TOWN OF ANTRIM

Zoning Board of Adjustment

Tuesday, October 10, 2023

MINUTES

Board/Staff Present: Diane Kendall (Chair); Janet McEwen (Vice Chair); David Clater (Member); Shelley Nelkens (Member); Connor Fitzpatrick (Alternate Member); Patty Monterecy (Land Use Administrative Assistant); and Carol Ogilvie, Board Consultant.

ZOOM: Michael Ott (Member); Donna Hanson (Selectman); and Ingo Schaefer, Busse Green Technologies.

Members/Staff Absent:

Others present: Cory Staats, Applicant; Joseph Hopock, Attorney; Daniel Latini, Fieldstone Land Consultants; Diane Chauncey, Town Clerk; Marshall Gale, Fire Chief/Health Officer; Rebecca Hull, Abutter; Orestes Monterecy, Resident; and C. Scott Blair, Abutter (arrived at @7:30 P.M.)

CTO: Chair Kendall called the meeting to order at 7:00 P.M.

Ms. Kendall welcomed everyone and introduced the Board and staff. The first order of business was to appoint Mr. Fitzpatrick to sit for Mr. Ott, who was present on Zoom, but would possibly not be present for the entire meeting. There were no objections to Mr. Ott participating in the discussion.

Ms. Kendall stated that her intent was to allow about 15 minutes for new information to be presented; she will allow public input, but asked that people not rehash what was presented at the prior meeting. Ms. Nelkens stated that there were abutters who had not been notified, to which Ms. Kendall replied that she would get to that issue.

Ms. Kendall stated that this meeting was to continue the public hearing that was held on October 3 2023 and continued that night to this date. (At this point Ms. Hull stated that she was recording the meeting.) Ms. Kendall went on to describe the procedure for noticing ZBA meetings, confirming with Ms. Ogilvie that the statutory time frame for a zoning board is five days. Ms. Ogilvie noted that it has been customary with this Board to follow the same noticing time frame as the planning board – which is 10 days, but with timing challenges for this hearing, it was necessary to use the five-day requirement. Ms. Hull stated that she never received her notice. Ms. Kendall responded that the statute only requires the board to send the notice; it cannot be responsible for whether the recipient actually receives it. In her opinion, the issue of notification is settled, and she is ready to re-open the public hearing.

Attorney Hopock stated that his client objected to the hearing continuing without the same board composition as heard the case on October 3, 2023. He pointed out that Mr. Ott – who is not sitting tonight, had heard all of the evidence and that Ms. Kendall – who is sitting, had heard none of the evidence. There followed discussion about options, with the end result being that Mr. Ott would be online for approximately one hour, and if it seemed likely the Board could at least get through the testimony, they could hear that tonight and continue for deliberation, if need be. Ms. Kendall then re-appointed Mr. Ott to sit as full member, recused herself, appointed Mr. Fitzpatrick to sit in her stead, and appointed Ms. McEwan to serve as Chair.
Ms. McEwan stated that the public hearing is re-opened. Ms. Hull interjected that she had material to distribute. Attorney Hoppock objected to that, stating that Ms. Hull had presented her objections at the last meeting, to which Ms. Hull responded that the applicant had new information, to which Ms. McEwan replied that the applicant had only brought what the Board had asked for. Ms. Hull objected to that, but Ms. McEwan reiterated that the applicant was responding to the Board’s request, and then asked the applicant to proceed.

Attorney Hoppock stated that they were prepared to respond this evening to the concerns expressed by the Board at the last meeting, and there were people present this evening to respond. First of all, he introduced Daniel Latini from Fieldstone Land Consultants to speak to the question of a mounding analysis. Mr. Latini introduced himself and stated that DES does not require or ask for a mounding analysis unless a proposed system is for 2500 gallons per day or more, at which point it is an engineering issue for DES. When asked about the capacity of this proposes system, he responded that it is 900 gallons per day.

Attorney Hoppock then asked Mr. Shaefer, on Zoom, to first speak to his academic qualifications, which he did, and then to describe the process for inspections and maintenance of this system. Mr. Schaefer explained that the system is inspected annually, except for the first year it is inspected twice, to ensure all is working properly. He then went on to detail the steps that are taken for these inspections, which include opening the tanks and testing the floats. Regarding alarms for system malfunction, Mr. Schaefer stated that when the floats are not working properly, the alarm sounds.

Mr. Schaefer answered a number of follow-up questions having to do with lifetime of the system, ability to bypass the system, the service contract, redundancy for the alarm, impact of power outages, and possibilities for the system to fail. In sum, Mr. Schaefer replied that: the system will last as long as it is maintained; if the company goes bankrupt, the property owner must find a new service provider; in the event of a power outage, the pump doesn’t work and therefore there is no effluent going through the system, and furthermore the tank has capacity for several days of light usage; if the property changes hands, the contract is still in place, although the company would send a service technician to explain the system to the new owners; and in the event of system failure, it simply stops.

