



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Approved Minutes

March 15, 2023

7:00 pm at Community Development Meeting Room
3 North Lowell Road

Attendance:

- Chair Tom Earley, Present
- Vice Chair Jennean Mason, Present
- Derek Monson, Present
- Jacob Cross, Present
- Matt Rounds, Present
- Alan Carpenter, Present
- Joe Bradley (alternate), Present
- Dave Curto, (alternate), Excused
- Pam McCarthy (alternate), Excused
- Dan Spalinger (alternate), Excused
- Bruce Breton, Board of Selectmen ex Officio, Excused
- Roger Hohenberger, Board of Selectmen ex Officio (alternate), Present, seated at 7:59pm
- Alexander Mello- Planning Director, Community Development
- Chris Sullivan- Assistant Planning Director, Community Development
- Renee Mallett- Minute Taker

The meeting opened at 7:03pm with the pledge of allegiance and the introduction of members.

Case 2019-19F – 64 Mammoth Road (Parcel 19-A-200); Application for Workforce Housing-Final; Zone - Rural District

The applicant has requested a continuance for this case, which proposes to build sixteen condominium style, detached, single-family units, including a single-family home that already exists on the parcel. In this project, 23.5% of the proposed units (4 out of 17 units) are proposed to be designated as Workforce Housing. This public hearing is in response to the State of New Hampshire Supreme Court Order (Case No. 2021-0473) which affirmed the Housing Appeals Board Order (Case No.: PBA-2021-04) that 1) VACATED the 2/3/21 PB denial of the waiver for the required percentage of workforce housing; 2) REVERSED the 2/17/21 PB denial of the two CUPs, and; 3) VACATED the 2/17/21 PB denial of the overall project.

Mr. Monson made a motion to continue Case 2019-19F to 7:00pm on April 12, 2023. Vice Chair Mason seconded the motion The motion passed with the following roll-call vote and Mr. Rounds abstaining as he has recused himself from voting on this case:
Chair Earley, aye

43 Vice Chair Mason, aye
44 Mr. Monson, aye
45 Mr. Cross, aye
46 Mr. Rounds, abstain
47 Mr. Carpenter, aye
48
49

50 **Case 2022-37 –72 Range Road (Parcels 17-H-30); Major Final Site Plan,**
51 **WWPD Special Permit, WPOD Site Plan / Subdivision Land Development**
52 **Application, and Final Subdivision; Zone – Gateway Commercial District, WWPD,**
53 **and WPOD**

54 Mr. Mello reviewed the history of and the previous hearings in this long running application which
55 proposes to build an 8600+ square foot commercial building, with associated site improvements. Mr. Mello
56 said questions of legacy and setbacks have been reviewed by town counsel. Mr. Mello had also reviewed
57 historical maps of the area and found no indication that town owned land was involved. Mr. Mello has also
58 called the state regarding the matter of a land purchase which is associated with this plan. The state
59 confirmed that, despite a counter-offer from Mr. Lopez, they are only pursuing selling the land in question
60 to the applicant as they have been in the process of negotiating this sale for some time. Mr. Mello has also
61 reviewed the parking calculations and agrees that the proposed 29 parking spaces does comply with the
62 28.79 spaces required. The storage spaces indicated on the plan are attached to the commercial spaces
63 below, and are accessory in nature, so they do comply with zoning.

64 Attorney Panciocco representing the applicant. She explained the matter of the vesting and
65 addressed some of the questions that had been raised at the previous meeting. Gove Environmental did
66 revisit the site and took soil samples. Jared Gott, of the Dubay Group, reviewed the plan and showed what
67 was already approved by the ZBA and what changes have been made since the last hearing. The solid waste
68 enclosure was discussed, as moving it out of the setback would result in losing a parking space or moving it
69 into the WWPD. The angled lot line was revisited, as discussed at previous hearings.

70 Chris Danforth reviewed the wetlands delineation done by Gove Environmental and visited the site
71 in person. He observed the areas which had been previously marked by Mr. Seekamp as potential wetlands.
72 Mr. Danforth said the soils were not conclusive though some other indicators of wetlands were visible. Mr.
73 Danforth asked for hydro-core data or said he would need to wait until the spring when conditions were
74 more favorable for determining the wetlands boundaries. Mr. Danforth also reviewed the possibility of a
75 tributary stream, showing where there was evidence of a well-defined waterbody before it became more
76 diffused. Visiting the site a second time Mr. Danforth said it was much more diffused and indicated a high
77 water table. He did not think it qualified as a waterway. Mr. Danforth reviewed the town ordinances in
78 regards to the definition of streams and said the wetlands did not meet the characteristics as defined by
79 the town.

