

**Town of Milford
Zoning Board of Adjustment Minutes
July 7, 2016
Case #2016-08
Red Oak Apartment Homes, Inc.
Special Exception**

Present: Michael Thornton, Acting Chairman
Joan Dargie, Alternate
Jason Plourde
Len Harten, Alternate
Rob Constantino, Alternate
Robin Lunn, Zoning Administrator

Absent: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Red Oak Apartment Homes, Inc. for the properties located at 543 Nashua Street, Milford NH, Tax Map 45, Lot 55, 0 Capron Road, Milford, NH, Tax Map 43, Lot 57, and 29 Capron Road, Milford, NH, Tax Map 43, Lot 58 Special Exception from the Milford Zoning Ordinance, Article VI, Section 6.02.06B to allow earth disturbing activities within the 25-foot wetland buffer associated with the construction of a utility access and roadways for the residential development project, "Ridge at Eastern Trails."

MINUTES APPROVED ON 11/3/16

Michael Thornton, Acting Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He informed all of the procedures of the Board. He stated that since there was a full agenda, and rules allowed for adjournment by 10 p.m., it was possible that not all cases would be reached. He gave the applicants for subsequent cases on the agenda the opportunity to stay and see if their cases were reached or table their cases until the next regularly scheduled meeting. The list of abutters was read. Applicant, Mr. Dupont was present. Present representing the applicant: John Cronin, Attorney for the applicant; Patrick Colburn of Keach-Nordstrom Associates, Inc.; Dennis Mires, the Architect.

P. Colburn presented the case. A drainage way divides the property. Turns along north property line, runs adjacent to it and then to Capron Rd. Special exception requested for buffer impacts only. Ordinance would allow wetland impact in this case because it falls within criteria of DES Minimum Expedited Permit Criteria and don't require special exception by the ordinance but adjacent buffer impact does. Three wetlands and buffer impact location which he printed out on plan. First is for the utility corridor. Don't have available water and sewer under road adequate to serve development. Working within a utility easement granted to the applicant by affiliate of the applicant provides a corridor down Nashua St

for water, sewer and gas. Will also correct deficient sewer serving Eastern Trails. New 8-in. sewer main out to Nashua St. Second wetland and buffer impact areas are for access to the uplands on the west side of the wetland complex. Have minimized impact to extent practicable by flanking crossing with precast block retaining walls. Not extending fill slopes any great distance. Cutting fill slopes off and replacing with vertical walls. Pointed out primary access up and around development for patrons of new site and gated emergency vehicle access for second access to back and third access to rest of development. Total wetland impact is 2912 SF. Wetland and buffer impact 12,999 SF. Did site walk with Planning Bd, Conservation Commission and a Zoning Board member. Didn't hear great objection to the wetlands crossing proposed at any of the three locations. Conservation Comm. requested 3 agreements. First was, at both permanent crossings for access. Had proposed plastic pipe 36 inches diameter. Changed to 48 inches and change from plastic to concrete pipe. Will sink additional foot into ground and line with natural stone to promote critter migration. Conservation Comm requested they limit tree clearing on the southwest portion of site. Limit only to what is required for development. Any unnecessary will be avoided and area will be wooded. Putting in a cut restriction there in perpetuity. Last request was re snow storage. Snow storage not imposed on any wetland buffer. Showed on plan. Favorable recommendation from Conservation Comm in packet. Letter read by Chair previously from Community Development Director Lincoln Daley relative to planting buffers – talking about the buffer separating wetland from proposed bioretention area which is currently a mowed field. Area A is next to the mobile home park. Plan provides apparatus access for Fire Dept. It is above elevation so fill slope down to edge of gravel to limit of wetland buffer. Leaving that wetland buffer undisturbed. Question came up whether they could plant in there to enhance area and plant between bio area and wetland in order to enhance view from 101A to Capron Rd. He felt that would be impact within buffer. But letter from Lincoln Daley suggested if they use native plantings they can, without additional special exception. With next plan revision before going back to the Planning Bd, they will amend plan to enhance bushes in those locations. R. Constantino asked if first crossing is for sewer – sewer, water, etc. Is that sunk also?

P. Colburn said sewer, water and gas. It is sunk. Once utilities are buried it will be allowed to re-establish itself. Temporary impact.

