



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, June 16, 2015 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chair John Samonas, George Baryiames, Liz Cummings, Steve Gerrato, Brian Hutchinson

Staff: Myrick Bunker – Building Inspector

Chair Samonas opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present and that the meeting was being recorded.

1. Reorganization of the Board

Chair Samonas welcomed and introduced new and returning members of the Board: George Baryiames and Steve Gerrato.

MOTION: *L. Cummings moved to appoint J. Samonas as Chairman. Second – S. Gerrato; all in favor. MOTION CARRIED*

MOTION: *L. Cummings moved to appoint B. Hutchinson as Vice Chairman. Second – S. Gerrato*

DISCUSSION: B. Hutchinson respectfully declined.

MOTION: *B. Hutchinson moved to appoint L. Cummings as Vice Chairman. Second – G. Baryiames; four in favor, one abstain (L. Cummings). MOTION CARRIED*

S. Gerrato suggested that Ron Gross be asked to return as a seated alternate. A seated alternate may participate in all discussions but not vote. Chair Samonas will contact R. Gross.

2. Application for a Special Exception: 40 Alden Avenue [R20, 14B]

Owner: Furber Strait, LLC

Applicant: Fred and Deborah Ludington dba Sweet Grass Farm

Greenland Zoning Ordinance: Article III, Section 3.6, Subsections CB M 1, 2, and 5

The owner and applicant propose to construct a 6,000 sq. ft. facility for wholesale, warehousing and general manufacturing. These types of uses are allowed only by Special Exception.

Fred Ludington, owner and applicant, addressed the Board giving a brief history of the project. When the lot was purchased, it was zoned Industrial/Commercial and the uses were approved at the time. They are currently operating out of Autumn Pond Park on Alden Avenue. Sweet Grass Farm manufactures soap, candles, lotions and health and beauty aids. They also purchase product, warehouse and distribute. Approximately 97% of their products are sold through wholesale. F.

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Ludington was before the Board requesting three Special Exceptions to allow them to continue to do business in the new building. They will be vacating the two units they currently lease, but maintain ownership of the third unit. Everything will be moved to the new facility.

Alden Avenue is zoned Commercial B; there is no other Commercial B Zone in Town. Autumn Pond Park, the Fairpoint building and the two lots at the end of Alden Avenue are Commercial B. The Industrial Zone is on Ocean Road (Nike, Novel, etc.).

Responding to a question from L. Cummings, F. Ludington stated that they currently do warehousing; one unit is strictly high-base storage. The project was originally approved in 2005 for 13,000 sq. ft.; rental units were proposed for two-thirds of the building. The proposed facility will house only Sweet Grass Farm and has been reduced to 6,000 sq. ft. A fair amount of the detention ponds are in the wetland buffers; a Conditional Use Permit has been requested at the Planning Board. Their Wetland Scientist considers the area to have contiguous surface waters.

Traffic is not projected to increase. The number of employees will not change. Currently, there is one semi a day that makes deliveries; that is not expected to change. There will be Portsmouth water. Septic has been approved by Town and State. L. Cummings commented that the Planning Board should be doing their due diligence with fire and sprinklers.

There was a discussion about the building being visible and inviting to people driving by on Rt. 33. There may be signage on Rt. 33 for delivery purposes. F. Ludington assured the Board that they did not want to do retail from their facility. 95% of their products are wholesaled for retail. The retail shop is only open between Thanksgiving and Christmas for the local community.

Chair Samonas opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board. Reviewing the criteria for a Special Exception, L. Cummings stated the applicant met the requirements as outlined in the applications; the Board was in agreement.

MOTION: *L. Cummings moved to grant the Special Exception to Furber Strait LLC, 40 Alden Avenue [R20, 14B], to allow general manufacturing in the Commercial B Zone. Second – S. Gerrato; all in favor. MOTION CARRIED*

MOTION: *L. Cummings moved to grant the Special Exception to Furber Strait LLC, 40 Alden Avenue [R20, 14B], to allow warehousing in the Commercial B Zone. Second – S. Gerrato; all in favor. MOTION CARRIED*

MOTION: *L. Cummings moved to grant the Special Exception to Furber Strait LLC, 40 Alden Avenue [R20, 14B], to allow wholesale in the Commercial B Zone. Second – S. Gerrato; all in favor. MOTION CARRIED*

3. Application for a Variance: 499 Portsmouth Avenue [U5, 4]
Greenland Zoning Ordinance: Article XVIII, Section 18.7, Subsection 18.7.1A
Owner: Estate of George K. Bates, Thomas A. Hayes
Applicant: Paul G. Sanderson – Esq. Agent
The owner and applicant are proposing to construct a three bedroom septic system within the required 75' setback.

4. Application for a Special Exception: 499 Portsmouth Avenue [U5, 4]
Greenland Zoning Ordinance: Article XVIII, Section 18.10, Subsection 18.10.1
Owner: Estate of George K. Bates, Thomas A. Hayes
Applicant: Paul G. Sanderson – Esq. Agent
The owner and applicant are proposing to construct a three bedroom septic system within the required 75' setback. The current location is within the required 75' setback; the proposed location would be further into the setback.

Paul Sanderson, applicant and representing the owner, described the location of the property and gave the Board a brief history. There is currently no one living in the home due to its age as well as a partial foundation collapse. The existing structure is located within the 50' and 75' setbacks; the exact location of the septic system is unknown. The septic system is not in failure, but has not been used since 2009.

P. Sanderson reviewed the five elements of the Variance (see application on file). The road elevation from the bottom of the house is approximately an 11' drop over a 40' run, or a 27.5% slope. From street level to the back of the property, it changes to a 25% slope. The proposed septic system will be taken out of the 50' setback and moved closer to the house. P. Sanderson stated it's impossible to put a septic system that's in compliance anywhere on the property that does not deal with a 50' or 75' buffer line. They requested a Variance that would allow for the septic system to be located within the 75' setback in accordance with the plan approved by the Building Inspector and NHDES. The Special Exception would allow the garage to be moved back 10' in order to permit the appropriate storage of a vehicle so the public way is not impacted.

A Presby Enviro-Septic System is proposed. P. Sanderson reviewed the approved septic plan with the Board. He continued that the Conservation Commission has reviewed the proposed plan. In general, they were in favor of the project. The Conservation Commission asked that conditions be added for better erosion control during construction and the new driveway be done with a pervious surface for better stormwater control. Gutters will be placed along the roofline to collect water off the impervious surface and brought down into stone rain gardens for filtration.

The owner and applicant are hoping the abutter will continue to allow them to use his property for access to install the septic system; otherwise, they will have to "reach" over from the sidewalk with an excavator. The construction of the septic system will cause the slope to become a flat area. The first thing for erosion control will be the construction of the septic system. The area of the grassy swale will remain unchanged. They worked with the Conservation Commission on plantings to ensure the wetland buffer is more functional. The septic tank will be concrete and the leach field will be a Presby Enviro-Septic System. The garage size will not change, but will be moved back. There is a small corner of the garage in the 50' buffer. L. Cummings pointed out to the Board that the garage is a 50' buffer vs. the septic which is a 75' buffer.

Chair Samonas opened the meeting to public comments. Tom Hayes, 511 Portsmouth Avenue: Introduced himself to the Board. Harley Seaton, 16 Post Road: Asked P. Sanderson what workable position there was to install the septic system. P. Sanderson stated that rather than reaching over the sidewalk with an excavator, they were hoping the he would continue to be gracious enough to allow the equipment access through his property. H. Seaton was concerned with getting in a jam trying to be a good neighbor. L. Cummings assured him that the Board couldn't make him do anything and the applicant would have to work with him.

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There being no further comments, Chair Samonas closed the public hearing and returned to the Board. L. Cummings stated that she was in favor of granting the Variance; the wetlands were being protected. The applicant met the requirements as outlined in the application; the Board was in agreement.

MOTION: *L. Cummings moved to grant the Variance to allow construction of a septic system in the 75' buffer at 499 Portsmouth Avenue with the following conditions: (1) the system shall be constructed in accordance with the plan entitled "Subsurface Disposal System for Thomas Hayes, 499 Portsmouth Avenue, Greenland NH", dated 2/26/2015 by Ross Engineering, Alex Ross, PE, as approved for construction by the NH Department of Environmental Services and the Greenland Building Inspector; (2) upon approval of the system for operation, the existing system on the property shall be abandoned, and any existing tanks or other remnants of the system shall be made safe and inoperable as instructed by the Greenland Building Inspector; (3) the above noted plan shall include instructions for erosion control measures to be taken during construction of the system to assure that no surface water or other runoff that is contaminated with soils or other materials shall be allowed to enter the jurisdictional wetland area. Second – B. Hutchinson; all in favor. MOTION CARRIED*

Special Exception: L. Cummings stated that the setback should be 50' for the garage. Only a small portion is in the setbacks, not the entire garage. A Special Exception is an allowed use as long as the criteria are met; the applicant meets those requirements in his application. L. Cummings reviewed the criteria for the Board.

MOTION: *L. Cummings moved to grant the Special Exception for the relocation of the garage at 499 Portsmouth Avenue in the 50' buffer as shown on the "Proposed Conditions Plan for Thomas Hayes, 499 Portsmouth Avenue, Greenland, NH", dated 5/27/2015 by Ross Engineering, Alex Ross, PE, Job No. 14-146, with the following conditions: (1) if possible, the reconstructed driveway will be of a gravel material or paved with a pervious material; (2) the relocated structure shall be for the purpose of storage of a motor vehicle or other materials, and shall not be living space. Second – S. Gerrato; all in favor. MOTION CARRIED*

5. Application for a Variance: 75 Bramber Valley Drive [U7, 10]
Owner: Jade Realty Corporation
Applicant: Richard Green, Green & Company Building & Development Corp.
Greenland Zoning Ordinance: Article IV, Section 4.2, Subsection CA b
The owner and applicant propose to subdivide 2.1 acres from the existing 50.1 acre parcel, providing no frontage on a Class V or better highway. The ordinance requires lots to have a minimum of 200' of frontage on a Class V or better highway.

John Springer, Springer Law and representing the applicant, addressed the Board. Also present were Rick and Jenna Green, John O'Neill and Joe Coronati (Jones and Beach Engineering). J. Springer described the area of the proposed Age Restricted Housing project before the Planning Board and the area to be subdivided, adding that Bramber Valley Road is a private road. The total project involves approximately 51 acres; they are proposing to subdivide out two acres.

The entire parcel is located in the Commercial A Zone. Jade Realty is the current owner; the property is under a Purchase and Sale agreement with Green and Company. The two buildings located on the parcel to be subdivided are owned by Jade Realty. One building is used for the storage of golf carts and equipment, the other is used for storage of personal property. The lawyer for Jade Realty has confirmed that they will retain ownership of the subdivided lot; the buildings will continue to be used as they are currently.

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The lot has utilities and an existing curb cut onto Bramber Valley Road. It meets the required lot size. In order to be subdivided without a Variance, the lot needs to have frontage on a public road. J. Springer noted that Bramber Valley Road is private. He continued that the ordinance requires 200' on a Class V road or better.

J. Springer further stated that they were subdividing it off because it was not a necessary or convenient part of the ARH project. He pointed out that it was on the opposite side of the road and was not a good fit for the project. A Variance was being requested for the frontage requirement. If Bramber Valley Road were a public road, they would not have to be at the ZBA. All the criteria for the Commercial A Zone had been met with the exception of the private road.

A very detailed application and narrative was submitted. J. Springer reviewed the Variance criteria with the Board (application on file). He noted that the Board granted a subdivision of the lot a number of years ago and is on a recorded plan. It was part of a different subdivision which was not built out. This parcel is the only portion of the property that is not on the easterly side of Bramber Valley Road and is not integral to the ARH project. They have more than twice the required frontage and meet the purpose. The lot exists every way possible with the exception of the legal element.

Asked by G. Baryames, the property will remain zoned commercial. L. Cummings added that if the ARH project is approved, that parcel will remain commercial. The frontage on Portsmouth Avenue is 68'. There are two lots between the proposed subdivided lots and Portsmouth Avenue. L. Cummings stated that there was subdivision approval granted in 1979 for eight lots, with the stipulation that there be no residential. Access to the new parcel will be deeded, if approved. Maintenance and upkeep of the right-of-way will be the responsibility of Green and Company or the entity operating the ARH, it will not be the Town, and includes plowing, lighting, insurance, etc.

Marie Gilbert (15 Tuttle Lane), Carol Smith (21 Tuttle Lane), Barbara Wilson (11 Tuttle Lane) and Lois Sanborn (39 Vernita Drive): All had the same concerns regarding the trees that weren't planted along the property line when the original subdivision was done as well as the noise from the existing storage buildings. In addition, they were concerned with the use of the buildings if the lot was subdivided.

Chip Hussey, 207 Winnicut Road: Stated that he was not representing any Board or Commission in Town. He had several questions for the applicant: was the subdivision going to be part of the condo association? Response: no. Is the Clark property, an abutter, going to be part of the subdivision? Response: they will be granted an access easement. Who is responsible for maintaining the road after Green and Company sells the lots? Response: the condo association. C. Hussey stated that in his opinion the developer was creating a hardship because they wouldn't make it a public road. The people owning the ARH units would become responsible for maintenance of the road. J. Coronati responded that under the ARH Ordinance the road must be private; it was a private road now, and a private road was before the Planning Board. C. Hussey countered that the ARH units don't start until after the existing club house. Chair Samonas clarified that C. Hussey's concerns were the road, access to the road, maintenance of the road and hardships being caused by the developer. C. Hussey added that it could be made a public road and they have chosen not to; therefore, there is no hardship.

Chair Samonas told those present who were concerned about the noise they would need to contact the Town. Addressing the change of use, L. Cummings assured the audience that it would have to come to the Building Inspector or Planning Board. There was also concern about subdividing the property further. J. Coronati responded that the minimum lot size is two acres, and could not be subdivided again without a Variance.

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There being no further comments, Chair Samonas closed the public hearing and returned to the Board for discussion. S. Gerrato stated that he was in favor of age-restricted housing in Town and it will be a very nice development. He reminded the Board that they didn't want to set a precedent by allowing frontage on a private road. L. Cummings stated that she "had worse than an uncomfortable feeling". As a Town, they could not do anything unless the State says it's okay. They say you can't erect something on a private road, and this isn't okay. There are other alternatives and the road could be made a public road up to the edge of the lot. There is a 300' easement on road from Portsmouth Avenue, which is almost to the edge of the lot. In addition to no frontage on a public road, there are easement problems on the private road. It appears the subdivision is being done because the current owner doesn't want to pay condo fees. The condo fees will be what maintains the private road. L. Cummings continued that the Portsmouth Avenue end of that road could become a "road maintenance war zone". She added that the Town would be setting itself up to not require frontage on any private road; by granting frontage it would be saying it was okay. L. Cummings also discussed the possibility of an increase in traffic. The ZBA had to be concerned about the health, safety and welfare of residents. The applicant did not prove there would be hardship; they could function on the private road. L. Cummings was also concerned about the easements along that road for water and utilities. G. Baryames had the same concerns that the property would be subdivided and not become part of the condo association, causing friction with the people purchasing homes in the ARH development.

Chair Samonas suggested that the lot could be condominiumized and not require a subdivision. He continued that they didn't want to get involved with road maintenance, which is an important concern. The general consensus of the Board was that they needed to consider the 73 prospective owners in the ARH development. Chair Samonas asked Attorney Sanderson if a condominium form of ownership could be created for a specific use on that parcel. Attorney Sanderson responded that if they felt that was an important legal point, they should take the matter under advisement and ask the Town Attorney.

J. Springer clarified that the applicant is Green and Company. The land is currently owned by Jade Realty, and they will continue to own the lot. The road maintenance issue is handled at the Planning Board level. The condo association will have the responsibility of maintaining the road. Jade Realty doesn't want to be part of the association because that parcel is not age-restricted property or use. J. Springer wasn't sure if that lot could be condominiumized under the requirements of the ARH ordinance or if it would receive Planning Board approval. He felt there would be friction if the lot was condominiumized. If the 300' easement is non-exclusive, it would not impact anyone's access. It was his understanding that the ARH project had the support of the Town; further, the Town didn't want it to become a public road. J. Springer stated that subdividing off the lot wouldn't make any change; Chair Samonas added that it would create a new commercial lot which was a concern. To which J. Springer responded that it's a commercial lot now.

L. Cummings stated that the first concern would be that it was setting a precedent. They also had to take into consideration the concerns of the abutters. Because it was a commercial lot, Jade Realty could sell it and the use could change. It was part of the Board's job to decide if the use was appropriate to the zone.

J. Springer responded that granting one Variance does not set a precedence. He added it was being subdivided out because it was not part of the deal. Not granting the Variance would put the project at risk. J. Coronati clarified that the access at Post Road will be gated and for residents only. He added that the precedence for a lot on a private road already exists with the residence and lot of record currently there. He felt that they would not be setting the precedence but continuing the precedence. Further, it was their understanding that the Town of Greenland didn't want to share in the cost of maintaining a road that the residents of the ARH were obligated to do by the ordinance. One of their

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goals was to show that this development was tax-positive. L. Cummings corrected that the existing residence was there first; the other lot would have to go to the Board of Selectmen for a building permit.

MOTION: L. Cummings moved to deny the Variance from Article 4.2 for the subdivision of Map U7, Lot 10 as submitted by the applicant, Richard Green. Second – S. Gerrato.

DISCUSSION: L. Cummings reviewed the Variance criteria.

- Granting the Variance would be contrary to the public interest: the Town has very clear requirements about frontage on roads and it is reinforced with our ordinance. The needs of the individual do not outweigh the needs of the public. Although it's not precedent setting, it would establish a reasonable expectation.
- The spirit of the ordinance would not be observed based on the above.
- There is not substantial justice. The Board must look at public health, safety and welfare. Subdivision of a lot would be granted without knowing what would be there; although not a ZBA requirement, the public did have concerns.
- It is unique in its surroundings because it's commercial on a private road. There are feasible, reasonable alternatives.
- The hardship is made by the process. The requirement for frontage is basic. The Board would be creating a non-conforming lot without frontage, which is not fair or reasonable and meets none of the criteria for granting a Variance.

Chair Samonas clarified that voting in favor of the motion would deny the Variance.

MOTION: L. Cummings moved to deny the Variance from Article 4.2 for the subdivision of Map U7, Lot 10 as submitted by the applicant, Richard Green. Second – S. Gerrato; four in favor, one opposed (Chair Samonas). **MOTION CARRIED**

6. Approval of Minutes: Tuesday, February 17, 2015

MOTION: L. Cummings moved to approve the minutes of Tuesday, February 17, 2015. Second – B. Hutchinson; all in favor. **MOTION CARRIED**

7. Other Business

S. Gerrato reminded that Board they agreed to find a sitting alternate and Chair Samonas will contact Ron Gross. According to the OEP handbook, alternates may participate as non-voting members.

8. Adjournment

MOTION: S. Gerrato moved to adjourn at 9:15 p.m. Second – L. Cummings; all in favor. **MOTION CARRIED**

NEXT MEETING

Tuesday, July 21, 2015 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Recording Secretary

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Documents used by the Zoning Board of Adjustment during this meeting are on file with the original minutes.

Approved: 