is located at 6 Watkins Road in the R (Residential), and Aquifer Conservation Districts and Wellhead Protection Area, Tax Map 4C, Lot 449. Case #2017-09.

Attorney Michael Klass, Bernstein Shur, said the petitioner proposes to install a septic system on each lot of a 12-lot cluster subdivision because there is no sewer available. There would also be one 14.5-acre open space lot. A single-family home is on Lot 1. There is a wetland to the south outside the building envelope. Test pits confirm that a septic system can be adequately placed. It would need approval from the NH Department of Environmental Services (NH DES). The parcel lies between two existing cluster subdivisions that were granted with the same variance that is being sought. The proposed open space would connect to abutting open space lots. Zoning allows for 19 units, but 12 lots with one open space lot is preferred by the petitioner.

Attorney Klass read the statutory criteria into the record.

As to #2, spirit of the ordinance, Tony Pellegrino questioned the test pits and safe use of individual septic systems. Chad Branon, Project Manager, Fieldstone Land Consultants, PLLC, explained that they were dug 9'-10' deep. No ledge was found in 12

of the 17 pits. The shallowest ledge is 4½' deep; the deepest ledge is 9' deep. The soil is well drained and sandy. Seasonal high water is between 3'-9'.

As to #4, Patrick Dwyer wondered whether widening Watkins Road would affect neighboring property values. Attorney Klass noted that a conventional plan would allow nine lots with no buffer or open space. Patrick Dwyer said three more lots would be a significant increase. It is a trade-off between more cars and a buffer on each lot. Chad Branon said Watkins Road would be upgraded, which would improve the frontage of the existing homes. No frontage is required in a cluster. A conventional plan would have to cross the wetland. Attorney Klass added that the open space would be conservation land that the owners would have the right to use. Chad Branon explained that Watkins Road is a town road. He opined that bringing it up to town standards would increase neighboring property values. Attorney Klass added that traffic on Amherst Road would greatly exceed traffic in the subdivision.

Public comment

Heather Dubois, 40 Amherst Road, asked about soil test information and ledge. She wanted the stream/pond on Lot 12 to be included in the conservation land, which Lynn Christensen said is already the case. Only a small part of it is on Lot 12. Patrick Dwyer explained that the petitioner must appear before the Merrimack Conservation Commission (MCC) and to provide test results.

Charles Duggan, 14 Merrill Road, said runoff from the back hill to the southeast can be extreme and questioned the test validity because of the drought. He asked who would be responsible for a septic system breakdown when water is at normal height. Lynn Christensen said actual soil conditions are rated by the state whether they are dry or wet. Tests determine whether soils are able to handle/accommodate different conditions over a period of years. Patrick Dwyer explained that the applicant could build a conventional subdivision with nine septic systems that drain downhill without having to appear before the Zoning Board (ZBA). The Planning Board is the body that addresses septic system designs and drainage concerns.

Dan Ricker, 12 Merrill Road, said that, in a wet spring water comes downhill and goes under the road to the other side. He asked about environmental impact, where the water would go, and consequences of a leach field failure. He thought there should be more than 17 test pits on 24 acres. He noted that the size of a home affects the size of a septic system. Jillian Harris explained Aquifer Conservation District and Wellhead Protection Area. Lynn Christensen said blasting is a Planning Board issue.

Chad Branon said he could share test pit information and noted that this is a conceptual development plan. 17 pits are adequate: one on each lot and some on the road exceed requirements. He repeated that soils are sandy and well drained. Wetland and Soil Scientist Chris Guida did the tests and Chad Branon is a licensed septic designer. The subdivision layout could be redesigned later as part of the Planning Board process. NH DES Septic Bureau must approve the septic designs. Chad Branon explained test pits and the seasonal high water table. Regulations require designing the septic systems so that there is no runoff or negative impact on surrounding areas. The site drains primarily toward the wetland to the south rather than toward Merrill Road. Any storm water runoff would be mitigated with either storm water management or infiltration

areas, which is a Planning Board issue. Homes would have three or four bedrooms. DES must accept the septic load and lot size for each lot. These lot sizes exceed DES standards. The state regulates septic systems and is responsible for enforcement in case of failure. Based on test pit results, no blasting is anticipated. That, too, is a Planning Board issue. Every test pit met local and state requirements.

Chad Branon would consider modifying Lot 12 to put the man-made pond into conservation. Attorney Klass, noting that there is no public sewer on the proposed development or on neighboring lots, said concerns go both ways. Chad Branon read out data about where there is ledge and noted it is at very good depths for septic systems. He reiterated that every lot can support a septic system without creating environmental impacts or requiring blasting. Every homeowner must maintain the septic system. Lack of maintenance accounts for most failures.

