

ZONING BOARD OF ADJUSTMENT
FEBRUARY 22, 2017

PRESENT: Wendy Juchnevics-Freeman, Chairman, Stanford Long, Edwin Somero, Walker Farrey, Lori Rautiola, Joanne Meshna

ABSENT: David Lage

The meeting was called to order at 7:20 p.m. at the Town Office. The minutes of the December 3, 2016 meeting were reviewed. Walker made a motion to approve the minutes. Stan seconded the motion and it passed unanimously. Joanne was appointed to fill the vacancy of David Lage.

7:25 p.m. Dennis and Carol Alix - Public hearing for a variance application :

The applicants own lot 6/21A, 36 Boynton Hill Road, Rural District. A variance application from Article X.D.3.b of the Zoning Ordinance was submitted to allow dredging and filling within the wetland conservation district for the purpose of constructing a driveway culvert to access a proposed subdivision lot.

Edward Rogers spoke on behalf of Mr. and Mrs. Alix. and Mr. Rogers gave a brief description of the property location and size (11.14 acres) stating in order to access the property, the driveway would need to go through a small section of wetland. He noted there is a possibility the property may be subdivided to make two lots and, the two lots would share the driveway therefore not impacting any more wetlands. The only other option to access the property would be to go directly through Dennis and Carol Alix's yard. Wendy questioned the amount of impact on the wetland and Mr. Rogers stated the driveway is proposed to be 25 feet wide with a total impact of 950 square feet, adding this would be the best location for the driveway to meet the Town's side setback requirements.

Wendy asked the applicants if they would agree to a condition upon the lot being subdivided that the access would be from this common driveway and that no additional wetlands will be impacted. Mr. Rogers stated the applicant would be willing to accept that condition.

Mr. Alix commented he has lived at this location for thirty eight-years and has never seen standing water in this area. The Town has taken run off from the hill and diverted it onto the property. The water funnels down and just disappears. Mr. Rogers stated the Town has put in some turnouts for the water and this area developed over the course of twenty years as it was not there when Mr. Alix built the house in 1978. Wendy questioned if there was any other dimensional controls that cannot be met and Mr. Rogers stated there were not.

The five criteria for granting the variance were reviewed:

- 1) The proposed use would not be contrary to the public interest because approval of this driveway culvert location would not allow development of the land in a fashion that is inconsistent with the current zoning density and it allows the proposed subdivision lot to be accessed in a way that avoids having a common driveway pass close to the existing home.

- 2) The use is not contrary to the spirit of the ordinance because it does not enable development of a density or a character that is not permitted by the ordinance.
- 3) Granting the variance would do substantial justice because it would allow access to the building envelope for the proposed lot without diminishing the property value of the existing home.
- 4) The proposed use would not diminish property values because the proper construction of the driveway culvert according to the attached engineered plans, and concurrent permitting by the NHDES Wetlands Bureau will insure that there are no adverse environmental affects to downstream and abutting properties.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because.....Literal enforcement of the ordinance would result in unnecessary hardship to the owner, since the only alternate methods to access the proposed lot would require construction of a bridge, constructing a common drive that would pass very close to and reduce the value of the existing home, or seeking to purchase an access easement through the western abutter's property which, even if successfully negotiated would require the construction of an extremely steep driveway that would not meet the current driveway regulations.
 - a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the proposed use, when properly permitted and constructed, will not adversely impact the wetland conservation district which the ordinance is designed to protect.
 - b. The proposed use is a reasonable one because it provides access to the building envelope on the subject property, in the same fashion as many other driveways in the town.

Edwin made a motion to close the public hearing for deliberations. Stan seconded the motion and it passed unanimously.

The Board discussed the five criteria and concluded it would allow access to the property with minimal impacts to the wetlands and there would be no additional impacts with a shared driveway in the future.

Walker made a motion to approve the variance application conditional upon the applicants agreeing if the lot is subdivided, the access would be through the proposed common/shared driveway, and that no additional wetlands will be impacted. Edwin seconded the motion and it passed unanimously.

