

ZONING BOARD OF ADJUSTMENT
March 7, 2019

PRESENT: Wendy Juchnevics-Freeman, Chairman, David Lage, Vice Chairman, Walker Farrey, Stan Long, Lori Rautiola

ABSENT: Edwin Somero

The meeting was called to order at the Town Office on March 7, 2019 at 7 p.m.

7:00 p.m. Nels Traffie – Lot 9/52-8, 104 Collins Rd. – Public hearing of a variance application: Nels Traffie owns lot 9/52-8, 104 Collins Road and has submitted a special exception application to Article XIII. N. of the Zoning Ordinance to allow an accessory dwelling unit above a garage. Mr. David Sikkila was present on behalf of Nels Traffie. He submitted the proposed floor plans and showed some pictures of the current dwelling along with a proposed septic design done by Fieldstone Land Consultants.

Wendy questioned if Walker or David were involved with this project. Walker responded he directed the applicant to Fieldstone Land Consultants but is not directly involved with the project. Wendy also questioned if Walker and David should recuse themselves due to the fact that the applicant, David and Walker all work for Hutter Construction. David stated he and Walker should not have to recuse themselves, adding this project is for Nels Traffie's personal use and has nothing to do with Hutter Construction.

Mr. Sikkila continued stating the septic design is currently being processed through the proper local and state channels. Wendy questioned what the current system was approved for and Mr. Sikkila noted it has been approved for a 3 bedroom dwelling. Wendy noticed a footnote on the septic design that states "wetlands were delineated in proximity to the leach field". Mr. Sikkila stated he was unsure what that meant and Wendy responded the applicant will need to find out. David asked what impact that would have on a special exception application and Wendy stated "you know our rules, our rules are that we do not separate applications, if the Board sees an applicant in need of more relief, the Board will only accept all applications at the same time. Wendy continued stating the Board could not approve an accessory dwelling unit if the leach field was within the 50 foot wetland buffer. Walker noted it was not within the wetland buffer according to the plan shown. Wendy responded she was confused and concerned with the conflict of interest and Walker should not be answering for the applicant. David stated there is not a conflict of interest, adding it is the engineer's responsibility to locate all wetlands. Wendy stated the Zoning Ordinance states a leach field cannot be within 50 feet of a wetland and she needs confirmation the leach field is not within the setback.

Wendy asked Mr. Sikkila if he could confirm whether or not the leach field was within the wetland buffer. Mr. Sikkila stated he could not confirm. Wendy suggested the applicant postpone the hearing until the applicant can provide wetland delineations. There was discussion on the statement on plan that stated "wetlands were delineated in proximity to the leach field area". Walker stated that could mean they are on the property but not within the setbacks. He added, according to this plan, there are no wetlands within the buffer. Mr. Sikkila stated he did not see any wetlands encroaching on the leach field according to this plan. Walker read the footnote #2 which states: "There are no poorly drained wetlands or standing surface water within 75 feet of the leach field." He continued stating "in my opinion, proximity is a relative term, meaning wetlands are on the property but not located within the wetland buffer. Wendy stated the

two statements contradict each other. She added she would like to hear more about the project; however, the Board cannot make a decision without verification of where the wetlands are located in proximity to the leach field. Wendy stated again, the footnotes contradict each other. David disagreed stating the plan states in one part wetlands were delineated; the footnote states "there are no wetlands within 75 feet of the leach field. Wendy stated she still would like clarification. David recommended the Board continue the hearing. Walker added to make it a condition on the decision pending verification of wetlands.

Mr. Sikkila addressed the five criteria for granting of the variance:

- 1) The site is an appropriate location for such use - the site is appropriate for an accessory dwelling unit which is allowed by special exception.
- 2) The use as developed will not adversely affect the adjacent area- Mr. Traffie was permitted for a garage and the outside appearance will not look any different if there was not an accessory dwelling unit above the garage.
- 3) There will be no nuisance or serious hazard to vehicles or pedestrians- this will not contribute to any more traffic volume or pattern and there is ample space for parking.
- 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use- an updated septic design is in the process to accommodate the additional waste.
- 5) Such approval should be consistent with the intent of the Master Plan... - it provides for the development of affordable housing.

There was discussion on whether or not to move forward into deliberations. Wendy noted there are many Board members wanting to move forward tonight and questioned if the applicant would be willing to move forward knowing a condition may be placed on the decision. Mr. Sikkila agreed to continue the hearing.

Abutters were asked to speak: Anthony Parker, 117 Collins Road, asked if the Traffies were present. Mr. Sikkila answered they are not present and explained he was here on behalf of Nels Traffie. Mr. Parker asked what was special about this case that warrants a hearing. Wendy gave Mr. Parker a brief explanation of the Zoning Ordinance that pertains to special exception applications and the process of how the Zoning Board works. David mentioned the Zoning Board is always looking for volunteer members, and if anyone is interested in becoming a member they would greatly appreciate any help.

