

TOWN OF ALLENSTOWN
Zoning Board of Adjustments
16 School Street
Allenstown, New Hampshire 03275
April 12, 2017

Call to Order

The Allenstown Zoning Board of Adjustments was called to order by Chair Eric Feustel at 6:30 pm.

Roll Call

Present on the Zoning Board of Adjustments: Eric Feustel, Chair; Chris Roy, Vice Chair; Jeff Gryval; Roger Laflamme

Others Present

Dana Pendergast, Allenstown staff

Roy Tilsby, Attorney, Bernstein Shur, representing 4NH Homes, LLC

Dan Higginson, Surveyor for Higginson Land Services

Mike Gallo, Developer for 4 NH Homes, LLC

Chair Feusel noted that there were four members present, including himself, and that three affirmative votes would be needed to grant the variance. He will only vote to break a tie.

Roy Tilsby, an attorney from Bernstein and Shur in Manchester, agreed to proceed with the meeting.

Mr. Pendergast asked if this was the same plan that was sent to him.

Mr. Tilsby responded that he believed it was. He stated that he was representing 4NH Homes, LLC, and was joined by the principal, Mike Gallo, and the surveyor, Dan Higginson. He referenced the property at the corner of Route 28 and Pine Acres Drive (Tax Map 102, Lot 8), stating that they are seeking a variance from the 200-foot buffer requirement. The parcel is 32.7 acres of undeveloped land in an R2 zone. Despite extensive frontage on Route 28, the parcel doesn't have access onto Route 28. The developer is proposing an eight unit cluster subdivision with the eight lots on Pine Acres Drive. The remaining 25.9 acres would be in conservation, owned by the eight subdivision owners with a conservation easement to the Town of Allenstown. The developer is seeking a variance under the current Article XI, Section 1125(6) of the ordinance which requires a 200-foot buffer along all property lines for cluster development; they are proposing a 50-foot buffer. A variance for the development was granted last fall under the old ordinance for cluster subdivisions. At that time the developer presented a similar plan with a different layout for the eight lots and eight access points on Pine Acres Road. That plan called for flag lots to try to stagger things, but the Planning Board did not approve the flag lots. The developer is back with eight lots that are rectangular and have the same eight access points on Pine Acres Drive. Under the requirements of the old ordinance, the 200-foot buffer was a special exception if

a special exception was sought; it wasn't an issue at the time. Now that the project is at the Planning Board level for approval of a cluster subdivision, the Board has raised the issue of the change in the ordinance requiring a 200-foot buffer. As a point of reference, a normal R2 development would have 20-foot front buffers, 15 foot side buffers and 30-foot rear buffers, so the 200-foot buffer exceeds this. Maximum density is 28 units; this plan proposes eight units. The open space requirement is 6.5 acres; this plan provides an easement to 26 acres. The developer is proposing 12 non-wet, flat acres where only 3.4 are required. The plan is at one-third of the maximum density allowed and has four times the amount of open space required. It is a win-win situation and a great use of the cluster subdivision concept.

Mr. Tilsby stated that there would not be a diminution of surrounding property values if this variance is allowed. The eight lots are consistent with the character of the neighborhood, which consists mostly of single-family homes. Mr. Gallo, from a realtor's perspective, sees no diminution of values. In fact, the 26 acres of open space may be a benefit in the long run from a property value perspective. The proposal is not contrary to the public interest because it does not violate the purpose of cluster subdivisions, which is to encourage open space and more efficient use of land. Placing the homes on Pine Acres Drive is the natural choice and makes the most sense because moving them back into the interior is awkward and clunky. Substantial justice will be done because the gain to the general public of strict enforcement of the ordinance is minimal and would result in less than 26 acres of protected land. Strict enforcement reduces or eliminates the feasibility of a cluster development, resulting in a loss to the developer because of inefficient use of the land if forced to drive inward. The spirit of the ordinance is upheld because this is a great use of the cluster development concept. It is a low density development with more open space and is consistent with the character of the neighborhood. Strict enforcement of the ordinance would create an unnecessary hardship because of the unique characteristics of the property, namely its unique shape with a pitch point by the cove and the wetlands in the interior. There is great frontage on Route 28 but no access to Route 28. Most of the use must be directed to Pine Acres Drive. There is no fair and substantial relationship between the purpose of the ordinance and its application here. It makes sense to develop the lots away from the wetlands. The 200-foot buffer prevents a cluster development. This proposal has low density and a high percentage of conservation land.

