

TOWN OF JAFFREY
Jaffrey, New Hampshire
BOARD OF ADJUSTMENT
Meeting Minutes
July 5, 2017

Present: Chairman Sawyer, Members Belletete, Cournoyer, Durand, Tieger and Webber

Absent:

Staff: Recording Secretary Brayall

MEETING MINUTES APPROVAL

No Action

PUBLIC HEARING

Chairman protem Belletete called the public hearing to order at 7:00 p.m. Notice of hearing for case No. ZBA 17-10, 17-11, 17-13 and ZBA 17-04 as advertised in the *Monadnock Ledger-Transcript*; copies were posted in the Town Office building, the Library and the town web site; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicants. Member Tieger would recuse himself from hearing numbers 17-13 (Pitch Perfect) and 17-11 (Belletetes). Member Durand would vote.

On a motion by Tieger, seconded by Webber the board elected to hear the applications out of order allowing them to move forward while waiting for Chairman Sawyer. The order of presentation would be 17-10 (Webster), 17-14 (Duval), 17-13 (Pitch Perfect) and 17-11 (Belletetes).

Public Hearing - New Items

1. ZBA 17-10 Webster, James, 188 Peabody Hill Rd., Map 225 / Lot 13, Zone: Rural (without town water)

Variance – The applicant requests a variance to construct a machine shed twenty-five feet from the (southerly) side boundary. (Land Use Code, Zoning Ordinance Section V, 5.7 & VI, 6.1)

Presentation: James Webster

Appearance:

Mr. Webster is requesting a variance to construct a 24 x 36 machine shed; there will be no power to the building. The most appropriate and least invasive site available has a power line overhead and you cannot build underneath or within ten feet of it hence the need for a variance to construct twenty-five feet from the property line.

Abutters Jim Bearce and Harry Young spoke in favor of granting the request.

Consensus of the board was that the application was not one of regional impact. A site visit will take place on Friday, July 7 at 4:30.

There being no further discussion, Chairman protem Belletete continued the public hearing for this item.

2. ZBA 17-14 Duval, Edward, 54 A Webster St., Map 244 / Lot 68, Zone: Residence B

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Variance – The applicant requests a variance to permit the expansion of a deck with less than the required rear and side setback. (Land Use Code, Zoning Ordinance Section VI, 6.1)

Presentation: Doug Hildreth

Appearance:

A letter from Mr. Duval was submitted granting Mr. Hildreth permission to present his application.

In 2015 Mr. Duval came before the board seeking a variance to expand/repair an existing porch with less than the required rear and side setbacks. The request was made to improve a life safety situation. A new variance request is being made to allow a 12 x 16 expansion of the existing deck. If granted there would be room to accommodate a grill and patio chairs.

Member Cournoyer asked if there was a sketch of the proposal. Mr. Hildreth presented a copy of the sketch attached to his building permit. Member Cournoyer asked if the site was staked out. Mr. Hildreth replied that it will be.

Site visits will commence on Friday, July 7 at 4:30 p.m. Mr. Duval will be the second stop at approximately 5:00/5:15.

There being no further discussion, Chairman protem Belletete the public hearing for this item.

3. ZBA 17-13 Pitch Perfect, LLC (Tim Foley), 177 River St., Map 239 / Lot 272.1, Zone: General Business / Rural (with town water)

Variance – The applicant requests a variance to permit a deck and garage with less than the required front and side setback. (Land Use Code, Zoning Ordinance Section VI, 6.1)

Special Exception – The applicant requests a special exception to construct a deck. (Land Use Code, Zoning Ordinance Section VI, 6.7)

Presentation: Tim Foley

Appearance:

Member Tieger recused himself. Member Durand would vote.

Mr. Foley recently purchased the property and has begun restoring the existing home. In doing so he would like to add a 10 x 10 deck and a breezeway with a 24 x 24 garage however he will need relief from the board.

Speaking to the deck, Mr. Foley feels that a special exception is required for the deck. If he is wrong, he is also asking for a variance. The Land Use Code states “unenclosed porches and decks may encroach upon setback areas by Special Exception of the Board of Adjustment subject to the following conditions: 6.7.1 That the dwelling was a lawfully existing use at the time of the adoption of this ordinance. May 9, 2017 and 6.7.2 The building line of the addition does not extend more than ten (10 feet into the setback area. The setback area to the side has plenty of room, the front setback is an issue. In this case the Rural with town water and General Business district line travels through the center of the house and the way the ordinance is

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set-up the most restrictive district applies. If the entire building was in the General Business district there would be no issue.