Walker made a motion to close the public hearing and enter into deliberations. David seconded the motion and it passed unanimously.

The Board discussed the five criteria for granting a special exception. Wendy stated the site is adequate for an accessory dwelling unit. David noted the garage is already permitted and adding the ADU will not change the appearance of the unit. Wendy commented the use will not adversely affect the area as it will look like a garage and should not have any impact on the adjacent area. Wendy added the unit is a far enough away from the road and will not be a nuisance or serious hazard to vehicles or pedestrians. Stan commented there is ample space for parking. Wendy stated the Board would will need clarification on the septic system and leach field and the design must be approved by the State. Wendy continued stating the applicant will also need confirmation from their engineer showing there are no wetlands within the 50 foot setback requirements of the leach field and septic system. Members agreed this proposal is in accordance with the Master Plan.

Stan made a motion to approve the special exception with the following conditions. David seconded the motion and it passed unanimously.

- 1) The applicant must provide clarification from the engineer that the leach field and septic system are not located within 50 feet of a jurisdictional wetland.
- 2) The applicant will provide a septic design that is adequate to handle the volume of waste and will have the State of NH approval for operation prior to a certificate of occupancy being issued.

7:45 p.m. Eversource Energy - Line 367 ROW- Utility Easement – Submission of a variance application:

Ms. Katy Wilkins was present on behalf of Eversource. A variance application has been submitted from Article X.D. of the Zoning Ordinance to permit the replacement of existing overhead electrical utility structures and addition of insulator weights on structures within the Wetlands and Surface Water Conservation Overlay District.

Ms. Wilkins stated there are 12 structures in need of repair in 2019, 10 will be structure replacements, 2 in need of maintenance. Six of the 12 are located in the Conservation Overlay District 4 of which need structure replacements, 2 in need of repair. Maintenance will require adding weights to the insulators to bring the line down and stabilize the line.

Ms. Lydia Morton, also with Eversource, supplied the members with an updated overview map of all the structures in New Ipswich including the ones in need of replacement/maintenance. Temporary impacts to the wetlands are also located on the map. A total of 25 structures need replacement, 10 are due to be replaced this year, 11 were replaced last year and 8 were replaced a few years prior. The structures will be replaced with steel, some will be higher than what is there currently. All of the work pads will be either gravel or matted timber mats.

Ms. Wilkins and Ms. Morton gave an overview of the areas that would have temporary impacts to the wetlands. The first area is off the Rindge town line and Rumrill Road. Structures 314, 313, 312 would be replaced and will gain access through Old New Ipswich Road. This area has some rare species and vernal pools which will be monitored daily by specialists. Erosion controls and work pads will be in place and they will raise above the vernal pools as extra caution. There will be temporary impacts from the work pads in this area. It was noted the work will start in April and all work will be restored in the fall of 2019.

The next area is east of Boynton Hill Road. Structures 282 and 281 would need to be replaced. There was discussion on finding the best possible route to these structures. Ms. Morton stated the owner of the property where they would like to gain access was currently in the process of selling the land and would not grant access so the plan would be to access off Boynton Hill Road where there is a stone wall. Wendy did not like the idea of the stone wall being disturbed. Ms. Morton stated they can air bridge over it. Wendy questioned if Eversource could ask the new owners for permission to access the existing logging road. Ms. Morton stated that would be the best possible way to access, with the least amount of impact; however, they are still at the mercy of the owner and she was not confident they would be able to get the access. It was mentioned Ms. Morton will research in finding the new owner to ask for permission. The other option would be to gain access through Stowell Road and they are working with land owners on this option as well.

There was a five minutes recess.

Wendy stated there are two options: Coming off Boynton Hill Road would avoid a substantial wetland impact. Ms. Wilkins stated coming off Kennybeck Court would be preferable; however, the last portion of the road is considered private and would they would need permission from the owner. The current owner, Builders Land Co., does not want to give temporarily access but would consider giving permanent access. Ms. Lydia stated she does put in “due diligence” to find the best possible way, with the least amount of impact to access the structures and will keep trying to locate and ask the new property owners for access. Stowell Road would be a worst case scenario. If they had to access off Boynton Hill and remove the stone wall, Eversource would have a rock wall breach agreement signed by Eversource and the property owners that states Eversource will breach the stone and rebuild it when finished.

There are other structures in the vicinity that are part of Eversource’s maintenance program and will need to be repaired/replaced within the next few years, so ideally Kennybeck Court would be the best way to gain access. Ms. Wilkins wanted to be clear that Eversource will be back in the coming years as part of their maintenance program.

