

ZBA Meeting Minutes, August 13, 2008 – Kinnear, Oak Ridge/Mattbob, Black/Guichard

Members Present: Robert Cadle, Cynthia Maxwell, Alison Manugian, Chase Duffy, Harris McWade

Chairman Cadle convened the Kinnear hearing by reading the Legal Notice.

No one was present for the applicant so the Board moved to continue the hearing to September 3, 2008 at 7:30 pm. The motion was seconded and passed unanimously.

Chairman Cadle convened the Mattbob hearing by reading the legal notice. He then read three memos into the record, the first being from the PB, requesting a continuation, the second being from Jeff Ritter, BOS, asking for a continuation, and the third from an abutter, again requesting a continuation.

Kevin Eriksen, agent for applicant from Deschenes and Ferrell, said he was also asking for a continuation because they are still getting supplemental information to Mike Jacobs for his review of the economic feasibility of the project. He said that they would like to talk about what they want to do and why, and to answer any questions. He said that they are looking to modify the Comprehensive Permit by removing the 55+ age restriction, noting that this is all about economics and possibly not being able to sell these restricted units. He said that there aren't available people to fill the spots and there is a glut of units on the market. He said that the interest just is not there, noting a recent article in either the Globe or the Sun that Mass Housing is not permitting these age restricted units except in very special circumstances.

Chairman Cadle asked for clarification regarding who asked for the 55+ age restriction.

Atty. Eriksen said that it was the developer making the request and due to delays caused by litigation, both the circumstances and market has changed. He then asked Mr. Bobrowski whether they could put a preference for 55+ on the affordable units.

Mr. Bobrowski said that if the Board removes the restriction they could consider making a preference for 55+ for marketing purposes, but noted that he felt they were jumping the gun.

Mrs. Duffy asked why they are building so many units if they can't sell them.

Atty. Eriksen said that the market has changed and said that he understands that the hearing will be continued.

Chairman Cadle asked what Atty. Eriksen felt would be the potential impact and whether a traffic study and a bus stop shelter would be necessary.

Atty. Eriksen said that he doesn't think there will have a big impact due to the presence of children because these are two bedroom units.

Mrs. Duffy noted concern regarding getting children safely onto school buses on the curve on Rt. 119 where the driveway will be located.

Mr. Bobrowski said that each unit will add 70 gallons of wastewater per unit per day for non age restricted units. He said that someone needs to verify that the septic system can withstand the increased load and if the Board feels they want additional peer review, they can ask for it.

Mrs. Duffy said that she has a vague memory of a loft area that could be converted to another bedroom in each unit.

Virginia Bennett, 34 Arrow Trail, said that she goes often down Rt. 119 to catch a train, noting that everyone speeds and there is also a large vernal pool and a Blanding turtle stepped right out into the road. She said that she is concerned about lots of cars, children, increased activity and also the need to bring in water. She said that she is concerned about those aspects and the integrity of the wetlands. She said that if age restriction is removed and there are families with children, it will be more difficult to maintain the integrity of the wetlands.

Chris Korwin said that the whole ten acres has been certified as a vernal pool, noting that there is also an additional species in the area and that they should have an environmental certification.

Mr. Bobrowski noted that Section 11 of 760 states that only changes in the project shall be considered, which includes more waste water and more traffic, which is fair game. He said that the roadway is not changing and the units are not changing. He said that the Board can rely on the permit that was already granted, pursuant to these regulations. He said that the septic system will have to change to allow for 36 units x 70 gals. additional water.

Kristen McEvoy, abutter, said that no architectural plans have been submitted and no plans were tied to the permit. She said that she is concerned regarding Mr. Hebert's noting that vegetation needed to be mowed for adequate site lines. She also said that post public hearing, a ten foot buffer safety strip was required to be installed in the wetland buffer zone, prompting her to think that this is a change in the order of conditions. She also asked about the need to go before MEPA with any of these changes.

Stuart Schulman noted that he was on the original board granting the permit. He said that what troubles him is that when the original hearing was held, the framework was based on this project being age 55+.

Mr. Bobrowski said that most towns have this issue with the age restriction and changing markets.

