



BOARD of ADJUSTMENT
Town of Hollis
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Minutes of May 25, 2017

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:00pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members –Rick MacMillan; Alternate Members – Drew Mason, Kat McGhee and Bill Moseley.

Major explained the policies and procedures.

Major appointed Mason and McGhee as voting members for the cases tonight.

Case ZBA 2017-004

The application of Michael Lambert, property owner, for a Variance to Section X, Paragraph F3, Minimum Frontage and Section XI, Paragraph C4, Wetland Conservation, Lot Requirements of the Zoning Ordinance to permit a lot line re-location between 77 Flint Pond Drive and 75 Flint Pond Drive, Map 026, Lot 007 and Map 058, Lot 019, in the Recreational Zone.

Colin Jean, Attorney at Law presented Case 2017-004 on behalf of Michael Lambert and Constance Slauenwhite. Colin explained the two (2) requested variances are to allow a lot line relocation between 77 Flint Pond Drive and 75 Flint Pond Drive so that the boundary line accurately reflects the historical and assumed property division location, thereby bringing into conformity the necessary side setback for the property located at 75 Flint Pond Drive.

The history of the property dates back to 1953 when the Sprague family bought both properties from Mr. Watson and the property became the Sprague family compound. A deed was recorded showing 77 Flint Pond Drive had 153 feet of road frontage. In 1969 77 Flint Pond Drive a 5+ acres parcel was purchased by Panel Form Company which was a Sprague brothers company. In 1970 the Sprague brothers gave Slauenwhite a piece of land (75 Flint Pond Drive) where she built her home. In 1981 the 5+ acre lot (77 Flint Pond Drive) was sold to Richard Sprague and Alan Lorden. Lastly, in 1992 the property (77 Flint Pond Drive) was sold to Michael Lambert.

The most recent history is that Mrs. Slauenwhite would like to sell 75 Flint Pond Drive and it wasn't known until a new plot plan was created and showed the lot line needed readjustment. The existing garage on 75 Flint Pond Drive does not meet the current side setback. Both parties agreed that the fair thing to do was relocate the lot line so that both properties had definitive lot lines. While discussing the lot line relocation with the Planning Board, it was determined two (2) variances were needed because you can't create new lots which do not conform to the current zoning regulations. It should be pointed out that the 5+ acre lot will remain an unbuildable lot as noted on the plan of 1953 which states due to poor soils, drainage and wetlands issues the property is unbuildable. The current frontage for 77 Flint Pond Drive is 153 feet and it would be dropped to roughly 131 feet if the variance is approved. The second variance deals with area because a lot is required to have 1 ½ acres of upland continuance buildable area which 77 Flint Pond Drive does not have. Michael Grainger an engineer has walked the property recently and in his opinion the land was unbuildable in 1953 and the property remains unbuildable today.

Major asked what should the ZBA consider as the hardship to the property. Jean replied the hardship is two-fold 75 Flint Pond Drive has an existing structure (garage) that is possibly located on 77 Flint Pond Drive property which has been there since 1970. That alone meets the 20 year requirement for adverse possession and both parties realize there would be no reason enter into a litigation considering the history of the property and when the original plan was created. Major asked would any of the circumstances change if the ZBA approved both variances to each lot. Jean replied the only change which would occur is that 75 Flint Pond Drive would meet the side setback regulations of the current zoning. The 5+ acre parcel (77 Flint Pond Drive) would remain 5 acres with a smaller amount of nonconforming frontage. Major asked could the lot line be reconfigured in a way that would reduce the frontage loss to 77 Flint Pond Drive. Jean replied it could but the plan is trying to create a straight lot line. Major asked would 77 Flint Pond Drive require a variance to build if the ZBA approved or denied the applications this evening. Jean replied yes.

Belanger asked if both lots were nonconforming. Jean replied yes by today's standards. Belanger asked would either lot have 2 acres if approved. Jean replied yes 77 Flint Pond Drive has 5+ acres and will remain 5+ acres. However, 77 Flint Pond Drive does not have the required 1 ½ acres of buildable land in their opinion. Belanger asked are their homes on each lot. Jean replied no 75 Flint Pond Drive is the only lot which has a home. The 5 + acres lot is open and will remain open. Mason asked was the garage located at 75 Flint Pond Drive partially on the property of 77 Flint Pond Drive. Jean replied yes it could be since the property was owned by the same family lot lines were really not considered. Mason asked if the variance was approved would the garage meet the current setback requirements. Jean replied yes.

Mason asked if the ZBA obtained any documentation from the second property owners pertaining to the variance requests. Major replied counsel is representing both property owners.

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

The ZBA decided to hear case 2017-005, 006 and 007 as one case however, the cases will be voted on separately.