Moving on to the breezeway and garage, Mr. Foley reviewed the variance criteria submitted stating in summary that a variance would not be contrary to the public interest because it is a permitted use in the district; The use of the addition does not violate the intent of the uses permitted in the district. The spirit of the ordinance would be observed because the use of the additions is a permitted use. The use will not cause adverse effect on the public interest. If granted substantial justice will be done because it is a standard permitted use and will not cause any loss to the general public. If granted values of surrounding properties would not be diminished. This will not have any negative impact on surrounding properties but rather strengthen their values. Owing to special conditions of the property (setback dimensions) that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship if there is adherence to the literal enforcement of the provisions in the ordinance.

Site visits will commence on Friday, July 7 at 4:30 p.m. Mr. Foley will be the third stop at approximately 5:15/5:30. Mr. Foley may have a conflict and unable to attend however the areas will be staked.

There being no further discussion, Chairman Sawyer continued the public hearing for this item.

4. ZBA 17-11 Belletetes, Inc. 51 Peterborough St., Map 238 / Lots 244 & 284.1, Map 245 / Lots 94, 95 & 99, Zone: Lots 244 & 94 - Res. A (with town water), Lot 284.1 - General Business (with town water), Lots 95 & 99 – Res A (with town water)

Variance #1 – The applicant requests a variance to permit the addition of fill within the Wetlands Conservation District. (Land Use Code, Zoning Ordinance Section XX, 20.4).

Variance #2 – The applicant requests a variance to permit impervious cover located within the Wetlands Conservation District. (Land Use Code, Zoning Ordinance Section XX, 20.7).

Variance #3 – The applicant requests a variance to permit a commercial use in the Residence A district, on map 245 / lot 99 which is split between the Residence A and General Business Districts. (Land Use Code, Zoning Ordinance Section IV, 4.2)

Variance #4 – The applicant requests a variance to permit structures (pavement) within the setback. (Land Use Code, Zoning Ordinance Section VI, 6.1).

Special Exception – The applicant requests a special exception to allow an accessory structure within the Wetlands Conservation District. (Land Use Code, Zoning Ordinance Section XX, 20.6.2)

Presentation: Jeff Kevan, TF Moran

Appearance:

Member Tieger recused himself. Member Durand would vote.

Mr. Kevan stated that Belletetes is hoping to expand their business. He displayed a map of the site showing the number of properties owned by Belletetes. On Route 202, one house has been removed and another is slated to be removed. There is an existing storage shed to the back of the property that is aging and it will be razed. It will be replaced with a new garage type structure on the parcel fronting Nutting Rd. however there will be no access to or from Nutting Rd. A pocket of wetland has been identified and flagged on this parcel and there is also a ditch line that comes out of a pipe and flows down Nutting Rd. It is considered a

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jurisdictional wetland but it is a man dug ditch. There are two lots on Route 202 where they would like to have a material storage building. An island between the building and Route 202 will be maintained with arborvitae plantings. A pocket of wetland has also developed over time on this parcel. The functions and values of the two wetland pockets they are proposing to fill are basically from water recharge/discharge and are addressed in the Wetland Functional Assessment package distributed to the board. Behind the McDonalds is a parcel of land that has a couple of natural wetland areas and fronts on a corner of the river. Belletetes hopes to acquire this parcel and construct a building for wood storage. They propose a detention basin for storm water treatment and detention. In one location, there may be underground storm water chambers. An evergreen screen around the property is planned.

Regarding drainage issues that come off the existing site, they have been asked by the planning department if anything can be done to help improve the situation. They have looked at removing a section of pavement located in the main storage area and replacing it with a bio-retention/rain garden. It would collect run-off and provide treatment for the existing facility.

Chairman Sawyer asked for an explanation regarding treatment. Mr. Kevan explained that treatment revolves around some type of filtration system through man-made material/detention; we are trying to treat the run-off and provide detention. They would put in a basin with a filtration media that would allow treatment of that run-off before it was discharged and heading towards the river. That would improve that quality of run-off leaving the site. Mr. Kevan pointed out that the site is in two districts. A back portion is Residence A with most of the site, including the parcel on Nutting Rd, in General Business.