80 Mr. Rounds asked about the development impacting the flow of these systems. Mr. Danforth did
81 not see any reason to believe there would be an impact, indicating the plan utilized porous pavement and
82 the existence of a culvert.

83
84 **Mr. Hohenberger was seated at 7:59pm**
85

86 At Mr. Monson's questioning Mr. Danforth said that even if the areas that were unclear were found
87 to be wetlands that they were small pockets and therefore not enough acreage to trigger WWPD. Mr.
88 Danforth did not find any evidence of a tributary stream that would be in the 100-foot setback from the
89 development. Mr. Seekamp, the wetlands scientist under the employ of the abutters, addressed the board.

90 He concurred with Mr. Danforth on the evidence of a scoured channel on an abutting parcel. He said the
91 stream within the wetland meant that the entire wetland was granted WPOD protection per town
92 ordinance. Mr. Seekamp said the definition of a tributary stream is unclear under the definitions of these
93 same town ordinances. Mr. Monson asked if the existence of a possible isolated wetland indicated by Mr.
94 Seekamp could accept the drainage of the required acreage in order to be included as WWPD. Mr. Seekamp
95 agreed that they did not. Mr. Mello explained the difference between the WWPD and WPOD buffers and
96 what was allowed to be built in them or not. He said the Planning Board had the purview to waive the need
97 for the buffer if the applicant could show the development met one of a series of items. Mr. Mello said he
98 did not think that the ordinances intended for one land feature to be covered by two buffers at the same
99 time. Board discussion followed on what was or was not covered by the already approved ZBA variances.

100 Mr. Gott was asked to indicate where on the plan the hundred-foot buffer would be. The building is
101 not in the buffer, per the plan, and only access to the site is. Mr. Gott confirmed the plan showed porous
102 pavement in the buffer that would transition to traditional pavement as it met with Range Road.

103
104 **Chair Earley opened the session to public comment.**

105
106 Chair Earley read a letter from Kathleen DiFrucis into the record which was opposed to the
107 project, listing a number of ordinances which she did not feel the plan met.

108
109 Attorney Reimer, representing the Nysten and Lopez families in their opposition to this project,
110 encouraged the board to focus on the language of the ordinances. He said if both WWPD and WPOD were
111 triggered that both needed to be considered. Attorney Reimer said his reading of the ordinances indicated
112 that all wetlands in the area were associated with the tributary stream. Attorney Reimer said the applicant
113 would be burdened by proving any requested reduction in the setbacks would not result in a lessening of
114 water quality. Attorney Reimers disagrees with town counsel on his opinion regarding conflicting
115 ordinances. Attorney Reimers reviewed several different town ordinances and the resulting buffers when
116 certain circumstances were triggered.

117 Attorney Reimer also disagreed with Attorney Campbell's opinion on the matter of vesting. He
118 disputed Attorney Panciocco's invocation of the Harborside case.

119
120 Patrick Nysten felt that he and his neighbors had presented so many instances of what they
121 considered non-compliance that he did not understand why the case was still being considered. Mr. Nysten
122 suggested that the town was searching for a reason to approve the plan. Mr. Nysten said he has spent
123 many thousands of dollars trying to protect his quality of life and property values. Mr. Nysten handed out a
124 multipage report he had compiled so the board could "follow along" with his presentation of his
125 interpretation of town ordinances.

126 Mr. Nysten said the storage area of the building was the size of a small house and that it could not
127 be an accessory use. He cautioned that allowing this project would result in clandestine storage businesses
128 being developed throughout the town.

129 Mr. Nysten questioned the parking calculations and said the applicant had not rounded up when
130 presented with partial spaces. Mr. Nysten said this resulted in artificially reducing the number of necessary
131 spaces. Mr. Nysten maintained that in his calculations thirty spaces were necessary. Mr. Carpenter said that
132 did not match his initial calculations and asked how he had come to this number. Mr. Nysten said he
133 thought the restaurant would need more parking than they were indicating and that the resulting overflow
134 would result in patrons parking in his neighborhood.

135 Mr. Nysten felt the changes to the plan since the preliminary hearing were significant and therefore
136 invalidated both the already approved variances and the vesting. Mr. Nysten had concerns with signage,

137 the porous pavement leaching, and the placement and size of the propane tanks. Mr. Nysten revisited his
138 previously stated issue with the lack of stamping of some pages of the plan.

