



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Wednesday, January 20, 2021 – 6:30 p.m. – Virtual via Zoom

Members Present: Lindsey Franck, Steve Gerrato, Ron Gross, David Sandmann, Chip Hussey (Alternate)

Late Arrival: Leonard Schwab

Staff Present: Jack Shephard – Building Inspector

Chair Gross opened the Board of Adjustment meeting at 6:30 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: L. Franck – present, S. Gerrato – present, D. Sandmann – 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.

Attorney Colby Gamester, representing the owner/applicant, addressed the Board. Also present were Paige Libbey, Jones and Beach Engineers; Jay Lajeunesse, 410 Portsmouth Avenue LLC; Stephen Pernaw, Pernaw and Company; Erin Proulx, Real Estate Agent with Keller Williams Coastal Realty. The application was continued from the November 2020 meeting. Plans have been reviewed by the appropriate Town staff for compliance; they felt this was a good project that was being put forward. The property has the ability to be further developed and it has multiple options as to how it can be further developed. Residential development is the project that is the better approach. The immediate area around and abutting the property is residential: there are single family homes and multi-family structures. Attorney Gamester noted that Chair Gross had raised a legal question at the November 2020 meeting: did the ZBA have the ability to hear this application. The project was continued to the January 2021 meeting to allow the ZBA time to receive a legal opinion from Town Counsel. Attorney Gamester noted the legal question had been addressed and the application could move forward for further consideration by the Board.

Attorney Gamester reviewed the aspects of the project each team member would be discussing. At the November meeting, the Board discussed the conditions that could be imposed on the Special Exception as noted in the Zoning Ordinance. As discussions regarding the project are more technical, some of the information may be more appropriate for the Planning Board during the site plan review process. A

statement was made at the November meeting that the plans will be over-engineered, meaning that they needed to cover all bases especially the engineering details of the project. The Planning Board, Planning Board Consultant and a third-party engineer will be reviewing the plans. Concerns of the Zoning Board and residents will be taken into consideration when moving forward with the project.

Attorney Gamester informed the Board that they have researched the property regarding the carriage house. They found no evidence that the property is protected or on a registry. The Pickering House is important enough to save and development of the site will incorporate the house; it will be renovated and rehabbed into a two-bedroom unit. The Pickering House will remain a prominent structure and the face of the property. They felt the carriage house was not worth saving; there is no evidence it was constructed at the same time as the Pickering House. The carriage house is in a state of disrepair and dilapidated. There is no functional use for the carriage house in the plans. The plans before the Planning Board show the building being razed for the construction of the proposed units.

Paige Libbey, Jones and Beach Engineers, reviewed the changes to the plans since the November 2020 meeting based on Board and resident feedback. The biggest change was that buildings have been reduced from 100 ft. to 96 ft. (4 ft. was removed from the end of each building). The greatest impact was on the third building located behind the two residential lots (Lots U4, 15 and U4, 16). There is approximately 35 ft. of separation to the property line from the back corner of the building. It was initially 30 ft., which is 10 ft. more than the required setback to the lot line. Additional buffer plantings were included along the lot line behind Lot U4, 15; the stockade fence has been extended along the entire lot line to buffer the residential properties. Additional labels were added from the corner of the buildings to the lot lines to clearly identify the separation from the buildings to the lot lines. They are exceeding the required setbacks in this zone.

Jay Lajeunesse, 410 Portsmouth Avenue LLC, responding to a question from Chair Gross, stated the driveway will be a private road. J. Lajeunesse reviewed the elevation plans. Attorney Gamester clarified some aspects of the renovations to the Pickering House, which will be a two-bedroom townhouse; condominium documents will state that it is a two-bedroom unit. Condominium documents will be enforceable until the condominium no longer exists. The bedroom count is specifically tied to the lot loading standards. Increasing the bedroom count would violate the condominium documents and lot loading standards as well as the Special Exception; they will be presenting the same to the Planning Board.

Stephen Pernaw, Pernaw and Company, presented his traffic study, dated January 07, 2021, to the Board. S. Pernaw reviewed his credentials with the Board. S. Pernaw reviewed the project and road conditions near the proposed site. He used traffic data from NHDOT; there is a short-term count station between the site and Rt. 33. The traffic study was reviewed (copy on file). There is a peak in the morning and evening with commuter traffic; volumes are down slightly due to COVID-19 but are gradually getting back to normal. A COVID-19 adjustment factor was included in the figures. When trips are estimated for future development on a State highway, NHDOT dictates that the Institute of Transportation Engineers Trip Generation manual, which is a national publication, be used. There will be an impact when a site goes from one trip to eight. Seven trips over a one-hour period is de minimis and may be split in either direction. The driveway has been shifted slightly to the west; a recommendation was made to clear vegetation within the road right-of-way to ensure there is good sight distance for an exiting vehicle.

