

A special meeting of the Board of Aldermen was held Wednesday, June 28, 2023, at 7:00 p.m. in the aldermanic chamber.

President Lori Wilshire presided; Alderman Alex Comeau recorded.

Prayer was offered by Alderman Alex Comeau; Alderman Tyler Gouveia led in the Pledge to the Flag.

Let's start the meeting by taking a roll call attendance.

Alderman Alex Comeau called the roll.

The roll call was taken with 9 members of the Board of Aldermen present: Alderman O'Brien, Alderman Moran, Alderman Jette, Alderman Comeau, Alderman Dowd, Alderman Gouveia, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire.

Alderman Sullivan, Alderman Klee, Alderman Lopez, Alderman Clemons, Alderwoman Kelly, and Alderman Caron were recorded absent.

PUBLIC HEARING

Petition – L Deerwood Drive, Lot H-103

President Wilshire

Tonight's meeting is a public hearing and on a Petition L land Deerwood Drive, Lot H 103. I'm going to turn the meeting over to the Chair of the Infrastructure Committee Alderman O'Brien.

Chairman O'Brien

Thank you, Madam President. And to the general public that is here that is going to give us testimony, there will be no clock. We really want to hear what you people want to say on this particular item. I will call as tradition testimony in favor. After everybody has spoken who wants to speak in favor of it, I will then terminate the testimony in favor and then open up testimony in opposition. I will then repeat to go to testimony in favor and again, repeat to testimony in opposition. The second time if you hear something from one of the ones and you want to make earth shattering designation, you know, but please try not to repeat of what you said before. Keep in mind, this is your opportunity to educate us members of the board who will be making the decision.

Then my last thing is those that will come up to speak, please identify yourself with your name and your address so that can be recorded in the minutes.

Okay, I will now open up the testimony in favor to Petition on Deerwood Drive, Lot H-103. Is there an attorney representing this? Do you want to go first so you can make your presentation?

Daniel Muller, Esquire

Thank you. Daniel Muller from Cronin, Bisson & Zalinsky on behalf of Vivian Jean Adams the owner of the property in question.

We are here after sort of a long journey back in September 2021. My client obtained a frontage variance to allow the construction of a single family home on this lot on Deerwood Drive. We are here tonight because there is a State statute 674: 41 which basically says that if you're the street granting access to your lot. The lot - the street that you have frontage and it's not Class V or better and doesn't fit into various other categories. You need to get relief from this Board to allow for the issuance of the building permit for that lot that lot alone.

The street here is a Class VI street. What that means it's a public way. However, it has not been maintained by the municipality and there is generally no obligation as it stands right now for the municipality to maintain it. One of the things that the Statute requires because that is the case, if you are to grant relief, my client or whoever owns the property when they go to get a building permit as a prerequisite to getting that building permit has to file in the Hillsborough County Registry of Deeds an agreement and release that basically acknowledges that the municipality is a liability, no responsibility for the street. The responsibility lies with the private homeowner and they are going to

have to do that. There has been a document I have spoken to Attorney Leonard in the Office of Corporation Counsel that we've been going back and forth. I think that is almost there. As I said though, that would be a prerequisite to any building permit. Because the question has come up before is there any liability or is there any financial responsibility on the part of the city? The answer is no.

Once again to make the access work, that is the responsibility of whoever owns the land and that agreement reflects that. That being said also to be clear, this proposal has been vetted a couple of times now through some of the city departments. In particular, the Fire Department and Public Works Department. The Fire Department had some requirements including making sure that the width of any passable or usable road would be at least 20 feet to satisfy the State Fire Code. We're going to agree to comply with any and all of their requirements. I will say some of the requirements are sort of still up in the air.

By way of further explanation if the person who builds the house decides to put sprinklers in, certain requirements will apply. Others will not apply. If they do not put sprinklers in, there will be more requirements that have to be met. So that's something that would come down the road but the notion here is it's been to the Fire Department twice. Once prior to the variance and once while this Petition was pending and they had made comments.

