

Minutes of hearing
5-14-19, 6:00 P.M.
Sutton School Multipurpose Room

In attendance: Paul Brouha (chair), Hank Parker, Byron Savoy, Darlene Ahrens (Sutton DRB), Brandon Mazur (clerk), Jesse Nelson, Kirsten Nelson, Holly Blair, and an audience of about 50 persons.

The meeting was called to order at 6:09 P.M.

Brandon then read the warning of the hearing as published in the *Caledonian-Record* newspaper on 4-18-19 and 4-30-19 and posted in three locations in Sutton:

TOWN OF SUTTON

NOTICE OF PUBLIC HEARING BEFORE THE DEVELOPMENT REVIEW BOARD

A public hearing before the Development Review Board will be held on May 14, 2019 at the Sutton Town Office at 6:00 p.m. to hear the following permit applications:

Jesse and Kirsten Nelson request a variance of building setback requirements in order to construct a new home at 3577 Calendar Brook Road

Holly Blair proposes to subdivide a 107.9-acre lot at 4089 Pudding Hill Road into lots of 40 acres and 60 acres

A copy of these applications and additional information may be obtained at the Sutton Town Clerk's office.

Participation in this hearing is a prerequisite to the right to make any subsequent appeal.

Paul began by explaining the purpose of the hearing, the order of events, and introducing the members of the Board.

Paul explained that only interested persons present at the hearing may appeal the DRB's decision. He then defined "interested person" for all present. Paul requested any conflicts of interest and/or *ex parte* communications be disclosed. There were none.

Holly Blair's subdivision application was considered first. Holly was sworn in. Holly had no additional information to present beyond her subdivision application. The Board had no questions for Holly. When asked by Paul if the audience had any questions, Joe Witt, Sutton Zoning Administrator, (ZA) asked if there were any wastewater permits on the 40-acre parcel. Holly answered there is a septic system for the house on the 40-acre parcel. Joe informed Holly that it's her obligation to show the State that the new property created by the subdivision features the ability to support a septic system. Holly informed Joe that surveyor Keith Johnson

met with the buyers and the buyers will be doing the percolation testing. Paul explained that Holly's application is not proposing any construction.

Paul then read the proposed findings of fact.

Proposed Findings of Fact:

Holly E. Blair Subdivision Application

The 107.9-acre property (Parcel ID 045-4089 & SPAN 636-200-10269) is situated in the Town of Sutton at 4089 Pudding Hill Road.

The current zoning map shows the property as being in the Working Lands District (Table 205.05 of Sutton Unified Development Bylaws, adopted March 7, 2017 and amended April 26, 2018). The purpose of this District is:

“The purpose of the Working Land District is to preserve Sutton’s unfragmented tracts of land with agricultural and silvicultural value that can provide a sustainable economic return and contribute to the local economy. This district allows for some limited residential development, while stabilizing Sutton’s remaining agricultural and silvicultural lands by protecting them from fragmentation that would impair their continued viability as working lands. The lands in this district have restricted access to public roads, are important for wildlife habitat, have one or more physical space limitations to development, and include significant natural, recreational, agricultural, and scenic resources. Planned unit development based on the lot’s overall yield is encouraged in this district in order to preserve and protect Sutton’s working lands. All other forms of development shall be done in accordance with Sutton’s density-based standards.”

Minimum lot area and dimension requirement in the Working Lands District is as follows:

Lot area	1 acre
Road frontage	200 feet
Setback from center of road	75 feet
Setback from side and rear lot lines	25 feet

The density standard provides that new lots may be any size greater than one acre, however, the original lot must retain sufficient acreage to remain eligible for tax abatement programs, such as Current Use enrollment. Lots ineligible for Current Use enrollment may be developed in accordance with the maximum density of one new lot for every 10 acres of land in single and separate ownership.

Applicant has notified abutting landowners in writing of plans including the date/time of the public hearing (May 14, 2019 @ 6 pm). The hearing notice was also published in the *Caledonian-Record* April 18 & 30, 2019. Posting of the hearing notice within view of the property from a public right of way was overlooked but it was posted in three public places in Sutton and on the Suttonvt.org website as required by law. It was judged there had been substantial compliance with the notice requirements.

