



ZONING BOARD OF ADJUSTMENT

Town of Greenland • Greenland, NH 03840

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, November 17, 2020 – 6:30 p.m. – Virtual via Zoom

Members Present: Steve Gerrato, Ron Gross, David Sandmann, Leonard Schwab, Chip Hussey (Alternate)

Members Absent: Lindsey Franck

Staff Present: Jack Shephard – Building Inspector

Chair Gross opened the Board of Adjustment meeting at 6:05 p.m. and a roll call was taken. A checklist to ensure meetings are compliant with the Right-to-Know Law during the State of Emergency was read into the record by Chair Gross. He stated this was a Zoom meeting and was being recorded.

Roll call attendance: S. Gerrato – present, D. Sandmann – present, L. Schwab – present, C. Hussey – present, R. Gross – present.

1. 410 Portsmouth Avenue – Commercial A (U4, 17)

Special Exception

Owner/Applicant: 410 Portsmouth Ave LLC

The owner/applicant is seeking a Special Exception as specified in the Zoning Ordinance: Article III, Section 3.6.1, Item 'O' (Residential-Commercial-Industrial Mixed Use District), to construct three new buildings on the property, each structure containing three townhouses. There will be a total of ten units, including the Pickering House.

Colby Gamester, Attorney representing the owner/applicant; Paige Libbey, Jones and Beach Engineering; Erin Proulx, realtor representing the owner/applicant; and Jay Lajeunesse and Eric Littlefield, 410 Portsmouth Avenue LLC, joined the meeting via Zoom.

410 Portsmouth Avenue is also known as the Pickering House. Attorney Gamester briefly reviewed the history of the Pickering House. The property is located in the Commercial A Zone, the only district in Greenland that allows this type of use by Special Exception. Pictures of the existing property were shown. The carriage house and shed on the property will be removed as part of the project. The Pickering House will remain and be converted from a four-bedroom house to two bedrooms. Attorney Gamester noted the property line has changed slightly. The existing conditions plan was reviewed and wetlands were noted.

Driveway: a new access way will be proposed. The proposed access way will provide for better siting and location for the building and other features of the project. It will also provide better ingress and egress for residents as well as emergency services. Planning Board and NHDOT review will also be needed.

The proposed leach fields and stormwater management areas were noted. They paid particular attention to the effects of the project on the neighboring properties. Normal setbacks are 20 feet; a 30-foot setback was established around the perimeter of the property, providing an additional 10 feet of buffer. Landscaping will be detailed in future plans. A stockade fence is proposed. The access way was positioned to allow the building to be sited a specific way to ensure privacy for residents. With those features in mind, the project will be insulated to surrounding neighbors.

Building architecture was shown. Floor layouts were also shown. Anticipated size of each unit was 1,850 sq. ft. The renderings were finalized after the submission deadline; the actual size of each unit is 2,011 sq. ft. of heated living space. Each unit is two bedrooms. The intent is to be a condominium association.

Attorney Gamester believes the project meets all the dimensional and fundamental technical requirements with respect to setbacks, lot loading for septic, etc. The frontage is deficient of the 200 ft. ordinance requirement. The ordinance provides for non-conforming lots of record prior to November 1974 receiving dimensional relief. The general intent of the project is to have it blend in with a myriad of uses along that section of Portsmouth Avenue. The street scape will remain almost the same; the Pickering House will look the way it does today. Due to the slope of the property, the two-story nature and size of the buildings, someone would have to look down the driveway to notice the true extent.