Mr. Schulman said that he is troubled with this change and wonders whether the Board would have granted the extent of the variances if this wasn't 55+ age restricted.

Mr. Bobrowski said that he is setting the HAC groundwork, noting that a post permit request for change is whether denying the change makes the project uneconomic. He said that the burden is on the applicant that the age restriction condition makes this project worse. This decision is based on financial figures. He cited a 1/22/08 Hanover case which applied to 55 and older condition, noting that the Board will have the help of Mike Jacobs to make this determination. He said that the Hanover case was a 55+ all rental and the developer came back to remove the restriction. He said that developers are allowed to ask for this change because circumstances changed between the time the permit was granted and now.

Atty. Eriksen said that that is why they too are asking for a continuation, to get Mike Jacobs the information he needs.

Mr. Bobrowski said that there are other issues here than in the Hanover case, such as traffic, waste water and the safety of kids getting to a school bus.

Mrs. Manugian asked whether the Board could ask for a whole new comprehensive permit because of member changes and design changes.

Mr. Bobrowski said no, that just the proposed changes could be dealt with.

An abutter asked whether wetlands issues could be revisited.

Mr. Bobrowski said only in so far as the changes proposed.

Tom Orcott, Water Superintendent, said that they also will need more water and a hydrological study may be required.

Mr. Bobrowski said that the issues here are water, wastewater, traffic, and child safety. He said that if DEP asks for any changes, these have to be reconciled with the Board.

Discussion ensued regarding these issues.

Mr. Bobrowski suggested engaging at least a civil engineer, if the applicant okays, and suggested using the same firm that worked on the original permit.

Mrs. McEvoy said that a source of water has never been defined for this project.

Mrs. Duffy said that she thought water would come from Sunset Road.

Mrs. McEvoy repeated that it was not delineated, noting also that the ZBA has improved their 40B rules and regulations and that many additional plans are now required. She asked whether if this is treated as a new permit, then could the Board mandate these additional requirements.

Chairman Cadle said that this is not a new plan.

Mr. Orcott said that there is a lot in the record about conceptual water routes, through Bayberry and Sunset.

Mr. Schulman suggested that if a lot of changes are proposed, this could require a new review. He said that there could be fewer units and maybe some of the variances would not be required.

Mr. Bobrowski said that only the changes requested can be looked at, noting that if there is still the same footage for variance, that is not a change.

Atty. Eriksen said that he took many notes and has a lot to discuss with his client.

Mr. Bobrowski said that the money review should be done last and that the Board should address wastewater issues first. He also said that the Board should get more money for a civil review.

Matt Field said that they separated the septic and leach fields and thus do not need variances and the size of system can be increased.

Atty. Eriksen said that he wants to continue with Mike Jacobs, stressing that it doesn't make sense to halt the financial review and noting that he has been working with him for a few weeks.

Chairman Cadle said that he understands but if there are additional changes after he completes the review, then the Board can't rely on his findings.

Atty. Eriksen said that he, too, understands and said that he will get all the pieces to fit.

Mrs. Manugian asked how to get up to speed since four of the members didn't sit on for the original application.

Mrs. Duffy asked how much money would be involved and when the civil engineering review should be done.

Mr. Bobrowski said that the civil engineering review should be done first, for the next meeting. He said that a new mounding calculation needs to be done, which is conditioned in the permit.

Mrs. McEvoy said that she wants an engineering review done before the hearing is closed, wants to know what waivers are being required and how it

will affect abutters. She said that a three foot retaining wall along her property line is needed for the project as it stands now.

Chairman Cadle said that our engineers will just do a peer review.

Mr. Bobrowski said that the engineers will determine what waivers are necessary.

Mrs. McEvoy said that she wants a full accounting of the impact, prior to the close of the public hearing.

Mr. Orcott suggested 60 days for a continuation, noting that a hydrological exam will cost at least 2500 dollars.

Mr. Bobrowski said that the money already in the 593 account is already gone with the financial analysis.

Discussion ensued regarding when to continue the hearing, 30 days at the applicant's request or 60 days as Mr. Orcott and the Board want.