There are four variances and one special exception application before the board. The first variance is to fill two wetland pockets areas of approximately 2,100 sf and 2,400 sf. As previously stated they are man-made and the main function is to detain and hold water. Those functions will be mitigated with their drainage system. As for the storm water, they feel they will improve upon the end result with respect to quality and the rate will be matched. The NHDES Alteration of Terrain standard will have to be met. Regarding wetlands, it is under the threshold for doing mitigation.

Chairman Sawyer asked where the water discharges to and is it closed or open. Mr. Kevan replied that it all goes across the property and down towards the river. Part of it is open and then discharged into the system and into the pipe that crosses Nutting Rd.

Mr. Kevan reviewed the criteria for the first variance to permit the addition of fill within the Wetlands Conservation District, Zoning Ordinance Section XX, 20.4. He stated that granting the variance would not be contrary to public interest and allow them to put in a system which would approve storm water and maintain/detain the run-off so there is no run-off onto adjacent properties. If granted the spirit of the ordinance would be observed because the subject areas are low-value, man-made wetlands whose main value is stormwater drainage. Substantial justice would be done because it would allow expansion of the business and develop land that is zoned for this use. Values of surrounding properties will not be diminished because a proper buffer currently exists around most of the property; additional buffering will be planted where needed. It is believed that the increase of the Belletete property will also increase abutting properties. Addressing the hardship Mr. Kevan stated that the wetlands are man-made with very little value and that it is reasonable to grant the variance to allow them to fill within the wetland conservation district. The second variance is to permit impervious cover located within the Wetlands Conservation District, Zoning Ordinance Section XX, 20.7. Reviewing the criteria Mr. Kevan stated that granting the variance would not be contrary to the public interest because the impervious cover would not negatively impact the safe and healthful condition of waters within the town. The public interest is maintained by providing storm

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water systems that improve storm water quality which is the purpose of the buffers. Additional landscaping will be provided to offset any work they have within the buffers.

The spirit of the ordinance is met because they will capture the run-off and provide better treatment than the wetlands themselves. They will be mitigating by constructing a drainage system and providing additional treatment. Substantial justice would be done because it would allow them to develop the site in the business district and mitigate the functions and values of the impacted buffers. Surrounding property values will not be diminished because they will provide better storm water quality and detention in place; there should be no impact at all to surrounding properties. As for hardship, the request to expand in the general business district is permitted. As for the wetlands, the proposed drainage system will improve the storm water system. The use is reasonable because it is a permitted use in the General Business district and is an extension of the business.

Member Cournoyer asked if Sunset Lane is a town road. Mr. Kevan stated that per the deed it is a private road. Member Cournoyer asked what the traffic flow would be. Mr. Kevan stated that they are looking to relocate an off-site storage area to this location. There would be no traffic from Route 202/Peterborough St. and a gate would be installed. Traffic would travel to and from the proposed structure by crossing over Sunset Lane from the Belletete property.

Mr. Kevan reviewed the criteria submitted for variance #3 requesting a commercial use in the Residence A district, Zoning Ordinance Section IV, 4.2. Granting the variance would not be contrary to the public interest because it would allow the expansion of an existing business at its current location. There is no impact on water or sewer within the community and there would be no traffic impact on Sunset Lane or the intersection. The spirit of the ordinance would be met because it is similar to the adjacent business making the proposed use a reasonable use for the area. There will be very low traffic and noise impact. Substantial justice will be done because the parcel is split between Residence A and General Business; granting the variance would allow full use of the property. Surrounding property values would not be diminished because the proposed use is in keeping with the nature of abutting commercial uses. Buffers will be provided to screen abutting lots. The hardship is that it's a split district. Given the access and location it makes more sense for this to be a commercial use. They feel the proposed use is reasonable given that it's in proximity to another commercial use.

The fourth variance requests structures (pavement) within the setback area, Zoning Ordinance Section VI, 6.1. A thirty-foot setback is required and they have approximately ten. Mr. Kevan read the criteria submitted stating that the variance would not be contrary to the public interest because the proposed use would not necessitate public expenditures for transportation, water or sewerage. It will allow the expansion of the business at its current location. They feel they are in the spirit of the ordinance by planting the proposed buffers. Substantial justice will be done because it would allow development of the property without any negative impact to the abutters. Property values would not be diminished because of the proposed vegetative screening. The hardship is due to the configuration of land and wetlands; specifically placing the facilities in this location.

