TOWN OF
NEW LONDON, NEW HAMPSHIRE
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ZONING BOARD OF ADJUSTMENT MINUTES
(ZBA)
Tuesday August 7, 2018 at 6:30 PM
Town Office, Sydney Crook Conference Room, 375 Main Street

MEMBERS PRESENT: Douglas W. Lyon (Chair), W. Michael Todd, Katharine Fischer, Ann Bedard, Heidi Lauridsen, Stan Bright

MEMBERS EXCUSED: Frank Anzalone, Bruce Hudson

STAFF PRESENT: Nicole Gage, Zoning Administrator

OTHERS PRESENT:
Mike Black, Continuum
Wayne Morrill, Jones & Beach Engineering
Attorney James Callahan
Luke Hurley, GES Inc.
Pat Deragon
Ray Deragon
Alison Trow

1. Call to Order – Chair Lyon called the meeting to order at 6:30PM.

2. Roll Call – Chair Lyon called the roll. Chair Lyon will recuse himself for the public hearing as he is the Chairman of the Board for the New London Hospital. Vice Chair Michael Todd will lead that part of the meeting.

3. Review Minutes from July 18, 2018

IT WAS MOVED (Michael Todd) AND SECONDED (Ann Bedard) to approve the minutes from the July 18, 2018 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

4. PUBLIC HEARING for Case #ZBA18-05. Applicants Mike Black of Continuum Development & Attorney James Callahan and Owners New London Hospital Association request a Special Exception for Wetlands Crossing, per XIII, E.1 to allow wetlands impact and crossing in connection with a proposed development for a senior living community (planned unit development). The lot is located on County Road in the R-1 (Residential) zone and is identified as Parcel ID 072-017-000.

Chair Lyon stated that a spreadsheet was previously distributed. Michael Todd prepared a summary of various cases on special exceptions. He did a similar one for variances. This is public information so if anyone wants a copy, please see Nicole Gage, Zoning Administrator.

Vice Chair Todd stated exceptions are not the same as variances. Exceptions provide relief from the operation of the ordinance. In this instance, the ordinance prohibits the crossing of wetlands. The conditions that are imposed in the ordinance for crossing wetlands by special exception must be met or the special exception can't be granted. The conditions cannot be waived.

Attorney Jim Callahan stated there are special criteria in section 21 and asked if they could dispense

with it. Chair Todd stated he wouldn't dispense with them as some may apply peripherally to the effect of the crossing of the wetlands. He is primarily interested in the provisions in XIII, E.1.

Mr. Callahan stated a wetland scientist and an engineer are here to discuss the wetlands in detail.

Section XIII E of the ordinance states the applicant must demonstrate to the Zoning Board of Adjustment that there is not a layout of the access way, driveway, street or utility line which conforms to your zoning regulations and does not cross the wetlands and proposed crossing will create the least impact on the wetlands compared with other crossing locations. This will be the standard to focus on. There is a precondition in our ordinance that the applicant must first have gone to the Conservation Commission. This happened on January 17, 2018. No response was received back from the Conservation Commission. The New Hampshire Wetlands board and the Soils Conservation Service also did not reply. They did receive notice so that requirement has been met.

Based on feedback that Jones and Beach Engineering received at the January 17, 2018 Conservation Commission meeting, they did more design work and reduced the impact. Originally, the affected square footage was 7,500 of impact. This has been reduced by 20-25%. This has been a heavily engineered site and there have been approximately 30 redesigns of the project.

Ian McKinnon of Jones and Beach Engineering attended to address the four wetland crossings that have been identified. There were many alternative layouts but this layout resulted in the best locations for flow through the site, for connecting the site and with regards to elevation and width of wetland areas, provided the smallest possible impact.

Grass stabilized slopes and retaining walls reduced the size of the crossings. They are currently designed with HDPD pipe and are designed with the 50 year storm event. The standard is generally 25 year storm for road crossing culverts but they felt a 50 year storm was a proper sizing.

