

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JANUARY 6, 2016

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Roland Dumont, Donald Routhier and John Kennedy.

MEMBERS ABSENT: None.

STAFF PRESENT: David E. Sharples, Director of Planning & Community Development and Tracy Gora, Planning Secretary.

The meeting was called to order at 7:00 pm.

1) APPROVAL OF THE MINUTES OF THE MEETING OF DECEMBER 2, 2015.

Motion: Keiser moved to approve the minutes of the meeting of December 2, 2015 with the amendment to page 11 to show that the motion was to continue the application until the January meeting; not table it.

Seconded by Dumont. Motion carried unanimously.

2) OLD BUSINESS

- A) GEM Farms Revocable Trust is seeking a special exception from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility on property located at 21 Grand Street, in the Historic Moderate Density (HMD) District, Assessor's Map 11, Lot 17, ZBA #10-2015.

Maskwa stated that the public hearing for this item was continued from the last meeting.

Sharples stated that the attorney for the applicant called him today and requested that this item be continued until the March 2, 2016 ZBA meeting. Stated that the City's attorney recommends the Board approve the continuance request.

FX Bruton with Bruton & Berube, PLLC represented the applicant and addressed the Board. Confirmed what Sharples said and stated that this continuance request is because Bonfire Recovery Services is changing location.

Motion: Kennedy moved that the request of the GEM Farms Revocable Trust for a special exception from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility be **CONTINUED** until the March 2, 2016 meeting.

Seconded by Dumont. Motion carried with a 5-0 vote.

- B) Any other old business that may come before the Board.

None.

3) NEW BUSINESS

- A) Georgianna Roberts Maher is seeking a variance from Table 5.A.1 of the Zoning Ordinance for a three lot subdivision without required frontage on property

located at 93 Cole's Pond Road, in the Residential Single Family (R1) District, Assessor's Map 50, Lot 13, ZBA #11-2015.

Maskwa stated that due to a continuance request for item 3B on tonight's agenda the Board is going to address item 3B, regarding 472 High Street, first.

Sharples referred to his memo (see attached) and stated that the applicant's attorney submitted a letter requesting that the Board continue this application until the February 3, 2016 ZBA meeting. Stated that the City's attorney recommends the Board approve the continuance request.

Motion: Kennedy moved that the request of the MDHF, LLC for a variance from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility be **CONTINUED** until the February 3, 2016 meeting.

Seconded by Dumont. Motion carried with a 5-0 vote.

The Board returned to item 3A.

Sharples reviewed his memo (see attached) and stated that the applicant is seeking a variance for a three-lot subdivision without appropriate road frontage. Stated that the property is a 56 acre lot with two frontages on Rocky Hill Road and frontage on Lily Pond Road. Stated that the property is in the R1 District with City water available but sewer over a half mile away and the regulations do not require that they tie into City sewer. Stated that required frontage for each lot is 135 feet. Referred to the plans and stated that the proposed lot one has an existing structure and no frontage on a City street. Stated that he wanted to be sure they would have legal access to the lot and stated that he has a copy of an access easement deed. Stated that proposed lot two has adequate frontage on Rocky Hill Road. Stated that proposed lot three has two frontages but the regulations require that the frontage be contiguous and unbroken. Stated that if this request gets approved then it will have to go to the Planning Board for review. Stated that he reviewed all files for this property and found that a variance to subdivide without adequate frontage was approved but that the lot configuration was different. Stated that the applicant submitted for subdivision approval from the Planning Board in 2011 but it was denied because the applicant failed to submit information required by the regulations. Stated that the applicant divided this request into two applications because his reasoning for each is different.

Public hearing opened 7:11 pm.

Steve Ferguson with Norway Plains Associates, Inc. represented the applicant and addressed the Board. Stated that Sharples explained what they are trying to do and stated he is available to answer questions.

