

**TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT**

Approved Minutes
July 21, 2010

Members Present: Joan Oliveira, Vice-Chairwoman; Bob Stamps; Jeff Connor; Gigi Laberge; Bruce Trivellini, Alternate

Members Excused: Doreen Connor; Roni Hardy, Alternate

Others Present: Mark Fougere, Town Planner; Jennifer McCourt; Greg Michael, Esq.; Thomas Patenaude; Richard Patenaude; Mr. and Mrs. Bob Flanders; Jennifer Astholz

Call to Order

Vice-Chairwoman Oliveira called the meeting to order at 7:01 pm. She stated that the voting Board would consist of herself, Mr. Stamps, Mr. Connor and Dr. Trivellini.

Public Hearings

Case 2010-003: Patenaude Properties, Applicant & Owner. The Applicant has submitted a request for a Special Exception under Article XXII Wetland Conservation, Section 133 – 113 to impact 9,573 square feet of wetland and restoring 5,707 square feet of disturbed wetland resulting from the construction of a roadway. The property is located at Bradford Road, Map 2 Lots 102G & 103x and is zoned CM Medium Commercial district.

Mark Fougere, Town Planner, stated that meeting minutes were received from the Conservation Commission. Also, a letter was received in the Town office today from the Conservation Commission which contained information summarizing what was in the minutes.

Bruce Trivellini asked for clarification of the lot numbers involved in the application. He stated that the application and tax map refer to Lot 102G, while the Conservation Commission letter and map refer to Lot 102. Ms. McCourt stated that Lot 102 has been subdivided out, and the application correctly references Lot 102G. She stated that when the application was originally made back in December and January, the subdivision plan had not yet been recorded. She stated that Lot 98 is the subject property; Lot 99 was approved by the Planning Board last year and is where the quarry is located.

Vice-Chairwoman Oliveira opened the public hearing at 7:09 pm. She announced that Ms. Laberge, who arrived at 7:08 pm, would be joining the Board as a voting member.

Atty. Greg Michael, representing the applicant, stated that part of the Special Exception criteria is to go before the Conservation Commission to discuss wetlands impacts. A permit was granted for the logging road. They discussed the width of the road with the

Conservation Commission. Atty. Michael stated that the road has been located and developed with the least amount of impact to the wetlands and neighbors. He explained that this is the first step of what could be a two-phase project. They are proposing a private road between the excavation site and the quarry. He introduced Jennifer McCourt, the engineer on the project who will describe the wetlands impacts.

Ms. McCourt explained that this project has frontage on the west side of Rte. 114; Henniker Sand & Gravel is located on the east side of the road. She showed the precast storage area and building locations. She stated that the operation was there prior to the logging road. She showed where there is an existing small culvert.

Ms. McCourt showed an area of fairly large wetlands on the plans and stated that they picked the narrowest spots to cross the wetlands. They evaluated other options to access the back of the property, but one area is fairly steep and another access area crosses a larger area of wetlands. Also, Amey Brook is on the northeast side of the property. They tried to keep the road on the uphill side of the bluff. She stated that they are in the process of upgrading after-the-fact wetlands permit with NHDES. The majority of discussion with DES was about what will happen in the future. They requested and received an extension from DES so that they can resolve the matter since there was a question between using Lot 98 or accessing Old Warner Road.

The applicant is getting an Alteration of Terrain permit for the wetlands crossings. Stone level spreaders have been put in and a treatment swale has been added to treat water before it reaches Amey Brook. Ms. McCourt stated that there are no erosion problems at all, and the areas have been stabilized well. The material is gravel and has not moved even with the heavy rainstorms. She explained that the restoration areas allow the road to be pulled back and minimize impact. The bluff to Amey Brook has a very steep bank. To protect Amey Brook, they felt this was the best action.

Dr. Trivellini stated that there appears to be quite a bit of engineering to this area. He wanted to confirm that all of this is on the Patenaude's property, and nothing they are proposing will occur on public easements. The applicant confirmed this.