S. Pernaw stated the impact would be de minimis. If the site were developed commercially, there would be an estimated 23 trips during peak hours. Developing the site for residential use has a benefit in terms of trip generation.

Chair Gross questioned 74 trips on a weekday when peak is estimated at five in the morning and eight in the evening, which was only 20%. S. Pernaw explained the first graph showed traffic demand on Rt. 151; that indicates a combination of a variety of trips (work, shopping, etc.). Residential traffic has a different hourly variation. There will be a morning peak hour, it drops off, then there is an evening peak hour. Residential use in the middle of the day flattens out. S. Pernaw further explained that the 74 trips are based on 24-hour volume. Chair Gross clarified that the peak may not necessarily be the peak for the proposed condominium but rather of the existing road. S. Pernaw stated the peak hour for residential traffic coincides with the peak hour of the adjacent street system. He was confident that this project would not create a safety hazard based on the level of traffic. The driveway will not require any auxiliary turn lanes, traffic control devices, etc. He viewed the development as improving safety by relocating the driveway slightly to the west, widening the driveway and clearing the roadside vegetation.

Erin Proulx, Keller Williams Coastal Realty, addressed the Board. She reviewed comparable demographics in the Greenland and Stratham areas.

C. Hussey recommended the exterior of the main house remain the same with clapboards and not be modified; repairs now or in the future shall duplicate the present exterior. He did not agree with the owner's team regarding the carriage house; it works well with the house and a two-car garage does not. It would also help block the north structure. C. Hussey continued that the exterior on the carriage house remain similar to the existing. He suggested moving units 8 to 10 back 165 ft. from the center line of the road to open it up so it fits the neighborhood aesthetics. The new structures should also fit the neighborhood. He also wanted the floor drains and perimeter drains to have daylight termination. C. Hussey noted that the drainage on Lot R21, 1A is not affected by this property; there are two major drains on Rt. 33 that flow onto R21, 1A. There is not an existing problem on 410 Portsmouth Avenue but it will need to be maintained.

P. Libbey responded to C. Hussey's recommendations. Several variations of building placement were attempted. The current layout reduces the amount of impervious surface to the minimum. Moving the building back will mean longer driveways increasing the amount of impervious surface and less lawn area and open space around the buildings. They wanted as much open space as possible. They were also trying to keep the leach fields in the back yards of the buildings where test pits were done; it works well by gravity. The building regulations require daylight foundation drains. The site is pitched perfectly to outlet the drains at the back of the property.

D. Sandmann asked if the driveway could be pervious. P. Libbey stated they could look into that but not the entire driveway. Test pits were good by the southern building that was referenced; others were a higher water. She noted that porous pavement requires a certain amount of separation to the water table. Leach fields also need a certain amount of separation per State standards because of nitrate setbacks and it complicates the layout. Leach fields are also required to have a certain amount of separation from stormwater. Responding to a question from D. Sandmann, P. Libbey stated with grading, Units 5 to 7 would not pump up to a leach field; this building would be close to or at grade with a walkout in the back.

J. Shephard reviewed test pit results. P. Libbey stated additional test pits will need to be done near the existing house and stormwater management areas.

R. Gross questioned if the 1,200-gallon leach field was shared; P. Libbey stated it was shared with the existing house and Units 1 to 3. The existing house will be part of the condominium association.

S. Gerrato read Section 17.1.3.1, Item E, regarding stormwater runoff. He stated that the plans have not changed in two months and water will be cascading down the road and into the wetlands and Rt. 33. There is only one stormwater location there that could easily be blocked off in the winter so it would be useless. S. Gerrato stated he could not vote to pass this project onto the Planning Board. He felt they did not provide enough place to put the water from the new construction. He questioned who did the loading; P. Libbey responded they did the loading. Lot loading calculations were based on lot size and soil type. Loading was enough for 10 units, 20 bedrooms. S. Gerrato continued that the way it was designed there were not enough areas for catching water.

Attorney Gamester, responding to S. Gerrato's statements, stated if there was a concern at the Zoning Board level, it would be a concern at the next level. They felt the multi-family use was appropriate if they could pass the criteria for a Special Exception, with the understanding that there is more work to be done relating to grading, drainage, and stormwater management.

P. Libbey stated they did not fully address the stormwater design at the Zoning Board level. A full site plan application will need to be submitted when going to the Planning Board. That process will include a full stormwater management design, hydrologic analysis, drainage report and a full study requiring them to meet or be below the peak rate and volume of runoff on the site. Reviews will be done by the Planning Board and their consultant as well as the Planning Board engineer. S. Gerrato stated he would vote "no" to forwarding to the Planning Board; the Zoning Board has a right to know the information.

