

ATKINSON PLANNING BOARD
Atkinson, New Hampshire

Public Hearing Meeting
Wednesday, July 20, 2005

Present: Susan Killam, Chairman; Paul DiMaggio, Vice-Chairman; Mike Fletcher; Chuck Earley
Alternates: Donna Sullivan; Ted Stewart; Tim Dziechowski
Town Engineer: Steven Keach

Ms. Killam called the meeting to order at 7:40 PM.

Correspondence

Incoming

1. Keach- Nordstrom Associate dated 6/20/05 re: Jameson Ridge bond reduction.
2. Selectmen minutes dated 5/16, 6/6, 6/13/2005
3. City of Haverhill Legal Notice for meeting of 7/12/05.
4. City of Haverhill Public Hearing Notice for meeting of 7/13/05.
5. Keach-Nordstrom Associates dated 6/24/05 re: Carpenter review estimate.
6. Keach-Nordstrom Associates dated 6/27/05 re: Deer Run Rd.Subdivision and Rock Ridge Development statement of account.
7. State of NH, Approval for Subdivision notice #SA2004005136-A for Tuck Realty Corp. Amendment date 6/23/05.
8. Planning Board Budget printout dated 6/30/05.
9. Town of Derry Legal Notice for meeting of 7/20/05.
10. Attorney Sumner Kalman dated 7/5/05 re: Town of Atkinson v. Contractors Bonding & Insurance Co.
11. Keach-Nordstrom Associates dated 7/8/05 re: Jameson Ridge inspection report.
12. State of NH, Approval for Subdivision Amendment dated 7/7/05 #SA2005005913-A for Austin Realty Trust.
13. City of Haverhill Legal Notices for meeting of August 9, 2005.

Outgoing

1. Winslow Drive Realty Group dated 6/20/05 re: Jameson Ridge Plan Amendment approval.
2. Settlers' Ridge Limited Partnership re: Approval of Amendment to Settler's Ridge Project Plan.
3. Rock Ridge Development dated 6/20/05 re: Approval of Commercial Site Plan.
4. Planning Board Legal Notice for meeting of 7/20/05.

APPROVAL OF MINUTES - June 15, 2005

The minutes of June 15, 2005 were reviewed and the following corrections were made:

Page 4, 4th line from the bottom, sentence to read: The hydrants have to generate 500 gallons of water a minute for a 2-hour duration.

Page 6, 2nd last paragraph, second last sentence to read: This is an older section of town and the houses don't have the fire protection the newer houses have.

Page 7, first full paragraph, first sentence, change 'than' to 'that'. Second sentence, change 'Mr. Boyle' to 'Mr. Earley'.

Mr. Fletcher made a motion to approve the minutes of June 15, 2005 as amended. Mr. Earley seconded the motion. Motion approved. Mr. DiMaggio abstained.

Discussion:

Mr. DiMaggio asked Mr. Keach if he knew of a consultant to conduct the cost benefit analysis of the alternative building design. Mr. Keach made a suggestion and Ms. Killam will obtain a bid.

The Public Hearing was opened at 8:05 PM.

PUBLIC HEARINGS:

New Applications:

Richard & Harratt Houde (Cameron) submission of an Application for Formal Consideration and Approval for a Lot Line Adjustment Plan between Richard & Harratt Houde, 14 Westside Drive, Map 17, Lot 29-2 (8:02A) and William Carpenter, 12 Westside Drive, Map 17, Lot 30 (2.83A) to transfer Parcel "A" (36075 SF) from Lot 30 to Lot 29.2, RR2 Zone.

The abutter's list was read. Present: William Carpenter, James Lavelle Associates.

The Lot Line Adjustment will reduce Mr. Carpenter's lot to 2 acres in total. Mr. Keach's Letter was reviewed. Under 'Zoning Matters' Mr. Keach noted that Lot 30 will be reduced in area from 2.83 acres to 2.00 acres, which is the minimum required lot area in the RR-2 District. As shown on the plan, a remaining portion of Map 17 - Lot 30 is comprised of jurisdictional wetland. Adjusted Map 17 - Lot 30 will have less than 2.00 acres of upland soil. This provision conflicts with the requirements of Section 410:7 of the Zoning Ordinance, which does not permit the use of wetlands to "satisfy minimum lot size requirements" of the Zoning Ordinance.

Mr. Lavelle stated that this lot existed prior to this ordinance and the lot does not have 2.00 acres at this time. This would make this a pre-existing non-conforming lot as it stands. Mr. Lavelle noted that they would be reducing this lot further.

Mr. DiMaggio noted that they are taking a non-conforming lot and making it more non-conforming. Mr. Keach felt that this was a good case for a variance but not a case for the Planning Board. The upland area is about 90% of what is required and it will be reduced further. Mr. DiMaggio noted that this application would add to an 8.02 acre lot, which is just shy of a developable cluster subdivision lot. He felt the town should not have the additional burden of increased impact. Mr. Lavelle stated that he has no knowledge of any cluster subdivision being planned. Mr. Carpenter is not able to use the land on the other side of the wetland and it is of no value to him. Mr. Carpenter did not believe that the motive for this adjustment was to subdivide the lot.

Mr. Lavelle asked the Board if they could recommend the approval of a variance to the Zoning Board. The board did not feel a recommendation from them would make a difference.