Case ZBA 2017-005

The application of Bentley Management Group, for a Special Exception to Section XII, Nonconforming Uses, Structures and Lots, Paragraph A.3 Nonconforming Uses, Alterations of the Zoning Ordinance to permit the alteration/expansion of a nonconforming use to include; a corporate office for real estate development/management business and an excavation business to include minor maintenance and repair of company vehicles, located at 143 & 145 Runnells Bridge Road (Map 004, Lots 064), property owned by 145 Runnells Bridge Road, LLC in the Residential Agricultural Zone.

Jeffrey Zall, Attorney presented case 2017-005, 006 and 007 on behalf of the applicant Bentley Management, Inc. Zall presented a handout to the Zoning Board of Adjustment (ZBA) which included;

1. Zoning Map identifying property location in yellow, Pitarys Mobile Home Park in blue and the industrial zone in orange.
2. 1 picture showing the location of the property from the road and eight pictures of existing structures.
3. Letter from Richard Holt who lives at the property and a letter from the property owner Patricia Holt both letters explain the current "use" and past "uses" of the property.

The lot has 6 commercial type structures and 1 SFR where Richard Holt lives and operates a landscape business on site. Major asked if the large building was one unit or was it separated into several units. Zall replied one large unit. The argument for the special exception is the approved nonconforming "use" has not been discontinued for a period of two years and the rights to change one nonconforming use to another is allowed by special exception.

Bentley Management group is a real estate development/management company and also operates an excavation company. Bentley Management has obtained a contract to purchase the property from 145 Runnells Bridge Road, LLC which is owned by Patricia Holt. Bentley Management is proposing to move their corporate office and excavation company to the location. They will also store some of the excavation equipment and company vehicles on the property and will occasionally maintain and repair some of its excavation equipment and vehicles on site. Most of the excavation portion of the business is completed off-site and generally the equipment is stored on the construction site. However, when some of the equipment is not needed on site they will store the equipment at the proposed location. Currently Bentley has 8 employees at their corporate office, 10 workers are site foreman who will come to the property once a day for assignments and there will be two onsite repair people to complete repairs and conduct maintenance of the equipment.

The proposed property is 4.75 acres located in the Residential Agricultural District (R&A) where this type of "use" is not permitted and the property is also located within the Aquifer Protection Overlay Zone (APOZ). The property is bounded by the Massachusetts State line on one side bounded by Pitarys Mobil Home Park on the other side, it also bounds RTE 111 and to the rear bounds property owned by the Town of Pepperrell. The history of the property is important because it is a nonconforming "use" which was allowed to continue and to change the "use" pursuant to section XII is allowed by special exception.

The property has been used commercially for a long time. Holt Lumber operated until 2014 when the lumber

company stopped doing business with the public. Holt continued to sell off the lumber on the property and finally closed the operation in 2015. Major asked what type of business was Holt Lumber and did the business start in 1950 or 1960. Zall replied he was unaware when Holt started the business. The business sold lumber and lumber related materials to the general public and contractors. Major asked if there was a saw mill on site and did Holt do vehicle and equipment maintenance? Zall replied he was not sure. The tenant who lives at the residence operates a landscaping business and in one of the storage building behind his home he stores and does maintenance on his equipment. The large metal warehouse building shown in one of the pictures is rented out for storage space. In 2015 the remaining portion of the property was leased to E-Scapes Landscaping. The company applied for a variance in March 2015 for a landscape material yard which the ZBA denied. In July 2015 a certificate of occupancy was issued to operate a landscaping company with a condition no storage of organic materials. E-Scapes moved out of the property in April 2016.

Pursuant to Section XII of the Hollis zoning ordinance the nonconforming “use” can be changed to another nonconforming use by special exception as long as the “use” has not been discontinued for more than two years. The “use” has not been discontinued as the prior testimony states. The property is located also in the APOZ where Section XI 7 states a “use” can’t be discontinued for 12 months or more. The 12 month limitation does not apply to the change of “use” we are seeking because the 12 month requirement only applies to a nonconforming “use” which is permitted in the APOZ. Even if the 12 months applied which he feels it does not, the process started prior.

The applicant has three requests before the ZBA tonight; 1st- a Special Exception for the change in use, 2nd- a variance request for the proposed “use” which is only being submitted if the Special Exception is denied and 3rd a variance for a non-permitted “use” in the APOZ for the incidental use for the minor repairs of vehicles and excavation equipment.