The original application/maps and the required fee of \$50 was submitted to the Town Clerk’s Office by application dated April 11, 2019.

The original property is 107.9 acres and the applicant proposes to create three lots: the 7.9-acre lot on the west side of Pudding Hill Road with the house, a 60-acre parcel accessed from an approximately 1130 foot right-of-way (50 feet wide minimum—see Bylaws Section 302) off the east side of Pudding Hill Road and a second parcel which is the remaining 40 acres on the east side with roughly 1500 feet of road frontage on Pudding Hill Road. The larger lots contain sufficient acreage to meet the density standard and to qualify for Current Use as required by Section 711 of the Bylaws but the 7.9-acre lot must be designated on a final plat in accordance with Section 705.

The property is not currently enrolled in Current Use.

The property deed recorded in Book 58, pages 208-227 and Book 68, pages 273-280. Neither of these deeds restricts subdivision of the property.

The warrantee deed for the property is recorded in Book 65, page 336 & 337 and the mortgage deed is recorded in Book 76, pages 607-691 and requires the lenders consent prior to subdivision.

The water supply and wastewater treatment facilities for the existing house are not shown (please include them in the final plat) but no new construction is contemplated on the 40 acre and 60 acre lots in the application so state water supply and wastewater treatment requirements are not an issue.

Paul asked if there were any clarifications necessary from the Board and public. It was asked why Holly Blair would have to get a percolation test for the parcel she is selling. Paul stated he believes it is possible to convey land without a wastewater permit. Joe explained that the Sutton DRB can approve a deferred development application. Hearing no objection, Paul entertained a motion to close the portion of the hearing on Holly's application. Hank moved to close, Darlene seconded. After a vote, the motion carried.

The hearing then moved on to considering the variance application to build a new home by Jesse and Kirsten Nelson. Jesse and Kirsten were sworn in. They had additional written information to present to the board: a statement from Joe Witt stating a legitimate reason for hardship, a "letter of safety location" from Sutton's Select Board, a signed letter from a neighbor stating they were aware the hearing was happening and expressing support, and letters of proof that all neighbors received notice. Members of the board had no questions about the additional material.

Paul then read Vermont Statute 24 V.S.A. Section 4469 detailing the facts that must be found in order to render a decision in favor of the applicant.

Kirsten stated that a message had been left on her phone by Paul explaining she had not followed proper procedure when submitting the building permit application. Paul replied he was unaware when he left that message that she had already communicated with ZA Joe Witt who had considered and then referred her application to the Development Review Board because it was a conditional use.

Paul then read the proposed findings of fact.

Proposed Findings of Fact:

Jesse & Kirsten Nelson variance application to build a new home

The 2-acre property (Parcel ID 101-3577 & SPAN 636-200-10364) is situated in the Town of Sutton at 3577 Calendar Brook Road.

The current zoning map shows the property as being in the Residential District (Table 205.03 of Sutton Unified Development Bylaw, Adopted March 7, 2017 and amended April 26, 2018). The purpose of this District is:

“The purpose of the Residential District is to provide for neat and orderly development at a density consistent with the physical capability of the land, the availability of services, and the need to provide sufficient opportunities for housing, balanced with the non-residential uses that are appropriately sited, screened, and of a scale that is compatible with residential uses.”

Minimum lot area and dimension requirements in the Residential District is as follows:

Lot area	1 acre
Road Frontage	150 feet
Setback from center of road	75 feet
Setback from side and rear lot lines	25 feet

Applicant has notified abutting landowners in writing of plans including the date/time of the public hearing (May 14, 2019 @ 6 pm). The hearing notice was also published in the *Caledonian-Record* April 18 & 30, 2019. Posting of the notice of the hearing within view of the property from a public right of way was overlooked but it was posted in three public places in Sutton and on the Suttonvt.org website as required by law. It was judged there had been substantial compliance with the notice requirements.

The property is in a flood hazard area and development is subject to Article V of the Bylaws. New structures in this area are subject to conditional use review by the Development Review Board. After seeking consideration and a decision concerning a variance (current application), it is recommended applicants contact Agency of Natural Resources to get a Project Review Sheet for their proposal. Going through the required processes should enable applicants to get flood insurance at reduced rates from the National Flood Insurance Program.