Mr. DiMaggio made a motion to not take this plan under jurisdiction because it conflicts with the requirements of Section 410:7 of the Zoning Ordinance, which does not permit the use of wetlands to "satisfy minimum lot size requirements". Mr. Earley seconded the motion. Motion approved unanimously. Mr. Dziechowski did not vote.

The hearing was closed at 8:20 PM.

New Business

Proposed Changes to Subdivision Regulations and Zoning Ordinances

Mr. DiMaggio referred to a Supreme Court ruling, which takes land by "Eminent Domain" and turning it over to private developers. Some states have already filed legislation against this. Mr. DiMaggio stated that we have the obligation to see that this does not happen in Atkinson.

Mr. DiMaggio presented the following two proposed Articles - one for Zoning and one for Regulations:

In Section 360. "PROHIBITIONS" of Subdivision Regulations (pp. SD-6), add subsection 360:3 to protect the longevity of citizen rights to own land under the 5th Amendment to the Constitution of the United States.

To Read:

360:3 Subdivision on land acquired through "Eminent Domain" shall be limited in use to public sector, governmental uses only. Private development of such land is prohibited.

In Section 400 "GENERAL PROVISIONS" of the Zoning Ordinance (pp. Z-14), add subsection 400:8 to protect the longevity of citizen rights to own land under the (1st Amendment?) to the Constitution of the United States.

To Read:

400:8 Property obtained by "Eminent Domain" shall be restricted in use to Local, State or Federal governmental public sector uses. No private use of property so obtained shall be permitted.

Section 400:8 must be voted on by the residents. Due to the time limitation this can be brought to a Public Hearing in November. The regulation section can be done in one Public Hearing. Mr. DiMaggio will discuss this with Town Counsel. Mr. Keach was not sure if a Federal or State level decision is made, if it would 'trump' any local subdivision and zoning restrictions. It was suggested that passage of a town charter amendment might be the way to go.

The Board decided to put the first section (Regulation Section) on the agenda for the next Public Hearing. Mr. DiMaggio will meet with Town Counsel before the meeting. The Proposed Amendment will be posted at the earliest possible date.

Discussion

Tim Dziechowski reported that there is an Atkinson resident that would like to give the town some land. There is a house on the land at this time. The owners are looking to make the lot smaller and to give the backland to the town. Mr. Dziechowski asked if a site plan would be needed or would it be a lot line adjustment.

It was the consensus of the Board that a site plan would be needed to see if the lot is conforming. There is a tax benefit involved and an appraisal would be needed. Mr. Dziechowski reported that the owners would assume the cost of the appraisal. Mr. Keach felt that it would be an Expedited Review. An easement does not require Planning Board approval but is of less value as a tax benefit.

Discussion - Johnson & Johnston property

Mr. Dziechowski reported on the former Johnson & Johnston property. One lot on this property is in Atkinson. In June the town of Hampstead received complaints that bulldozing and excavation has been going on. Hampstead determined that the work was being done in Atkinson. Mr. Jones was contacted and he was told that they were clearing some land to park trucks that the state had told them they had to move from where they were. They showed Mr. Jones a copy of a Wetlands Timber Permit Application to cut timber. This permit was never filed with the State. There is conservation land to the west and to the north. A wetland crossing has been built without any state permits and underground utilities have been installed. Mr. Dziechowski reported that he is filing a Wetlands Complaint. The Selectmen are going to discuss this with Town Counsel.

Mr. Jones had recommended a cease & desist order but the Selectmen wanted to discuss this with Town Counsel first. They needed to know what zoning regulation they are violating. Mr. Keach recommended that Mr. Kirsch, Code Enforcement Officer should simply ask them what they are doing instead of speculating and to remind them that this requires a site plan review.

The consensus of the Board was to file a Wetlands Violation Complaint and that Mr. Kirsch take some action on this.

Discussion - Brian Boyle, Jameson Ridge

Mr. Boyle reported on a 4" rainstorm in an hour that washed out a silt barrier and some bark chip retaining walls on the property. These barriers washed into wetlands and landed by a stone wall. None of this has been removed because it

is in a swamp. Mr. Boyle contacted the Wetland Bureau and explained the situation. It is agreed that there is no way to clean this up without making it worse than it already is. All protective measures are in place to prevent further erosion. The site was visited on July 7th and the situation was already under control. Mr. Boyle has made every effort to stabilize the area and should have everything completed by Labor Day.

Discussion continued on what measures will be taken to stabilize the area and what materials will be used, and there was discussion on what authority the Planning Board has on an approved project during construction. Ms. Killam stated that it is not the Planning Board's job to do this and that is why we have a Town Engineer. Mr. Stewart noted that Mr. Keach is not an enforcement officer and felt that a regulation should be in place to police this. This was discussed at a previous meeting and this subject will be discussed further. Liability was discussed and Mr. Keach stated that during construction liability is entirely on the owner.

Mr. Earley left the meeting at 9:20 PM.

Mr. Fletcher made a motion to adjourn. Mr. DiMaggio seconded the motion. Motion approved unanimously.

The meeting was adjourned at 9:40 PM.
Next scheduled Meeting - Public Hearing August 17, 2005

APPROVED _____ Respectfully submitted,

Carol Kater