The special exception (case 2017-005) requirements are as follows the proposed “use” will not change the nature and purpose of the original use. The original “uses” were all construction related businesses. They involved storage of equipment, products and included offices for their business. The new “use” will continue to be a construction related business with offices and storage of equipment and vehicles. The second requirement is the proposed change will not involve a substantially different effect on the neighborhood. The neighborhood has had construction related business as a neighbor for over 30 years. The original lumber yard use had customers and truck coming and going daily. The landscaping company may have had customer coming and going but did have vehicles coming and going. Amos White, President of Bentley Management, approached the ZBA and stated that State Line Lumber also operating out of the location in 1975. Major asked what types of vehicles would be stored on the property and how many would be stored on the property at one time. White replied 30 – 35 vehicles which would include; dump truck, loaders, trailers, excavators and pickup trucks. However, most of the equipment would be stored on the job site. Major asked is there a possibility of 7 or 8 diesel motors starting up 7am to bring them to a job site. White replied yes. MacMillan asked if 30 + vehicles would be serviced on the property. White replied most service is conducted in the field but the major repairs would be conducted on site. MacMillan asked would there be construction materials stored on site. White replied no. Zall stated a meeting occurred with one of the abutters and we agreed to a stipulation that no construction material would be stored at the property. Major stated fundamentally the request is different than past uses. White replied not really the lumber yard had large equipment they even ran a saw mill in the mornings. The newer equipment runs quieter and runs cleaner than the equipment 20 years ago. MacMillan stated a saw mill was run at the property because he had lumber milled at the site. Zall stated the lumber yard existed until 2015. The proposed “use” will not be more intense than the past uses if you consider what the lumber company had in regards to large trucks and customer coming and going. The amount of people and trucks going in and out with the Bentley proposal would be significantly less than the past use. Zall stated in his opinion the proposal qualifies for the Special Exception.

Belanger asked would there be any fuel storage on site. Zall replied no. Belanger asked if there would be above or in ground tanks installed. Zall replied no. Belanger asked what the current septic system was approved for. Zall replied the applicant would have to submit an application to the Planning Board (PB) if approved and the PB would handle any septic concerns. Belanger asked how close the operation would be to the existing cemetery. Zall replied the cemetery is next to the current residence and is well buffered from the operation. Belanger asked if the Lawrence Cemetery was a different lot or was it some type of easement. Zall replied a title search has not been completed at this time but he would assume it is a different lot. Belanger asked what types of floors exist in the current structures. White replied all of the structures have concrete floors with the exception of the older wooden structures which have gravel floors. Belanger asked if the applicant had any issues if a condition of approval stated “That all vehicles repairs be conducted inside on an impervious surface.” Zall replied the issue would be brought forth during the variance request. However, a proposal will be made that with the equipment that can’t be repaired

indoors because of their size and the possibility for fuel release, those repairs would be done on an impermeable surface in compliance with the PB requirements. Belanger stated his concern is an oil, gas or hydraulic spill within the Aquifer. Belanger stated if the condition stated repairs to be conducted indoors or over an impermeable surface, would that condition be agreeable. Zall replied yes. Belanger stated another potential condition could be between the hours of 7 pm – 7 am the noise level could not exceed 60 decibels at the property line. White replied he is unaware of what 60 decibels was so it would be hard to agree to something he has no knowledge of. Zall replied an agreement was made with Pitarys that the operating hours would be 6 am to 7 pm. Monday – Friday so, if the condition read 7 pm - 6 am there would not be a problem. Belanger asked if there would be any operations on the weekends. White replied some operation occurs on the weekend but it is rare. However, we do operate when there is a snow storm but most of the equipment is stored on site. The only thing that may go out from the property is a dump truck to remove snow. MacMillan asked would there be any snow stored on site. White replied no. McGhee asked were there any other stipulations agreed to with Pitarys. Zall submitted a letter to the ZBA with the 7 conditions agreed to with Pitarys. The conditions were as follows;

1. There will be no storage of sand, loam, mulch, salt, pesticides (except by the same criteria as for Morin's set by the Planning Board) or other debris or fill materials, no sifting and screening of said materials.
2. Storage of excavation vehicles and equipment will be inside building or at the rear of the property, not along the easterly boundary adjacent to Pitarys Mobile Home Park
3. Repair and maintenance of excavation vehicles and equipment will be done within a building with an impermeable floor or, if done outside a building and involves the potential release of automotive or hazardous fluids, it will be done on an impermeable surface with safeguards that prevent the fluids from leaching into the ground contracted in compliance with the conditions under Section XI (A)(3) a(iii)).
4. Hours of operation will be from 6am to 7pm with occasional operation until 10pm, Monday through Saturday. Provided, however, in the case of extreme weather conditions, such as snow storms, there may be occasional operations on Sundays or outside the foregoing hours.
5. Use shall comply with Performance Standards in the Aquifer Protection Overlay Zone, Section XI A. (4).
6. Storm water runoff to be controlled by a system shown on a plan which considers maximum safeguards for preventing impacts by surface runoff contamination on adjacent drinking water wells, to be approved by consultant to the Town. Paid by the applicant per Section XI 4(c).
7. No improvements to the property, no removal of existing buffer between existing structures and boundary with Pitarys Homes. Inc.