Likewise with the Public Works Department. They have had a number of comments. The notion from our standpoint, unfortunately our engineer could not be here tonight to do dress some of the technical points, but the notion would be that we would agree that we'd have to provide a road plan that meets their requirements. There is a road plan that was included in the package. They have some comments and wants some additional details how we would agree that a plan acceptable to them would go in as a condition of any approval from this Board under the Statute. So at the end of the day, we would meet the requirements of both the Public Works Department and the Fire Department in terms of the technical requirements of the road.

I would note that some of the requirements here for example, there is a request for no parking in this area. As I indicated earlier, a Class VI road is a public way and I believe and the law in the State this Board if there was any question about whether there would be parking allowed would still have the jurisdiction to regulate the use of the road and clean parking thereon.

Turning to the proposal itself, we're looking for a basically the right to get a permit to build one single family home on the existing lot of record. Miss Adams has had this property since 2002, has been paying taxes on it, and at this point would like to be able to get something out of the carrying costs that she's born over the years for this lot. The proposal would have access come from the I'll call it the classics portion of Massasoit which is the end of that right-of-way. That right-of-way was dedicated to public use through the recording of plan 2103 then we'll go up Deerwood Drive to the property. As I said, the details are on the plan and they will be further modified to meet the city's concerns.

One of the issues I saw a letter from the Airport Authority. They raised some concerns relative to what I'll call a taxi road that in part abuts this property. The access road is within a public way. Public rights still exist. You can't adversely possess against public rights. So to the extent that they'd have a concern about people using that road, I think the suggested course of action was to seek to discontinue or partially discontinue another portion of Deerwood Drive. This Board has discontinued portions of Deerwood Drive. More specifically if you go further up beyond the north fork of Blood Crossing Road which was another Class VI, there was a portion up there that is shown on several plans as having been discontinued by the 1980s. I'm not sure the exact date but it was by the mid 1980s of Deerwood Drive. That would end the public servitude over that portion of the road and clear that up. The likewise if there was a concern about getting access to that road either from my client's property or something like that, there is an opportunity for them. They can speak to them. The general law in the State is each owner owns the centerline of the road. They could speak to my client or whoever owns the property at the time about getting an easement for a fence or something of that nature or it could seek to just purchase that half of the road. There are options available to them.

Likewise to the extent that they have an interest in the property, my understanding a question had been put to the airport approximately five years ago. At the time, they did not have an interest. If they have an interest now, they are free to come and ask about buying it. I don't think my client has any particular objection to anyone coming in and putting in an offer to purchase the property or to inquire about it.

So with respect to their concerns, there are a practical ways of dealing with it but number two, I don't think that the fact that they would like to buy the property is really grounds to deny relief here. Without this relief, there is basically no reasonable use left to this property. You can't get a building permit. It basically stays or has to stay as empty property which you know the notion in the State is everyone has a right, a constitutional right to use and enjoy their

property and that is what we're looking to do here. Again, the proposal is rather modest. We're looking for looking for permission for a single family home.

The last thing I would note when we went to the Planning Board and got their favorable recommendation, the Conservation Commission brought up some concerns about effects on conservation restrictions on neighboring properties. Obviously, the city has setbacks that keep development from immediately going next to those properties. However, we would be willing to discuss with them what I will call "an additional setback" if that's what's needed around those sides of the property to further protect the conservation restrictions so that they don't need to worry about the same. I think in nutshell, that is sort of what we have to say. If the Board has any questions, I'd be happy to answer them.

Chairman O'Brien

Thank you Counsel for your presentation.

I'm going to ask that your hold off and to members of the Board to hold off particular questions for now. Keep in mind the flavor of the meeting is supposed to allow the citizens so we'll go continue with the testimony in favor and in opposition. But immediately following after we convene this meeting, we're going into the Committee of Infrastructure meeting where this will be discussed by that particular Board. We'd like to have you join us for that meeting if you could do so.

Daniel Muller, Esquire

I will. Thank you.

Chairman O'Brien

Then I think members of the Board will have questions at that time.

Daniel Muller, Esquire

Okay.

Chairman O'Brien

Thank you, Counselor. Thank you.

All right. We're still on testimony in favor. Anybody else would like to stand? Yes, please come to the mic.