Dave Francoeur of 48 Blue Heron Drive addressed the Board. Asked if he is on the abutter's list because he wasn't notified of the meeting. Stated that he is concerned on where they will be accessing the lots. Asked if they will use the dirt road that he maintains or access from Rocky Hill Road.

Maskwa asked if Francoeur maintains Blue Heron Drive and asked if other property owners contribute to that.

Francoeur stated that he maintains the road and that there have been some contributions in the past. Stated that there is a road maintenance agreement that is in place but he does all the maintaining. Stated that the land is owned by Roberts-Maher and that he has a right of way over it. Stated that he is assuming the other property owners do too.

Sharples stated that regarding the abutter notification, Francoeur is on the abutter list and we have a receipt showing that it was mailed. Stated that we do not have a return receipt though.

Francoeur stated that his mail delivery has been messed up.

Dave Witham of 10 Rouleau Drive and City Council Representative to the Planning Board addressed the Board. Stated that this property has come before the Planning Board but in different forms. Stated that Blue Heron Drive is a road that has been in contention because of its status. Stated that if they expand development here then that road becomes an important access piece. Stated that an ambulance has gotten stuck on that road and emergency access is important. Stated that Cole's Pond Road is gravel and that he is not sure it makes sense to expand development there. Stated that the road can't be fixed and they shouldn't make it any worse. Asked the Board to consider access to these lots. Stated that the proposal will have to go to the Planning Board.

Vincent Kulickowski of 34 Cole's Pond Road addressed the Board and stated that the property is private where is accesses proposed lot one and two. Stated that the City has a right of way over the land and there is a house and garage out there. Stated that he is concerned they are trying to develop over Cole's Pond Road but there is no room. Stated that the City plows the road but doesn't have a right to. Stated that last year they tried to develop a different way and now they have a new version. Stated that he just received his abutter notification a few days ago and didn't have time to prepare for this so he hopes it gets continued.

Denise Ambrose of 46 Otis Road addressed the Board and asked how the land will be subdivided.

Maskwa referred to the plans and showed the three proposed lots.

Ambrose asked if Blue Heron Drive is private.

Maskwa replied yes.

Ambrose asked about Cole's Pond Road.

Sharples stated that it is private and that the City owns some land out there but there is a right of way to benefit the lots that are there.

Peter Houde of 104 Rocky Hill Road addressed the Board and stated that his property is near proposed lot three. Stated that he has some of the same concerns and asked what the real future of the property is. Stated that he is not sure what can be accomplished with three lots so he is concerned with what they are trying to do.

Elaine Leughmyer of 122 Rocky Hill Road addressed the Board and stated that she doesn't approve of this and she doesn't think the Board should approve it. Stated that she feels that they are trying to take advantage of the City because there is not enough room. Stated that the access on proposed lot three is hilly and they haven't done anything to Blue Heron Drive. Stated that she lives next to proposed lot two and that a house can be put there but she doesn't think that is what they are going to do. Stated that there is an old tote road that could become a road. Stated that if this is approved she can see the driveway being extended for another lot. Stated that there are wetlands out there and she wants to know their future plans and what they really want to do. Stated that they have plans that no one has seen and that they should come forward with them.

Ryan Joyce of 73 Cole's Pond Road addressed the Board and stated that he agrees with what he has heard tonight. Stated that there are so many questions and no answers with what they have.

Francoeur stated that he would like clarification on the classification on the two roads and stated that in the past the City maintained both roads.

Sharples stated that the City has it as a private way.

Francoeur stated that really the road goes all the way around. Stated that he hauls in sand for Blue Heron Drive and that it right that the City takes care of one side and not the other. Stated that if they have frontage and the zoning to do something then they should be able to do it. Stated that in his opinion, if they are only putting a house on proposed lot two and three and have access to them then they should. Stated that this could be the best thing for the property.