Mr. Gryval asked about the size of each lot and the frontage.

Mr. Pendergast responded that six of the lots are one acre, one is 1.29 acres and one is 1.28 acres.

Dan Higginson, Surveyor for Higginson Land Services, stated that five of the lots have 85 feet of frontage, one has 1.57 feet, one has 100 feet and one has a little more than 100 feet.

Mr. Gryval asked Mr. Pendergast if the information provided during the presentation is accurate.

Mr. Pendergast responded that it was. He said that the Planning Board said no to the original concept with flag lots; the 200-foot buffer was always there but it was missed. The developer would lose three lots and some conservation land by keeping the 200-foot buffer.

Chair Feustel asked if the orientation of the structures was hard and fast because he likes the idea of placing the houses closer to the road for more open space.

Mr. Pendergast asked if the Chair wished to make it part of an approval to require that the houses be placed closer to the road.

Chair Feustel responded that he likes them where they are and doesn't want to see houses at the back of the lots.

Mr. Higginson stated that with a 50-foot buffer all the houses could be pulled closer to the road; they are trying to keep as much buffer as possible.

Chair Feustel stated that aesthetically it might look better.

Mr. Roy asked how far back the houses are from Pine Acres Road and how far the first lot is from Route 28.

Mr. Higginson responded that the front lots are 60-65 feet from the edge of the pavement and the ones staggered to the back are about 110 feet from the edge of the pavement. The first lot that abuts Route 28 is about 150 feet from the edge of the pavement.

Mr. Feustel said he assumed the lots are large enough to have individual septic systems.

Mr. Higginson responded yes, both septic and wells.

Mr. Roy asked about the square footage of the houses.

Mr. Higginson stated that they will be range between 1,600 and 2,000 square feet; a mix of one story and two story dwellings.

Mr. Pendergast noted that the original septic plan on the website references the old zoning ordinance, which was changed in March. The applicant has advised the Town Council that they will be submitting a new application based on the new ordinance. The Articles have different numbers but there is no change other than the numbers.

Public Participation

Mr. Mike Juranty addressed the group, thanking Mr. Pendergast for informing the applicant that the 200-foot buffer was required all of the time and for all property lines, not just roadways. He is surprised that the Chairman is asking that the homes be moved closer to the road because this is out of character for the role of the Zoning Board of Adjustments. He said that the zoning ordinance is not archaic; it was recently revised and the 200-foot buffer requirement is because of the density of cluster housing. It is apparent that this parcel is not suited for cluster development and a waiver should not be granted because of inconvenience to the developer. The vast majority of this property is undevelopable pond, wetlands, and flood plain. There is no hardship. They could put three houses on Pine Acres Road, and it would be in the spirit of the ordinance to do that. This proposed development is more dense than the

houses across the street, which brings more risk to the public. Mr. Gallo cannot offer an unbiased opinion regarding the effect this development will have on property values since he is the developer. He wants to flip the property for maximum profit without regard to the interests of the Town, the purchasers or the existing residents. The 200-foot buffer is in the ordinance for a reason; reducing the required footage for the buffer is not in the Town's interest. There is no hardship. The developer wants to avoid the tax burden of the 26 conservation acres which is otherwise undevelopable. It is a pond and a cow corn field. When the developer was before the Zoning Board of Adjustments in September, they presented a different plan than the one presented to the Planning Board, with two times the density.

Mr. Roy asked if the properties across the street are bigger.

UNKNOWN SPEAKER responded that the lots across the street have less acreage but more frontage.

Chair Feustel asked if the required lot size was five acres.

Mr. Pendergast stated that in an R2 zone where Town water and sewer are not available, it would be 40,000 square feet.