Zall stated item 7 means that no improvements to the property would be in that location. There will be improvements at a later date such as; impermeable surfaces areas and improvement to the existing structures. Belanger asked if the ZBA imposed the same conditions as presented would there be any problems with the applicant. Zall replied no, the condition could be included in the special exception and the variance if granted. Mason asked if there were any agreements with the other abutters. Zall replied no. Major stated the proposed property is close to the industrial zone what types of equipment maintenance or vehicles repairs if any occur in the industrial zone. Zall replied currently there are 5 special exception or variances granted by the ZBA since 2010 for maintenance of equipment and vehicle repairs including Morin's Landscaping, Jaw Sales, Viking Roofing all received approval for vehicle maintenance and repairs within the industrial zone which so happens to be in the APOZ as well. MacMillan stated the supplied plan shows a 3,000 gallon above ground storage tank for fuel will that tank be installed. Zall replied the submitted plan was completed in 2001 in conjunction with a building proposal which never occurred. MacMillan asked if assurance can be given stating the tank will not be installed and would the applicant be opposed to a condition of approval regarding the tank. Zall replied the tank will not be installed and a condition of approval would be agreeable.

Mason asked what the current uses were on the abutting property in Massachusetts. Zall replied a residential subdivision which are not direct abutters and property owned by the Town of Pepperrell which is a direct abutter. Mosely asked on a normal given day how many pieces of equipment would be on site. Kevin Booth, Foreman Bentley Management, approached the ZBA and stated that 75% of his time is on site and there would probably be 2 to 3 vehicles and/or equipment on the property to be repaired at one time and 4 or 5 vehicles and/or equipment would be on site for storage. Mosely asked would a maximum number of vehicles and/or equipment be 10 with a minimum 5 on a regular day. Booth agreed.

Spoke in favor of the application

Chris McGinnis, Bean Group Real estate, stated for the record the property owner had notified him the State Line

Lumber was in business since 1957 not 1975 and he is in-favor of the application.

No one spoke in opposition of the application

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

Case ZBA 2017-006

The application of Bentley Management Group, for a Variance to Section X, Paragraph G.1 Residential & Agricultural District Permitted Uses of the Zoning Ordinance to permit a corporate office for real estate development/management business and an excavation business to include minor maintenance and repair of company vehicles, located at 143 & 145 Runnells Bridge Road (Map 004, Lots 064), property owned by 145 Runnells Bridge Road, LLC in the Residential Agricultural Zone.

Zall stated the variance request is being made if the ZBA does not grant the special exception. If the special exception is granted, this variance will be withdrawn. Zall stated he would like the ZBA to incorporate all of the testimony from case 2017-005 into this request. The ZBA agreed.

Zall explained that hardship to the property and its special condition that exists are as follows. The hardship is the property location is between the mobile home park and the state line. The property is a small appendage of the Residential & Agricultural District as the map shows. The property has 6 commercial type buildings existing on it which can't reasonably be used for a permitted use. NH Case law states per case of Harbor side Assoc. vs Parade Hotel in Portsmouth the special conditions do not have to be with the land it can also be with the building as well. If the building has some special conditions that sets it apart from other properties in the neighborhood that is a hardship. Belanger stated a hardship can't be financial the buildings could be taken down. Zall replied case law states a hardship can in fact be structural. The proposal is not contrary to the public interest the property has been used commercially for 30 years and safe guards will be put in place to protect the APOZ. There would be no impact to property values the proposed use is similar to past uses of the property since 1957. Substantial justice will be done because there are 6 commercial building that can't be used for a permitted purpose and no harm will come to the public.

Mason asked if the property was currently being used residentially and does the tenant run a business from the location. Zall replied one the buildings is currently being used for storage and maintenance of landscaping equipment. Mason asked will the use continue if the variance is approved. Zall replied yes.

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

Case ZBA 2017-007

The application of Bentley Management Group, for a Variance to Section XIA, Paragraph 6g Prohibited Uses in the Aquifer Protection Zone, Automotive service and/or repair shops of the Zoning Ordinance to permit a corporate office for real estate development/management business and an excavation business to include minor maintenance and repair of company vehicles, located at 143 & 145 Runnells Bridge Road (Map 004, Lots 064), property owned by 145 Runnells Bridge Road, LLC in the Residential Agricultural Zone.