Heather Dubois noted that other abutting subdivisions have much larger lots.

As to #5, Richard Conescu did not see lack of a sewer as a hardship. Patrick Dwyer repeated that the applicant could build a conventional nine-lot subdivision without involving the ZBA.

Lynn Christensen repeated that the difference is open space around a cluster subdivision and no open space around a conventional nine-lot subdivision with larger lots. The sewer requirement was enacted because clusters were proposed in areas with poor soils. That is not the case here because the soils are good.

Dan Ricker asked how the direction of drainage is determined. Lynn Christensen replied that septic systems drain downward and not sideways and are not related to storm water or rain drainage. Chad Branon said wetland setbacks safeguard against septic failure. There must be adequate separation. Septic systems are designed so that there is no runoff and so that effluent infiltrates into the ground and is treated and recharged. A cluster plan is much more environmentally friendly than a conventional plan. He repeated that a conventional subdivision would require crossing the wetland and that the proposed open space would be contiguous to other conservation land.

Richard Conescu said there would be more sewage per square foot in a cluster than in a conventional plan. This is why the requirement for sewer is in the ordinance.

Patrick Dwyer saw a potential for diminished property values and did not see unnecessary hardship. He doubted a cluster would work here.

A motion made by Richard Conescu and seconded by Patrick Dwyer to deny the variance failed, by a vote of 2-3-0. Tony Pellegrino, Lynn Christensen and Leonard Worster voted in the negative.

The Board voted 3-2-0 to grant the variance, with the condition that petitioner shall obtain Planning Board approval for the proposed 12-lot cluster subdivision, on a motion made by Lynn Christensen and seconded by Tony Pellegrino. Patrick Dwyer and Richard Conescu voted in the negative.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the proposed cluster subdivision not only would allow for preservation of open space,

but, due to the location of adjacent open space, promote connection of open spaces within the neighborhood. The soils on the property have been tested and would allow for appropriately designed and installed on-site septic systems. The subdivision would neither negatively impact the essential character of the development in the Watkins Road area nor threaten the public health, safety or welfare;

2. The spirit of the Ordinance is observed because the cluster design would allow for the creation of dedicated open space and encourage development away from wetlands in the direction of existing infrastructure. The proposed open space would also abut existing open space and allow for its interconnection. The soils on the property have been tested and would allow for the safe use of individual septic systems for single-family homes. The proposed development would blend well into the essential character of the neighborhood and allow for the safe and reasonable use of the property;
3. Granting this variance would do substantial justice because it would allow the property to be developed in the way that strikes a balance of community needs, conservation of the natural environment and accessibility, and access and safety for the homeowners in the development. Denial would not result in an appreciable gain for the public, while causing a substantial loss to the applicant by preventing the proposed use of the property;
4. The values of the surrounding properties would not be diminished because they include single-family lots in cluster subdivisions. The proposed lots would be used in a manner consistent with the neighboring lots and should not produce different or significant traffic, noise, odors, or other detrimental impacts to the surrounding area. The proposed cluster design would minimize impacts to neighboring properties by creating a buffer and approximately 12 acres of open space;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property because the property is unique in that it is located in the Residential zoning district (where cluster subdivisions are an allowed use) and serviced by water but not sewer. Another unique feature is the existence of a public road (Watkins Road) that currently provides access from the northeasterly portion of the property to Amherst Road. The soils on the property have been tested and would support the proposed on-site septic systems. Wetlands located at the southern portion of the property provide further special features. The property is unique in that it is abutted to the north and to the south by the open space portions of previously permitted cluster subdivisions. The proposed lot configuration would allow for development on the property in the direction of the public road, with the conservation area located in the direction of pre-existing open space.

The proposed subdivision seeks to cluster houses toward the existing public way and away from wetlands and existing adjacent open space in a manner

consistent with the character of the neighborhood. Because of the soils on the property, such development can be appropriately be serviced with on-site septic systems.

Strict application of the Ordinance would result in a conventional subdivision with a greater disturbance on the property and in a manner that would potentially separate existing open spaces, which would be contrary to the spirit of the Ordinance;

- 2) The proposed use is a reasonable one because it contemplates uses that are permitted on the property under the Ordinance, i.e., cluster subdivisions and single-family residential.

4. Discussion/possible action regarding other items of concern

Patrick Dwyer was concerned by abutters' claims to have received meeting notices late. Jillian Harris explained that mailings met all regulations.

5. Approval of Minutes - February 22, 2017

The minutes of February 22, 2017, were approved, by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.

6. Adjourn

The meeting adjourned at 8:35, by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Lynn Christensen.