J. Plourde said he was member of Planning Bd and walked the site. Good to be able to walk site to see wetland areas. As far as buffer areas being discussed, one is for utilities, they have minimized it to be able to get to more of southern portion; and other is for emergency access. Members of Conservation Commission were there asking lots of questions. It was very beneficial.

J. Dargie asked about the grade of road around the buildings.

P. Colburn said steepest part of development is leaving two garden style areas and coming through the townhome village. 4%, ADA compliant. Site covered by Fair Housing and needs to be ADA accessible. They are. Around buildings 2% or less.

J. Dargie asked if blasting required?

P. Colburn said area in back will likely be blasting required.

J. Dargie asked if that was far enough from wetlands.

P. Colburn said yes, they are seeking an alteration of terrain permit and that is one thing they review.

There being no further questions, M. Thornton asked for application to be read into the record.

P. Colburn said that for this there are two sets of criteria, the wetlands criteria and the special exception criteria. Special exception criteria basically the same as for the previous case for height, so with permission of Board, he would skip reading those and just read the criteria for wetlands. Board agreed.

He paraphrased in reading. Following is text of the application.

1. The need for the proposed project.

Generally, the proposed project entails construction of 124 new rental apartment units on the currently undeveloped Lot 57. The site is properly zoned for the proposed use, and is situated in close proximity to jobs, the highway system, a complete variety of retail and service needs, and the downtown. Lot 57 has frontage along Capron Rd., a local Class V public roadway. Although municipal utilities exist under Capron road, the Department of Public Works has identified latent inadequacies of the existing sewer system serving Eastern Trails Apartments on Lot 58.

Correspondingly, municipal utilities are proposed to be extended from beneath Nashua Street,

across Lot 55 through a utility easement benefitting Lot 57, to Lot 57. Unfortunately, a long thread of jurisdictional wetland bisects the property generally running from north to south. At the common boundary between Lots 55 and 57, the wetland makes a 90 degree turn toward its outfall under Capron Road. Extension of municipal utilities from Nashua Street require wetland and wetland buffer impacts. The same wetland thread precludes access from Capron Road to the majority of developable wetlands to the west. In order to construct the private drive throughout the development, additional wetland and wetland buffer impacts are required. Lastly, wetland and wetland buffer impacts are required in order to provide emergency vehicles access from the back side of Eastern Trails apartments to the proposed development. This third means of access to the site is not feasible without additional impacts.

2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.

The layout and design of the proposed multi-family residential development limits wetland and wetland buffer impacts to the extent practicable. As has been mentioned numerous times already, wetland and buffer impacts are required to provide adequate access into and out of the project from Capron Road. A large wetland thread precludes access from Capron road to the majority of developable upland areas on this property. As well, deficient sanitary sewer infrastructure under Capron Road requires that utilities be extended from Nashua Street. At each of the locations where impacts are required for construction, the impacts are minimized by situating them in locations where the wetland is narrowest. Further, in the locations of permanent culvert crossings, the inlet and outlet ends of the culverts are constructed with precast block retaining walls in place of earthen fill slopes. This is not the cheapest alternative for the applicant, but does greatly reduce the overall impact areas.

3. The impact on plants, fish and wildlife.

According to the attached Wetland Functions and Values Assessment, prepared for the applicant by Schauer Environmental Consultants, LLC, the onsite wetlands have limited ability to pond water due to the sloping terrain and lack of sufficient depressions. The majority of the onsite wetlands, especially those areas proposed to be impacted, are not capable of supporting vernal pool habitat. The overall functional values of wetlands on the property are generally limited due to the lack of opportunity and outstanding characteristics. That said, careful consideration during the design of the proposed wetland crossings further limits any impact on plants and wildlife. The areas of impact are reduced by situating the crossings at the narrowest points through the wetland thread. Disturbed areas will be stabilized using a conservation seed mix containing native plant species commonly found in this area.

4. The impact on the quantity and/or quality of surface and ground water.

The design, construction methods, and maintenance methods for the project, including those involving the wetland and wetland buffer impacts, have been or will be designed by the applicant's project engineers, Keach-Nordstrom Associates, Inc. In accordance with the provisions of the Town of Milford, the New Hampshire Department of Environmental Services, and generally accepted engineering practice, the 1-year, 2-year, 10-year, 25-year and 50-year frequency storm events will be used in the various aspects of analysis and design of stormwater management considerations for this project. Stormwater treatment provisions will be designed to be fully functional during a 50-year return frequency storm. As an integral part of this project, general construction sequencing and erosion control practices have been implemented according to the State of New Hampshire, Department of Environmental Services (NHDES) Best Management Practices as described in the New Hampshire Stormwater Manual. Through the various strategies described herein, the impact on the quantity and quality of surface and ground water resulting from the proposed project have been reduced to the extent practicable.

