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THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

July 27, 2016

Denial of a Special Permit Application

Special Permit was denied on July 13, 2016 by the Zoning Board of Appeals under the Lunenburg Protective by Law Sections 8.3.2.1. (b)4.

The petitioner JEG Holdings, LLC, 46 Prince Street, P.O. Box 5155, Beverly, MA 01915 was seeking a Special Permit to vary the open space dimensional requirement for a proposed cluster subdivision known as Highfield Village. The property which was the subject of this case is located at 961 Northfield Road owned by John E. & David G. Saliba and property located at 361 Massachusetts Avenue, Lunenburg, MA 01462 owned by Robert A. Leverone, Trustee of Lunenburg Nominee Trust.

Board Members present: Chairman Raymond Beal, Alfred Gravelle, Hans Wentrup, David Blatt, Paul Doherty and James Besarkarski (was present but not voting).

The said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision denying said Special Permit, and that copies of said decision, and all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

DISCUSSION

Chairman Raymond Beal opened the public hearing and explained the hearing procedure to the audience. Lisa Normandin, Board Secretary read the application into the public record and letters submitted from both the Land Use Director and the Board of Health agent, James Garreffo. Attorney Paul Haverty of Blatman, Bobrowski, Mead & Talerman was representing John Godfrey the applicant. James Rheault, Engineer from Whitman and Bingham was also present and representing the applicant.

Attorney Haverty was representing the applicant John Godfrey and said that his firm and the engineering firm Whitman and Bingham were brought in on the project in 2015. He indicated that while the developer wanted to get the project back on track the engineer James Rheault previously addressed one hundred items that were concerns of the Planning Board and currently there are only about fifteen or twenty outstanding issues.

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In 2004 the preliminary subdivision plan was reviewed by the Planning Board and Director and most of the issues were addressed and believed to have been resolved. It was realized in 2015 that the Planning Board (new Planning Board & new Land Use Director) has no authority to grant waivers for the open space, therefore the applicant is now before the Zoning Board of Appeals to seek relief from the open space dimensional requirement for the proposed cluster subdivision rather than conventional zoning as the plan currently shows.

Attorney Haverty explained the preliminary subdivision. He said that at the beginning of the process the Applicant submitted a preliminary cluster subdivision plan to the Planning Board pursuant to Section 5.6 of the Lunenburg Zoning By-laws. This was approved by the Planning Board in July 25, 2005 and a definitive subdivision plan was subsequently submitted. Several years of hearings ensued, the delay caused in part by the Applicant needing to address access issues raised by the planning Board and the need for the Applicant to address concerns regarding access to the municipal sewer system, both which required significant time and expense on the part of the applicant. Since that time a new civil engineer and attorney has brought in to move the project forward, however, an issue was raised regarding compliance with the requirements of Section 5.6 of the By-laws. The Planning Board noted that the definitive plans did not comply with the Open Space requirements of Section 5.6, because more than ten percent (10%) of the Open Space consisted of areas that were either wetlands or steep slopes. The Applicant was under the presumption that this was resolved by the approval of the preliminary subdivision in 2005. The current Planning Board has taken a different position, therefore Mr. Godfrey is seeking a Special Permit to vary the open space dimensional requirement contained in Section 5.6 of the Bylaw to allow 52.7% of the Open Space to consist of wetlands and steep slopes (slopes in excess of 15%). The total amount of Open Space that is wetlands is 14.87 acres (24.9%), and the total amount of Open Space that is steep slope is 16.58 acres (27.8%). It is the position of the applicant that the grant of such waiver will result in a significantly more beneficial and less impactful project than a conventional subdivision.

Attorney Haverty went over the items in the letter submitted to the Zoning Board by Land Use Director Adam Burney (attached). The first item is the fact that, with a waiver of the open space ten percent requirement and a Special Permit for dimensional variation from the Zoning Board, they can comply with Section 5.6 of the Protective Bylaw.

Attorney Haverty questioned the statement in paragraph #2 regarding the plan review and the one acre deficiency, he contends that if it was only one acre deficient they wouldn't be here tonight and does not agree with that statement because it is deficient by more than one acre.

Attorney Haverty questioned the fact that in paragraph #3 it says that the plans shows five potential conventional subdivisions, when in fact that plans show six. The sketch plan shows only what could be done in conventional zoning. Cluster development would mean smaller lots but not subject to Section 5.6, therefore could get two additional lots for building: the sketch plan shows what **could** be done in a conventional zoning regime and shows theoretically how many lots **could** be made. He added that this is not a definitive subdivision plan. Attorney Haverty indicated that the yield was similar to conventional vs. cluster. Each cluster (outlined on map) has twenty five acres and not subject to Section 5.6. He felt the current plan is better for the Town and that there would be significant infrastructure costs with cluster development. Smaller lots equal less impact and more open space.