Chairman Sawyer expressed an interest in seeing how the proposals will sit on the properties. Mr. Kevan indicated that he could provide a plan.

The final application is for a special exception to allow accessory structures within the wetlands conservation district. The request seems redundant given the variance applications. The accessory structures are permitted within the wetlands conservation district by special exception.

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Member Webber asked for the dimensions of the accessory structures. Mr. Kevan replied 60 x 120 and 160 x 84. Height will be eighteen feet at the eaves. Overall height will be under the town limit.

Mr. Justin Grandy, an abutter on Nutting Rd., is opposed and does not agree that property values will not be impacted. If approved the view from his home will be the side of a building. He also questioned the placement of a maintenance garage next to a wetland and asked if trucks would be idling at night as they do in the main yard and will there be truck traffic. Mr. Jack Belletete replied that maintenance is done during the day with the off chance of emergency work at night. There will be no use of Nutting Road and typical hours are 7:00 a.m. to 5:00/6:00 p.m. Trucks should not be idling.

Attorney Silas Little represents abutter Randy Christmas who is opposed to granting the requests. He stated that the biggest issue for Mr. Christmas and others in that area stems back to 2001 when the concept of Belletetes and developing this property was to run all the water off site. There is no detention or retention. The paved area on the site has more than doubled between 1981 and 2011. Looking back to a 2001 Planning Board approval there was to have been a gravel area where paving now appears. To his knowledge there has been no variance granted or amendment to the site plan permitting the paving. He also questioned the placement of an existing structure. It is within the seventy-five-foot wetland setback; is there a variance?

Attorney Little's opinion is the site consists of approximately ten acres with much of it being impervious. The drainage is now routed to two 12" pipes near the proposed rain garden that collect water from two locations and channel it off site. On a one year storm, it is approximately 31,000 cubic feet and a five-year storm would be 48,000 cubic feet. In 2001 with the Planning Board it was said that there would be detention basins and none were put in. In looking at the existing conditions plan you can see that most of the drainage is caught and drained at these pipes. This drainage flows between Mr. Christmas and abutter Bob Aho's property. With no detention when there is a rain event the drainage flows to their properties. There is also a drainage pipe that runs alongside the proposed material shed facing Peterborough St. and that pipe has somehow been extended out through the wetlands and it took all the Route 202 drainage. With the extension, the drainage would not go into the wetlands.

Attorney Little displayed to the board pictures of what has happened to the two abutting properties over time also stating that there is siltation collecting in Cheshire Pond due to the failure to control run-off. There has been nothing stated in the application on how they are going to mitigate what they promised to do in 2001 with the drainage. They do not show the size of the retention areas, they do not show how they are going to detain it or reduce the flow off site. Snow storage was also mentioned; will it be removed or stored and what about drainage? The intent of the ordinance is to not allow development where wetlands serve a purpose. Paving or putting an impervious structure over wetlands does not meet the intent, spirit or purpose of the ordinance. Additionally, they have adequate use of the property and there is no unnecessary hardship. Attorney Little surmises that Belletetes has placed the burden of their use of that property on all abutters because there is nothing on site to retain the water and there are no calculations presented.

Attorney Little addressed Section XX which states that an Accessory Structure is a special exception and cannot exceed 200 square feet. The proposed structures are currently on lots of their own and are not accessory structures; they are principle structures for this business.

One of the variance requests is to expand into a residential district; where is the hardship? It is not consistent with the ordinance. Citing page II.11 of the NH Office of Energy and Planning handbook for the ZBA it reads "however when the ordinance contains a restriction against a particular use of land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such

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activities would be of doubtful legality. **The board cannot change the ordinance.**” Also, called into question was the use of the proposed structures. Is this a business or a warehouse and storage yard? The buildings discussed are not ones associated with a general business, they are associated with a distribution center which are not specifically permitted in the general business district.

Attorney Little distributed a packet of information to the board. In a letter from the then DPW Director, Mr. Alexant, he stated “I understand Belletetes will attempt to install storm water recharge boxes or some other holding devices such that there will be no net increase in storm water discharge.” That understanding was made a condition of the Planning Board in August 29, 2001. They are not shown on existing conditions. Sixteen years later we are back before the board trying to fill more wetlands and run more water off. Public justice would not be accomplished by granting this because there has been no attempt by the applicant to comply with previous representations to the board in terms of how they were handling the run-off. Apparently, what is being proposed will do the same thing.

