

MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT
January 4, 2007

Pending approval as of 1-7-07

MEMBERS PRESENT: Bruce Kudrick, Vice-Chair; Dana Carlucci, Tom Hebert, Tom LoPizzo
ALTERNATES PRESENT: David Sheldon, Stephanie Burnham
EXCUSED: William Bonney, Chair
STAFF PRESENT: Laura Scott, Director of Planning; Michael Pelsor, Code Enforcement Officer; Susan Gifford, Recording Secretary

Vice Chairman Kudrick called the meeting to order at 7:00 p.m.

PUBLIC HEARING

Case #06-25-Z

Applicant: Stephen J. Cormier Revocable Trust
Attorney Charles Cleary, Agent

Property Owners: same

Agent: Kevin Leonard, P.E.
Northpoint Engineering LLC
5 Sheep Davis Road, Suite F
Pembroke, NH 03275

Property Address: 424 North Pembroke Road
Pembroke, NH 03275
Tax Map 937 Lot 7 located in the R3 District

Special Exception to amend a previously approved Special Exception, which was granted on 8/23/06 for a 10-lot Rural open space development, to realign the proposed cul-de-sac and add an eleventh residential lot.

Abutters were notified and cards were received back from most abutters.

Vice Chairman Kudrick opened the public hearing at 7:05 p.m.

There were four regular members and two alternate members. Five members make up a full board. Vice Chairman Kudrick designated Stephanie Burnham to vote for William Bonney; therefore, there was a full board present. Vice Chairman Kudrick explained the rules of the hearing.

Attorney Charles Cleary stated that the applicant is seeking an amendment to the previously approved Special Exception. Kevin Leonard of Northpoint Engineering, Dennis Aubin, Project Engineer, and Bruce Lewis, P.E., Water Consultant are present tonight to answer any questions.

Kevin Leonard, P.E., of Northpoint Engineering, agent for the applicant, stated that after a Conceptual Consultation with the Pembroke Planning Board, the applicant relocated the cul-de-sac to allow for a future connection with an abutting property if it were to ever be developed. Based on Planning Board input, the revised plans created enough land to add one residential lot.

Attorney Cleary stated that the road has shifted to the north. Everything else about the plan is the same as the ZBA saw 8/23/06. At that time, there was discussion of water issues. The question before the ZBA tonight is, does the addition of the one lot cause any of the conditions to fail.

Because the Planning Board had rewritten and posted the Cluster Subdivision Ordinance for 2007 Town Meeting, Ms. Scott was under the impression that the application would follow the revised Open Space Ordinance and would not have to go back to the ZBA. Unfortunately, she was mistaken and the applicant needs to follow both ordinances until the proposed Open Space Ordinance is either adopted or rejected at Town Meeting. The application before the ZBA is for one new lot and reconfiguration of the road.

The ten other lots and the cluster subdivision concept were already approved by the ZBA in August 2006.

A copy of an evaluation of the overall concept of developing a community water system dated 12/22/06 from Bruce Lewis, P.E., Lewis Engineering PLLC of Litchfield, NH was provided to ZBA members in their packet. A copy of a traffic impact assessment dated 12/21/06 from Woodland Design Group of Auburn NH was provided to ZBA members. Plans dated November 2006 from Northpoint Engineering were also provided. A letter dated 12/20/06 from Craig Keeler, Fairway Real Estate, Pembroke NH commented on the proposed eleven single-family home Rural Cluster Open Space Development. In general, a project of this type with expected home prices in the \$300,000 to \$350,000 range built in an existing residential area does not have an adverse affect on the adjacent property values.

