

**Newton Board of Appeals
2 Town Hall Road
Newton, NH 03858**

MINUTES OF THE MEETING of February 12, 2018

CALL TO ORDER at 7:30 PM by Chair Tom McElroy

ROLL CALL: Chair Tom McElroy, Vice Chair Alan French, Jack Kozec and Alternate Frank Gibbs

Mr. McElroy appointed Frank Gibbs a voting member in the place of Mr. Connolly.

ACCEPTANCE OF MINUTES: A motion to accept the minutes of the meeting of January 8, 2018 was made by Mr. French. Second by Mr. Kozec. Motion carries.

**Review: Arthur J. McSweeney
17 Plum Street
Chelmsford, MA
For Property at: 28 Wilders Grove, Newton, NH
(Map 02 Block 27 Lot 04)**

The Board of Appeals reviewed the application and drawing of the proposed garage. The replacement garage will park two cars – front to back. Mr. McSweeney was informed that all decimals must be converted to inches. The Board agreed to place Mr. McSweeney on the March 12, 2018 agenda.

**Appeal of Administrative Decision
George Twiss
131 North Main Street
Newton, NH 03858
Map 9, Block 6, Lot 7**

Mr. McElroy opened the public hearing. Atty. Scott Hogan appeared on behalf of Mr. George Twiss. Atty. Hogan started off by stating what Mr. Twiss' appeal is not. It is not a challenge of the Planning Board's original approval of this project. The property behind Mr. Twiss' went to the

Planning Board as a Cluster Residential Development. When the project went before the PB in 2014, Mr. Twiss expressed his concerns about retaining the buffering that was in place at the time and concerns about drainage. He was concerned with the fact that the engineering of the drainage was diverting the water to the front of the property towards Mr. Twiss' property instead of toward the back of the property toward the wetlands.

Atty. Hogan stated that the Newton Zoning Ordinance requires buffers between a Cluster Residential Development project and existing dwellings. Atty. Hogan presented before and after pictures and stated there was no buffer. He stated that the buffering was the issue and the drainage was secondary. He stated that the wetlands were to the back of the property and it would have been better/easier to drain towards the back of the property. He said that the reason Mr. Twiss did not appeal the PB decision at the time was because the PB said "yes we want a 25' buffer". Atty. Hogan referred to past PB meeting minutes. When the PB approved the project, Mr. Twiss figured the buffer would be maintained.

Atty. Hogan gave a history of his interaction with the PB. When they first approached the PB, they were told it was a Code Enforcement issue. Code Enforcement sent it back to Mr. Twiss stating it was not Code Enforcement's jurisdiction. The PB sent the Town Engineer to the site to evaluate the conditions. The Town Engineer stated that the applicant's engineer staked out the ground. The Town Engineer went out after that time and checked out the lines. That resulted in the Town Engineer's report at that time.

Atty. Hogan stated that when he went back to the PB in June, he was informed by the PB that they did not have jurisdiction. At the point, Atty. Hogan stated he "lost his professional cool". (He stated he did apologize to the PB.) Atty. Hogan stated that he asked at that time about the lack of buffering. He stated that the PB never answered the questions about the lack of buffering. He stated that the PB approval required a buffer. Atty. Hogan said he did not understand why the PB sent the Town Engineer out at that time if they did not have jurisdiction.

Atty. Hogan stated that current conditions at this time provide no buffer. The PB approval required a buffer. He invited the BOA to take a site walk and see the conditions.

Atty. Hogan stated that the Town Engineer's report stated that the town regulations do not allow increased flow in post construction conditions. The calculations submitted by the applicant's engineer at the time show they would have drainage structures that would release over time. Atty. Hogan stated that all the stormwater goes into the infrastructure. He said that it is, according to Mr. Twiss, increasing the downstream flow.

Atty. Hogan said that the Ron Lemere's decision of November 30th was based on the Town Engineer's report. Atty. Hogan asked, what about the fact that Mr. Twiss sees more water coming through his property and there is not a buffer.

Atty. Hogan is asking the Board to overturn that decision and find that the conditions on the ground are not according to PB approval. He believes it is an error and he is asking the BOA to overturn the decision of Ron Lemere and find that the conditions on the ground are not consistent with the PB's approval.

Mr. McElory asked if the builder (Mr. Bartlett) was involved in any of these discussions. Atty. Hogan replied that yes he was in contact with Mr. Bartlett. He said they had spoken quite a few times. He stated that Mr. Bartlett had come out to the site.

Atty. Hogan stated he is looking for the PB to take jurisdiction.

Mr. French asked if part of the conditions of approval required new plantings. Atty. Hogan stated no. He stated Mr. Twiss had requested they keep the original, mature tree line between his property and the cluster development. On the plan, it states that the width of the buffer varies.