Zall stated the second variance deals with minor maintenance and repairs to company vehicles and equipment which are accessory to real estate development/management business and an excavation company. The proposed accessory use will be minimal as it will be limited to minor maintenance and repair of the applicant's vehicles and equipment, and not open to the public. Most of the repairs will be conducted off site so there will only be a few vehicles at a time at the location. Maintenance of vehicles/equipment which have the potential of fluid release will be done inside of the building or be done outside on an impermeable surface. The construction of the impermeable surface inside and outside of the building will all be done in compliance to PB requirements, since the applicant will have to obtain site plan approval. The use will not alter the character of the neighborhood since there are at least 4 other vehicle repair operations nearby which complete oil changes which comply with conditions and requirements from the ZBA and the PB to safe guard the APOZ. Public safety is insured since all work will be done on surfaces which will protect the APOZ. The spirit of the ordinance will be observed because the spirit of the ordinance is to protect the APOZ and the requirements imposed by the ZBA and PB will insure the protection of the APOZ. Substantial justice will be done because, there will be no harm to the public and it will allow the applicant to use the property for a reasonable commercial use. Substantial justice also is met because several other business in the area

were granted a variances for a similar use within the APOZ. Values of surrounding properties will not be diminished since the property has been used commercially for over 35 years and the accessory use of repairs is still a commercial use. Literal enforcement of the ordinance would result in an unnecessary hardship as testified in the prior variance case. The fact the property is in the R&A zone, actually cut off from the R&A zone the property should not be in the R&A zone. The property is wedged in-between the State Line, the mobile home park and the property has existing commercial buildings. Zall stated in his opinion the proposal has met the 5 requirements for granting variance with the conditions agreed upon with Pitarys Mobile Home Park and any other condition the ZBA had discussed previously.

Mosely asked besides the traditional fluids, lubrication oils or hydraulic fluids would the maintenance include any other fluids, solvents be used which would be considered hazardous. Zall replied no. Mason asked if the maintenance conducted on site will be done exclusively to vehicles and equipment owned by Bentley Management Group. Zall replied yes.

Spoke in favor of the application

Morgan Hollis, Attorney

Morgan Hollis, Attorney representing Pitarys Homes, Inc. and Jim Pitarys. We have met on-site with the applicant to discuss the proposal. There were a number of concerns and we have presented a number of stipulations that we agreed to that have been submitted previously to the ZBA. The main concern is that Pitarys has a number of wells nearby and the property is located in the APOZ. We believe if the stipulations are incorporated into the decision of the ZBA the applicant in-fact does meet the criteria for granting the variances as requested. Mason asked how close the nearest well was to the proposed lot was. Jim Pitarys replied roughly 200 feet.

Spoke in opposition of the application

Paula Terrasi, Town of Pepperell MA

Terrasi stated the Town of Pepperell has a municipal well nearby and has concerns about the proposal. The main concerns are fuel storage, snow storage, salt, deicing materials and any other run-off from the property that could affect the municipal wells. The Town of Pepperell purchased the land where the well is and created a 400 foot buffer around the well and the buffer touches the Hollis line and the proposed lot. Terrasi presented a map to the ZBA showing the location of the well. The Town of Pepperell is not opposed to the proposal but needs to have reassurance and stipulations placed on the application so that the municipal wells be safe guarded. Moseley asked if the water supply was tested regularly creating a base line so if a problem was to occur it would be noticed quickly. Terrasi replied yes.

Applicant rebuttal

McGhee asked would salt, snow and other deicers be stored on the site. Zall replied no but a stipulation could be placed on the approval to address the Town of Pepperell's concerns. Major asked where the applicant gets salt from, if it would not be stored on site. White replied salt is delivered directly to the site and would not be stored onsite.

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

The ZBA recessed at 8:30 pm and returned for deliberations at 8:35 pm

DELIBERATION AND DECISION

Case ZBA 2017-004

Discussion of the application of Michael Lambert, property owner, for a Variance to Section X, Paragraph F3, Minimum Frontage and Section XI, Paragraph C4, Wetland Conservation, Lot Requirements of the Zoning Ordinance to permit a lot line re-location between 77 Flint Pond Drive and 75 Flint Pond Drive, Map 026, Lot 007 and Map 058, Lot 019, in the Recreational Zone.

The ZBA discussed the application briefly and since there will be virtually no change to the area and the lots the

ZBA had no issues with the proposed applications.

Belanger moves for a finding of fact;

1. *Due to current requirements and zoning, the lots are unique which constitutes the hardship in this case.*

Seconded by Major.