Attorney Gamester reviewed the Special Exception criteria (copy on file). The property is located in an area that is not really a residential setting; it is a mixed-use area of Town. The multi-family use and new structures will blend in and not change the character. Attention has been paid to the setbacks, buffering, plantings, siting, and location of the buildings, etc. to reduce any inconvenience to surrounding properties. Attorney Gamester stated the traffic safety hazard would be improved with the change in the driveway curb cut and access point: it will go through Planning Board review, it will be redesigned by an engineer and reviewed by NHDOT. As a result, there will be a safer sight line, safer turning radius, etc. Referring to numbers from the ITE Manual, Attorney Gamester stated it was anticipated with the addition of the nine town homes four additional trips would be initiated during the AM peak hour, 4.7 additional trips during the PM peak hours, and a total of 53 additional trips during the entire day for this section of Portsmouth Avenue. This increase is negligible, given the extent of traffic currently experienced by residents and businesses in that area. The town houses will be marketed towards first-time home buyers, young couples just starting out, empty-nesters and downsizers. Sewer, water, Police, Fire, and school systems should not see a significant impact.

Attorney Gamester continued that the property generally slopes towards Rt. 33. When the development is started, best management practices will be implemented. The stormwater management area has been designated.

The applicants have sent letters to residents in the neighborhood to inform them of the project before they received the public notice from the Town; one phone call was received. Attorney Gamester stated that granting the Special Exception would be done in harmony and meet the intent of the Zoning Ordinance. The Board's function is to determine if the conditions in the Zoning Ordinance were met.

P. Libbey added that the number of units was driven by the lot loading for septic. There is a total of 10 units, 2 bedrooms each. The original house will be a single unit.

Chair Gross opened Board discussion, reminding members they were looking at a Special Exception for multi-family units on that property. S. Gerrato stated the area was a groundwater recharge area and

ten new septic systems would be installed, noting it was in the aquifer protection zone. He questioned if one of the units had a pump-up septic system. P. Libbey stated it would depend on the grading of the site and the elevation of the last unit. It was dependent on the final design.

L. Schwab stated that Attorney Gamester noted the exterior of the main house would remain untouched, which was extremely important. L. Schwab questioned why the carriage house could not be retained for its historical basis. He suggested it could be turned into a workshop area for the inhabitants of the new condos. L. Schwab also noted that as a driver or pedestrian approaches the end of the driveway on Portsmouth Avenue, looking to the right and left, the roadway flares away in a detrimental direction in terms of sight line, which causes a bit of a hazard. S. Gerrato stated that would be a Planning Board item; L. Schwab added that conditions can be imposed on a Special Exception by the ZBA. L. Schwab continued that the applicant was proposing three triplexes and questioned why they would not do two quadraplexes due to the increased number of cars and people in the area. He also questioned how they arrived at four additional morning trips with the traffic loading of nine units. His concern was that the density was too great. He was for the concept but against the density.

D. Sandmann stated that keeping the carriage house would be essential to the historic nature of the property. He agreed with L. Schwab about the density and traffic; there would be more traffic than they expected. Getting onto Portsmouth Avenue was going to be a dilemma.

C. Hussey stated that the area is outside of the aquifer protection zone. Responding to a question from C. Hussey, J. Lajeunesse stated the units would have full basements. C. Hussey noted the area does have flooding issues and recommended daylight drains to mitigate the problem on non-point source pollution. P. Libbey stated that the building regulations require foundation drains. Their goal is to put them above the seasonal high-water table. C. Hussey clarified that the bottom of the basement would be above high water. P. Libbey stated there would also be foundation drains.

Attorney Gamester addressed the sight line concerns. If cars were required to stop at the white stripe, the angle would be changed and the sight line much better. P. Libbey added the line of sight was measured 14 ft. back from the white line. They have surveyed 400 ft. in both directions and there did not appear to be any sight distance problems. Moving the driveway slightly further west would put it more into the inside of the curve which would make it better than the existing condition. NHDOT will be reviewing during their permitting process.

P. Libbey explained how they arrived at the daily number of trips. The highest case is nine trips during the AM peak hour. Attorney Gamester stated that the same information would be extrapolated for the PM peak hour.

J. Lajeunesse stated when they first looked at the project, they hoped and intended to save the carriage house. When looking at how the road would come into the property, it did not look feasible. The structural condition of the building would not allow it to be converted into a heated conditioned space. It would be a challenge to save the structure.