Mr. Juranty stated that his issue is not with the lot size but with the frontage.

Chair Feustel asked if the wetlands could be considered part of the minimum requirement.

Mr. Pendergast responded that it could.

UNKNOWN SPEAKER stated we also have extensive frontage on Route 28 which could be counted as frontage, which would result in L-shaped lots with access points off of Pine Acres Road. However, the proposed design is a cleaner approach. With L-shaped lots, it is harder to determine lot lines.

Mr. Tilsby pointed on the map to the areas available for development.

Chair Feustel asked where the wetlands were located.

Mr. Pendergast asked if the Chair wanted him to turn it on.

UNKNOWN SPEAKER stated that a spur road was possible, but this would place a greater burden on the DPW.

Mr. Tilsby stated that what they are showing is what they intend to do; it is not just conceptual.

UNKNOWN SPEAKER explained that the first design was for eight to ten houses; then they worked with Matt Moynihan, the regional planner, on a design for 12 flag lots. This was denied by the Planning Board, so they came back with the eight-house design.

Mr. Juranty said that the density is greater than first expressed and the property is inappropriate for a cluster development because of the wetlands in the middle.

Mr. Tilsby responded that the property is appropriate for a cluster development and it is consistent with the neighborhood to have the lots where proposed. The Town receives the benefit of the open space, which is not garbage land, and this is what the cluster concept is all about. The plan consolidates use where it makes sense.

Chair Feustel asked if any of the lots were on the wetlands.

Mr. Tilsby responded no.

Mr. Laflamme said it would be easier for him if there were six lots versus eight because there are six across the street.

UNKNOWN SPEAKER stated that there is no conservation land in the development across the street; it is just small lots stamped out. The Town is pro cluster development. Even though it is large in acreage, the shape of this lot is a hardship when the 200-foot buffer is required.

Melissa Gallo, an abutter, stated that the density of this proposal is greater than the rest of the neighborhood and affects the character of the neighborhood. The houses in the rest of the neighborhood have 100 feet of frontage and these have 50 feet.

UNKNOWN SPEAKER responded that this is a cluster subdivision, while the rest of the neighborhood is traditional. The existing properties may not meet current zoning requirements, but may have been grandfathered. It is an apples to oranges comparison.

Mr. Tilsby stated that the narrowest lots have 85 feet of frontage, not 50.

Chair Feustel asked if they can get curb cuts onto Route 28.

Mr. Pendergast responded no; Route 28 is a limited access highway, allowing only one curb cut for each property. Subdivisions have used up these curb cuts.

Chair Feustel asked how many of these lots have less than 100 feet of frontage.

Mr. Tilsby responded that five of them have 85 feet of frontage.

Ms. Campbell, an abutter, has a two-acre lot on Pine Acres Road next to this proposed development. She said that the developer is saying that the plan is consistent with the neighborhood, but not the entire neighborhood is one acres lots. She is also concerned about water issues such as wells drying up. This happened last year because of drought.

Mr. Pendergast stated that where wells are placed is a Planning Board issue; the Zoning Board of Adjustments does not regulate wells. Questions could be asked tonight if there is someone who is willing to respond.

At the request of Chair Feustel, Mr. Pendergast pointed out the property lines of the proposed development and the wetlands area therein. He said that the developer had an on-site wetlands survey done so their depiction might be more accurate than what he has.

Jason Gallo, an abutter, stated that their survey was taken before the winter, and when there is a lot of snow during the winter, the drainage on his side of the road is problem. The parcel under consideration is all mud. A truck will sink right in. He has problems draining his septic system and this will be worse with the new development. He won't be able to drain his septic.

Mr. Juranty stated that the well water issue is relevant because wells drying up causes property values to decline.

Chair Feustel stated that there is so much wetland, he is amazed that the wells dry up.

UNKNOWN SPEAKER stated due to the stratification, there is a clay layer and under that is a gravel aquifer that is not horizontal. It slopes downward toward the river, so the river is not recharging.