Chair Gross noted that 'no significant increase of stormwater runoff onto adjacent property or streets' was a criteria of the Special Exception. If they were granted a Special Exception and a proper stormwater management design could not be done on the property, the Special Exception would need to be rescinded. Attorney Gamester responded if the plans are not approved by the Planning Board, all previous work would be null and void.

S. Gerrato stated he felt it was overcrowded. J. Shephard questioned if it could be brought down to seven units to alleviate most of their problems. Attorney Gamester stated they tried several different designs, and the one submitted worked the best.

Chair Gross opened the hearing to public comments. Attorney Gamester asked the Board to share their thoughts on the project; example: the Board wanted more details on drainage and stormwater. Chair Gross acknowledged it was a significant issue and was a criteria for a Special Exception as well as a detailed aspect.

C. Hussey asked if there was an engineering formula that could demonstrate the property was large enough to handle the stormwater runoff. P. Libbey stated she did a preliminary look to make sure there was an adequate amount of space that could handle the impervious runoff; the actual study is site specific. P. Libbey explained the stormwater management process. There was a discussion about rain gardens. Attorney Gamester added they would recommend a stormwater management and maintenance plan. P. Libbey noted there are towns that require annual stormwater management and maintenance reports. She continued they would recommend it be included in the condo documents

and that it should be done annually. Chair Gross suggested it be a condition added to the Special Exception.

Dean Martin, speaking on behalf of his parents, stated the response from the Town Counsel had not been shared. It was explained that the response from Town Counsel was 'Attorney Client Privileged'. D. Martin stated his parents would be in favor of reducing the number of units to seven and moving one building back.

C. Hussey noted the Planning Board has changed the language of Article IV – Dimensional Requirements, Section 4.3. It was approved at a Planning Board public hearing and has been moved forward to ballot. It was his understanding that the new verbiage is in effect.

There being no further comments, Chair Gross closed the public hearing and returned to the Zoning Board for further discussion. Chair Gross noted that the Zoning Board was not a technical board. S. Gerrato felt it was obvious there would be runoff. C. Hussey stated it would increase, but not significantly. He felt the biggest problem may be the speed of flow off the property. L. Franck noted they made effort with the stormwater management and agreed with Chair Gross that the Zoning Board was not a technical board. D. Sandmann was concerned with the historic impact of the building. When there are impervious surfaces, the stormwater will be affected. P. Libbey stated it was her understanding of the Ordinance that 'no significant increase' was pre- vs. post, but included any stormwater structure that would be provided to control the peak flow, volume, velocity, treatment, etc. At the Planning Board level, they have to provide details for mitigation as required by the Site Plan Regulations. Other options include drip edges for the roof, adding something to other areas on the site and along the edge of the road, etc. C. Hussey, directing his comment to the engineer, stated that on Portsmouth Avenue the drainage empties on the east side and crosses the road in 18-inch tile; the property owner reduced that to 8-inch. It goes under his property and Hunkins' property. The engineer may want to consider that when doing the stormwater management plan. The culvert on the right is 18-inches but the property owner reduced it to 8-inches.

D. Sandmann questioned the historic impact of the building. Attorney Gamester responded there was nothing listed in the historic registry.

Chair Gross noted that a Special Exception is defined as something that is allowed in that space but must meet criteria. As long as it meets the criteria, the Board cannot deny the Special Exception; it must meet the site plan review. The Zoning Ordinance does not specifically disallow multiple multi-family units. Stormwater: the Zoning Board is not the technical engineer; that is the responsibility of the Planning Board to ensure the requirements are met.

MOTION: S. Gerrato moved to deny the Special Exception as presented to the Zoning Board on these plans. Second – D. Sandmann; roll call vote: L. Franck – no, S. Gerrato – yes, D. Sandmann – no, C. Hussey – no, R. Gross – no. One in favor, four against. MOTION FAILED

Discussion: S. Gerrato stated his motion was due to stormwater and overcrowding. He continued that it was due to lack of sewage and only septic systems. Test pits failed on the lot. Everything together overloads the lot. Chair Gross noted that the Board was not deciding the number of units but rather a set of multi-family units on the property. S. Gerrato responded the Board was deciding if ten units could be done on the property. Discussion continued on the number of units and overcrowding on the lot. Chair Gross reminded members that the Zoning Board was required to grant a Special Exception if it met the criteria.

S. Gerrato reviewed the criteria:

- Hazard to the public or adjacent property: absolutely; if the runoff is not controlled or stays the way it is shown, there will be problems not only for the adjacent properties but Rt. 33.
- Detriment to property values or change in essential characteristics of residential neighborhood: it is an older neighborhood, with no residences in it, this will be in there.
- No creation of a traffic safety hazard or substantial increase in level of traffic congestion: right now, there is a tremendous safety hazard on Rt. 33 in the morning and evening; by increasing that it is not a good idea.
- No excessive demand on municipal services: correct; there will be no additional demand.
- No significant increase of stormwater runoff onto adjacent property or streets: it is quite obvious that everything will flow right out of there; snow plowing will create an edge and it is something that will not be controlled. Chair Gross noted snow removal could be a condition.