P. Colburn said he could go into more detail on this item, but essentially their project proposes two above-ground stormwater management areas. One at top of site consists of a convention detention pond that it outlet through a long flat grass treatment swale which controls both quality and quantity; and at the

foot of the hill adjacent to Capron Rd a proposed bioretention area that has a detention component as well as infiltration and filtration component.

M. Thornton asked if all that was handled on property.

P. Colburn said yes.

Mr. Thornton said no drainage off the property?

P. Colburn said there is drainage off the property into the wetland complex and under Capron Rd to the existing cross culvert. But it is to the same peak rate as in the pre-development scenario. So they have controlled the increase.

5. The potential to cause or increase flooding, erosion, or sedimentation.

As an integral part of the engineering design of this site, an erosion and sedimentation control plan will be developed with the intent of limiting the potential for soil loss and associated receiving water quality degradation, both during and after the construction period. Traditional temporary erosion and sedimentation control devices and practices, such as siltation fencing, seeding, erosion control blankets, and erosion stone will be specified for use during the construction period. In preparation of these provisions, reference will be made to the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment temporary Controls During Construction. Construction details for each temporary erosion control measure and practice specified will be added to the project plans. Together, these measures will limit the potential to cause or increase flooding, erosion, or sedimentation as a result of the subject project.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.

The buffer impacts which are the subject of this application are quite small when compared to the overall encumbrance on development over Lot 57 by the wetland and associated buffers. Impact Area #1 is located in an area that today exists as a grass field. Following construction, disturbed areas will be allowed to return to grass thereby emulating existing buffer conditions. The two permanent crossings for access are proposed with large cross culverts to maintain the hydrology and runoff patterns of the area. Since the primary purpose of the wetland thread is surface water conveyance, and that function is being preserved with the proposed design, the overall impact to the complex is not expected to be measureable. Therefore, the same would be true for similar impacts to the same complex by other parties owning or abutting a portion of the affected wetland.

7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.

Attached to the application for Wetland Special Exception is a formal Wetland Functions and Values Assessment, prepared by Schauer Environmental Consultant, LLC. That report states that “Overall, functions and values of wetlands on the property are generally limited due to lack of opportunity and outstanding characteristics...” The report goes on to say that limited levels of sediment/toxicant retention, nutrient removal/transformation, groundwater recharge/discharge, and wildlife habitat were evaluated on portions of the site’s wetland, [he added, we assert all of those things are being replicated and enhanced by the proposed stormwater management provisions in our site plan]. Please see attached report for specific evaluation of each of the required impact areas. The impacts required are not expected to have measurable impacts on the moderate functions of the wetland system.

J. Dargie said there was another project with wetland issues. It doesn’t sound like this project has as much elevation and slope as that one. But, what happened was that after they turned a lot of forested land into pavement, there were flooding issue. Instead of their presentation of green grass, it turned into boulders and gravel because that is what they had to do. They probably could have spent more time and money planting. Any way in this proposal that all the green would turn into rocks because of runoff. Concerned with blasting and construction and paving, the water runoff is changed and the water has to go somewhere.

P. Colburn pointed to areas they are inlets to detention points. They are proposed with erosion stone for that purpose. But it is limited. Area behind will be grass and maintained. Both designed with outlet at bottom so it is dry between storm events and mowed grass. It is in applicant's interest to have something aesthetically pleasing. In bioretention area there is heavy planted with wetland species for purpose of nutrient uptake. Essentially building a wetland for that purpose. Can expect limited stone and adjacent planting.

J. Dargie asked if there were issues of water runoff – other development she referred to they wanted to sell them too. It is a 55 and older residential, fairly expensive home sites that has all turned into rock. Can they put in condition that not to allow that.

P. Colburn said they prepare a specific construction sequence as required by alteration of terrain that these downstream facilities be constructed first so by the time flow is directed to them, they are established.

J. Dargie said in the other case water was going everywhere. Basically what happened was all the dirt was going into people's houses below.