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Attorney Haverty felt that #4 was not a relevant statement and that municipal sewer was certainly beneficial to the Town and a benefit to the sewer department and to the rate payers. Paragraph number 5 addresses the Lunenburg Water District and Attorney Haverty argues that it is indeed a benefit to the Town and the ratepayers that use it even though it is not subject to Town government.

James Rheault of Whitman and Bingham addressed the Board and indicated that he was brought into the project in 2015 on evaluate the subdivision and address peer review issues and the over one hundred and fifty comments, he indicated that there were currently fifteen to twenty issues that can all be dealt with. The peer review was done with Whitman & Bingham working for the applicant and David Ross Associates working with the Lunenburg Planning Board. He said that a conventional subdivision can be laid out the plan that he shared tonight was only a proof plan, but felt that the cluster development is the preferred way to go, he added that 67 lots in a conventional subdivision would not allow open space to be dedicated to the Town, and that Maple Parkway & White Street areas will not get municipal sewer, nor would the Lunenburg water district be able to construct a disinfection building. A deed dedicated to the Town of Lunenburg (for the open space) Cluster development is **preferred only** if the Special Permit is granted which comprises 67 lots and is only a two lot difference per as opposed to sixty five lots and would allow significantly more dedicated open space. Mr. Rheault said that additional engineering would need to be done to show the additional cuts and fills involved with a conventional subdivision, the plan described is only a proof plan at this point.

James Rheault added that the proposed roadway through Maple Parkway will allow multiple homes a connection to the municipal sewer system that currently have failed or failing septic systems. This would also include at no cost to the Town a site for a new well field and associated pumping equipment providing a substantial public benefit. Mr. Rheault added that the applicant has agreed to perform at its expense, upgrades to the intersection of Northfield Road and Route 13, which would help address existing inadequacies within the intersection.

Public comment

Bill Gustus, managing partner of 994 Northfield Road LLC, 994 Northfield Road aka "Settlers Golf Course spoke during public comment. He indicated that the development would be located next to 9th hole on his property. He explained that while he is not for or against the project, he questioned whether or not Special Permit process is the appropriate remedy for the applicant. He pointed to Section 5.6 of the Zoning by-law that deals with cluster development relative to wetland, slopes etc. He indicated that a dimensional requirement waives or varies the by-law and would be more appropriately under variances and that the standards outlined within are very different. A variance is difficult to grant and that the hardship here is self-created. Mr. Gustus felt the type of application is not the appropriate application and, it's a variance from 5.6. and not a Special Permit.

Greg Bittner, 9 Pleasant Street felt that plan was deceiving and that the 59.62 acres dedicated to open space minus roadway wouldn't work with MASS DOT. He agreed with Mr. Gustus on his points and encouraged the Board not to approve the application.

Matthew Allison, Chairman of the Lunenburg Planning Board said that the Conservation Commission unanimously voted not to grant this at their last meeting. Mr. Beal asked if the Board received any correspondence from the Conservation Commission and Lisa Normandin indicated that they did not. Mr. Allison, 305 Flat hill roads spoke as a citizen and said the Planning Board was against as the proposal and new plan a "scare plan".

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Mr. Allison added that it has been in front of Planning Board for 12 years and he has been a member for four years. As a private citizen and chair of the Planning Board he urged the Zoning Board not to grant.

Ron Smith, 110 Old Farm Road indicated that he is a primary abutter and has been a resident in Lunenburg for fifty years. He said that he has been a developer and builder in Town and designed his around 5.6 and felt that the dimensional variation is not the correct way to gain approval. He felt that this developer should not circumvent the bylaw and it that it is not best scenario.

David Rodgers, 83 Highland Street asked that a portion of Adam Burney's letter (Land Use Director) be reread specifically #4 regarding "dry sewer". He recalled when the Wal-Mart shopping plaza was proposed and municipal sewerage obtained from the Walmart development was a benefit to both the Town of Lunenburg and to the applicant at that time. This would be a benefit to Walmart as a business and to anyone developing downstream. Mr. Rodgers maintains that the sewer benefited the Town of Lunenburg and the crux of the issues is that there was not sufficient capacity on site to accept conventional SDS system and this was a way make sure that the development of Walmart would take effect and also a benefit tax wise to the Town of Lunenburg and Walmart and a "win win" situation to all. In addition Walmart paid for certain amount of gallonage to go to Fitchburg and to provide for the back portion to develop the property. Mr. Rodgers also ask that the clerk reread #5 regarding wellhead. He questions the fact that the wellhead would not benefit the Town of Lunenburg and argues that there are certainly benefits, fire protection, students at the schools, and while there may not be a need now it would indeed benefit the Town of Lunenburg in the future. He added that the community made a deal with some people that was a good deal for everyone and hopes the Town will honor the guideline and that the Zoning Board, Conservation Commission and the Planning Boards take a look to see what we can do to preserve and protect a potential water source for the future.

Chairman Beal reminded the audience that the only question before the Zoning Board is a request for only a Special Permit for Dimensional Variation, the design criteria is before the Planning Board and wanted to bring the discussion focus solely on the Dimensional Variation.

Attorney Haverty indicated the letter from the Land Use Director instructed the applicant that this is the appropriate avenue to seek dimensional review. He said that the Zoning Board deals with dimensional and use issues and this is a dimensional issue. The proof plan prepared by Whitman and Bingham shows theoretical number of lots, and not the preferred development option. Town of Lunenburg gets fewer impacts with a cluster development the applicant gets less infrastructure costs. He argued that MADOT issue is worked out by MADOT if and when we get there. He doesn't understand why the Conservation commission would not support? The cluster is less impactful, no denying the impacts are far less. To address the water district comments he alleges that the water district is part of the town and its clients are part of the town.

The Board discussed in detail with Attorney Haverty the amount of open space (52.7 is wetland and steep slope while the requirement is ten percent. Mr. Doherty asked the attorney how this fits in with the purpose of Cluster development that states "The purpose of Cluster Development is to encourage the preservation of useable open space, agricultural lands, and forested lands in the Town of Lunenburg and assist in preserving the Rural Residential Character of the Town. Paul Doherty asked how does this cluster development represent the rural residential of the Town. Mr. Haverty said it is accomplished by requiring smaller lot sizes, reducing the infrastructure and having a very large dedicated open space area.

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James Rheault outlined the total acreage and detailed the owners and the total amount of acres, 180 acres more or less, the development is proposed in the middle, the 120 acres is the property before you. John Godfrey clarified that the subject of tonight's request encompasses 120 acres, there is an easement to access the property and has easements for public utilities. Ray asked how much of the 120 acres is wet and steep sloped? Attorney Haverty said that the answer is 52.7 %. Hans Wentrup asked how much of the area could be utilized by residents and will it be cleared? Mr. Haverty replied that all of the land was usable and will not be cleared. James Rheault indicated that there will be tree cutting for a proposed well and sewer line so a swath will be cut to accommodate these utilities, a deed will be prepared to deed it over to the Town.

Dave Blatt asked what the lot size is for the conventional subdivision lots and the reply was 40,000 square feet or more for each lot, as this is what the minimum lot size requires in that district. The option can be a conventional sewer system for 40,000 swath foot lots according to Mr. Rheault.

Mr. Gustus and Mr. Smith made additional points and Mr. Gravelle explained that the Board knows the history of the property back to the 1970's when an eighteen whole golf course was proposed with condo units surrounding it.

Mr. Allison felt that if the open space was inaccessible then it is only thirty acres in the middle of nowhere.

Mr. Beal cut off public discussion and turned it over to the Board for deliberation. He reiterated that the only issue before the Board is simply the request to vary the open space dimensional requirement. Chairman Beal read the criteria outlining the standards outlined in Section 8.3.2.1.a) Standards.

Alfred Gravelle was unclear whether or not this should have been applied for as a variance and was conflicted by that fact. James Besarkarski felt perhaps that the Board should seek legal counsel. Hans Wentrup felt that the Board should vote on the issue that is in front of them.

MOTION

After due deliberation Paul Doherty made a motion to deny the Special Permit for dimensional variation based on the finding that the request does not fulfill the requirements outlined in the bylaw. David Blatt seconded the motion.

Mr. Wentrup said that while the by-law allows ten percent, he felt that fifty percent was too great a request and added that each case before the Board stand on its own merits. Alfred Gravelle agreed that a difference of ten percent vs. 52.7 % was too great a leap. Mr. Beal disagreed and said that the cluster development as proposed was advantageous and allowed for more open space. While Mr. Gravelle agreed with the amount of open space provided, he did not feel that the criteria outlined in the Zoning Bylaw Standards met the requirements for approval. David Blatt indicated that the egregious change in the request did not meet the intent of the bylaw and felt a better plan for the land could be provided.

After closing the discussion, the Board acting in its capacity as the Special Permit Granting Authority and **denied** the Special Permit for dimensional variation with the below members present and voting as follows with respect to the issuance of the Special Permit.

VOTE

Hans Wentrup voted to deny the Special Permit.
Alfred Gravelle voted to deny the Special Permit.
Paul Doherty voted to deny the Special Permit.
David Blatt voted to deny the Special Permit.

Raymond Beal voted in favor of granting the Special Permit.

Finding: The Board found that the request was not consistent with the regulations outlined in the Protective Zoning Bylaw and denied the permit.

