

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

MINUTES OF THE MEETING of March 12, 2018

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

ROLL CALL: Chair Tom McElroy, Vice Chair Alan French and Jack Kozec.

ACCEPTANCE OF MINUTES: A motion to accept the minutes of the meeting of February 12, 2018 was made by Mr. Kozec. Second by Mr. French. Motion carries.

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

Mr. McElroy continued the public hearing from February 12, 2018. Mr. Hogan spoke on behalf of Mr. Twiss. He stated he did not plan to reiterate everything he said at the last hearing and appreciated the fact that the Board went out to the site. Mr. Hogan stated:

- The Cluster Development Ordinance requires a buffer, a visual buffer between the development and neighboring properties and roads.
- When the Planning Board approved the project, a notation was made that buffer width varies. It does not mean there will be no buffer. There are places right now where there is no buffer at all.
- The drainage structure itself is what required the trees to be removed. They would have liked a bigger buffer originally. Mr. Hogan stated that what was approved is not out there now. They are not trying to appeal the Planning Board's original approval.

- On the drainage side. Mr. Hogan said the drainage structure is releasing water all the time. He stated it is not functioning the way it was presented to the Planning Board.
- What they are asking for is “Yes, the buffer was part of the condition of the Planning Board’s approval” and it does not exist now.
- The drainage, the way the Planning Board approved it, does not appear to be happening now.

Mr. McElroy asked if there were any abutters present? Yes, Mr. Ted St. Germaine of 6 Kerry Drive spoke. He stated that the 25’ no-cut zone that was expected is not there.

There was some discussion of the site-walk. Mr. Kozec stated that some of the cutting of trees was required for the drainage system. Mr. McElroy pointed out that the trees are deciduous and that when the spring/summer arrives the leaves will be out.

Mr. Twiss spoke. He said he went to the Planning Board with his concerns and got no response. He said it was wrong to put the duplexes in, that they changed the character of the Town. He said he was happy that the BOA members did a site walk, but said they never stood on his property to see the view he sees. Mr. Twiss said he is just trying to get what he deserves.

The Building Inspector/Code Enforcement Officer, Ron LeMere, read from a prepared statement:

“I would like to thank you for allowing me the time to testify to the pertaining facts, regarding the Kinsley Corner Development appeal of my decision which stated, “Given the Information provided by the Town Engineer, pertaining to inspections in the months of March and June of 2017, it is represented that the Kinsley Corner Development is in compliance with the approved plans as it pertains to the no cut zone and the draining calculations.”

On February 12, 2018, you did hear approximately 1 hour and 20 minutes of testimony which did include the following:

- a. Attorney Hogan did state on three occasions that the appeal did not pertain to the Planning Board’s original approval of this project. The**

basis and majority of his argument primarily pertained to the decisions of the planning process (pre Planning Board approval)

- b. Attorney Hogan did represent that my decision was based solely on engineering data. As represented, my decision was based on the engineering data of record.
- c. Attorney Hogan did argue that the site was not constructed per the approved plan. The Town Engineer did testify that the project was constructed per the approved plan and Attorney Hogan offers no engineering data for the basis of his claim.
- d. Attorney Hogan also stated that the drainage system was not functioning as designed. Attorney Hogan offers no engineering data for the basis of his claim.
- e. Attorney Hogan did state that the ZBA should discard the Engineer's findings of compliance, without any additional engineering data, as it pertains to the approved plan, and that the ZBA could simply conduct a site walk to determine engineering compliance and question the confidence of the engineer of record.

During my testimony of approximately 11 minutes and 34 seconds, I did represent for the record, my letter to Attorney Hogan, dated November 30, 2017, that based on the information and observations provided by KV Partners, LLC, please find the following:

- 1. Mr. Vignale (Town Engineer) did find that based on the requested marked limits, the tree clearing that was completed, is consistent with the no cut zone requirements.
- 2. Mr. Vignale did also represent that no restoration of plantings was required.
- 3. The developer's engineer did submit plans and drainage calculations that was prepared by a Licensed Professional Engineer, that were reviewed by Mr. Mike Vignale of KV Partners LLC, for conformance with Town Regulations, State Standards and general engineering practice.
- 4. After comments and revisions, the plans and calculations were found to be in conformance by Mr. Vignale, with the applicable regulations with no increase in flow to downstream areas as indicated in the approved documents.
- 5. Mr. Vignale did represent that the proposed site construction will not mitigate pre-construction flooding problems in that area.

- 6. On February 12, 2018, the Town Engineer did personally represent that the project was constructed to the plan of record that was approved by the Planning Board.**

So again on this date, I do represent that given the information provided by the Town Engineer, pertaining to the inspections as conducted, it is represented that the Kinsley Corner Development is in compliance with the approved plans as it pertains to the no cut zone and the drainage calculations.

/S/ Ron LeMere, Chief Building Inspector

There was more discussion between the Board of Appeals members, Mr. Hogan and Mr. Twiss. Mr. French relayed a personal story. He said years ago, a lot of land next door to him went up for sale. He said he chose to buy the lot so that he could control the future of the property. Mr. French said they are not trying to be mean. Mr. Kozec said they understand Mr. Twiss' frustration. Mr. Kozec said a lot of land became available behind his house and the property owners were allowed to build on that piece of property.

After deliberating, Mr. Kozec made a motion to deny the Appeal request based on the information presented. Second by Mr. French with unanimous vote.

Mr. McElroy closed the public hearing at 9:06 PM

At 9:10 PM, Mr. McElroy opened the Public Hearing:

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

Board members reviewed the application and drawings submitted by Arthur J. McSweeney. After reviewing the plans, it was discovered that Mr. McSweeney submitted a septic plan when in fact he needs a Site Plan prepared by a licensed engineer. It was agreed that the Public Hearing for Mr. McSweeney will be continued until the next meeting, April 9, 2018.

At 9:31 PM, a motion to adjourn was made by Mr. Kozec. Second by Mr. French. All in favor. Motion carries.

Meeting adjourned at 9:31 PM.

NEXT MEETING will be Monday, April 9, 2018 at 7:30 PM.

Respectfully submitted,

Gail M. LeBlanc, Secretary
Board of Appeals

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

March 12, 2018

NOTICE OF DECISION

A Public Hearing for George Twiss of 131 North Main Street, Newton, NH (Map #09-6-7) was held Monday, March 12, 2018 at 7:30 PM in the Town Hall, Newton, NH, to act on the request for Appeal of Administrative Decision.

The Board voted unanimously to deny the Appeal of Administrative Decision based on the information presented.

Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty (30) days of this notice. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for a rehearing must set forth all the grounds on which you will base your appeal.

See New Hampshire Statutes, RSA Chapter 677, for details.