Mr. French asked if they are questioning the competence of the Town Engineer. Mr. French stated that the purpose of the retention pond is to slow the release of the water. Atty. Hogan said on the buffer side he cannot see how it is not black and white to the Board members.

Mr. McElroy asked if there were any abutters in the audience. Mr. Greg Colson, 133 No. Main Street stated that he lost his buffer.

Mr. St. Germaine from Kerry Drive spoke. He said that he and the abutters were against the plan from the beginning. He felt a single structure would

have better served the lot of land. He said there was no talk of adding or planting trees.

Atty. Hogan discussed the value and the marketability of Mr. Twiss' property now. He said Mr. Twiss is concerned about the post conditions of the property. He said it is wide open; it is not buffered; and the width does not vary.

Ron Lemere, Building Inspector/Code Enforcement stated that after reviewing the information, he has to rely on the documents of record and the information provided by the Town Engineer. The Town Engineer is the expert. He said he cannot make that determination. He has to rely on the Town Engineer's report. The report stated that based on the marked limits, the tree clearing is consistent with the no cut zone requirements and that there was no required restoration of plantings required. Mr. Lemere said that looking at the plans, the buffer width varies. It does not give a specific buffer of 25'. What he has to rely on during this process, is to look at the record. The record shows a varying width. Mr. Lemere said the Newton Ordinance provides for a visual buffer. There is no number recommended. Part of the approval process was the buffer width varies. According to the Town Engineer, the development meets with the approved plan.

Mike Vignale, Town Engineer stated that he looked into the drainage. He stated that he is a technician – he looks at the nuts and bolts and that all things come together. He stated that the PB approves the plan, he makes sure that the project meets those plans. It is not up to him to approve the plan, but to determine that the project is built to plan as best as he can tell. He spoke of the drainage flow – the rate of flow vs. volume of flow and it does comply with regulations. It matches the plan. He stated that the tree clearing is consistent with the no cut zone requirements.

Bill Bartlett, Applicant (Kinsley), stated that five years ago when he applied he never heard a word about a buffer. He stated that the road was paved two years, three months ago. A year ago they started construction of the duplexes. He stated that the project is 100% done. He stated he does not own anything there but the road. He has a bond on the road. To this point everything's been seeded. He stated he never met Mr. Twiss. He said he would have been happy to meet Mr. Twiss. Mr. Bartlett said he met with Atty. Hogan twice in June of last year. Mr. Bartlett asked Atty Hogan where Mr. Twiss was and Atty. Hogan stated Mr. Twiss was too upset to meet. He stated had Mr. Twiss

met with them and expressed his concerns he would have been more than happy to put some trees in. He stated that the plan was public record. He stated he attended the meetings with easels and pictures.

The pictures showed where the retention ponds are located. Mr. Bartlett stated that the project was approved by his Engineer, the Town Engineer and the State Engineer. He said he was proud of his work/development. He thought he was doing something good for the Town. He said he is sorry that he interrupted someone's life. He said that anyone could have purchased the property.

Mr. McElroy asked if any of the homeowners from Kinsley Drive were in attendance? No.

Mr. Twiss spoke. He said from the first meeting no one wanted the development. He expressed his concerns about drainage. He said at the meetings it was stated that they would retain a buffer. He said he did not agree with putting duplex houses there; it was not in keeping with the single family residential homes. He said he brought up at the meeting his concerns with a 3' drainage pipe. He said the land used to drain naturally towards the back of the property. He said he never received a notice saying the project was accepted. He said he came into the Town Hall in June and never heard a word from the Planning Board for six months. Mr. Twiss was not happy about the construction process. Mr. Twiss said at this point he obtained an attorney after not hearing back from the PB.

Mr. Kozec stated he would like to do a site walk. The BOA members agreed. Bill Bartlett granted permission for the BOA members to access the road as well as the abutters and Mr. Twiss. The Board members discussed options for the site walk. The public hearing will be continued on March 12, 2018. At 9:00 PM Mr. McElroy closed the public hearing.

It should be noted that the original site walk was scheduled for Wednesday, February 14, 2018. After some discussion with board members it was scheduled for Monday, February 19th at 4:00 PM.

Correspondence: The 24th Annual Spring Planning & Zoning Conference will be held Saturday, April 28, 2018, at the Courtyard by Marriott, Concord, NH.

At 9:20 PM, a motion to adjourn was made by Mr. Kozec. Second by Mr. French. All in favor. Motion carries.

Meeting adjourned at 9:20 PM.

NEXT MEETING will be Monday, March 12, 2018 at 7:30 PM.

Respectfully submitted,

**Gail M. LeBlanc, Secretary
Board of Appeals**