Attorney Charles Cleary, agent for Stephen J. Cormier Revocable Trust, addressed the 10 points necessary for a Special Exception as they applied:

- 1) The use is listed in the Table of Uses Regulations, Section 143-19, as a special exception in the district for which the application is made. *Yes*
- 2) The requested use is essential or desirable to the public convenience or the general welfare. *The proposed development will provide a large tract of open space which is very desirable to the public and the community as a whole. The proposed open space (31 acres) includes a segment of Ames Brook and will back up to Seventh Range Road (Fuller Road) a Class VI town road. This land will provide an excellent location for passive recreation and will help to maintain the rural character of the town. In addition, it is adjacent to several large tracts which offer the possibility of a larger contiguous area in conservation. The applicant has presented the proposed project to the Conservation Commission and it was well received. The Conservation Commission sees value in land of this type and location. Furthermore, it appears likely that the Conservation Commission is going to accept an easement over the large tract west of the proposed single-family homes.*
- 3) The requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals or general welfare. *The applicant is proposing to construct a cul-de-sac to access single family homes. The proposal is a residential use in a residential neighborhood. Such a use will not be detrimental to the health, morals or general welfare of the district. The proposed open space will actually compliment the character of the area and provide access to Seventh Range Road. The existing improvements on the property, in particular the outbuildings, are in disrepair and the yard could use some cleaning up. It would be the intention of the applicant to clean up the appearance of the existing property as part of the proposed improvements which will benefit the neighborhood and improve the marketability of the development.*
- 4) That the specific site is an appropriate location for the proposed use and the character of adjoining uses will not be affected adversely. *All the surrounding properties are located within the R-3 (Rural/Agricultural/Residential) district and the proposed single-family residential use is in keeping with the zone and the properties in the vicinity of the project.*
- 5) That no factual evidence is found that property value in the district will be adversely affected by such use. *Real estate trends would suggest that adjacent properties will not be adversely affected by a project*

which proposes new single-family homes in an area of existing single-family homes. See attached letter written by Craig Keeler of Fairway Real Estate, LLC.

- 6) *That undue traffic or no nuisance or unreasonable hazard will result. The proposed use will not cause undue traffic, nuisance, or unreasonable hazard. The proposed single-family development will be limited to eleven homes and will be harmonious with the adjacent properties and will not produce excessive traffic, noise, light etc. See attached Traffic Impact Assessment prepared by Robert Woodland, P.E., of Woodland Design Group, Inc. Woodland Design Group redid the study for 11 lots.*
- 7) *That adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. The proposed roadway and associated infrastructure servicing this development will meet the Town of Pembroke Regulations and will be required to go through the Planning Board approval process. The infrastructure will include drainage and curbing as required by the Pembroke Planning Board. The development will be serviced by a community water system and individual septic systems. Each lot will be connected to cable, phone, and electric service from the local service providers.*
- 8) *That there are no valid objections from abutting property owners based on demonstrable fact to the applicant's knowledge. The applicant does not believe that there are any valid objections to the proposed project, which have been proven by demonstrable fact. The project would be in keeping with the neighborhood and would provide valuable open space to the community.*
- 9) *That the proposed use has an adequate water supply and sewerage systems and meets the applicable requirements of the State. The proposed subdivision will be serviced by a community water supply which will require approval by NHDES Water Supply Engineering Bureau as a public water supply. The proposed well will be sited to provide adequate yield for the development and shall produce satisfactory water quality before final approval will be granted. The applicant has hired Lewis Engineering, PLLC, which is a firm that specializes in all phases of water engineering and water utility operations. Lewis Engineering has evaluated the proposed community water system and is working to secure the Water Supply permit on behalf of the applicants. See attached letter written by Bruce Lewis, P.E. In seeking the required NHDES Subdivision permit the applicant will need to demonstrate that each lot will be provided with a test pit describing the soil on the property. The soil data and subdivision plan will be reviewed by the NHDES Subsurface Bureau during the permitting process. In addition, before individual septic systems can be constructed on each lot, individual sewage disposal construction approvals must be obtained by the NHDES Subsurface Bureau assuring that each individual septic design meets the state regulations. Northpoint Engineering, LLC has witnessed test pits on each of the proposed eleven lots and has found suitable soil for wastewater disposal.*
- 10) *If the proposed use is for multi-family dwellings, it shall be served by the town water system and by the town sewerage system. Does Not Apply*

Mr. Lewis, water consultant, stated that there is sufficient potable water on the site. The flow rate must be above 10 gallons per minute to serve the proposed subdivision. Gallons per minute in the area range from 12-20 gallons. Eleven lots are proposed on 40 plus acres of land. Cluster subdivision is an accepted form of home ownership. Mr. Lewis will ensure that the community water system meets all State requirements.