Mr. Laflamme asked to hear from the well expert.

Mr. Carl LaChance, an expert on wells from Skillings and Sons, Inc., stated that the water there is surface water. The wells being drilled are bedrock wells. Surface wells are affected by drought dramatically more than bedrock wells. They are drilling down into the bedrock and shutting off surface water, pulling water from lower bedrock. Drilling wells in deep bedrock will not affect surface wells.

Mr. Laflamme asked if drilling water for these eight lots will take water from existing wells.

Mr. LaChance responded that it is a shared resource in the bedrock area, but there is a huge amount of water so there should not be an issue in this neighborhood. There is one producing 150 gallons per minute. We have not had any concerns with any of the bedrock wells in that area. Most wells are making more than three gallons per minute. There are not many deep bedrock wells; the deepest one is only 500 feet. We have drilled wells in troubled neighborhoods upwards of 2,000 feet deep. Regarding wells on the properties across the street, there could be problems with the existing wells such as not being drilled deep enough, the pump not being deep enough, or iron in the water. Many things affect the recovery rate of a well.

Mr. Pendergast pointed to the dark green area on the map and explained that it was the aquifer protection area. There is no Town water in the area; the closest hydrants would be at the MRF Building on Route 28 or the corner of Deerfield Road. It would be cost prohibitive to run water to this development. He agreed that they could draw from the river in case of fire.

Mr. Laflamme said when you said three gallons per minute, what is the average?

Mr. LaChance responded it depends on the depth of the well and the size of the home needed. The standard is: can it produce five gallons per minute for four hours? A 500-foot well needs to produce two gallons per minute; a 400-foot well needs to produce three gallons per minute, and it goes down. As the depth of the well decreases, the volume has to be more. For this area, it is about six gallons per minutes, which is typical for a 200 to 300-foot well.

Mr. Juranty stated I am not in the well business, but I am a professionally licensed civil engineer with a masters' degree in water resources. Water well rates are wonderful; they produce till they dry up. Bedrock wells are fed from veins but these depend on surface water to recharge. It is slower, but they suffer the same fate as surface wells during drought.

Mr. LaChance stated I respect what you say but there is a protective radius around wells to help them recharge and all of those are within the cluster.

Mr. Juranty stated that recoup time is slower

Mr. LaChance said that the static water level fluctuates through the seasons due to the recharge of water above, based on rainfall and what percolates down through the soil.

Mr. Juranty stated eight more wells in that area will have a great effect.

Mr. LaChance stated I disagree.

Mr. Gryval asked for and received clarification that the 200-foot buffer pertains to the sides as well as the front. He asked if the Technical Review Committee has seen this.

Mr. Pendergast responded no.

Mr. Gryval asked if the road agent had weighed in on eight driveway cuts.

Mr. Pendergast responded that he had reviewed the original plan for twelve cuts. He said that he noted that the grade slopes away, so there is no need for culverts. Again, this is a Planning Board issue.

Mr. Gryval asked if there would be TRC review at the Planning Board level.

Mr. Pendergast responded yes.

Cynthia Emery, an abutter, stated that she owns Lot 10229 and has drainage problems. She has a sinkhole in her front yard.

On motion of ??????????, duly seconded by ?????????? , it was voted to enter into a deliberative session.

Chair Feustel asked the Board members for comments on whether the variance would result in diminution of value of the surrounding properties.

??????????? said I don't think so.

??????????? said I'm good.

??????????? said I have no opinion.

Chair Feustel moved to the second criteria regarding whether the variance would be contrary to the public interest. He said that he had imagined something like a lollipop configuration of the lots, not spaghetti.

Mr. Gryval said that clusters could be designed in many different ways, not just the lollipop designs you see in Florida.

Mr. Pendergast stated that clustering allows increased density in a specific area. The question at hand is relief from the 200-foot buffer, not the number of lots or the configuration of them.

Chair Feustel asked for discussion as to whether literal enforcement of the ordinance would create unnecessary hardship owing to special conditions of the property that distinguish it from other properties in the area.