Emailed comments were received and are on file. Addressing the email concerning the fence and buffer zone around the Martin property, Attorney Gamester stated that the owners were open to additions and revisions to the project.

An email was received from Fred Ludington, 407 Portsmouth Avenue (copy on file). Property values: Attorney Gamester respectfully disagreed the units would be crammed. It is not going to be a Town

road; it will be privately maintained by the condominium association. There will be no snow and ice management by the Town. Traffic safety hazard: A substantial increase would occur if there were nine additional homes built on a property where there was a much less dense area of Town. As it is referred to in the criteria and applies to this lot, the estimated trips during peak AM and PM hours is not a substantial increase in this section of Town.

Chair Gross opened the meeting to public comments. Jay McKenzie, 1616 Greenland Road: His property abuts Rt. 33, which abuts 410 Portsmouth Avenue. His main concern was stormwater management and potential flooding to his property. P. Libbey stated that the Site Plan Regulations require a drainage study; it did not have to be done for the Special Exception. After her initial look at the drainage and pond location and size of the pond, the stormwater runoff and flow pattern on the site is based on the real site runoff. A complete stormwater management plan will be part of the Planning Board process. P. Libbey continued that if the plan changed, rain gardens could be added in the small areas in front of the buildings for driveway or roof runoff. Drip edges for the roof could also be added. There are options if the area is not big enough for what is planned. The roads are the biggest concern for drainage because of treatments during the winter.

J. McKenzie questioned the location of two culverts on the site plan. P. Libbey stated they did not locate any culverts on the property. J. McKenzie stated there are wetlands during any big storms and is natural without any development on the property. Attorney Gamester asked P. Libbey if it was possible to improve the stormwater management with development of a property. P. Libbey responded that towns have stormwater management requirements in their regulations to either match or improve the pre- to post-conditions of peak flow conditions on the site. When stormwater management designs are done, they make sure the conditions are improved and not worse.

Chair Gross clarified that the Zoning Board was the first step of many. If the Special Exception is granted, there are other steps for final approval where abutters will have a chance to speak.

There were numerous comments from abutters regarding drainage and runoff. L. Schwab noted that under Zoning Ordinance Article XVII – Board of Adjustment, Subsection 17.1.3.2, the Zoning Board can impose conditions when granting a Special Exception. He suggested the Board consider the comments from abutters especially the flooding and runoff issues, etc. It can be within the Board's purview to include the condition of catch basins in an unspecified quantity.

Jack Shephard, Building Inspector, has checked with the State Historical Society regarding the carriage house possibly being registered with the Pickering House; he is expecting an update from them shortly. Attorney Gamester has not checked on the status of the carriage house. He added if the Board granted the Special Exception it could be conditioned upon the response from the State Historical Society.

Fred Ludington, Portsmouth Avenue, noted that the ZBA had an obligation to grant a Special Exception based on the five criteria. His comments were primarily based on what was going to happen to the neighborhood and its intrinsic characteristics. Currently, the lot blends in with the neighborhood; the proposal for nine additional residential units behind the farmhouse would not blend in or match well. Chair Gross responded that a Special Exception is to allow this particular use (multi-family units) in this location. The Zoning Ordinance, Site Plan Review Regulations, and DOT requirements will need to be met.

Attorney Gamester noted that many of the concerns from abutters were specifically related to the Planning Board. He continued P. Libbey and her team would have to over-engineer the property to

ensure there would be no detrimental effects on stormwater management. Traffic concerns were also the purview of the Planning Board and will be reviewed on a much more technical level.

Addressing the characteristics of the neighborhood, Attorney Gamester stated the Pickering House was part of the streetscape. However, that section of Portsmouth Avenue could not be more diverse in architecture and building materials as well as the type of uses. The proposed residential uses were in line with the character of the neighborhood and will maintain the essential characteristics of the neighborhood.