TESTIMONY IN FAVOR

Frank Goodspeed

Hi. My name is Frank Goodspeed. I'm 120 Walnut Street and I'm a Nashua native and I've lived there all my life. Thank you guys for doing what you're doing. I appreciate it. Everybody can hear me okay, right?

Jean Adams the person who owns this property, she's owned it for 30 years. She's 80 years old. It's a beautiful area. If you know the area at all, you're going down Indian Rock Road, you get to Blackfoot which takes off to - I mean you've got some beautiful houses out there ranging from \$600,000 to like a million something.

She asked me, what can we do with this parcel? I've dealt with real estate for over 40 years off and on and I said well to Jean you have just under four acres land - 3.7 acres land in Nashua right down in that area. The long and short of it is after we met with the engineer, he said listen you don't want to change the character of the neighborhood which we're not doing. I think we're going to enhance it with putting one house there.

The other issue was he said well, you know, it abuts 150 acres. To me, that's a great piece. You're abutting 150 acres. Your view was of conservation land. I think one of the issues that people confuse here is that to get to this, everybody thinks its conservation land. Her piece is conservation land because they've been walking by it all these years, you know, enjoying the views and so forth. There's some confusion there. It's her land. It's her land and there was other mentioned that it was wetland. There's no wetlands here. The engineer, and by the way, he said a family

emergency and couldn't be here this evening. But we did that right at the beginning to see if there was any wetlands on this piece. There's no wetlands on it at all.

So I, again, you had the ex-Attorney General of the United States of America who lived down the road. We're not trying to change the character of the neighborhood. One household. That's all I wanted to say. That's why I'm in favor of it. Okay. Thank you.

Chairman O'Brien

Thank you, Sir. Again, I'll call for any testimony in favor. Going once, twice, sold America. Okay. I will now terminate testimony in favor and open up testimony and opposition. If somebody wants to speak in opposition, this is your opportunity to come forward.

TESTIMONY IN OPPOSITION

Holly Hardt

Hello. Thank you for having me. My name is Holly Hardt. I live in 17 Massasoit Road, Nashua. I am the abutter to this property. I did present a letter to each one of you. I don't know that any of these subjects are going to be addressed tonight. I hope that they are.

But first of all what I do want to address these two certified letters that were addressed to my husband. I went to pick them up and I could not because he's deceased, and I couldn't get his signature. I was told that I was told that the reason they were addressed to my husband is because the notifications get sent out by the assessor's card. So in doing a little bit of research, it didn't make sense to me. I searched the GIS records and everything and my name is on that but I checked on the assessor's record and my husband's name is still on that too. So if you do a search in Google, it brings you right to the GIS and basically it tells you on the GIS use the interactive tool to zoom in, zoom out, pan, measure, and find abutters, etc. So I would think that this is how you would go about notifying an abutter instead of the assessor's record card.

My second concern is that if this project is done, you're going to open up Massasoit Road down to Deerwood. Are those boulders going to be removed? My concern is this is going to turn into an access road right over to Amherst Street. You don't know how many people come down there thinking from their GPS that this is Deerwood. So they wanted to go around the other way. So there's going to be a lot of people going through that access way.

And the third thing that does concern me is the right of passage. Who can use that road? Can the public use that road? Can the public drive down that road? Can the public walked down that road? There was a much concern at the Zoning Board that the no parking signs and the nobody can be using it because it's gonna be a private driveway. So it's just - everything is just so up in the air and there's not a lot of answers to the questions. So hopefully tonight I can get some answers and also my neighbors can get some answers to. Thank you.

Chairman O'Brien

Ms. Hardt before you go, I'm sorry you had some difficulty. Are you familiar with the City of Nashua's website through the Assessing Department and you can bring up the municipal GIS portion of it?

Holly Hardt

I'm familiar with the GIS.

Chairman O'Brien

Which would list yourself as an abutter.

Holly Hardt

I am listed on the GIS but not on - if you click on the assessor's link, my husband's name is still on that.

Chairman O'Brien

Okay. I hope you and I'm sure...