Ferguson showed the plan to everyone and stated that he doesn't think Blue Heron Drive is an issue for this plan. Stated that this is a concept and will have to go to the Planning Board. Stated that the existing cottage has been in use since the 1950s according to the City's records and has been using this access. Stated that proposed lot two has the required frontage and there are wetlands and topography that will come into play. Stated that the concept of the plan is just what you see. Stated that if they want to develop more they will have to get more subdivision approvals. Stated that they did come forward with a different configuration of the lots but they didn't want to upgrade the road. Stated that they will need building permits to build on the lots. Stated that the road may have gone all the way through the lot at one point and that he doesn't know of any hidden agenda for the owners to further subdivide. Stated that they will have to look at the wetlands and the topography as required. Stated that this family has owned it for a number of years.

Leughmyer questioned how long the cottage has been there.

Francoeur asked what access they plan on using for lot three if it is approved.

Houde questioned if there was any Planning Board or Zoning Board approvals to get the existing house built on lot one.

Kulickowski asked if they are just trying to access proposed lot one from Cole's Pond Road or all three of them.

Ferguson stated that they are just trying to access proposed lot one from Cole's Pond Road and that the intent is to use lot one as it has been used in the past. Stated that the location on the proposed lots has not been determined yet and that they would still have to go through the Planning Board process for that. Stated that they are looking for a variance just to create the lots and then move on to the next step.

Gary Leughmyer of 122 Rocky Hill Road addressed the Board and asked what they want a variance on. Stated that when he went to City Hall to view the plans it was only for lot one. Stated that there is a swamp in the back and that he used to hunt there.

Sharples stated that it is a 56 acre lot and that they have enough frontage for one lot but they need a frontage variance for proposed lot one and three.

Ambrose asked if there was a house built on Cole's Pond Road last year.

Sharples replied yes but that there was a variance granted years ago.

Routhier asked if these three lots are already separated and if they are just looking for a lot line adjustment.

Ferguson stated that it is just one lot right now.

Routhier asked if they have done wetlands testing or topographical mapping.

Ferguson replied not yet because if they do not get the variance request approved then it is not worth going out there to do that work. Stated that they need to find this out first because without a variance there is no point to go further.

Routhier stated that the five need to be met and asked what the hardship is here.

Ferguson stated that they want to subdivide this large piece of property to use it for more than one house.

Routhier stated that they need a variance from the ZBA but he is not sure what they are doing so he doesn't know what he would be approving.

Ferguson stated that the applicant cannot go to the Planning Board without coming to the ZBA first. Stated that they are just looking for a variance for frontage and the development questions get answered at the Planning Board.

Routhier stated that the City has requirements for a reason and that there has to be a good reason to stray from them. Stated that this is a residential area and asked why they are seeking this variance.

Ferguson stated that they can look at the surrounding lots and see that this is in keeping with the area and that three lots aren't unreasonable. Stated that access for proposed lot one is on Cole's Pond Road but the road frontage is somewhere else.

Keiser asked how they came to the proposed configuration of the lots.

Ferguson stated that proposed lot one has access, proposed lot two has frontage and proposed lot three has divided frontage. Stated that they will have to get a wetland scientist out there.

Keiser asked why proposed lot one is so much smaller than lots two and three.

Ferguson stated that there is no reason and that it is just an arbitrary line.

Keiser stated that approval for proposed lot one would make the frontage for that lot zero. Stated that the private road is not frontage. Stated that he would like more information on what the hardship is.

Ferguson stated that lot one is existing and that the access is not where the frontage is. Stated that they are asking for nothing different than what the others in the neighborhood have. Stated that the existing houses have variances.

Sharples read the definition of frontage from the Zoning Ordinance and stated that frontage on a private road doesn't count.

Keiser asked if access from Blue Heron Drive is a possibility for lot three.

Ferguson replied yes and stated that they still need subdivision approval and based on their previous trip to the Planning Board, they would have to upgrade the road. Stated that there are two access points but they still don't meet the frontage requirements.

Keiser asked that they explain how criteria four is met.