P. Libbey discussed the test pit issue. The lot loading has been verified and the NRCS soils match. Enough test pits have been done to make the project viable. Only one test pit failed; there are not septic systems proposed on the failed test pit. Additional test pits will be done in the areas where none has been done. DES requires test pits to be within 20 ft. of a leach field. Test pits will need to be done for stormwater management purposes for seasonal high-water tables, infiltration rates, etc. P. Libbey continued that she would agree with a condition that stormwater management be a reduction in peak flow or volume. Other conditions: stormwater management and annual maintenance plan and snow storage.

MOTION: C. Hussey moved to grant the Special Exception for 410 Portsmouth Avenue to construct three new buildings on the property, each structure containing three town houses with the following conditions:

- No increase or a reduction of stormwater to surrounding lots or streets.
- Snow storage shall not interfere with stormwater management features on the property.
- Stormwater management and maintenance plan must be in place.
- Drip edges will be added to the three structures to capture the impervious runoff and be designed to meet stormwater management and infiltration standards, depending on the depth of the water table.
- Main house exterior shall not be modified now or in the future; repairs shall duplicate the present exterior.
- The carriage house shall remain as part of the project with the same restrictions as the main house; repairs now and in the future shall duplicate the present exterior.
- The front setback from the center line of Rt. 151 to the southern most building (Units 8, 9 and 10) will be 165 ft. and locate the building on the southern property line of Lot U4, 15.
- Exterior of the new buildings shall resemble barn or farm type exteriors.
- All buildings shall have full perimeter drains and daylight termination.

Discussion: Attorney Gamester stated the way the motion was read, and if approved, would render the project null and void. The three buildings could not be built and carriage house saved. The three buildings also could not remain the way they are based on the front yard setback. Section 17.1.3.2 allows a limited number of conditions; Items A through G can be addressed by the Board. The applicant's decision to raze the carriage house is his decision at his discretion. Attorney Gamester did not believe the Board had the authority to tell an applicant to keep a building currently on the property. C. Hussey disagreed that the buildings could not be built with the carriage house remaining. Chair Gross noted that C. Hussey was adding conditions that were not associated with the criteria. The criteria decide if the Special Exception is granted. The conditions are not the deciding factor. Chair Gross noted

the Sections 17.1.3.2 was a list that could be expanded. Chair Gross suggested that the garage be built to resemble a carriage house. Attorney Gamester added that with the elevations, they have decided on a modern farmhouse architectural style. The applicant noted that the addition on the rear of the main house is modern construction and will be demolished. P. Libbey addressed moving the southern-most building back. Test pits have not been done where the building is currently located; the leach field may have to be located there. P. Libbey explained the complications that would be involved. If moving the building was not possible, they did not want to have to return to the Board.

AMENDED MOTION: C. Hussey moved to grant the Special Exception for 410 Portsmouth Avenue to construct three new buildings on the property, each structure containing three townhouses with the following conditions. Second – L. Franck; roll call vote: L. Franck – yes, S. Gerrato – no, D. Sandmann – no, C. Hussey – yes, R. Gross – yes. Three in favor, two against (S. Gerrato, D. Sandmann). MOTION CARRIED

- No increase or a reduction of stormwater to surrounding lots or streets.
- Snow storage shall not interfere with stormwater management features on the property.
- Stormwater management and maintenance plan must be in place.
- Drip edges will be added to the three structures to capture the impervious runoff and be designed to meet stormwater management and infiltration standards, depending on the depth of the water table.
- Main house exterior facade shall not be modified now or in the future; repairs shall duplicate the present exterior.
- The addition on the main house may be removed, repaired, and renovated to the same style.
- The proposed one car garage located near the main house will be built in a similar fashion to a carriage house for that time period.
- The applicant must prove to the Planning Board, and provide details, why the building with Units 8 through 10 could not be moved farther away from Lot U4, 15.

S. Gerrato left the meeting.

2. Approval of Minutes

Approval of minutes from the meetings on Tuesday, November 17, 2020 and Tuesday, December 15, 2020 was continued to the next meeting.

3. Other Business

There was no other business to discuss.

4. Adjournment

MOTION: D. Sandmann moved to adjourn at 8:48 p.m. Second – C. Hussey; roll call vote: L. Franck – yes, D. Sandmann – yes, C. Hussey – yes, R. Gross – yes. All in favor. MOTION CARRIED

NEXT MEETING

Tuesday, February 16, 2021 – 6:30 p.m., Virtual via Zoom

Respectfully Submitted: Charlotte Hussey, Administrative Assistant