139
140 Jennifer Lopez said the developer has not treated her or her family with courtesy. She said they had
141 not reached out to her during this process. Ms. Lopez then also said that she had been in communication
142 with the developer and had granted them permission to access her property. She read an email received
143 from the applicant's attorney that she found threatening. Ms. Lopez said the applicant had insinuated she
144 was cutting down trees on her property but maintained it was only the removal bittersweet.

145 Ms. Lopez said the state had cashed their application check for the purchase of the land and she did
146 not see how that was possible if they were not being considered as a buyer. Mr. Carpenter explained it was
147 a typical procedural step and that the application fee would be refunded in the future.

148
149 Jacques Lopez said this is a complicated place to build and that so far the onus was on the abutters
150 to find the issues with the plan. He said the changes made to the plan based on abutter feedback meant
151 that this was no longer a vested plan. He thought on top of the already stated concerns that enough
152 attention was not being placed on the potential noise pollution from the bistro.

153
154 Dave Reese said the two biggest issues to him were the violation of the fifty-foot buffer, as detailed
155 by his fellow abutters, and the lowering of the water quality in the area. He is very concerned about the
156 potential threatening language used in an email to Jennifer Lopez.

157
158 Jeanne Schipelliti asked about the condition of the culvert pipe, what it was made of, and what the
159 life expectancy was of culverts. She worried it would be a pinch point during a storm event and that
160 abutting properties could flood. She asked if the culvert needed to be replaced. Mr. Danforth said metal
161 pipes generally lasted 25 years but cement pipes could last longer. Ms. Schipelliti asked if the culvert would
162 be updated before development.

163
164 Richard Comtois asked why his request for a wildlife study was denied. He said there are two
165 endangered turtles in town and that a quarter of a mile from this property on West Shore Road there's a
166 turtle crossing. He says this project would increase traffic and would impact the turtle population.

167
168 Vanessa Nysten rebutted an earlier comment made by Attorney Panciocco regarding the Master
169 Plan. Mr. Rounds agreed that two New Hampshire Supreme Court cases had reiterated the importance of
170 compliance with the Master Plan.

171 Ms. Nysten felt that the angled lot line was not for the sake keeping whole parking spaces but
172 because she believed that it allowed for "something." Ms. Nysten did not indicate that she knew what the
173 "something" might be but was adamant that development probably could not happen as presented
174 without the angled lot line.

175 Ms. Nysten had previously contacted Mr. Schlosser from the state's Alteration of Terrain Bureau. At
176 that time Mr. Schlosser indicated that, based on information that had been supplied by Ms. Nysten, an AoT
177 permit may have been necessary for the development of the vet hospital which is located on the parcel this
178 application I asking for a subdivision from. Ms. Nysten had asked that the Dubay Group mail information to
179 AoT regarding this matter but when she contacted the AoT Bureau they had not yet received this mail.

180 Ms. Nysten called a waste removal company to ask them about dumpsters. She maintains that the
181 applicant is indicating the use of rolling carts because a standard dumpster would not fit in the area
182 allocated for solid waste on the plan. Ms. Nysten said her conversation with the unnamed waste removal
183 company had caused her concern as that entity had indicated that the carts were usually meant for
184 temporary use.

185 Ms. Nysten had a number of issues with Mr. Mello’s findings on the appropriateness of uses for the
186 zone. Ms. Nysten said the drainage study was titled with the potential subdivided lot number and thought
187 the title would more appropriately include the lot number of what she called the “parent” parcel. She
188 thought the pictures included in the drainage study were outdated and that the report did not show the
189 flow of water.

190

191 **Chair Earley closed the session to public comment.**

192

193 Mr. Rounds said he had painstakingly researched this parcel and various previous plans. Mr. Rounds
194 thought the variance was solely for the parking spaces and not for maneuverability. Mr. Rounds thought
195 this should be addressed by the ZBA and that potentially a new variance would be needed.

196 Mr. Monson thought the wetlands study was lacking in some information. He wanted to see
197 drainage moved away from the tributary and that the water would be treated after capture. Mr. Cross
198 asked staff why they have not ruled on the appropriateness of the parking calculations. Mr. Mello said he
199 had confirmed the parking were correct at the start of the meeting and then explained how the calculations
200 were reached, adding that this was the prescribed method in every town where he had been employed.