Ferguson stated that looking at the properties around the subject lot; he doesn't think that two extra lots would be different from what is out there.

Maskwa stated that it was indicated that there are other properties in this area that have this kind of approvals. Stated that if there are other lots with this approval then it wouldn't be contrary. Asked if those other lots with this relief are the ones on Blue Heron Drive.

Sharples stated that he doesn't know the history of the abutting properties but they have been there a long time.

Maskwa stated that if the Board approves this, proposed lot one needs the variance so that it has access from Cole's Pond Road, proposed lot two has access from Rocky Hill Road but they have to decide for access from Rocky Hill Road or Blue Heron Drive for proposed lot three.

Ferguson stated that it will depend on the existing features of the lot like wetlands and topo. Stated that he is asking for a variance so that he can go through the Planning Board process.

Maskwa stated that he is concerned with the current homeowners on Blue Heron Drive and asked where this would leave them.

Ferguson stated that they are not changing what is there today and not making the situation worse.

Public hearing closed 8:06pm.

Keiser stated that proposed lot one would have frontage on a private road but zero frontage on a public road and asked how that is different from other lots on Cole's Pond Road. Asked how proposed lot three is different from other existing lots on Blue Heron Drive. Stated that 56 acres is a large single family lot and asked if it would be reasonable to keep it that way for a single family home.

Routhier stated that there is an issue of only having 109 feet of frontage on Rocky Hill Road and coming out by the Houde's property. Stated that they could use Blue Heron Drive and that there is no hardship for access. Stated that it doesn't comply with the Zoning Ordinance.

Keiser stated that he doesn't understand how 109 feet is different than what they have on Blue Heron Drive.

Routhier stated that Rocky Hill Road is a City road and everyone has the right amount of frontage.

Maskwa asked if they approve this, does that mean that proposed lot three would be released from the need to have frontage to further subdivide.

Sharples stated that they would need variance to further subdivide.

Routhier stated that there are two variances requested here.

Maskwa stated that the first motion is for lot one and the second motion is to create lots two and three.

Sharples stated that even if they only grant one of the requests, two lots will be created.

Approval motion for Lot #1 made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Georgianna Roberts Maher for a variance from Table 5.A.1 of the Zoning Ordinance to create lot #1, as shown on the proposed subdivision plan, without required frontage be **GRANTED**.

Seconded by Kennedy. Motion carried with a 5-0 vote.

Approval motion for Lot #3 made by Keiser: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Georgianna Roberts Maher for a variance from Table 5.A.1 of the Zoning Ordinance to create lot #3, as shown on the proposed subdivision plan, without required frontage be **GRANTED**.

Seconded by Kennedy.

Routhier stated that he doesn't think this request is like the first one. Stated that he doesn't feel there is a hardship or that the spirit of the ordinance is met. Stated that he feels this should be denied.

Maskwa stated that he agrees with Routhier and stated that he doesn't like the access for this one. Stated that he feels the larger parcel has access from Rocky Hill Road.

Motion failed with a 2-3 vote with Maskwa, Dumont and Routhier opposed.

Motion: Routhier moved that the request of Georgianna Roberts Maher for a variance from Table 5.A.1 of the Zoning Ordinance for a subdivision without required frontage be **DENIED**.

Seconded by Dumont.

Keiser stated that he disagrees and that this is a large piece of land and that it is unreasonable that it has to be one lot.

Motion carried with a 3-2 vote with Keiser and Kennedy opposed.

B) MDHF, LLC is seeking a variance from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility on property located at 472 High Street, in the Residential Commercial (RC) District, Assessor's Map 40, Lot 04 A, ZBA #12-2015.

See item 3A above.

C) Any other new business that may come before the Board.

None.

Motion: Routhier moved to adjourn the meeting.

Seconded by Keiser. Motion carried unanimously.

Meeting adjourned at 8:21 pm.

Respectfully submitted:



Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment