

TOWN OF JAFFREY
Jaffrey, New Hampshire
BOARD OF ADJUSTMENT
Meeting Minutes
September 19, 2017

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

Absent:

Staff: Recording Secretary Brayall

MEETING MINUTES APPROVAL

No Action

PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 7:00 p.m. Notice of re-hearing for case No. ZBA 17-11A 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 recused himself. Member Durand would vote.

Public Hearing - New Items

1. ZBA 17-11A, 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 (without 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.

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: Attorney James Callahan, Jeff Kevan, TF Moran

Appearance:

Member Tieger recused himself. Member Durand would vote.

Mr. Jeff Kevan began the presentation by reviewing what is being proposed. The entire proposed improvements are within the general business district and all lots would be merged. The construction of a 7,200-square foot maintenance building is being proposed and the current maintenance building would be razed. The new maintenance building will have frontage on Nutting Road however there will be no through access. Landscaping will be placed along the property line. There is a small wetland area in this location. A

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variance application has been made to fill the wetland. A second variance application to place impervious surface, being building and pavement, within the buffer to the ditch line has also been submitted. The second part of the project is to construct a 13,440-square foot materials storage building. The building and surrounding pavement will replace an existing home and will front on Peterborough St./Route 202. There is a small wetland in this location and the applicant is seeking a variance to fill it. At the last public hearing, the plan was amended resulting in no access onto Sunset Lane. The wetlands function and value assessment prepared by a Wetlands Scientist has been resubmitted. His assessment was that the wetland areas are manmade due to how the terrain was formed. They are jurisdictional and the function they perform are run-off, recharge and storage. A Storm-tech system, which is a chamber system, has been designed and will go under the parking lot. An area of pavement will be removed and a detention basin will be constructed to capture run-off. This is designed to meet the State standards for a storm water treatment and the rate of run-off leaving the property will be reduced. A September 18, 2017 letter from the Environmental Scientist stating that the storm water management plan will effectively mitigate the loss of groundwater recharge/discharge functions that results from the combined wetland impact of 4,498 square feet.

Attorney Callahan reminded the board that at the previous meeting two of the applications had been withdrawn; variance #3 and the special exception. What remains is variance 1: the request to put fill in the wetlands conservation district; variance 2: to permit impervious cover within the wetlands conservation district and variance 4: to place a building within the setback area. The variance criteria were reviewed. In summary, Attorney Callahan feels that the first standard for each case can be considered together and he does not believe there is anything in the applications that are contrary to the public interest. The proposed structures are going to support an existing business that has been in town for many years. The request for a maintenance building is to maintain their in-house fleet. The proposed storage building will not be a central distribution warehouse; it will primarily be for the support of this operation. Attorney Callahan views this to be in the public interest and consistent with the Master Plan that supports downtown development. It will not have an adverse impact on the community at large.

Speaking to the second standard, the highlights to the wetlands section XX, 20.2 are to maintain safe and healthful conditions of waters within the Town; prevent and control water pollution, protect fish aquatic life, bird and other wildlife habitat. To prevent necessary or excessive expenses to the Town's endeavors and to encourage those uses that can be appropriately and safely located in wetland areas. A report from a NH licensed Wetlands Scientist has been submitted into the record stating that these are low grade/low value wetlands that were probably created because of run-off from a state highway and the site itself. The conclusion in the report highlights that the site has no state or federally listed species or unique or exemplary habitats present or near the project area and that the wetlands are limited value primarily suited for groundwater discharge and recharge and are no value with regard to any of the other guidelines.

Attorney Callahan chose to skip over the Substantial Justice standard as he feels it is a nebulous concept. Moving on to the value of surrounding properties he feels they would not be diminished. A letter from a NH licensed Appraiser was submitted into the record and it is his opinion that the proposed expansion, per the plans, would not adversely affect the market value of abutting properties.

The final standard is hardship. Reviewing what was submitted Attorney Callahan's opinion is there is no fair and substantial relationship between the public purposes of the ordinances and the specific application of this case. The proposed plan is to impact a very low grade wetlands and by adopting the engineering recommendations for site work drainage will improve and the wetlands recharge function will be improved.

Attorney Callahan feels the proposed use is a reasonable request. It is adding ancillary buildings in the wetlands district which has raised the question – can an accessory building be in excess of two hundred

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square feet. The applicant's request exceeds that amount and it is part of their variance request. It is reasonable given the size and scope of the operation and what is already on the site.

One of the hardships is wetlands; they have primarily been formed or expanded by man-made impacts caused by runoff from the State highway or by general site runoff. As stated in the Danforth report they are of a low value. Secondly, it wouldn't be prudent or reasonable to require that the applicant demolish or relocate existing structures in order to accommodate the Wetlands Overlay requirements affecting a low-value wetland. The property is on a major state highway, allowing the applicant to utilize this site is reasonable. They also own a storage facility in another part of town. Truck traffic to and from this facility currently travels through much more densely settled residential neighborhoods. The new facilities will mitigate the impact of commercial activity in these neighborhoods.

Attorney Little represents abutter Randy Christmas who is opposed to granting the requests. Attorney Little began by stating that what has not been addressed is they are seeking to expand what is not a permitted use in the district. Photographs were distributed to the board showing outside storage of materials. The ordinance states a retail operation in this district is supposed to have enclosed storage. Mr. Mike Shea had been quoted as referring to the store as a distribution center. Under the zoning ordinance this is not a permitted use in this district. The entire application has ignored the fact that they are seeking to expand what has been a non-conforming use.

On the issue of man-made wetlands Attorney Little pointed out that there is nothing in the ordinance that distinguishes between a manmade wetland and a naturally occurring wetlands. He suggested to the board that a man-made wetland exists because man improperly improved or paved property resulting in the loss of wetland where water originally went. Taking away wetlands which are the result of prior poor design is not an appropriate application of the variance. Attorney Little referenced a statement from NH DOT that the pipe that runs along with water of what was the former Pratt/Roy property only entered one hundred and fourteen feet and that the extension of eighty or ninety feet was not part of DOT improvements. Attorney Little believes that the evidence shows that the pipe was extended after the purchase of the property by Belletetes. The purpose of the wetlands ordinance is to protect wetlands to serve their function. The applicant has an extensive use of this property and there is no hardship.

On the issue of use, Attorney Little stated that retail stores do not have repair facilities. It is not an ancillary use for a retail store. There is no hardship and they do not need to pave within the setback. They already have extensive and intensive use of the property. As for diminishing property values Attorney Little feels that Belletetes has already had that affect with the present operation.

Mr. Bob Aho is an abutter and is opposed to granting the requests. A copy of his presentation was submitted into the record. In summary Mr. Aho feels that on Peterborough St. he has the most to lose if the project is approved. The general business district is a mixed use of residential and retail properties and Belletetes is closely surrounded by thirty-four residences. It is proposed that truck traffic would increase by twelve trucks per day/72 trucks per week. These are diesel trucks and the health of people in the area could be affected. Jaffrey's Master Plan states that a sizeable portion of the town's population is concentrated in a half mile radius from the town's center. It also supports safety concerns and states commercial enterprises can result in environmental issues, increased traffic and stress on the town's infrastructure. In addition to this his privacy will be affected by the positioning of the building.

Addressing the wetland issue Mr. Aho stated that as the wetland ordinance overlays it becomes more prominent than other districts. It takes precedence and helps control building sites, the placement of structures and the use of land. It encourages the appropriate and safe use of wetlands. The only allowance

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for an accessory building in the wetland is that it must be two hundred square feet or less. The proposed buildings do not conform to this requirement.

In 2008 Mr. Aho observed Belletetes adding fill to the property they now wish to build on (77 Peterborough St.). There were four 10 wheeled truck loads dumped and spread on the property. Because of this fill, the wetland impact shown on Belletetes' site plan is significantly smaller. Satellite photos in his presentation show the illegal fill.

The hardship the zoning laws imposed on the Belletetes properties are shared equally by all property owners in Jaffrey. Mr. Aho's property has the same wetland characteristics as the Belletetes property and the zoning laws apply fairly and equally to his property. If relief (a variance) is granted to allow them to fill, pave and encroach on wetland setbacks, the purpose of the variance to control building sites, placement of structures and land uses, will no longer be equally and universally applied.

Mr. Justin Grandy is an abutter and is also opposed to granting the requests.

Conservation Commission member Charlie Koch asked if the wetlands to be filled will be offset square foot for square foot somewhere on the property or off the property. Mr. Kevan replied that they are not creating wetlands to offset. They are creating an infiltration basin that will easily offset that. They have been focused on the functions that are happening within those wetlands and mitigate those functions. Those are being offset easily foot for foot, indirectly between that and the underground system.

Ms. Carolyn Garretson of the Conservation Commission expressed a great concern for the drainage system and silt that goes to the small streams and the river. Who monitors the underground system? Mr. Kevan replied that the two systems should collect the silt from those two areas. There is a basin being added that will help collect silt. The State now requires maintenance records of their annual maintenance and cleaning of their drain system. Ms. Garretson feels this is a big concern. Referring to the piece of land that was filled which Mr. Aho spoke about, she looked back at old maps and there was a wetland there. You can see that there are identified species now on both sides of that wetlands where the pipe is now put through underground and discharges from all of Route 202 down onto Mr. Aho's property. The pipe goes under the area that has wetlands on both sides of it. Mr. Kevan feels confident that prior to Belletetes purchasing the property that his office has an as-built and that pipe was extended prior to the purchase. Ms. Garretson noted that there is no record of it.

Attorney Little noted that in 2001 the discharge next to Mr. Aho's property prior to development was 13.54 cf per second; with the proposed development, it would be 17.16 cf per second. Are the proposed structures enough to handle 17.16 cf per second as forecast in 2001 and any additional run-off created and what is that calculated on? A 15 or a 25-year storm interval? Mr. Kevan stated that the system was installed as designed. They will capture this, they are putting in a detention pond and they are decreasing the run-off. They have decreased the number by two or three cfs'.

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Resident Mr. David Kellog asked what type of maintenance will be done in the building. Mr. Mike Shea replied it would be truck repairs. There will be no change in maintenance. Mr. Kellog asked if in the new location will there be more impact from noise. Mr. Kevan replied that he cannot speak to the noise impact however there will be vegetative screening and a fence around it. Mr. Jack Belletete added that they are not changing the number of trucks only the location of the building which will help the flow of traffic in the yard. The building will change from a three bay to a four bay.

Elizabeth Webster of the Conservation Commission expressed concern about fluids changed and potential leaks. What provisions have been made in the catch basin system for those things that are inedible. Mr. Kevan replied that all work will be done inside. There are a couple of catch basins that will bring the water forward. They could put a grease trap hood on it to capture any oil or grease. Chairman Sawyer asked if grease traps were required inside a building. Mr. Kevan replied that they are but they can also be put on an exterior drain system as a precaution.

Resident Tory McCagg recalled Mr. Kevan mentioning a potential survey of the Pratt property being done by his office prior to the Belletete purchase. Ms. McCagg asked if it wouldn't be helpful to see that survey. Attorney Little pointed out that the deed for the Pratt property, which is where the pipe is located, is an old description and doesn't indicate that there was any survey done in connection with the acquisition of the land in 1997 with Belletetes.

Resident Pam Armstrong asked what the hours would be for the maintenance garage. Mr. Shea responded five and a half days per week; a half day on Saturday. The business day will start at 7:00 a.m.

Abutter Randy Christmas referenced the Master Plan and how it speaks to harmonious development. The maintenance garage will be in the middle of all the houses. That does not sound like the intent of the Master Plan.

Chairman Sawyer informed the audience that in the event this board approves the requests the applicant will still have to go before the Planning Board for approval. The Zoning Board is only the first step.

On a motion by Belletete, seconded by Durand the board waived a re-visit to the site. (5-0)

Feeling the need for more time to review the documentation the board unanimously agreed that a decision would not be made tonight. Deliberations will take place on Tuesday, September 26, 2017 at 7:00 p.m.

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

Continued

No Action

OTHER BUSINESS


None

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ADJOURNMENT

The meeting recessed at 8:45 p.m. They will reconvene at 7:00 p.m. on Tuesday, September 26 for deliberations.

Submitted:


Erlene R. Brayall
Recording Secretary

Attest:


Lee A. Sawyer
Chairman
Jaffrey ZBA