Atty. Greg Michael reviewed the Special Exception criteria. He stated that the applicant has meeting minutes and a letter from the Conservation Commission where it is noted that each criteria was discussed in detail with the Conservation Commission. He presented the following information from their application:

1) As to how the specific site is an appropriate location for the requested use, Atty. Michael stated that the applicant has done their best to locate this hauling road to decrease impacts on the land, Amey Brook and abutting properties. He stated that this off-public road between the applicant's two sites is the best place to locate the hauling road.

2) Atty. Michael stated that the requested use will be compatible with neighboring land uses because this is a permitted use in the Medium Commercial district. The location is

placed away from abutters and is away from the Amey Brook drainage area. He stated that the Conservation Commission agreed with the applicant in this regard.

3) Atty. Michael stated that they are proposing a private road, so any traffic congestion is only relative to their private business. This application will not impact public use or pedestrian safety. He stated that this would be an interesting question if they were proposing access of a public way, but that is not the case as it is all contained on private property.

4) According to Atty. Michael, granting this permit would be in the public interest because of the restoration of the altered wetlands. Also, putting this type of traffic on private roads is definitely in the public interest. The Patenaude's are responsible for the maintenance of the road which will be used to access two of their business lots which is in the public interest.

5) Atty. Michael stated that it is fortuitous that the Patenaude's own both lots and can make the private roadway, ensuring no public health, safety or other detrimental concerns.

The proposed road is below the nearest abutters and meets or exceeds other gravel roads that are in Town right now. The proposed road is on private land and is a good distance from any neighbors. It was also stated that there have been no complaints about the other roadways that the Patenaude's have developed for business, and they do not anticipate any complaints from this road. Atty. Michael stated that he believes this proposal meets the standard. They have gone to the Conservation Commission and are pursuing appropriate permits. The Conservation Commission does not have a problem with this as it's in the right location.

Bob Stamps asked how big the trucks using the proposed road will be. Ms. McCourt stated that large trucks can be used on a hauling road. Atty. Michael stated that they will be the same as what are currently used at the gravel pit.

Atty. Michael stated that the applicant has no problem complying with all of the requirements needed for the Alteration of Terrain and wetlands permits.

Ms. Laberge asked about the current status of the permitting process. Ms. McCourt stated that an extension was requested, and granted, by DES for providing information about the wetlands permits. She stated that a step forward was made last night when the sale agreement was signed so they can now move ahead with due diligence. She stated that she is working on replying to comments made about the Alteration of Terrain permit; this will be submitted by mid-August.

When asked, Ms. McCourt pointed out where abutters are located on the map. One of the abutters has recently placed 600 acres into conservation. The closest house is more than 500' away from the proposed road and is heavily wooded between. She also showed that the road is approximately 60 feet lower than that house.

Dr. Trivellini confirmed that all of the changes to the land will occur on Patenaude's property. He stated that there is lots of engineering, barriers, drainage culverts, etc. and that this will all be the applicant's responsibility to maintain. Dr. Trivellini asked for assurance that this requirement will run in perpetuity with the land, and the Town will in no way be held responsible for it.

Mr. Fougere stated that the letter from DES is somewhat confusing because DES is looking at the entire property; a few items discussed in the letter are related to the entire operation, not just the portion being discussed this evening.

Vice-Chairwoman Oliveira opened the public hearing at 7:33 pm and called for comments in favor of the application. Mr. Bob Flanders, abutter, stated that he lives about 120 yards from the crusher. He stated that he doesn't mind hearing the noise as it reminds him that somebody is working. He stated that the Patenaude's have done a very nice job with their business and land, and this project does not bother him. He also stated that land that the Patenaude's restored is in much better condition than it was originally.

Vice-Chairwoman Oliveira called for any comments against the application. Hearing none, the public hearing was closed at 7:34 pm. The Board went into deliberation.

Gigi Laberge **MOVED** to approve Application 2010-003 for Special Exception as written. Jeff Connor **SECONDED** the motion.

Mr. Stamps asked about adding conditions to the approval but stated that the conditions recommended by the Conservation Commission would have to be followed whether they are explicitly written in the approval or not.