Mr. Roy asked if the Board could require something more than a 50-foot buffer but less than 200 feet.

Mr. Pendergast responded that they could.

Mr. Roy said that he would like to see a 100-foot buffer and staggered lots.

Chair Feustel addressed the criteria of substantial justice.

Mr. Gravel noted the concerns brought up by the abutters; if granted we are breaking from the norms they expect in their neighborhood.

Chair Feustel stated that they have expectations for their neighborhood based on the ordinance. He asked if the members wanted to discuss the last criteria – whether or not the spirit of the ordinance would be observed if the variance were allowed.

???????????? said I think the spirit of the ordinance would be observed.

???????????? said I agree.

On motion of ?????????, duly seconded by ?????????, it was voted to return to public session.

Chair Feustel noted that any motion must be stated in the affirmative.

Mr. Roy asked the applicant how they would respond to a compromise 100-foot buffer.

UNKNOWN SPEAKER said it would be fine on the front but on the sides they would lose a couple of lots or the lots would have to be narrower.

Mr. Juranty said they should reduce the number of lots, not the frontage. It would not be in the spirit of the ordinance to make the lots narrower, and that it should be a condition to not reduce frontage.

Mr. Pendergast reminded everyone that the number of lots is a Planning Board issue; the cluster ordinance doesn't address setbacks or frontage.

Mr. Tilsby stated we feel strongly that we meet the criteria for a variance for a 50-foot buffer. He does not know what is going to happen if the Board allows something different, if the Board grants a variance but puts conditions on it. The lots are spaced well, they are neat and orderly, and we think this is the best plan. There is regularity to it. There are no strange lot lines.

UNKNOWN SPEAKER said eight is the lowest number of lots we have proposed and the TRC didn't have a problem. It is the flag lots issue that brought us back. We already have relief for the density.

Chair Feustel said probably no one except those across the street cares about the density.

Mr. Juranty said that in the first plan presented in the fall, two of the eight lots were on Route 28, so this is denser.

Mr. Tilsby said my point is that all eight lots access Pine Acres Road.

Mr. Pendergast stated that the Board could table this item to a later date so that more information could be gathered.

Mr. Gryval said that the attorney for the developer said that these 85-foot lots with the 50-foot buffer is the best use of the parcel, and the next plan might be less favorable. We should give them an answer tonight and not leave them hanging. Based on his information and the information from the audience, I know how I feel about it.

Chair Feustel said that it is like a balloon; if you squeeze the density in one place, it has to go somewhere else. I don't know if you can reduce the number of houses there.

Mr. Juranty said I don't think you should vote favorably due to a threat from the developer. You could limit the number of lots.

Mr. Gryval said that would be a Planning Board issue.

Chair Feustel said I don't know what the opinion of the Board is yet. My concern is that if I also don't want to put everybody out. If we say no, they can come back to us asking for a 100-foot buffer and they have to go through the process all over again.

Mr. Pendergast stated you are here about the 200-foot buffer. You can grant, deny or add a different restriction. They already have approval for a cluster and for single septic and wells. That is done. It is within your purview to approve, deny, continue or add conditions that are reasonable. You have up to 30 days, so you can continue for 30 days to re-examine the facts.

????? made a motion to grant the variance for a 50-foot buffer. The motion was duly seconded by ?????.

A roll call vote was taken. Mr. Roy abstained. Mr. Gryval voted no. Mr. Laflamme voted yes.

Chair Feustel stated that he would maintain his neutrality. He informed the applicant that the motion had failed and they have 30 days to appeal the decision, or lack of a decision.

Mr. Gryval stated that the only time limit for presenting a new application would relate to the P&S agreement.

Mr. Pendergast stated that the Board can attach conditions that are reasonable and relate to the spirit of the ordinance, but only in relation to the 200-foot buffer, The Zoning Board of Adjustments has no authority regarding the lot size or the setbacks for clusters.

On motion of ?????????, duly seconded by ??????, it was voted to adjourn at 8:18 pm.

 8/16/2017

ERIC FEUSTEL, Chairman, Allentown Zoning Board of Adjustments

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