

CALL TO ORDER: Chairman Morton called the meeting to order at 7:00 p.m. Board members in attendance: Ralph Estes, Vincent Frank and Richard Ford. In addition, Tom Morgan, Town Planner was in attendance.

CORRESPONDANCE: None

MINUTES: Ford made a motion to accept the minutes of August 27, 2007; Vincent Frank seconded, motion carried.

PUBLIC HEARINGS:

1) The Estate of Barbara Baird requests a special exception to allow a driveway in wetlands pursuant to Article X, Section 4C of the Zoning Ordinance. The Baird property is located at 316 Newington Road, Tax Map 53, Lot 5.

Chairman Morton advised the applicant that there were only four Board members in attendance. Ms. Baird asked if this was a majority and if the vote went 2 and 2, could she request a rehearing? Town Planner Morgan advised that she would have to request a rehearing, but that did not guarantee that she would be allowed a rehearing. She agreed to proceed with the hearing.

Chair asked if the Board had the permit and if everything was in order. Town Planner said it was and he had received the permit that day. Applicant advised the Board that it had been approved by Conservation Commission. Town Planner said Chairman of the Commission was in the next room and he said the Commission had unanimously approved the request. The Board members were given time to look over the permit.

There was discussion between Board members and Chairman Richardson of the Conservation Commission. Chairman Richardson felt permit more than met their requirements.

Ms. Carroll said (she and her husband) object to this request. She stated that their attorney was not at the meeting tonight, however, they object to the number of people who will be using the driveway. She advised the Board that an appeal has been filed with the State Court. Chair Morton advised Ms. Carroll that this had nothing to do with tonight's request.

After more discussion, the Chair asked if the Board was ready for a vote. Town Planner Morgan told the Board that they needed to look at Article X, Section 4C and make their decision based on these Special Exceptions. Ford read the Exceptions.

- (1.) The proposed construction is essential to the productive use of non-wetland areas. Yes
- (2.) Design, construction and maintenance methods will minimize any detrimental impact upon the wetlands, and will include restoration of the site as nearly as possible to its original grade and condition. Yes
- (3.) No alternative route is feasible and reasonable. No
- (4.) Issuance of permits (if applicable) from the New Hampshire Wetlands Bureau and the Army Corps of Engineers. A copy of these permits shall be submitted to the Town in advance. Yes

- (5.) All Special Exception criteria specified in Article IV Section 9 of the ordinance, and
- (6.) The provisions of mitigation measures, in Newington, close to the affected wetland system, where appropriate. Yes

Ford made a motion to approve, Frank seconded, motion carried.

2) A proposal by Tyco and Groen Builders to construct a 75-room hotel at 141 Shattuck Way, Tax Map 27, Lot 1-4 that would require the following:

- A) A variance from Article VI of the Zoning Ordinance to allow a 22' by 28' concrete patio and grass-paved emergency access road with 75 feet of Woodbury Avenue;
- B) A variance from Article X Section 6 of the Zoning Ordinance to allow a roadway and retaining wall within 25 feet of the wetlands buffer;
- C) A variance from Article X Section 7 of the Zoning Ordinance to allow a roadway and retaining wall within the 100-foot wetland setback; and
- D) A special exception to allow a wetlands crossing pursuant to Article X Section 4C of the Zoning Ordinance.

The Chair advised the applicants there were only four Board members. Did they want to continue or wait until the full Board was in attendance? Attorney Pilech was representing the applicants and they were comfortable with continuing the hearing. He stated that they had not applied for a Special Exception. Chair Morton reminded applicants there were two applications that were required.

The Attorney advised the Board that the proposed hotel site coming in from Shattuck Way involved two wetland areas. He reviewed the variances needed and for what purpose.

The Chair asked if there were any abutters in attendance and/or people who wished to comment.