S. Gerrato, as Co-Chair of the Planning Board, explained that the Planning Board was looking for this type of project as part of the Town's growth in this area. The Town approved a mixed-use area in March. There were problems in that area that could be worked out; there were places in Town with more wetlands than on that property.

F. Ludington stated he was wildly opposed to what the abutters had to go through. It will alter their residential neighborhood. He felt specific individuals who will be affected by a project should be considered and not what was necessarily good for the Town.

Eric Syphers, Park Avenue: Concerned about the impact on Town services, especially schools. Greenland was still an affordable community for families. The impact on Town services and schools needed to be looked at more carefully on the local level. He continued there were probably real issues that needed to be addressed: Attorney Gamester mentioned the project would be over-engineered before it was started. E. Syphers added that the ZBA had a responsibility to look at the project closely before they 'pushed it along' to the Planning Board.

Attorney Gamester, addressing over-engineering the project, stated it was not directed at only stormwater management. Plans going before any Board will be subject to peer review by consultants, engineers, and Board members. Attorney Gamester stated it would be an over-engineered plan in every respect. E. Proulx, realtor, addressed concerns about town home communities. Based on her research in neighboring communities, this type of town home community would not appeal to family-style living.

Additional abutter concerns included the aquifer protection zone, wetlands, building setbacks, effects on property values and changes to the Town center. It was too much for a small lot. It should be scaled down and more appropriate. Attorney Gamester stated they would be available to discuss additional buffering and/or landscaping with any of the abutters. They were trying to add to the unique character of the neighborhood and saw that opportunity with this property.

Chair Gross closed the public hearing and returned to the Board for discussion. S. Gerrato stated a person has the right to develop their land. Other than drainage, this is a nice piece of land. The Planning Board Engineer will be reviewing the project and work on the problems.

L. Schwab stated there is a section in the Zoning Ordinance that addresses Special Exceptions granted by the ZBA. Section 17.1.3.2 addresses some of the comments made by abutters. He continued that some members of the Board did not believe some of the statements that were made; there is questionable credibility and their source. It was akin to the old argument "give me some statistics and I can make anything work". L. Schwab agreed in concept but disagreed on the details. He planned on making motions for amendments.

D. Sandmann agreed with much of L. Schwab's statements. He was concerned about the wetlands and drainage as well as the leach fields and the pumping. There could be a problem with water in the basements. D. Sandmann was also concerned about the historic value of the house and carriage house as well as the abutters and privacy. Replying to Chair Gross, D. Sandmann stated there were other options for use of the carriage house.

C. Hussey stated it was a poor location in the center of Town. He was concerned about basement flooding. As part of the approval process there must be daylight drains.

Chair Gross stated his concerns were similar to other Board members. He did not agree with the trip data based on the number of residences. He would like to see more data as it relates to Greenland. There are a lot of condos and duplexes in Town and he would like to see real numbers as they relate to those. Even though they are two-bedroom units, there will be an office with a closet. J. Shephard defined a bedroom as sleeping quarters with a closet. Chair Gross noted a third bedroom could be created in the office space. He was concerned about parking and the impact of more than 4.7 trips. The studies were not specific to little towns. Chair Gross stated there was a much bigger impact than the Board was led to believe. He agreed with L. Schwab that criteria could be added to any ZBA approval.

Chair Gross noted the Special Exception was in the Table of Uses as multi-family. The definition of multi-family was a building or structure containing a maximum of five dwelling units each designed by occupancy by an individual household. Chair Gross interpreted it as a multi-family with a building or structure. According to the Table of Uses (Section 3.6), for a Special Exception to be granted, it has to meet the Site Plan Review requirements. Chair Gross reviewed Site Plan Review Regulations Section 3.2.1. If something does not meet the Zoning Ordinance, it cannot be allowed. Based on the comment regarding multi-family, he referred to Section 4.1.3 of the Zoning Ordinance. The Table of Uses indicates 'multi-family', not multi-family buildings. Multi-family according to the Zoning Ordinance is a building or structure, not multiple buildings or structures. Chair Gross interpreted that as there could not be multiple buildings or structures on a lot of record. It did not meet the Zoning Ordinance for a Special Exception to be addressed by the Zoning Board.