At this point Ms. McEwan asked if the Board was satisfied and whether there were any more questions from them, to which the response was there were no more questions from the Board.

Ms. Hull raised questions about testing for nitrates, E. coli, and ammonia. Mr. Schaefer said that this system does not filter any of these without a separate add-on component. Mr. Latini stated that DES does not require testing for any septic system. Responding to a question from Ms. Nelkens regarding the treatment of phosphate, Mr. Schaefer replied that the system does not treat phosphates, but that this is less of an issue today because of reduced use of this chemical. Ms. Nelkens responded that this is an issue because of the wetlands, to which Ms. McEwan pointed out that the use of this system is the point, since the system is designed to treat effluents.

Mr. Ott asked if all questions from the Board had been asked and answered and all information provided, to which the answer was yes.

C. Scott Bailey, introduced himself as an abutter and apologized for arriving late. He asked if copies of the septic design and plan were available. He was informed where he could find them, but was also invited to take a copy of the plan with him, which he did.
Ms. McEwan closed the public hearing at 7:45. The Board then discussed whether they would need to continue deliberation to a future meeting, depending on whether Mr. Ott would be able to stay in the meeting. After reviewing several possible dates for a future meeting, it was ultimately decided to go ahead with deliberations as long as Mr. Ott was available.

Ms. McEwan then described the process that they would follow in going through the five variance criteria. She will go through each one (although combining 1 & 2 because they are so similar), and ask each member to respond.

- Criteria #1 & #2 (Public Interest and Spirit of the Ordinance):
- Mr. Ott asked if the Board could not just consider all five at one time and take that vote, but Ms. McEwan explained that this was not their customary practice and they should not change it tonight.

Mr. Clater: He believes the proposed system is related to public health and that the system is appropriate for the site.

Mr. Fitzpatrick: He does not see any impact on the abutters from this proposal.

Ms. McEwan: She sees no impact and does believe that this is in the public interest.

Mr. Ott: He believes that this application is directly in the public interest and embodies the spirit of the ordinance.

Ms. Nelkens: She has a problem with the proximity to the wetlands.

- Criteria #3 (Substantial Justice):
- All five members stated that they saw no harm done from this proposal.

- Criteria #4 (Property Values):
- All five members saw no diminution in the value of surrounding values from this proposal.

- Criteria #5 (Hardship):
- All five members felt the application met the criteria for proving hardship.

The Board then discussed whether any conditions would be attached, should they vote to approve. The Board agreed that the proposed condition included in Mr. Beblowski’s letter to the Board from the Conservation Commission was reasonable; with a few edits, the condition was agreed to.

There was further discussion about the life of the system and inspections. Ms. McEwan noted that DES requires the inspections and the maintenance agreements, and Mr. Clater stated that since the inspections are mandated, the Board should not be too specific regarding inspections. Mr. Ott questioned whether they should require an alternative power source in the event of failure. Ms. McEwan stated that these are not required for other systems, and Mr. Clater pointed out that it would be beyond the scope of this application request to do that. Mr. Schaefer stated that, again, in the event of a power failure, the system just sits there; without power, there is no pressure, and the water doesn’t move.

On a motion by David Clater/seconded by Connor Fitzpatrick, the ZBA voted 4 in favor, 1 abstention, to approve the application of Cory and Cynthia Staats for a variance from Article XI, E. 1 of the Zoning Ordinance to facilitate the construction of an NH DES-approved leach field.
that includes an approved waiver for Env-Wq-1008 Section: 04 Minimum Distances, subject to
the following condition:

“The current and any subsequent lot owner(s) shall maintain an inspection and maintenance
agreement for the Busse Model MF-B-400 Wastewater Treatment System with a qualified entity
for the life of the system. The system shall be sampled during each inspection, twice in the first
year and once annually thereafter. Evidence of the inspection and maintenance agreement,
inspection report(s), and sampling results shall be submitted to the Town’s Health Officer
annually within one month of inspection. Any deficiencies that were identified and corrective
actions (taken in the past year) should be summarized in the inspection reports.”

Ms. McEwan then turned the meeting back to Chair Kendall. Attorney Hoppock asked that the
Notice of Decision be emailed to him.

Ms. Kendall stated they could continue with the business portion of their meeting. Ms. McEwan
suggested that they table the minutes from last meeting, since there will be another set of minutes
from this meeting, and meet at their regular date which would be October 24th. There were no
objections to this. Ms. Kendall stated that they could take up other business items at this
meeting; if anyone had issues they wished to have on the agenda, to email them to her.

Ms. Nelkens said that she wanted to object to the way Ms. Hull was treated by Ms. McEwan; she
thought it was rude. Ms. McEwan defended her response, stating that it had been made clear that
the Board was in deliberation and no further public comment is allowed; despite that, Ms. Hull
insisted on continuing to talk. Mr. Clater added that Ms. Hull had had multiple opportunities to
state her case and raise objections.

There being no further business, the meeting adjourned at 8:23 P.M.

Respectfully Submitted,

Carol Ogilvie

Approved February 13, 2024