

Newton Board of Appeals

2 Town Hall Road

Newton, NH 03858

MINUTES OF THE MEETING of August 10, 2020

CALL TO ORDER at 7:30 PM by Tom McElroy, Chairman

ROLL CALL: Tom McElroy, Chairman; Jack Kozec, Frank Gibbs, Michael Connolly, Alan French, alternate Tricia McCarthy, and Alternate Roger Hamel, recusing himself from the meeting; Laura MacKenzie, recording Minutes (Full board attendance).

ACCEPTANCE OF MINUTES: A Motion to accept the Minutes of the Meeting on July 13th, motion passed.

Chairman McElroy called the Public Hearing to order for Rt. 125 development.

Bill Gregsak – We are here to discuss the proposed lot 27-7, 4-lot subdivision. We are requesting 4-variances. The first variance is from the required 200-foot structural site setback when abutting another zone. This will have a 50-foot structural site setback and we need a variance requesting 150-feet. The second variance required is the 200-foot structural rear setback when abutting another zone. This will have a 50-foot rear structural setback with a 200-foot setback and are requesting a variance of 150-feet. The third variance that is requested is a 70-foot building distance from the center line of the street and 50-feet from any lot line. This person will have a building and pavement with a 25-foot distance from the center line of the street. The distance from the building to the center line of the street is 25-feet and we request a variance of 50-feet. The last variance that we are requested is from section 27, the wetland zoning ordinance, zoning requirement is 50-foot building activity from any poorly or very poorly drained soil and we are requesting to do work within 15-feet. We will not have any building within the area, but it is mainly for runoff and drainage treatment within that 15-foot zone.

Jenn Roden – Shared her screen of the application. Jenn asked if the participants could see a proposed 6,000 square foot building (sheet 2 of the application that was submitted to the ZBA).

Tricia McCarthy - Looking at the first lot and they are requesting a variance. Is this coming to us because it was denied by planning board? And if so, I was just curious as to when it was denied.

Bill Gregsak – No, it was not.

Tricia McCarthy – Typically, according to our specific ordinances, to come to ZBA, there should be a decision whether there was a denial or something else.

Bill Gregsak – We had a denial from the building inspector and that is how the application was submitted.

Tricia McCarthy – Our regs. Say not the building inspector but planning board.

Bill Gregsak – That is incorrect. The only way that you get before the ZBA is planning board?

Tricia McCarthy – Our policies are specific. Within 30-days of a planning board decision, you can come before the ZBA.

Jenn Rodin – Tricia, I know that is what your procedure states, but that is not what is allowed under law. People can appeal or ask for relief from any zoning ordinance from the board of appeals and do not require a denial from a planning board.

Jack Kozek – Tricia, the denial states that the application was denied for 27-7 as building lots have not been legally accepted by the town of Newton. Hypothetically, if the subdivision were legally accepted, the permit would be denied due to wetland setback requirements. The application says planning board, but should say building inspector.

Ryan Murphy – I Attended the walkthrough and it seems as though all the proposals are still showing that they want to change the 200-foot setback on all the lots that would have it to 50-feet and it seems as though this development group keeps coming back with the same argument that they want 50-feet. How many times can they keep coming back?

Jack Kozek – This is the first time they have come in front of us with this particular application with lot 27-7 and 27-3, the appeals board.

Greg Ravencraft – In conjunction with Ryan Murphy, these variances seems pretty extreme. We are not talking 7, 8 or 10 feet, we are talking huge variances that seem to go well against the zoning ordinance. As far as I am concerned, is out of line. The letter from conservation clearly agrees that they are not asking a small thing here, they are going from 200-feet to 50-feet and will change the whole dynamic of what the town of Newton has set forth for the zoning ordinance.

Greg Ravencraft – Does not understand why we would be entertaining changing the zoning of Newton to the extreme measures they are requesting. Can someone explain that?

Bill Gregsak – I just want to point out that the properties that is owned by Newton properties on Rte. 108 do not meet current zoning setbacks themselves.

Greg Ravencraft – I am in touch with the town of Newton on a regular basis and if we are in any sort of violation or any issues, we will address those accordingly.

Thomas LaPorte – With regard to Mr. Gregsak's comment about another individual's apparent non-conformant, that has no precedential effect under the law. Each variance needs to comply to all 5-factors under the statute and that burden of persuasion is not on anyone else, it is on the applicant himself. And that includes that the variance will not conflict with the public interest and when making a decision, make findings and facts on each of the factors that this applicant needs to prove. This applicant's right to get some economic benefit from this property vs. the public's interest. There will be a number of variances, particularly from the wetland setback requirements of 200-feet so it seems that the applicant is approaching this board in a piecemeal

fashion and I think that the board of appeals should understand that this is part of an overall effort to eviscerate the zoning ordinance of Newton. I believe there is a masterplan in Newton and in 2004 and recently, it has been reiterated by the legislative body, the town of Newton that they want to keep the rural character of the town. These factors reflect RSA 674:33: A) The variance will not be contrary to the public interest. That includes habitats, the benefits of wetlands, and the health of the area, in general including human beings. B) The spirit of the ordinance is observed: This an intrusion on the setbacks. C) Substantial justice is done, meaning the applicant is not deprived of all economic benefit, which he is not. There are other uses for this lot, 27-7 that they can not tell this board are not feasible. Again, the burden of persuasion is on them. Fourthly, and there are two more, D) The values of surrounding properties are not diminished and the fifth one, which is most important E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. That unnecessary hardship must come from special characteristics or conditions of the subject property that distinguishes it from other properties in the area. There are no special conditions. And I would challenge this applicant to be able to persuade this board what unique circumstances are there.

