



Town of Merrimack, New Hampshire

Community Development Department
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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES

WEDNESDAY, JANUARY 30, 2013

Members present: Phil Straight, Fran L'Heureux, Tony Pellegrino, Patrick Dwyer, and Alternates Leonard Worster and Richard Conescu.

Members absent: Kevin Shea and Alternate Nathan Barry.

Staff present: Assistant Planner Jeff Morrissette and Recording Secretary Zina Jordan.

1. Call to Order

Phil Straight called the meeting to order at 7:00 p.m. and designated Richard Conescu to sit for Kevin Shea.

2. Roll Call

Fran L'Heureux led the pledge of allegiance. Patrick Dwyer read the preamble. Phil Straight swore in members of the public who would be testifying.

3. Monogram Building & Development, LLC (petitioner & owner) – Special Exception under Section 2.02.7(A)(4) of the Zoning Ordinance to permit the installation of a sewer line not otherwise permitted in the Wetlands Conservation District. The property lies within the R (Residential) and Aquifer Conservation Districts on Pearson Road. Tax Map 7D, Lot 011-03. Case # 2013-01.

Attorney Greg Michael, Bernstein Shur, stated that the Planning Board approved the subdivision plan on June 28, 2011; however the approved sewer location is not the best one. The original plan would involve blasting through ledge. PSNH had to blast in order to erect two poles. A sewer pump station is nearby. Sewer and water are now in the ground, so blasting is problematic and digging up Pearson Road entails unnecessary expense. The engineer said he could avoid the wet area by going under it. It really is not a wetland; it was Swensen's hayfield for 50 years and is now scrub (shrub wetland per wetland delineation requirements). Wetland Scientist Lindsay Boyboth and Soil Scientist James Gove filed a January 16, 2013, letter with the Merrimack Conservation Commission (MCC) stating that, "given the type of soils identified in this area and the classification of the wetland, they do not foresee any wetland impacts" using the directional bore method. MCC Chairman Tim Tenhave wrote on January 23, 2013, that they have "no concerns or issues with the chosen method and plans for the sewer line". Wetland impact will be completely avoided and the sewer line will be deep enough to go to the pump station. The owners will maintain the private water and sewer. There are municipal and Merrimack Valley District (MVD) utility easement rights to access the property if there is an unattended problem. Attorney Michael read the Special Exception criteria into the record.

Questions from the Board

Patrick Dwyer questioned Special Exception Criterion c) concerning expenses to the Town, stating that there would be a cost to the Town if it has to go onto the property in case of an unattended problem. Attorney Michael replied that would apply no matter what was done. There is less potential for problems with this plan. The Town wants to promote municipal sewer. Jeff Morrissette said there is other unsewered land in the area and that there may be a benefit by the Town retaining said easement. Phil Straight noted that an inspection differs from forcing the Town to come onto the property because there is an unattended problem.

Patrick Dwyer questioned Special Criterion d), that the use will not conflict with the purpose of encouraging uses that can be appropriately and safely located in and around wetland areas. He asked whether a septic system or leach field would be less intrusive. Phil Straight said the choice belongs to the petitioner. A sewer is preferable to a leach field near wetlands. Jeff Morrissette reminded the ZBA that the Planning Board approved the lots knowing that said lots would be connected to Town sewer.

There was no public comment.

Deliberations of the Board

Patrick Dwyer said a sewer makes sense, but the Board should not set a precedent by impacting wetlands. Phil Straight stated that there would be zero disturbance and this method is preferable to blasting. Attorney Michael said the Public Works Department has no issues. Jeff Morrissette read the conditions requested by Jim Taylor of the Public Works Wastewater Division into the record. Attorney Michael agreed to the conditions .

The Board voted 5-0-0 to grant the Special Exception, with the condition that the petitioner shall satisfactorily address comments related to the proposed sewer line received by the Community Development Department from the Public Works Assistant Director per email dated December 19, 2012, on a motion made by Fran L'Heureux and seconded by Tony Pellegrino.

Findings of Fact

- a) To prevent the development of structures and other land uses on or adjacent to wetlands that would contribute to pollution of surface and ground water. The proposed use will not conflict with this purpose because once installed, the line will be invisible and have no impact on surface or ground water.
- b) To prevent the destruction and degradation of natural wetlands that provide flood protection. The proposed use will not conflict with this purpose because the disturbance is minimal and will not degrade the wetland or interfere with flood protection. This area was formerly a hay field and has no standing water.
- c) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which arise because of inharmonious use of wetlands and adjacent upland areas. The proposed use will not conflict with this purpose because once installed, it will connect to the Town's sewer lines and pump station.
- d) To encourage those uses that can be appropriately and safely located in and around wetland areas. The proposed use will not conflict with this purpose

because the installation will follow best management practices and will be installed in accordance with all Town and State regulations.

4. Communications

None.

5. Discussion/possible action regarding other items of concern

None.

6. Approval of Minutes

The minutes of November 28, 2012, were approved as submitted, by a vote of 4-0-1, on a motion made by Tony Pellegrino and seconded by Fran L'Heureux. Phil Straight abstained.

7. Adjourn

The meeting adjourned at 7:25 p.m., by a vote of 5-0-0, on a motion made by Fran L'Heureux and seconded by Tony Pellegrino.