Mr. Schulman said that he doesn't think 30 days is enough to let other boards review the plans, noting that boards need an additional buffer of a week or two after the plans are submitted.

Atty. Eriksen reiterated that he is requesting a 30 day continuation.

Mr. Bobrowski asked what would be accomplished in 30 days.

Atty. Eriksen said that Mike Jacobs would be reporting on an update and a civil engineering report update will be made. He said that there will be enough to have a productive meeting.

Mrs. Duffy said that she feels 45 days is minimal.

Mr. Bobrowski suggested getting the applicant to agree to a civil engineering firm and vote to hire them, contingent on funds being available. He said that Atty. Eriksen should fax a letter tomorrow stating that Nitsch is an acceptable firm and that 3000 dollars is the limit of the engineering review, and which could be replenished as necessary.

An abutter asked whether other boards will be able to put in input.

Chairman Cadle said that the next meeting won't be the final and boards will have input.

Mrs. McEvoy asked that any work sessions be raised in a public hearing and that the public be notified.

Mr. Bobrowski said that one board member is not a subcommittee and thus the work session doesn't have to be posted.

The Board moved to hire Nitsch Engineering, with the approval of the applicant and contingent on receipt of 3000 dollars, which is the limit of the civil engineering scope of review, and which can be replenished (593) as needed. The motion was seconded and passed unanimously.

The Board moved to continue the hearing to September 24th at 7:30 pm. The motion was seconded and passed unanimously.

Chairman Cadle convened the Guichard/Black hearing by reading the legal notice.

Don Black, contractor, said that a 24 x 24 attached garage is proposed on the existing ranch style house, that has a shell pitched roof and no storage space. He said that his client wants a two car garage for her car and the storing of her kids' bikes, which keep getting stolen due to lack of storage space. He said that the side boundary hasn't been determined and the variance would be for 2.5 to 5 feet. He said that they will have a survey done, noting that the proposal is for a single story two car garage.

Discussion ensued regarding whether a certified plot plan should be obtained prior to the issuance of the permit.

Mr. Black said that his client will spend \$700 for the survey after the permit is granted, and thus if the variance is granted from 2.5 to 5 feet, based on the plan, the permit should be acceptable.

Chairman Cadle said that they would have to come back if the calculations are wrong.

Mr. Black said that they would do that if necessary, noting that there is a fence along the back of the property but it is unclear if it is the rear boundary.

Mrs. Duffy noted concern that if the house caught on fire how a fire truck could get in.

Mr. Black said the property would be accessed through the other side of the property, where there is room. He noted that the septic shown on the plan is not in use as the property is served by town sewer.

Mrs. Maxwell asked where garage would be in relation to the fence.

Mr. Black said that from the fence is 2.5 feet and from the trees is about five feet. He said that 24 feet is ideal for a standard two car garage.

Ms. McWade suggested that a one car garage with a shed would require less of a variance.

Mr. Black said that if his client ever sells, a standard two car garage would be better for the property value.

Mrs. Manugian asked what the setback on the other side of the house is.

Mr. Black said that it is about 20 feet.

Mrs. Duffy said that she wants a certified plot plan first. Chairman Cadle agreed.

Mr. Black said that he would have to certify both the house and garage so thus a survey would have to be done twice. He said that if they get the permit, they will get the survey and he will pin the garage such that it works with the permit. He said that if it is determined that there is a problem after the survey is done, they will have to address that.

Mrs. Maxwell said that she feels that they have to do the survey either way.

Mr. Orcott said that they might have to survey other properties to make sure that it all works. He suggested using Stan Dillis, noting that it is not a little expense.

Mrs. Manugian asked whether the garage could be located in the notched space shown on the plan and thus avoid a variance all together.

Mr. Black said that it is living space with windows that would look into the garage and is not viable.

Of note: the driveway is paved.

Mr. Black asked for a conditional variance.

Discussion ensued regarding whether this is possible. Mr. Black said that his client doesn't want to spend the money if the variance is out of the question.

The general consensus was that the variance would be okay if as outlined.

The Board moved and seconded to continue the hearing to September 3, 2008 at 7:45 pm.

The meeting adjourned at 9:45 pm.