Wetland impact 1 is in a high point in the wetland. This pipe is designed solely as an equalizer pipe between the road way. There isn't consistent flow through this area.

Wetland impact 2 is near the corner of the building and under the main access way. This is the tallest elevation wise from wetland to finish surface. To reduce slopes on the high side of the crossing they will put in a retaining wall so there isn't impact to the wetland further down. This was realigned to reduce the impact size.

Wetland impact 3 is behind the building and the access behind this building is restricted for life safety. The fire and police departments will have access but it will not be a regularly traveled roadway. Pedestrians can also use this access way.

Wetland impact 4 is the largest crossest in terms of what is sees for flow. That watershed extends up towards the hospital and some storm water runoff comes off Newport Road. The hospital has a porous employee parking lot and some existing storm water infrastructure but the water ultimately comes through this site. The pavement that will be used for all roads will be standard asphalt. This wetland is closest to Parkside Drive. This was designed with four, smaller 12 inch pipes because it is a wider crossing and they wanted to keep the impact down as this allowed for a lower road elevation. The pipes have open ends on both sides so as long as water is moving it shouldn't freeze.

Luke Hurley of Gove Environmental explained that crossings 1, 2 and 3 aren't flowing wetlands. Where they get narrow, it concentrates and then drains downhill. They pick the narrowest points to go through for lesser impact. It's important to maintain the functions and values of the wetlands. The goal is to maintain the natural flowing system that goes from the top to the bottom of the site. The large wetlands are all staying intact.

There won't be any direct runoff from the roads and parking areas into the wetlands. There are ponds located on the property to slow water down.

All the roof runoff will be detained and infiltrated.

Mr. McKinnon identified where all the ponds will be located. The roof water is controlled in standard chambers underground. There is a system under the parking lot as well. There is a larger pond that pretreats the water and detains the water before entering the wetland. The water is being slowed down by going through multiple systems. The water flow is controlled.

There are concerns about the culvert on Parkside. Some preliminary work has been done for recommendations to the Department of Public Works. Mike Black stated they are discussing this with the review peer engineers to come up with an improvement for flow across Parkside Road.

On this entire site there is no sheet flow as all of the roads are curbed or pitched inward. There is no direct runoff so no sediment or salt running directly into the wetlands. It will go through the storm water features scattered among the site. They are required to meet the predevelopment conditions and are not adding any additional flow to the pipes.

The hospital property contributes to the wetland and then this development will. It will continue to handle the hospital runoff and they have worked to slow the runoff within their disturbance. With all of this development, this area can still sustain the runoff.

The post run off cannot be more than the pre run off and in some cases it is actually less.

Vice Chair Todd asked if there was any other layout that would have less impact, cross them fewer times and affect fewer square feet. Mr. McKinnon stated this is the best option and have chosen all the narrowest locations to cross and have crossed them only once.

The units that will have a basement will have a standard foundation drain. The foundation drains are obtaining water that is already in the ground and they don't collect flow. There isn't a need to slow water down and the ground water level isn't at the footing. It is there as for emergencies if there are heavy rain events.

Alison Trow discussed her concerns about heavy water flow. She feels the culvert needs to be replaced on Parkside as it is not adequate. Her concern is that she already has water issues and this will add to it. Will there be more water coming down. Mr. McKinnon stated there are two requirements they have to meet for the site design. One is the peak flow for the site which determines how much water and volume comes off the site. They have to meet or reduce the precondition on both of these. They cannot increase the volume coming off the site.

IT WAS MOVED (Katharine Fischer) AND SECONDED (Anne Bedard) to close the public hearing. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Heidi Lauridsen) AND SECONDED (Stan Bright) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

Vice Chair Todd noted that the applicant must demonstrate to the board that there is no other layout with less impact. Ann Bedard stated they have met this and the evidence is sufficient.