Kevin Leonard of Northpoint Engineering witnessed test pits on all eleven proposed lots. Mr. Leonard pointed out the proposed well location, the pump house and road to it. Preliminary data has been gathered and a final determination on location will be made after a well is drilled. To allow for future connection to an abutting lot, interior lot lines have been moved.

Kevin Crebs, 429 North Pembroke Road, asked about the length of the cul-de-sac. The maximum length of cul-de-sac is 600 feet per the ordinance. Now the cul-de-sac is proposed at 1,000 feet. Mr. Crebs heard it would be a private road, privately maintained. The Planning Board has posted new cluster open space rules. The changes in the ordinance increase the required lot size to 40,000 square feet per lot. At least five lots on this plan must be changed to meet that requirement.

Ms. Scott explained that there is a waiver request from the applicant to the Planning Board for a longer than 600' cul-de-sac. There are associated fire safety issues and planning issues. The proposed cul-de-sac has always been longer than 600'. Ms. Scott confirmed that the road is proposed to be a town road, town maintained. Ms. Scott explained that this application is exempt from the posted cluster regulation changes. This application must follow existing cluster ordinance and proposed open space changes.

Ms. Scott explained that on December 20, 2006 the Planning Board posted a new open space ordinance. This application was submitted before the proposed regulations were posted. The notice of decision approving the Special Exception refers to the plan submitted in August 2006. More information is available tonight.

Jim Kowalik, 425 North Pembroke Road, stated that the plan is different tonight than in August 2006. By extending the road to allow access to a neighboring lot, the Planning Board is proposing future development and another possible cluster subdivision. Is the usable land adequate for lots in the 15% slope area? Vice Chairman Kudrick stated that the proper board for this question is the Planning Board. Mr. Kowalik also stated that the proposal does not meet Special Exception criteria #7 because the character of the neighborhood is affected by the lot sizes as proposed.

Kevin Leonard stated that there is an isolated wetland in the cul-de-sac. The length of the cul-de-sac exceeded 600 feet as proposed in August 2006 and is within 50' of the previous cul-de-sac length. The road is intended to be a public road. Mr. Leonard stated that there are three open space lots to distinguish land put in the conservation easement. He pointed the three lots out on the plan. Providing future access to a 75 acre abutting parcel is good land planning. Mr. Leonard stated that a professional survey and wetlands mapping has been done on Map 937 Lot 7. He stated that he personally dug test pits on all these lots. Charles Cleary stated that the reason the plan came back to the ZBA is that the Pembroke Planning Board, along with the applicant, saw a planning opportunity.

There will be no additional density, private property will become 'conservation land.' This plan was derived from good planning with the Pembroke Planning Board.

Dennis Aubin, partner with Mr. Cormier, stated that there is variation all along North Pembroke Road in how far the houses sit on each lot. At the intersection of Cross Country Road, most of the houses sit on the road with more land behind the house. Mr. Aubin extended an invitation to all ZBA members to walk the property on Saturday 1/6/07 with them. Their goal is to set the houses back as far as possible. Abutter Mr. Friedrich has made it known that he wishes to develop his property.

Ms. Scott noted that by the Conservation Commission holding a conservation easement, the town would maintain and ensure public access on the open space. The homeowners association will still own the property and pay taxes on it. Ms. Scott apologized for the confusing process for applications that come in this time of year, with existing and posted ordinances.

Kevin Krebs, 429 North Pembroke Road, stated that under the proposed open space subdivision ordinance, individual lot sizes must be the minimum for the district. It was discussed that proposed lots are using frontage on the new road. Lot frontage by definition is measured at the street line. Lot frontage is not currently defined as where the driveway is located (in the case of a corner lot, the driveway could be on either road frontage).

Jim Kowalik expressed concern about building on 15% slope. This is a Planning Board issue.