Ms. Laberge stated that she purposely did not include those express conditions in her motion because the minutes from the Conservation Commission reflect that these issues were discussed in detail; therefore, the conditions will be covered whether they are listed here or not. Ms. Laberge stated that she does not want to cause the applicant any difficulties between the approval tonight and the time that the actual paperwork is completed. She stated that requirements from DES will cover these issues. It was noted that DES supersedes the Board's authority.

Mr. Stamps stated that he believes the project should move forward, but feels that there is no harm in listing the recommended conditions in this approval.

Dr. Trivellini stated that he believes the proper protocol is to list the conditions. He stated that every petitioner should have clear motions and decisions on their applications which will help in the future. He stated that the motion can be denied and then another motion can be put forth.

Vice-Chairwoman Oliveira stated that she disagrees with voting on a motion that does not include conditions as the ZBA has the right to attach reasonable conditions of approval.

Atty. Michael stated that the applicant has a very clear understanding of what is required.

Ms. Laberge stated that listing the conditions as written actually causes more confusion because terms like “regularly” should be defined. Ms. Oliveira stated that case law can decide those matters.

The vote was taken on the motion on the floor to approve the application as submitted. The motion **FAILED, 2 For** (Ms. Laberge and Mr. Connor) – **3 Against** (Mr. Stamps, Ms. Oliveira, Dr. Trivellini).

Mr. Stamps **MOVED** to approve the Special Exception with the following conditions as recommended by the Conservation Commission:

- 1) The applicant shall install low impact design and erosion control features, including dust control, are required to minimize impact of the road bed;
- 2) The applicant shall regularly inspect these features and make any needed repairs as soon as possible; and
- 3) The applicant shall perform project mitigation required by DES under low flow conditions.

Dr. Trivellini **SECONDED** the motion.

Ms. Laberge asked if there is any way that the conditions could impede the applicant. Ms. McCourt stated that DES requirements will be more specific and stringent than these conditions, so they do not have a problem with these conditions. Atty. Michael stated that they agree with the conditions as long as the ZBA’s conditions of approval indicate that DES conditions apply.

Dr. Trivellini stated that he believes they should take the advice of the Conservation Commission on this project since they took the time to make recommendations. He then suggested that another condition be that Chapter 22, Section 133-111 “Conflict with Other Regulations” be added as a condition of approval. He stated that the ZBA is to act as the protectorate of the wetlands. Also, he suggested that no municipal funds will be used at any time be added to the conditions. Mr. Stamps agreed to the amended motion.

The **AMENDED MOTION TO APPROVE WITH THE FOLLOWING CONDITIONS** was made by Mr. Stamps and seconded by Dr. Trivellini:

- 1) The applicant shall install low impact design and erosion control features, including dust control, are required to minimize impact of the road bed;
- 2) The applicant shall regularly inspect these features and make any needed repairs as soon as possible; and

3) The applicant shall perform project mitigation required by DES under low flow conditions;

4) Compliance with Chapter 22, Section 133-111 “Conflict with Other Regulations” of the Henniker Zoning Ordinance;

5) No municipal funds will be used at any time for this project.

Motion **PASSED, 5 – 0.**

Review and Approve Meeting Minutes from April 21, 2010

The minutes from the April 21, 2010 ZBA meeting were reviewed. Dr. Trivellinini **MOVED** to approve the minutes as written. Mr. Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY.**

Miscellaneous

Mr. Fougere stated that they will have a determination about the cell tower lawsuit soon. The judge went to the site to view the properties involved in the case.

The case involving the Bowers Road dispute is scheduled to go to court in about two weeks.

Mr. Fougere stated that he will email the Board members with updates about any legal proceedings to keep them informed.

Adjournment

Mr. Stamps **MOVED** to adjourn at 7:52 pm. Dr. Trivellini **SECONDED** the motion. Motion **PASSED UNANIMOUSLY.**

Respectfully submitted,

Jennifer Astholz
Recording Secretary