They also have to ascertain that where these wetland crossings have been identified, that evidence has been presented to sustain a finding that they are done with the minimum impact possible. Ms. Fischer stated they have been convincing that they have spent the time and done the work to lead to that conclusion.

In addition to those specific conditions, there are others that need to be met. Item 21G on page 81 was identified and Ann Bedard stated she is concerned that there isn't more information from the Department of Public Works regarding this. We have the applicants' word that they are working with them and she hopes that happens. Vice Chair Todd stated if there isn't sufficient evidence to sustain a finding, we can give them an opportunity to produce further answers and the hearing could be continued.

Attorney Callahan suggested that they consider that at the Planning Board level, making an approval conditioned upon the Planning Board working in conjunction with peer review engineering on these concerns. The plan will be more heavily scrutinized. Vice Chair Todd is concerned that if they grant a special exception and the plan changes they have to come back to the Zoning Board anyway. They will have forgone the right to impose conditions that they may see fit in granting the special exception. They need all the information they can get now.

Mike Black commented that the culvert issue on Parkside is an existing condition and Continuum brought it to the town's attention. The special exception relates to wetlands crossings and doesn't relate to these culverts. Ms. Bedard appreciates this however, she objects to not hearing from our Department of Public Works. These other things need to be looked at as well.

IT WAS MOVED (Michael Todd) AND SECONDED (Stan Bright) to suspend the discussion pending a presentation on 21 G. THE MOTION WAS APPROVED UNANIMOUSLY.

The public hearing has been reopened to for the purposes of discussing 21 G and related points on these four wetland crossings.

This use is permitted by special exception and it has been heavily engineered. The issue that has arisen is the impact of the water flow based on the inadequacy of the town culvert on Parkside. Two licensed professionals testified today that there will not be an impact on the property. The runoff and the drainage on the site will be improved as a result of the systems put in place. Condition A- this involves the use and they will be in harmony with surrounding area because they won't be adding more water to it.

Condition B – the impact on wetlands on these crossings is minimal and is improved.

Condition C – the use is specifically allowed and it is.

Condition D – Adequate and lawful facilities for sewage disposal, water supply, drainage. This has been addressed.

Condition E – The use will not be detrimental to vehicular or pedestrian traffic. This has been met.

Condition F – The proposed special exception conforms to all other requirements of the ordinance.

Condition G – the use will not be detrimental to the character of the neighborhood. Internally the effects of this project will be an improvement. A concern was flagged by the applicant by being proactive and being a good neighbor. This is a complicated project on many levels. It's unclear who would pay for the upgrades but that will be discussed. An agreement could be put together between the town and the applicant to identify a process to move this forward on an efficient basis.

Condition H – use is compatible with the spirit and intent of the ordinance. The purpose of this overlay district is to protect wetlands and they have mitigated the impact.

Doug Lyon stated that the request is for a special exception for wetland crossings. The issue that is stalling this discussion is a preexisting condition in the town that is of concern. We've heard testimony that nothing that will happen on this site will increase the flow of water across Parkside. That means that this site is not going to contribute to the problem that already exists. Penalizing this project for a preexisting problem is not fair. Continuum has gone to exceptional lengths to say they will work with the town to try to alleviate that problem which is more than reasonable. He suggests that the special exception be approved with the understanding that Continuum, in good faith, will work with the DPW to try to alleviate what they can. He doesn't agree with putting a condition on this that adds to the burden of the project by requiring the project to address conditions that existed in the town prior to this, especially when the project is adding nothing to that problem.

Vice Chair Todd doesn't think its right to deny the Board advice of their own expert before making their decision. Mr. Lyon is suggesting that there will be peer review as part of the Planning Board.

Ann Bedard stated that since it has now been brought to our attention that we don't have crossings

that can accommodate any increase in flow. She is suggesting that they have some way of knowing it will be addressed as now we know the culverts are undersized to accommodate the flow. She would like to impose a condition. Attorney Callahan stated they are open to an agreement to address these offsite issues.