Attorney Little stated that Mr. Christmas is being directly affected and has had to put up a berm on the side of his property to control the storm water surge. When there is no rain, the channel is near empty. This site presents serious issues and until those issues are cleared-up he does not feel the board should entertain an application to further expand and increase the impervious area and not deal with it on site.

Abutter Mr. Robert Aho submitted a letter to the board stating his concerns. He pointed out that his property has five sides. When they purchased the home, he was an abutter to the Belletetes operation on one side. With this proposal, he will become an abutter on four sides with truck traffic passing over Sunset Lane which he has an easement over to access his property and for trucks that are left idling. They accept the fact that Belletetes is there but this expansion will impact them severely. Just as Mr. Christmas is affected by the run-off they too experience eroding. Someone, not Belletetes, at an unknown time placed an illegal pipe that dumps onto his property. He has video of the water flowing off the site and photos. Mr. Aho submitted a before and after photo showing the placement of the proposed buildings. What it lacks is the debris and truck traffic. He has read that building material and supplies is supposed to be in the industrial district. Does this mean they are non-conforming? Mrs. Aho asked about snow storage. Presently it is piled near their home which melts in the spring consuming their lawn. Along with the melt off is debris that has been plowed up.

Abutter David Kennedy is not in favor or impacting the wetlands. He is opposed to granting the requests.

Abutter Randy Christmas noted to the board that in addition to the erosion there is debris that comes with it. It makes for an unsafe area for his daughter. He is also disturbed by noise generated by trucks and fork lifts. He is opposed to granting the requests.

Abutter Carolyn Howard disagrees that the property values will not be diminished. She asked if there will be any fencing on the Nutting Road property and is there a plan for more trees around the property. Mr. Kevan stated there will be a chain linked fence around the property. As for more plantings, it is something they could consider.

Mr. Bill Graf of the Jaffrey Conservation Commission pointed out that a letter was submitted by ConComm member Carolyn Garretson noting that the Contoocook River is a State designated river which deserves special consideration. It was also noted that the ConComm had requested from the applicant a copy of the Wetlands Impact Report once completed; they have not yet received a copy so they cannot evaluate the project. Chairman Sawyer asked who would have sent the report. Mr. Kevan replied that it would come

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from himself. At a ConComm meeting he was asked for a copy; it has not yet been sent but he will deliver a copy. He is also scheduled to go before the Contoocook River Commission on the 17th.

Mr. Jack Belletete spoke to the 2001 Planning Board conditions stating that he does not recall the specifics however he will do some research. Also, the size of the entire site, as it is today, is 8.2 acres. The parcel fronting on Nutting Road is 1.1 acres. Mr. Belletete stated that he met with Mr. Christmas three weeks ago, and he understands his problem. The opportunity to rectify the problem will be at the Planning Board level and the plan would be to redirect the water onto the Peard section of property that abuts him and they would construct a berm. As for the Aho property he is in tune with his problems as well and they try to respond quickly when there is an issue. It is difficult when you are downtown and in the general business district.

The board expressed a desire to visit both the Aho and Christmas properties. Chairman Sawyer asked if that would be allowed and they were granted permission.

Site visits will commence on Friday, July 7 at 4:30 p.m. Belletetes will be the fourth stop at approximately 6:00. Those attending will meet in the parking lot at the guard shack. Deliberations will take place on Saturday, July 8 at 9:00 a.m.

There being no further discussion, Chairman Sawyer continued the public hearing for this item.

Continued

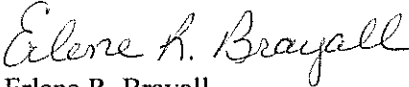
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OTHER BUSINESS

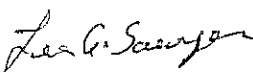
ADJOURNMENT


The meeting recessed at 9:30 and will reconvene at 4:30 on Friday, July 7 for site visits and deliberations on ZBA 17-10, 17-13 and 17-14.

Submitted:


Erlene R. Brayall
Recording Secretary

Attest:


Lee A. Sawyer
Chairman
Jaffrey ZBA


Ernie Belletete
Chairman protem
Jaffrey ZBA