201 Mr. Cross saw some value in the vesting arguments made by the abutters. Mr. Mello revisited the
202 opinion of Attorney Campbell and said that the preliminary hearing was for a multi-tenant commercial
203 building and that was what was before the board today. He explained that when plans came at the
204 preliminary level they had no tenants and were applying for a building not a use.

205 Mr Rounds asked about the appropriateness of subdividing a lot that was unbuildable without
206 variances. Mr. Carpenter noted that this property was rezoned not just into commercial property but into
207 very aggressive commercial zoning that allowed for minimal setbacks. However, Mr. Carpenter thought it
208 might be a case of trying to build too much on too small of a lot. He suggested roof run off be captured and
209 sent into the ground. Mr. Carpenter would like to see confirmation from a waste removal company about
210 the needed size and placement of dumpsters. Mr. Carpenter thought a one story building with no storage
211 area might be more appropriate for the parcel.

212 Mr. Rounds said he was ready to vote on this case tonight based on the number of times it had
213 been heard and the amount of information the board had already received.

214 Mr. Bradley wanted to see more information on the delineation of the wetlands. He agreed the
215 trash was significantly undersized. Mr. Bradley said the development of the vet hospital should be taken
216 into consideration.

217 Vice Chair Mason was concerned about the vesting and the original ZBA variances. She was not
218 comfortable with the current information the board had about the wetlands and soils. Vice Chair Mason
219 wanted to see where the grease trap would be located and how that would interact with the porous
220 pavement.

221 Chair Earley said he had ongoing concerns about the changes that would need to take place
222 depending on the wetland delineation and how that would impact the vesting.

223 Mr. Rounds said the onus of proving the need for a WWPD special permit was on the applicant and
224 not the board. He suggested denying the special permit and then the applicant could decide if they wanted
225 to resubmit. Mr. Mello said the applicant had justified their request for the WWPD special permit and that
226 information was already submitted and included in the case file. Mr. Cross thought the building needed to
227 be made smaller though he felt he had enough information on the WWPD special permit that he was ready
228 to deny it.

229 Mr. Mello confirmed the dumpster and propane tank were indicated on the plan that the ZBA had
230 seen. Mr. Mello said the parking spaces and maneuvering aisles were indicated on the plan and he did not
231 see how parking spaces could be used without aisles to get to them.

232 Attorney Panciocco addressed the allegation of threatening emails. She said the Lopez had been
233 gracious enough to allow the applicant to access their property in order that they might fulfil the boards
234 directives. She said the email in question was sent in response to that meeting and that it was followed by a
235 phone call. Attorney Panciocco said she has consulted with AoT and that the applicant was not ignoring the
236 issue raised by the Nystens. She added that she thought the applicant's wetlands scientist should have a
237 chance to be at future meeting, as both the abutters and the town had their consultants on hand.
238

239 **Mr. Carpenter made a motion to ask staff to consider releasing the March 15, 2023 Beaumont**
240 **Campbell letter regarding Case 2022-37. Mr. Rounds seconded the motion. Mr. Carpenter specified that**
241 **the decision to release the letter was Mr. Mello's and that his motion was to ask staff to consider the**
242 **appropriateness. The motion failed with the following vote:**

- 243 **Chair Earley, aye**
- 244 **Vice Chair Mason, aye**
- 245 **Mr. Monson, no**
- 246 **Mr. Cross, no**
- 247 **Mr. Rounds, no**
- 248 **Mr. Carpenter, aye**
- 249 **Mr. Hohenberger, no**

250
251
252 **Mr. Cross made a motion to continue Case 2022-37 to 7:00pm on May 3, 2023. Mr. Carpenter**
253 **seconded the motion. The motion passed with the following roll-call vote:**

- 254 **Chair Earley, aye**
- 255 **Vice Chair Mason, aye**
- 256 **Mr. Monson, aye**
- 257 **Mr. Cross, aye**
- 258 **Mr. Rounds, aye**
- 259 **Mr. Carpenter, aye**
- 260 **Mr. Hohenberger, aye**

261
262 **Mr. Cross made a motion to adjourn the meeting. Vice Chair Mason seconded the motion. The**
263 **motion passed with the following roll-call vote:**

- 264 **Chair Earley, aye**
- 265 **Vice Chair Mason, aye**
- 266 **Mr. Monson, aye**
- 267 **Mr. Cross, aye**
- 268 **Mr. Rounds, aye**
- 269 **Mr. Carpenter, aye**
- 270 **Mr. Hohenberger, aye**

271