Motion unanimously approved.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest
- Question 2. The spirit of the ordinance is observed
- Question 3. Substantial justice is done
- Question 4. The values of surrounding properties are not diminished
- Question 5a(1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property
- Question 5a(2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	6	0
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	6	0

THEREFORE THE VARIANCE WAS GRANTED WITH THE FOLLOWING FINDING OF FACT;

1. **Due to current requirements and zoning, the lots are unique which constitutes the hardship in this case.**

Case ZBA 2017-005

Discussion of the application of Bentley Management Group, for a Special Exception to Section XII, Nonconforming Uses, Structures and Lots, Paragraph A.3 Nonconforming Uses, Alterations of the Zoning Ordinance to permit the alteration/expansion of a nonconforming use to include; a corporate office for real estate development/management business and an excavation business to include minor maintenance and repair of company vehicles, located at 143 & 145 Runnels Bridge Road (Map 004, Lots 064), property owned by 145 Runnels Bridge Road, LLC in the Residential Agricultural Zone.

Belanger stated the conditions 1 – 7 presented by the applicant should be incorporated into the decision with the following changes;

Condition 3 remove the sentence “*and involves the potential release of automotive or hazardous fluids*” and change “to leach” to “*from leaching into the ground*”

Revised Condition 3 would read. “*Repair and maintenance of excavation vehicles and equipment will be done within a building with an impermeable floor or, if done outside a building it will be done on an impermeable surface with safeguards that prevent the fluids from leaching into the ground contracted in compliance with the conditions under Section XI (A)(3) a(iii).*”

Condition 2 add to the end “*Storage of construction vehicles and equipment at the rear property will be on impermeable surface with the proper controls to keep fluids out of the Aquifer.*”

Revised Condition 2 would read “*Storage of excavation vehicles and equipment will be inside building or at the rear of the property, not along the easterly boundary adjacent to Pitarys Mobile Home Park. Storage of construction vehicles and equipment at the rear property will be on impermeable surface with the proper controls to keep fluids out of the Aquifer.*”

Belanger stated the ZBA should also consider the following additional conditions in order;

8. Sound at the property lines shall not exceed 60 decibels between 7pm through 6am.
9. No hazardous materials storage shall occur on site including snow storage, salt or deicers.
10. No above or underground fuel storage tanks, not used for heating purposes.
11. No change in the natural buffer boarding Lawrence Cemetery without Hollis Cemetery Commission approval.
12. No floor drains in concrete floors.

The ZBA discussed the proposed conditions and made slight modification. The ZBA felt that the imposed conditions would alleviate the concerns of Pitarys and the Town of Pepperrell.

Belanger moves for the following 12 conditions of approval;

1. *There will be no storage of sand, loam, mulch, salt, pesticides (except by the same criteria as for Morin's set by the Planning Board) or other debris or fill materials, no sifting and screening of said materials.*
2. *Storage of excavation vehicles and equipment will be inside building or at the rear of the property, not along the easterly boundary adjacent to Pitarys Mobile Home Park. Storage of construction vehicles and equipment at the rear property will be on impermeable surface with the proper controls to keep fluids out of the Aquifer.*
3. *Repair and maintenance of excavation vehicles and equipment will be done within a building with an impermeable floor or, if done outside a building it will be done on an impermeable surface with safeguards that prevent the fluids from leaching into the ground contracted in compliance with the conditions under Section XI (A)(3) a(iii)).*
4. *Hours of operation will be from 6am to 7pm with occasional operation until 10pm, Monday through Saturday. Provided, however, in the case of extreme weather conditions, such as snow storms, there may be occasional operations on Sundays or outside the foregoing hours.*
5. *Use shall comply with Performance Standards in the Aquifer Protection Overlay Zone, Section XI A. (4).*
6. *Storm water runoff to be controlled by a system shown on a plan which considers maximum safeguards for preventing impacts by surface runoff contamination on adjacent drinking water wells, to be approved by consultant to the Town. Paid by the applicant per Section XI 4(c).*
7. *No improvements to the property, no removal of existing buffer between existing structures and boundary with Pitarys Homes. Inc.*
8. *Sound at the property lines shall not exceed 60 decibels between 7pm through 6am.*
9. *No hazardous materials storage shall occur on site including snow storage, salt or deicers.*
10. *No above or underground fuel storage tanks, not used for heating purposes.*
11. *No change in the natural buffer boarding Lawrence Cemetery without Hollis Cemetery Commission approval.*
12. *No floor drains in concrete floors.*

Seconded by Major.

Motion unanimously approved.

Major questioned whether or not the proposed "use" is fundamentally different than the past uses of the property. Belanger stated the use is different but the affects to the neighborhood of the Town won't be any different than the past uses. MacMillan stated the lumber yard was a more intense and noisy operation than the proposal.