In making this determination, the Board specifically found that the granting of this Special Permit would not contravene the purpose of the Protective Bylaws or the provisions of Chapter 40A of the Massachusetts General Laws.

Voted and executed,

Lunenburg Zoning Board of Appeals
Special Permit Granting Authority


Raymond E. Beal, Chairman Date

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BY: _____

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Land Use Director



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Date: July 5, 2016

To: Raymond Beal, Chair
Lunenburg Zoning Board of Appeals

From: Adam R. Burney, Land Use Director

RE: Highfield Village Special Permit Dimensional Variation Application

By way of background the Planning Board has been reviewing the Highfield Village Project in one manner or another since 2004. This project was originally submitted as a Preliminary Plan, which was approved. This approval was rescinded at the applicant's request on October 18, 2006 (see attached project chronology). In May of 2007 a Definitive Subdivision Plan was filed, this is the submission that the Planning Board is currently adjudicating. This Plan was filed as a Cluster Development under Section 5.6 of the Protective Bylaw and thus would be subject to the included requirement that fifty percent (50%) of the land area remain as open space. Only ten percent (10%) of the reserved open space may comprise "wetland or land under water or land with a slope in excess of fifteen percent (15%)," a provision which the current design does not meet and is the subject of the application you are currently hearing.

At its meeting of 27 June 2016 the Planning Board voted to submit the following comments and documents related to the petition of JEG Holdings for a Special Permit Dimensional Variation in regards to the Highfield Village Project.

1. The applicant has been made aware of the need to provide information on the composition of the land to be designated open space a number of times; these communications are attached. The applicant also submitted a memorandum under my signature dated March 24, 2016 that also outlines the dates of the communications. Furthermore, in 2007 as part of the Definitive Plan filing the applicant requested a waiver from the ten percent (10%) requirement. For unknown reasons the applicant was not informed that the Planning Board has no authority to waive this requirement but it was clear that applicant was aware that there was a potential issue. This is further reinforced by the 2009 review letter from Marsden Engineering which again requests additional information to determine compliance with Section 5.6 of the Protective Bylaw.
2. As of the Planning Board's last hearing (March 28, 2016) on the matter the applicant has not provided a plan that shows the proposed open space meeting the fifty percent (50%) requirement of Section 5.6. The Plan reviewed at that meeting was short approximately 1 acre of open space. The applicant's design engineer did mention that there was the ability to shift some property lines slightly to achieve the required acreage without a negative impact to the development but the Planning Board has not been supplied a compliant plan as of this date.
3. The application materials submitted to the Zoning Board of Appeals included a plan showing five potential conventional subdivisions that would allegedly be exempt from Section 5.6 of Protective Bylaw. The Planning Board questions several items in reference to this proposal. Specifically, the Board questions if the layout actually comprises five subdivisions or one subdivision with five phases. This is based on the fact that there is one proposed collector road that would serve all the lots and/or the minor roads. Furthermore, the location of the intersection of Massachusetts Avenue (Route 2A) and the proposed collector road is controlled by MADOT and would require their

approval. At the genesis of this project the road was proposed to be located in a similar place; a location that was rejected by MADOT at the time due to safety concerns about the proximity to the intersection of Chase Road (Route 13) and Massachusetts Avenue (Route 2A). Finally, the Planning Board questions the viability of the potential conventional subdivision based on the presence of the wetland and steep slope, that is the subject of the application in front of the Zoning Board of Appeals, and its impact on the ability to meet required road grades, construct foundations and not have negative effect on the wetland resource areas.

4. The applicant has presented the installation of "dry" sewer pipes within the road layout from the edge of the Sewer Service Area to Northfield Road as a benefit the approval of the project will grant to the Town. In the opinion of the Planning Board the installation of this pipe would be as beneficial, if not more so, to the applicant and/or the property owner retaining the land adjacent to the proposed roadway as it would to the Town. This pipe could potentially be used as leverage to expand the Sewer Service Area and potentially provide the ability to construct a series of Approval Not Required (ANR) lots at a density that the soil conditions would prevent if on-site disposal were necessary. The claim of benefit for this item is submitted without documentation or data detailing the benefits to the Town of Lunenburg.

5. The final benefit enumerated by the applicant is the fact that there is an area they have set aside for the location of a public water supply wellhead. This is something that would not benefit the Town of Lunenburg but the Lunenburg Water District, a separate quasi-public utility. While there are many residents of the Town of Lunenburg who are customers of the Water District the Town has no direct affiliation with the operations. It is the understanding of the Planning Board that there was no request for this wellhead location and while there may be benefits in the future there is currently no issue with the quality or quantity issues with the District's supply.

The Planning Board raises these concerns to ensure that all perspectives have been presented in the review of a variation of more than five hundred percent (500%) of a requirement contained within the Protective Bylaw.

If you have any questions or require further information please do not hesitate to contact me.

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