The original application/maps and the required fee of \$50 was submitted to the Town Clerk's Office by application dated March 18, 2019.

The property deed is recorded in Book 64, pages 114-115 and details no restrictions.

The discharge of the warrantee deed for the property is recorded in Book 75, page 332-337.

The applicants contemplate using the existing water and wastewater facilities.

Paul stated that, after receiving the decision on the variance application, the Nelson's should contact the ANR to request a Project Review Sheet, which would enable the Nelson's to present a complete building permit application. Byron asked why the Nelson's weren't informed that was a prerequisite to the hearing. Paul replied that it was not a prerequisite for a variance and that a conditional variance decision would allow the Nelson's to go to ANR to complete the process.

Paul then asked if members of the Board had any questions. Byron stated he felt that the Nelson's should have been informed that a Project Review Sheet was necessary well in advance of the hearing. Kirsten stated that due to the Nelson's history with Mr. Brouha about their stone wall and the message Mr. Brouha left stating that he "could not in good conscience approve their application" they request an alternate chair for this decision. Hank apologized for any delay and stated he hoped to move forward as expeditiously as possible. Byron stated the Board should grant a conditional variance so the Nelsons could go to ANR. Joe Witt stated that he had discussed with the Nelsons the difficulty of building in the flood zone, and that their proposed building site is over 100 feet from the water and about 62 feet from the centerline of the road which is very near the required 75 feet (and stays out of the flood zone). Further, he felt the Town can approve the variance for road setback and avoid the ANR process and participation in the National Flood Insurance Program. Byron moved to close the hearing and move to deliberative session. Darlene seconded. Paul stated he wanted to give opportunity for more questions. Tim asked if Paul felt the Nelsons had to go to the state and suggested, if the Nelsons are merely asking for a variance to build closer to the road, the state doesn't need to be involved. Paul explained, because of the uncertainty of the location of the flood hazard area boundary and elevation on the 1976 FEMA flood maps, consulting a licensed professional engineer to establish the boundary and base elevation is a Bylaw requirement and a benefit of communicating with the State. Denis Royer stated that this process is dragging on and needs to be expedited so the Nelsons can build this summer. Byron stated that it seems like Paul is obfuscating the process of the Nelson's application and it needs not be belabored. After a vote the motion carried and the hearing closed.

Paul explained that interested parties have 15 days to appeal the approval, that the deliberations may take up to 45 days, and also that an approval of Holly Blair's application would be pending the delivery of a Mylar map within 180 days of the decision. Paul assured everyone that the DRB would act expeditiously. Byron stated that the decision should be made by the end of the week. Paul apologized to Kirsten for any miscommunications and stated his desire to work with the Nelsons to achieve a positive outcome.

Conclusions of Law (Decisions from the Deliberative Session)

Holly Blair's subdivision application for three lots is approved contingent on filing a survey/plat map that conforms to the Mylar Checklist 2/25/19 revision (available at: http://suttonvt.org/wp-content/uploads/2014/02/MYLAR-CHECKLIST-2_25_19-Revision.docx.pdf) with the Town Clerk within 180 days. The survey will depict existing water supply and waste water treatment facilities for the house. Development of the 40-acre and 60-acre lots is deferred and state water supply and waste water treatment permits must be obtained as part of any future building permit applications on these lots. The surveyor completing the subdivision plat will need to review Bylaw Section 711, Development Standard for Working Lands District to be sure its provisions are adhered to.

Jesse and Kirsten Nelson's variance application is approved in conformance with 24 V.S.A. Section 4469 (a) & (d) contingent on their obtaining a Base Flood Elevation Certificate. The setback variance will represent the minimum variance that will afford relief and will represent the least deviation possible from the Bylaws. Obtaining the certificate is the last step needed to complete their application for a building permit and will permit scheduling of the Conditional Use

Review by the DRB. The Zoning Administrator and the DRB are engaging Sacha Pealer, State of Vermont ANR-DEC to assist the Nelson's in obtaining the certificate.

These minutes prepared by Brandon Mazur