8:00 p.m. Nathan and Danielle Sikkila - Public hearing for a variance application-: The applicants own Lot 14A-4 on Ashburnham Road. A variance application was submitted to Article X. D. of the Zoning Ordinance. Mr. Chris Guida of Fieldstone Land Consultants spoke on behalf of Mr. and Mrs. Sikkila. He gave a brief description of the applicant's property explaining it is transected by wetlands. The applicant would like to put a driveway in and have access to the back of his property for a future barn and paddock area. Mr. Sikkila is currently in the process of building a house on the front part of the property and plans to utilize the sand from the back part for fill and for driveway material.

Mr. Guida stated they would be utilizing the existing driveway crossing at the narrowest point of the wetlands are proposing an impact of 1,064 square feet. There is no other way to access the property. Walker questioned the size of the culvert and Chris stated the culvert would be 18 inches.

Wendy questioned crossing the wetland area in this location and stated it did not seem necessary to cross there to access that property. Mr. Guida disagreed stating the lot is completely isolated and there is no access from the south side through Ashby. Wendy added the owner's intent is to excavate that hill and it looks like there is already commercial work being done there. She questioned if Mr. Sikkila had permits in Ashby to excavate and Mr. Guida explained there is no commercial material being excavated out of Ashby, adding there was work being done in the past and that was permitted. Mr. Guida stated the property is in New Hampshire not Massachusetts. There was a driveway installed which has all been permitted through Ashby and the DEP. Wendy questioned if the applicant had a permit for the gravel pit that was there and Mr. Guida stated it is not a gravel pit; there has been material removed in the past but it is not a commercial gravel pit. Wendy stated she did not like the idea of filing an application when it looks obvious that the intent is to excavate the hill and take it down in order to pull out the sand; this would not be incidental to the building a barn.

Mr. Guida stated again, just because material has been removed it is not a commercial operation, the material is not being sold. Wendy disagreed. Mr. Guida noted Mr. Sikkila had taken that material and utilized it to make the driveway which has been permitted through the State of Massachusetts and offered to supply the Board with those permits. He added the plan is to get a variance to cross the wetlands to access the property and they were not trying to hide anything from the Board. Wendy argued that there is already a commercial operation.

Wendy questioned how much material is going to be excavated and Mr. Guida responded about 62,000 cubic yards. Wendy mentioned he will need an alteration of terrain permit from the State. Mr. Guida disagreed because the minimum for that permit is 100,000 square feet. Wendy disagreed. She questioned how much property is between the rear of the property and the Souhegan River and Mr. Guida believed it to be about a quarter mile from the Souhegan.

Wendy also questioned the run off from the site. Mr. Guida noted it will be self-contained on the site. There will be silt fencing and erosion control. There was discussion on the driveway and the grade being so steep. The width of the driveway is 20 feet. Mr. Guida stated the fill will be removed from this driveway. Stan asked if the applicants were planning on selling the fill not used during the construction of his house and Mr. Guida noted if there was anything left over, it would all be permitted to do so and would comply with paying taxes or anything else that need be. Mr. Sikkila figured it would all be done within a six month time frame.

Wendy mentioned having the Conservation Commission review the application. Mr. Guida stated he had conversation with Mr. Boynton but they have a policy in which they do not review wetland permits in the winter months.

Wendy noted she would like to share the application with NHDES and would also like to know the following: where the applicant stands with the Ashby Conservation Commission, the permitting of the

driveway, the wetland crossings, the current use of the property and the excavation that has been going on. Mr. Guida stated he will provide the Board with the information, however that is completely irrelevant to what the applicants are requesting. Wendy disagreed. Wendy would like to visit the site again with the Board and the Conservation Commission. A site visit was scheduled for Saturday, March 18, 2017 at 9 am for the Board and the Conservation Commission.

Stan made a motion to continue the public hearing to April 6, 2017 at 7 p.m. Edwin seconded the motion and it passed unanimously.

The January 5, 2017 minutes were reviewed. Stan made a motion to approve the minutes. Walker seconded the motion and it passed unanimously.

Respectfully Submitted,

Lori Rautiola