Major stated an argument could be made that the pre-existing grandfather use was discontinued for a period of 2 years or discontinued for a period of 1 year as noted in the APOZ ordinance. McGhee stated the testimony was that the landscape business left in April 2015. Major stated the ZBA should then consider a finding of fact that the use was not discontinued. Mason stated the previous tenant left a little over a year ago. Belanger stated however, the 1 ½ years would not cover the 1 year discontinued use for the APOZ. Mason agreed however, counsel made a good argument that the APOZ 1 year requirement only effects the nonconforming uses within the APOZ.

Major moves for a finding of fact;

1. *The nonconforming use was not discontinued for two (2) years.*

Seconded by Major.

Motion unanimously approved.

Questions/Special Exception

Question 1 Is the Exception specified in the Ordinance?

Question 2 Are the specified conditions under which the Exception may be granted present?

Question 3 Should the Exception be granted?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
Major	Yes	Yes	Yes	3	0
Belanger	Yes	Yes	Yes	3	0
MacMillan	Yes	Yes	Yes	3	0
Mason	Yes	Yes	Yes	3	0
McGhee	Yes	Yes	Yes	3	0

THEREFORE THE SPECIAL EXCEPTION WAS APPROVED WITH THE FOLLOWING CONDITION AND FINDING OF FACT;

Conditions:

1. There will be no storage of sand, loam, mulch, salt, pesticides (except by the same criteria as for Morin's set by the Planning Board) or other debris or fill materials, no sifting and screening of said materials.
2. Storage of excavation vehicles and equipment will be inside building or at the rear of the property, not along the easterly boundary adjacent to Pitarys Mobile Home Park. Storage of construction vehicles and equipment at the rear property will be on impermeable surface with the proper controls to keep fluids out of the Aquifer.
3. Repair and maintenance of excavation vehicles and equipment will be done within a building with an impermeable floor or, if done outside a building it will be done on an impermeable surface with safeguards that prevent the fluids from leaching into the ground contracted in compliance with the conditions under Section XI (A)(3) a(iii)).
4. Hours of operation will be from 6am to 7pm with occasional operation until 10pm, Monday through Saturday. Provided, however, in the case of extreme weather conditions, such as snow storms, there may be occasional operations on Sundays or outside the foregoing hours.
5. Use shall comply with Performance Standards in the Aquifer Protection Overlay Zone, Section XI A. (4).
6. Storm water runoff to be controlled by a system shown on a plan which considers maximum safeguards for preventing impacts by surface runoff contamination on adjacent drinking water wells, to be approved by consultant to the Town. Paid by the applicant per Section XI 4(c).
7. No improvements to the property, no removal of existing buffer between existing structures and boundary with Pitarys Homes. Inc.
8. Sound at the property lines shall not exceed 60 decibels between 7pm through 6am.
9. No hazardous materials storage shall occur on site including snow storage, salt or deicers.
10. No above or underground fuel storage tanks, not used for heating purposes.
11. No change in the natural buffer boarding Lawrence Cemetery without Hollis Cemetery Commission approval.
12. No floor drains in concrete floors.

Finding of Fact:

1. The nonconforming use was not discontinued for two (2) years.

Case ZBA 2017-006

Discussion of the application of Bentley Management Group, for a Variance to Section X, Paragraph G.1 Residential & Agricultural District Permitted Uses of the Zoning Ordinance to permit a corporate office for real estate development/management business and an excavation business to include minor maintenance and repair of company vehicles, located at 143 & 145 Runnels Bridge Road (Map 004, Lots 064), property owned by 145 Runnels Bridge Road, LLC in the Residential Agricultural Zone.

*Belanger moves to table Case 2017-006
Seconded by MacMillan.*

Motion unanimously approved.

Case ZBA 2017-007

The application of Bentley Management Group, for a Variance to Section XIA, Paragraph 6g Prohibited Uses in the Aquifer Protection Zone, Automotive service and/or repair shops of the Zoning Ordinance to permit a corporate office for real estate development/management business and an excavation business to include minor maintenance and repair of company vehicles, located at 143 & 145 Runnels Bridge Road (Map 004, Lots 064), property owned by 145 Runnels Bridge Road, LLC in the Residential Agricultural Zone.