Chris Cundy, New London Hospital Trustee commented that he understands the concerns of the Zoning Board but he thinks this presentation has complied with all the requirements of approving the case. If the approval is delayed, things can develop that are out of anyone's control including changes in the marketplace, financing and availability. This can potentially destroy the project. It they have complied with the requirements, he would hope that they would not put conditions on it that will significantly time delay it. Vice Chair Todd responded that they have 30 days to make this decision if they need to, and will not make a decision until they have all the information they need.

IT WAS MOVED (Katharine Fischer) AND SECONDED (Ann Bedard) to close the public hearing. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Heidi Lauridsen) AND SECONDED (Ann Bedard) to resume the discussion. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Michael Todd) AND SECONDED (Stan Bright) to approve the Special Exception with the following Conditions:

1) Satisfactory peer review by outside engineers;
2) No change in the number or location of wetland crossings;
3) No more than 20% change in the wetland impact area;
4) Further assurance that plans do not result in additional downstream flow; and that the Special Exception is based on the plans presented.

THE MOTION WAS APPROVED UNANIMOUSLY 5-0.

5. **Amended Motion for Rehearing, Case #ZBA18-02, 1876 Newport Rd., Parcel ID 041- 001-000, SDB Investments, Inc.**

Chair Lyon stated that he sent out research information to Board member as this is public information.

There was an amended motion for rehearing by counsel for Spec Bowers. Counsel states that "In our motion for rehearing dated July 6, 2018 we reserve the right under RSA 677:2 to amend our motion within 30 days of the decision filed on June 27, 2018.

Nicole Gage and Chair Lyon reviewed RSA 677:2 and sought advice from town counsel. Under RSA 677:2 there are two conditions that must be met in order to file an amended motion. Those conditions are that both the minutes of the meeting and the decision of the meeting must not have been filed within five business days of the date when the decision was made. Ms. Gage has produced a chronology which was distributed that demonstrates both the decision and the minutes were in fact filed in a timely fashion. Counsel has no right to amend the motion and the motion for rehearing is not timely. An untimely appeal can't be considered by the Zoning Board of Adjustment.

The ZBA heard the applicants July 6th motion for rehearing on July 18th and voted to deny the rehearing. That concludes this case.

IT WAS MOVED (Chair Lyon) AND SECONDED (Katharine Fischer) to deny the amended motion for rehearing.

Applicant Spec Bowers has filed an amended appeal based on RSA 677:2. However, RSA 677:2 requires that two conditions be met: Those conditions are that both the minutes of the meeting and the decision must not have been filed within 5 business days of the date when the decision was made. However, both the decision and the minutes were filed in a timely fashion. Therefore, the application is not timely and cannot be heard. The ZBA heard the applicant's July 6 motion for rehearing on July 18. The Board voted to deny the rehearing and that concludes this case. The Amended Motion for Rehearing is denied. **MOTION PASSED 5-0**

Spec Bowers stated that when the ZBA met on June 26, 2018 you thereafter amended the minutes to incorporate the substitute motion that you made on June 26. The minutes were modified long after the June 11, 2018 meeting so that gives me 30 days to amend the motion.

Chair Lyon stated that on the advice of counsel, the ZBA is rejecting that argument. Mr. Bowers asked if counsel was aware that the minutes were modified after. Chair Lyon stated yes.

Nicole Gage and Chair Lyon discussed the distribution of information between meetings. In many cases it is appropriate but sometimes it is not. As a result, any information to be distributed between meetings will go through Ms. Gage directly.

6. New ZBA meeting schedule

The new schedule has been distributed. The August 21, 2018 meeting has been cancelled.

7. Other Business - None

8. Motion to Adjourn

IT WAS MOVED (Chair Lyon) AND SECONDED (Michael Todd) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 8:34pm.

Respectfully submitted,

Trina Dawson
Recording Secretary
Town of New London