Dan Sweeney – I would like to reiterate what Thomas states and we have had two elections in town to maintain the 200-foot setback and overwhelmingly, it went down and this is another attempt to get around it and we're against it and keep it at 200-feet and I'm sure all the abutters feel the same way.

Greg Ravencraft – If these were somewhat smaller variances, something that made sense but if these variances are granted, it will change things from here going forward and other developers will see what happened here and I don't think it is a good idea in the town of Newton.

Thomas LaPorte – With regard to the variances for the wetland setback, the subdivision plans that have been submitted to the planning board and are of public record, show on their own maps without even going to the NH DES wetland maps, there are wetlands on each side of this lot and all around it. The existence of wetlands is not unique to this lot and again, that is the fifth requirement that goes to whether there is an unnecessary hardship because of the unique characteristics of this lot; it is not unique.

Tricia McCarthy – Conservation did do a site walk and had a meeting and we did write up a letter for the zoning board.

Alicia Geilen from Conservation - In summary, the letter from the Newton conservation commission addressed to the Newton Board of Appeals noted that it seems as though the applicant is requesting a waiver of almost all applicable zoning requirements. If so, what is the point in having zoning regulations at all? In short, wetlands are important natural resources and should be protected. Commission members express grave concerns over the environmental impacts to wetlands, wildlife, and water quality if these waivers are granted. The conservation commission respectfully requests that the board of appeals to require these properties to meet all applicable requirements set forth in the Newton zoning ordinance.

Coleman McDonough – Is Alicia a member or an abutter

Alicia Geilen from Conservation – I am a Newton resident and a member of the conservation commission.

Coleman McDonough – Don't you think it would have been beneficial to CC us on that letter you just read?

Tricia McCarthy – The letter was sent to the ZBA chairman

Coleman McDonough - This 200-foot setback... I can't even put the road into phase III and III. This 180 acres was set aside to be developed and in comments with Greg from Newton properties, not only is his building non-conforming but he can't even build his own building that he wants to build if he can't get this 200-foot setback. At 2 Puzzle lane, lot 1. You, the ZBA approved the same, almost identical setbacks for variances that we requested. So, I do not know all the scientific facts of your letter but back then, it was allowed and the ZBA should be consistent on how they vote and 90% of the buildings in phase 1 are within 200-foot setbacks. Coincidentally, in March 2004, we asked the planning board to show us that this 200-foot was endorsed and voted in but there's no discussion, votes, documentation, nothing that shows it even went up for a vote; no meeting minutes. I also want to tell Alicia that my engineer has to abide by all rules and regulations of the state and conform to all alteration of terrain, runoffs and wetland crossings. Everything will be scrutinized by the state of NH. This 200-foot setback is cumbersome. No other town has this and is considered to be a 200-foot no disturb zone and that is over in cumbersome and burdensome to the point where this road will not be installed, put in and the 180-acres will not be developed unless we have a positive vote from the ZBA.

Alicia Geilen from Conservation- I understand that variances have been approved in the past but if every variance request is approved, why have zoning regulations?

Thomas LaPorte – With regard to Mr. McDonough's comments about a former variance approval for a different applicant in the past is irrelevant. Whether or not Mr. McDonough can find the minutes of the town meeting voted on the 200-foot setback it is the law and is in the ordinances right now. Lastly, this is on one of the largest aquifers southern NH and is vitally important for health, safety, values of surrounding properties which far outweigh the reduction and benefit of this lot if approved by the planning board.

Coleman McDonough - I just want to reiterate that each and every lot will have a site review and the town can review the site to the wetlands and we don't have any problem with providing the board with a wetland scientist review or report. But this land was secluded and set back and designated by the town to be developed. I wanted to make the offer to Alicia, I would be receptive to the conservation purchasing the property to put in a park or biking trail, something of that nature.

Alan French - The problem with the town making a timely decision, is that without any kind of information on the lot in the subdivision, we can't make a decision until he comes back with variances on the lots, which we were receptive to.

Coleman McDonough – When you were doing a masterplan for the whole town, Todd Fitzgerald owns land next to the town, that is a 50-foot setback. Plaistow is also a 50-foot setback. So, your own town and abutting town has a 50-foot setback.

Michael Connolly – That section of Plaistow that you are looking to build on, is that residentially zoned right now, and you are going to go for commercial?

Coleman McDonough – Yes, that is correct

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Tricia McCarthy - A big reason for the 200-foot buffer setback in Newton is because of the aquifer.

Chairman Tom – Coleman, are you willing to have a wetland scientist come in to do an evaluation?

Coleman McDonough - I would be more than happy to do a wetland evaluation.

Greg Ravencraft – Noted the tractor trailers commonly blocking and disrupting his business at all hours of the night

Chairman Tom – I would like to make a motion to carry this meeting for 27-3 and 27-7 to September
Motion carries.