Frederick Richardson, Chairman of the Conservation Commission, asked to be recognized. He was not speaking against the project. His comment was that when the hotel was originally proposed, there was going to be a rain garden and the Conservation Commission was very much in favor of this proposal. Now it appears this area will be a handicapped parking area. He wondered if this was still the plan. There was more discussion regarding wetland areas and what the contractor planned to do and why variances were needed.

Chair commented that it was nice to see Engineering plans. Contractor stated the project was not going to be a prepackaged plan. They have contracted with some of the Davis architects to work with a design that hopefully will be in keeping with the area.

Chair advised Board that they would be addressing three issues. The meeting was closed to the public unless the Board asked for their help.

Chair asked if there were any other questions from the Board. Ford made a motion to approve, Estes seconded. They moved to address each request separately.

The first variance A:

- 1. Value of surrounding property will not be diminished, Board felt it would not.

2. Will not be contrary to public interest. No
3. Denial of the variance would result in unnecessary hardship to the owners,
 - 1.) Interferes with the applicant's reasonable use of the property considering the unique setting of the property to its environment. Yes
 - 2.) No fair and substantial relationship exist between the general purposes of zoning ordinance and the specific restrictions on the use of the property. Yes
 - 3.) The variance would not injure the private rights of others. No
4. Substantial justice will be done. Yes
5. The variance is consistent with the ordinance. Yes

Motion made by Estes to approve the second variance B, pending approval by the Conservation Commission and the State requirements, seconded by Frank. Criteria reviewed, motion carried.

Motion to approve the third variance C, made by Estes as stated in motion for second variance, seconded by Ford. Criteria reviewed, motion carried.

Applicants thanked the Board and said they would see them at their next meeting pending approval from the Conservation Commission for these requests.

3) A request by Mindrift LLC for a variance from Article XIII Section 2 of the Zoning Ordinance in order to allow a restaurant use to be established at the Pizzeria Uno site sometime prior to January 15, 2009.

The Chair advised applicants that there were only four Board members present. Applicants were willing to continue with request.

John Cane and Ken Linsman are co-owners of Mindrift LLC a real estate company. Pizzeria Uno closed January 15, 2007. They have a lease w/Mindrif and Mindrift LLC has been trying to get control of the property. They still don't have control of the property but felt they were close. Mindrift is marketing the property and have several people interested. A veterinary clinic is interested in the property. There are a couple of restaurants, nothing is definite. Mindrift owns the property, Uno built the building. They were paying rent on the property, however, Mindrift has not received any rent since the restaurant closed.

There was discussion regarding the property, who was interested, etc. Chair asked if they were interested in selling the property and response was, yes, if there was a good offer. The hardship for Mindrift is the 12 months requirement to get another restaurant in there. Would like a good restaurant to go in, but two restaurants have closed and they still do not have possession of the property. Chair asked if they owned the property where Smokey Bones had been operating. The response was yes. Smokey Bones has been working with Mindrift. They immediately hired a broker and have been paying their rent, so the culture is different.

All the applicants were looking for, was a 12-month extension from January 2008 to January 2009. There was more discussion regarding 6 months versus 12 months and Mr. Cane indicated the next few months were not going to be very good, so 12 months would work better. There was more discussion regarding who might come in, how applicant would change look of building for a new business, etc. Ford said he could see the hardship and concern and did not feel 12 months was unreasonable.

The Chair asked if there were any abutters present and were there any comments or

concerns. There being none, the meeting was closed to the public

Ford asked that before the Board went any further, he would like to know who was responsible for maintaining the property. Cane stated that it was really Pizzeria Uno's responsibility. There was further discussion after which, the applicants said if the restaurants have no agreement with anyone, Mindrift will go after the restaurants and if they don't take care of the properties, the owner will take care of it.

Frank made a motion grant a 12-month extension and to accept applicants five criteria; Ford seconded. Motion carried. Ford moved to adjourn, Frank seconded, motion carried. Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Sandra W. Sweeney, Secretary