Vice Chairman Kudrick summarized the case. The proposal is to add one new lot to an approved 10-lot rural open space cluster subdivision proposal and to reconfigure the road. The reason the applicant is back

before the Zoning Board is that the Planning Board felt that moving the road to allow for future development was good planning. The traffic impact study was revised to include eleven lots. There is very little additional traffic from one additional lot. A water study was provided by Lewis Engineering, PLLC of Litchfield, NH. The applicant will still have to prove they can get water for the development. The applicant proposes 350 feet deep house lots and will set the houses back as far as possible. The ZBA encourages all interested residents to go to the Planning Board hearings and ask those questions that are Planning Board issues.

There being no further input, Vice Chairman Kudrick closed the public hearing at 7:58 p.m.

Deliberations: Vice Chairman Kudrick stated that at the last ZBA hearing on this proposal, one abutter did state that he plans to develop his property. Allowing for connecting roads between the two lots makes it easier for the town to plow and maintain the roads. In the ordinance, there is no limit on the number of lots in a rural open space cluster subdivision. No more lots than allowed in a regular subdivision may be created in a cluster subdivision. The Planning Board based its recommendation on public safety concerns and Section 11-3 of the Master Plan on good land management.

The Board reviewed the individual criteria for a Special Exception. Vice Chairman Kudrick stated that at the last hearing on this plan, he had a concern with criteria #9 (That the proposed use has an adequate water supply ...and meets the applicable requirements of the State.) There was not enough evidence that adequate water could be provided. Vice Chairman Kudrick stated that he is not as concerned as he was at the 8/23/06 public hearing, after reading the December 22, 2006 from Lewis Engineering, PLLC. Tom LoPizzo stated that he supports the movement of the cul-de-sac as shown on the revised plans. Mr. LoPizzo stated that he lives in a cluster subdivision and there is an easement for a 50' road beside his house. Mr. LoPizzo noted that in Chichester NH, a cul-de-sac at Malachi Glen is gone, replaced by an easement for connecting to a road on the other side of the hill. This was found to be better for emergency vehicle access than a cul-de-sac.

Motion: Tom LoPizzo moved to grant a Special Exception that amends a previously approved Special Exception which was granted on August 23, 2006 for a 10-lot rural open space cluster development, to realign the proposed cul-de-sac and add an eleventh residential lot as shown in plans dated November 2006 as requested by Stephen J. Cormier Revocable Trust in Case #06-25-Z. Dana Carlucci seconded.

VOTE: DAVID – Y STEPHANIE – Y TOM L - Y
 TOM H - Y DANA - Y

MOTION TO AMEND SPECIAL EXCEPTION ORIGINALLY APPROVED 8/23/06 PASSED ON A 5-0 VOTE

MINUTES OF PREVIOUS MEETINGS

Motion: David Sheldon moved to approve the minutes of December 18, 2006 as amended. Dana Carlucci seconded.

VOTE: BRUCE- Y DANA - Y TOM L- Y
 TOM H Y DAVID- Y

MINUTES OF DECEMBER 18, 2006 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER

ZBA Fees – At their 12/20/06 meeting, the Board of Selectmen amended Pembroke Chapter 160 to add 160-4.1 Zoning Board of Adjustment Fees of \$100, \$10 per abutter notice and \$90 to post the notice in the newspaper. Ms. Scott provided ZBA members with a copy for their binder.

Zoning Board of Adjustment Rules of Procedure – Ms. Scott provided ZBA members with a copy of the Rules of Procedure adopted 12/18/06.

Town Report – In a memo dated 11/29/06, Linda Williams, Administrative Secretary, requested that all Board reports for the Town Report be submitted by Tuesday, 1/16/07. Bruce Kudrick will prepare a draft report and send it to Ms. Scott.

Date of January ZBA meeting – The ZBA January 2007 meeting will be on Monday, 1/22/07 (the usual fourth Monday). David Sheldon will not be available on that date.

NH DOT proposal Fleet Fueling Facility – A DOT representative will present the plan at the Town of Allenstown Selectmen's meeting Wednesday, January 10, 2007 at 7:00 p.m. Vice Chairman Kudrick plans to attend this meeting.

Allenstown Meeting on Sewer Bond – There is also a meeting in Allenstown next week regarding the upcoming sewer bond.

ADJOURN Motion: Dana Carlucci moved to adjourn. David Sheldon seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Susan P. Gifford
Recording Secretary