D. Sandmann and L. Schwab agreed it did not quite meet the requirements. S. Gerrato referred to Section 4.2 – Table of Dimensional Requirements, the CA Zone, Item 'j' – Building Footprint. The requirement was 10,000 sq. ft. maximum for each building on site. S. Gerrato stated it indicated there could be more than one building on a site in the CA Zone. Chair Gross disagreed, stating they were residential buildings. S. Gerrato stated this was the type of building the Planning Board was trying to bring into Town. There was further discussion regarding the interpretation and intent of that section of the Ordinance. C. Hussey noted that the Mixed-Use Ordinance did not apply to this property; it was in the Commercial A Zone.

L. Schwab noted that Section 4.1.3 did not differentiate between the Residential Zone and the Commercial Zone. It stated 'no residential building lot shall contain more than one residential structure used for living purposes'. He stated the applicant could apply for a single building with five units, or a single building of four units plus the house. L. Schwab suggested referring the matter to Town Counsel for clarification of how many residential structures are allowed on a Commercial A Zone lot.

MOTION: C. Hussey moved to continue further discussion to the December 15, 2020 meeting and consult with Town Counsel. Second – D. Sandmann

DISCUSSION: Attorney Gamester agreed with S. Gerrato that there could be more than one residential building on a lot in the Commercial A Zone. He would argue that the definition of multi-family would refer to the building or structure itself; it does not indicate on a lot. Attorney Gamester referred to the apartment building on the abutting property that was originally approved for two buildings, six units each; however, only one building was built, noting there have been zoning amendments over the years.

J. Lajeunesse stated that during their due diligence they reached out to the Town Planner multiple times who also spoke to the Town Attorney. During discussions with the Planner, they reviewed the number of buildings allowed, square footages, definition of multi-family, etc. Those conversations resulted in verbal confirmation that multiple multi-family units could be built on that site.

MOTION: C. Hussey moved to continue further discussion to the December 15, 2020 meeting and consult with Town Counsel. Second – D. Sandmann; roll call vote: S. Gerrato – yes, D. Sandmann – yes, L. Schwab – yes, C. Hussey – yes, R. Gross – yes. All in favor. MOTION CARRIED

Attorney Gamester clarified that the Board would like to see more data specifically to Greenland and possibly Stratham. Chair Gross suggested they also look at what could be added as a contingency and possibly address those. Chair Gross requested data on traffic more suited to Greenland and the number of people in the units. L. Schwab noted there were many comments regarding drainage and runoff; that should be discussed further. S. Gerrato added that Governor Sununu has declared a huge housing shortage in New Hampshire and requested that Boards ‘ease up a little bit’. Chair Gross stated that S. Gerrato was correct, but the Board had a duty to residents to ensure their concerns were addressed. D. Sandmann added they were also looking at affordable housing for families with children not just condos for professionals.

2. Approval of Minutes

MOTION: S. Gerrato moved to approve the minutes of Tuesday, August 18, 2020. Second – D. Sandmann; roll call vote: S. Gerrato – yes, D. Sandmann – yes, L. Schwab – yes, C. Hussey – yes, R. Gross – yes. All in favor. MOTION CARRIED

3. Other Business

There was no other business to discuss.

4. Adjournment

MOTION: D. Sandmann moved to adjourn at 9:10 p.m. Second – S. Gerrato; roll call vote: S. Gerrato – yes, D. Sandmann – yes, L. Schwab – yes, C. Hussey – yes, R. Gross – yes. All in favor. MOTION CARRIED

NEXT MEETING

Tuesday, December 15, 2020 – 6:30 p.m., Virtual via Zoom

Respectfully Submitted: Charlotte Hussey, Administrative Assistant