Cedar Ridge Road would be the next area where they would access structures 275 and 274. There would be about 300 square feet of temporary impacts to wetlands and would use the existing access road to reach these structures. They would access structure 273, 270, and 272 from Temple Road. This is the only area that would be re-impacted, and there would be about 824 square feet of temporary impact. Structures 272 and 273 will have the weights installed to stabilize the lines and 270 will be replaced.

Structures 264, 263, 262, 260 and 261 will be accessed off Route 45 where there is a gate with an existing access road. Structure 260 will be a replacement. There would not be any wetland impacts to this area.

The five criteria for granting a variance were reviewed:

- 1) The proposed use would not be contrary to the public interest – The work consists of the maintenance of existing utility infrastructure to provide reliable electric service to the public.
- 2) The use is not contrary to the spirit of the ordinance because the work consists of maintenance and will not result in any new development.
- 3) Granting the variance would do substantial justice because it will allow the electric utility to maintain its infrastructure.
- 4) The proposed use would not diminish property values because the existing structures will be replaced with like weathered steel structures and weights will be added to the insulators on two existing structures. All work will be completed within the existing utility ROW.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because it could result in failure of the transmission system, which would result in a hardship for both the utility company and the customers that the transmission line serves, including residents of New Ipswich.

AND a) No fair and substantial relationship exists between the general public purposes of the ordinance provision... the existing use provides a public service (electricity) to the general public.

b) The proposed use is a reasonable one because it consists of the maintenance of existing electrical infrastructure.

Wendy thanked the applicant for doing due diligence in accessing the properties and commended them on a job well done. David requested a bond for any newly paved roads, Temple, Thayer and Appleton Roads and any cross sections of any roads. David also noted due to lack of staff at the Town Office, to have their wetland scientist provide a letter upon completion of the project stating all wetlands and access points have been restored.

No abutters or interested parties were present.

David made a motion to close the public hearing and enter into deliberations. Stan seconded the motion and it passed unanimously.

The Board discussed the criteria and concluded the easement lines are already there and the way the project has been done is very helpful and a job well done. Granting the variance would do substantial justice because the poles need to be repaired and replaced. The proposed use would not diminish property values. Literal enforcement of the ordinance would result in unnecessary hardship- the residents need electricity. Wendy noted the Board would like Eversource to continue to seek an alternative route other than Boynton Hill Road and to avoid the rock wall as much as possible.

David made a motion approve the variance application with the following conditions:

- 1) A road bond shall be provided to cover the repair cost for any damage caused to any newly paved roads or right-of-way, including all intersections/cross roads. Value of the bond shall be as determined by the town's DPW Director.
- 2) The applicant will provide a letter from a licensed wetland scientist upon completion of the project stating that all wetlands and access points have been restored.

Walker seconded the motion and it passed unanimously.

Submission of an appeal of administrative decision - Jessica and Eric Cormier, 122 Stowell Rd., Lot 10/ 7/6-1: Jessica and Eric Cormier own Lot 10/7/6-1 which abuts the property of Lot 10/7 owned by USA Properties, Inc. Ms. Cormier stated she regretfully missed the last public hearing for USA Properties and has submitted an appeal from an administrative decision by the Zoning Board of Adjustment. She continued stating their dwelling was not accurately represented on the plans submitted to the Zoning Board, adding the Board was wrongfully informed, leading to a wrong decision on case Z18-3. The Board discussed the concerns of Mr. and Mrs. Cormier. Wendy questioned if the applicant received a certified mail with the date and time of the USA Properties hearing. Ms. Cormier stated she had received it but could not make the February 7th hearing. Wendy stated you do have grounds for this appeal of administrative decision.

Ms. Cormier asked if the board could waive the application fees. Wendy noted unfortunately the Board has no precedence to waive fees. Wendy explained the process of the application and that the abutters would be notified. There was discussion on the USA Properties project. Wendy stated she does not want to discourage the applicant to go forward with the appeal; however you were notified by certified mail to go to the public hearings to represent yourselves. The applicant stated she is seeking protection for her house from a road going in right next to her house. David commented there is no way a town board can deny the owner access to their property. The issues with the road and other issues will be addressed by the Planning Board. Wendy stated the Zoning Board would have two choices, the first one being to re-open the public hearing for USA Properties or deny your appeal.

The applicant was unsure of their decision to move forward with the appeal, but decided to move forward pending payment of fees.

Stan made a motion to accept the appeal of administrative decision application upon payment of fees by March 12, 2019. Walker seconded the motion and it passed unanimously. The public hearing was scheduled for March 28, 2019 at 7 p.m.

The minutes of the February 7, 2019 meeting were reviewed. David made a motion to approve the minutes as written. Stan seconded the motion and it passed unanimously.

The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Lori Rautiola