J. Plourde said that was valid concern with history of that site. Trying to find how to reassure her. Grade is only 4%. Vegetation and grass can take much easier and probably not as much runoff.

R. Constantino asked if any of the other Boards foresaw that?

J. Dargie said no. But that was why she was bringing it up. Blasting can create an issue. Hopes that can be contained. That is probably an issue for another Board.

J. Plourde asked if they measure runoff after construction to see if numbers are right on.

P. Colburn said no, That is not required by local or state.

J. Plourde said what if they are changed with blasting.

P. Colburn said his calculations based on surface water.

M. Thornton asked for any further questions. There were none. He read a letter from Community Development Director Lincoln Daley saying the applicant file is currently with Planning Bd for site plan. Planning Bd held first meeting on it on May 24, 2016. Discussion involved opportunity to provide visual mitigation for building facing Nashua St and abutting property. Discussed planting additional vegetation within 25 ft wetland buffer area. Addition of vegetation does not require special exception. Determination that addition of native trees and planting would be permitted within 25 ft wetland and buffer area. He also read a memo from the Conservation Commission to the ZBA saying the Commission met with the applicant in May. There was a site walk on May 3, 2016. Memo contained several comments by Conservation Commission and points of advice.

M. Thornton opened hearing for public comment.

R. Dupont, abutter, supported relief requested.

There being no further public comment, Chair closed the public comment portion of the hearing.

J. Plourde commented things were pretty straightforward, especially with input from the Conservation Commission.

M. Thornton proceeded to vote on criteria:

1. Is the exception allowed by the ordinance?

R. Constantino – yes; J. Dargie – yes; J. Plourde - yes; L. Harten – yes; M. Thornton – yes

2. Are the specific conditions present under which the special exception may be granted?

J. Plourde – yes; R. Constantino – yes; L. Harten – yes; J. Dargie – yes; M. Thornton – yes

Vote on questions:

Is the proposed use similar to those permitted in the district?

R. Constantino – yes

J. Dargie – proposed use is permitted. Yes

L. Harten – yes\

J. Plourde – yes

M. Thornton – yes

Is the specific site an appropriate location for the proposed use?

J. Plourde- yes

L. Harten – yes

J. Dargie – yes
R. Constantino – yes
M. Thornton – yes

The use as developed will not adversely affect the adjacent area.

L. Harten – yes; R. Constantino –yes; J. Plourde – yes; J. Dargie - yes; M. Thornton – yes

There will be no nuisance or serious hazard to vehicles or pedestrians.

J. Plourde – yes, with respect to the wetland buffers; J. Dargie – yes; R. Constantino – yes; L. Harten – yes; M. Thornton – yes

Adequate facilities will be provided for proper operation of the proposed use.

J. Dargie – yes; L. Harten – yes, from the Conservation Comm. letter, with Best Management Practices proposed this impact shall be tolerable to the surrounding landscape and natural resources; J. Plourde – yes – agreed with Len; R. Constantino – agreed, yes; M. Thornton – Conservation Commission commented they would like to see more people doing what they are doing, so yes

J. Dargie said there is nothing locking them into doing what Conservation Commission recommended. Suggested that with motion to approve they condition requirements stated by the Conservation Commission are met.

J. Plourde put in conditions of 1, 2 and 3 in the Conservation Commission memo dated May 14, 2016.

J. Dargie said it was block retaining walls, upsizing the culverts, and plantings in the buffer zone.

J. Plourde made motion to approve applicant’s request for a special exception pursuant to Article VI, Section 6.02.6B of the Zoning Ordinance to allow earth disturbing activities within the 25 foot wetland buffer associated with the construction of a utility access and roadways for the residential development project Ridge at Eastern Trails at the property shown on Tax Map 45, Lot 55 in accordance with the plan entitled Master Site Plan, East Ridge Apartments as drawn by Keach-Nordstrom Associates, Inc. dated March 5, 2015 and submitted by the applicant as part of this hearing, **with the following condition:**

Inclusion of the Conservation Commission comments in their May 14, 2016 memorandum to the Zoning Board of Adjustment

J. Dargie seconded the motion.

Final Vote: Yes vote was to approve, with condition

R. Constantino – yes

J. Dargie – yes

L. Harten – yes

J. Plourde – yes

M. Thornton – yes

Special Exception approved by 5 to 0 vote.

Chair informed applicant of approval and reminded of 30 day appeal period.