Belanger moves to apply the same 12 conditions imposed on Case 2017-005 for the Special Exception to the Case 2017-007;

- 1. There will be no storage of sand, loam, mulch, salt, pesticides (except by the same criteria as for Morin's set by the Planning Board) or other debris or fill materials, no sifting and screening of said materials.*
- 2. Storage of excavation vehicles and equipment will be inside building or at the rear of the property, not along the easterly boundary adjacent to Pitarys Mobile Home Park. Storage of construction vehicles and equipment at the rear property will be on impermeable surface with the proper controls to keep fluids out of the Aquifer.*
- 3. Repair and maintenance of excavation vehicles and equipment will be done within a building with an impermeable floor or, if done outside a building it will be done on an impermeable surface with safeguards that prevent the fluids from leaching into the ground contracted in compliance with the conditions under Section XI (A)(3) a(iii)).*
- 4. Hours of operation will be from 6am to 7pm with occasional operation until 10pm, Monday through Saturday. Provided, however, in the case of extreme weather conditions, such as snow storms, there may be occasional operations on Sundays or outside the foregoing hours.*
- 5. Use shall comply with Performance Standards in the Aquifer Protection Overlay Zone, Section XI A. (4).*
- 6. Storm water runoff to be controlled by a system shown on a plan which considers maximum safeguards for preventing impacts by surface runoff contamination on adjacent drinking water wells, to be approved by consultant to the Town. Paid by the applicant per Section XI 4(c).*
- 7. No improvements to the property, no removal of existing buffer between existing structures and boundary with Pitarys Homes. Inc.*
- 8. Sound at the property lines shall not exceed 60 decibels between 7pm through 6am.*
- 9. No hazardous materials storage shall occur on site including snow storage, salt or deicers.*
- 10. No above or underground fuel storage tanks, not used for heating purposes.*
- 11. No change in the natural buffer boarding Lawrence Cemetery without Hollis Cemetery Commission approval.*
- 12. No floor drains in concrete floors.*

Seconded by Major.

Motion unanimously approved.

Mason stated that in previous cases dealing with repairs the ZBA imposed a condition that the repairs shall be limited to company owned vehicles and equipment. The ZBA agreed.

Mason moves for a condition of approval;

- 13. Any vehicle and equipment repairs conducted on site shall be limited to company owned vehicles and equipment.*

Seconded by Belanger.

Motion unanimously approved.

Mason moves for a finding of fact;

- 1. The ZBA finds that the incidental repairs of vehicles and equipment related to the business does not constitute an automotive service and/or repair shop.*

Seconded by Major.

Motion unanimously approved.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest
- Question 2. The spirit of the ordinance is observed
- Question 3. Substantial justice is done
- Question 4. The values of surrounding properties are not diminished
- Question 5a(1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property
- Question 5a(2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	6	0
MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
McGhee	Yes	Yes	Yes	Yes	Yes	Yes	6	0

THEREFORE THE VARIANCE WAS GRANTED WITH THE FOLOWING CONDITIONS AND FINDING OF FACT;

Conditions:

1. There will be no storage of sand, loam, mulch, salt, pesticides (except by the same criteria as for Morin's set by the Planning Board) or other debris or fill materials, no sifting and screening of said materials.
2. Storage of excavation vehicles and equipment will be inside building or at the rear of the property, not along the easterly boundary adjacent to Pitarys Mobile Home Park. Storage of construction vehicles and equipment at the rear property will be on impermeable surface with the proper controls to keep fluids out of the Aquifer.
3. Repair and maintenance of excavation vehicles and equipment will be done within a building with an impermeable floor or, if done outside a building it will be done on an impermeable surface with safeguards that prevent the fluids from leaching into the ground contracted in compliance with the conditions under Section XI (A)(3) a(iii)).
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5. Use shall comply with Performance Standards in the Aquifer Protection Overlay Zone, Section XI A. (4).
6. Storm water runoff to be controlled by a system shown on a plan which considers maximum safeguards for preventing impacts by surface runoff contamination on adjacent drinking water wells, to be approved by consultant to the Town. Paid by the applicant per Section XI 4(c).
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9. No hazardous materials storage shall occur on site including snow storage, salt or deicers.
10. No above or underground fuel storage tanks, not used for heating purposes.
11. No change in the natural buffer boarding Lawrence Cemetery without Hollis Cemetery Commission approval.
12. No floor drains in concrete floors.
13. Any vehicle and equipment repairs conducted on site shall be limited to company owned vehicles and equipment.

Finding of Fact;

- 1. The ZBA finds that the incidental repairs of vehicles and equipment related to the business does not constitute an automotive service and/or repair shop.**

Other Business

Major stated since the resignation of Moore he would like to recommend to the Board of Selectman that Durham be appointed as a regular member of the ZBA. The ZBA members agreed.

The ZBA would like to thank Moore for his many years of service and his experience, knowledge and dedication while sitting on the ZBA will be missed.

Major asked all members to help with recruitment of new ZBA members. The members agreed.

Review of Minutes

Belanger moves to approve the minutes of April 17, 2017.

Seconded by Major.

Motion unanimously approved with McGhee abstaining.

Meeting Adjourned

The ZBA meeting adjourned at 9:15 pm.

Respectfully submitted, Donna L. Setaro, Building & Land Use Coordinator