Holly Hardt

Hopefully it will catch up but for future, perhaps maybe using this instead of the other because it seems like the assessor's card is not catching up with the GIS.

Chairman O'Brien

They're usually very good people. I'm sure if you talk to the assessors, this sounds like a solution is in hand.

Holly Hardt

Thank you.

Chairman O'Brien

All right. Thank you.

Chris Lynch

Good evening. Chris Lynch, 500 Main Dunstable Road. Also, the Airport Manager speaking in opposition of this project. I sent a letter out to the Board of Aldermen and it states that we have serious security and safety concerns if we were to open up this road.

Essentially, this road is out in the woods, out in the middle of nowhere, and abuts our property. We are not the City of Nashua. We leased this property from the City of Nashua. So I wasn't even notified as Miss Hart wasn't notified as an abutter. I get it. We don't own the property. The city does. She let me know this was all going on. Immediate concerns our security, people getting through the fence out back, we can't patrol the fenced in area out in the woods all the time, and then we have some critical infrastructure out there in terms of navigation equipment. We have a precision approach that goes to runway 14 and part of the components of that system go right across the road on Deerwood. I know that the Attorney spoke a few minutes ago about a portion of the road a little further down where it is actually discontinued and that's where all of our equipment is but there's nothing that would prevent anybody from continuing beyond Miss Adams property and venturing down into our critical ILS approach infrastructure. So those are some of our biggest concerns and I know that there was discussions about no parking, etc. at the zoning meeting, people loitering there at night. Again, we can't patrol that area constantly and it is an airport. We have serious, you know, security concerns.

On another note, one of the things I'm tasked with is protecting the airport environment. We strongly discourage, the FAA discourages it, the DOT discourages it building residential properties abutting an airport. It's never a good thing. I actually went online the other day and just type that in and you will have hundreds of pages of different cities and towns that have been through this and they all realize the same thing. It's not a good thing. We are zoned Airport Industrial. We're not a residential neighborhood, residential property. We generate a lot of noise and some people would say its constant noise. There's air traffic and where this property is, it's located right within the air traffic pattern. So they'll be subject to that constant noise. Some of the Board of Directors asked that, you know, I let everybody know that and that there should be disclosed to any potential buyers of that property.

As an example on the other end of the airport on Pine Hill Road, we're actually engaged in an agreement right now to purchase a piece of land on Pine Hill Road because somebody bought it and they planned on developing a single family home on it. Again, it directly abuts the airport. After a few meetings with the developer, he agreed it's not a good place for a home, and we've agreed to buy it, and we're negotiating that right now. If I could negotiate to purchase this property from Miss Adams, we would. I'm not in a position to do that right now. We're carrying too many projects right now at the airport. In the letter I sent out, I would urge the City of Nashua who actually owns the property, the airport property, to consider acquiring that piece of property. I'll cut it short. Thank you.

Chairman O'Brien

Thank you, Mr. Lynch.

Again, I'll open up where in testimony in opposition. Anybody else would like to come forward?

Alan Doucet

Hi. My name is Alan Doucet. I'm at 12 Massasoit Road and I'm only going to keep it short but I'm here to support both Mr. (inaudible) and Miss Hardt in their concerns and things just don't seem to make sense especially with the items that have been brought up. That's all I have to say.

Chairman O'Brien

Thank you, Sir. Brevity is always the best. Thank you.

Again, we're in testimony and opposition. Anybody else would like to come forward?

Julie Stanton

Hi, good evening. My name is Julie Stanton. I'm a neighbor of Holly at 15 Massasoit Road. I actually wasn't planning on speaking today but just listening to the testimony by Mrs. Adams' representative, I'm just a little puzzled actually about how we all got here thus far.

In the initial hearings that we had with the Zoning Board, I was very surprised that this had continued with it being, I guess, not on conservation land but abutting conservation land. Additionally, I purchased my home in 2005 just three years after Miss Adams did. I purchased that home and under the assumption that there would be no more buildings built. Very surprised, again, that we're here at this stage of the game. Again, they mentioned that the engineer wasn't here. I don't see any visuals. I haven't seen any visuals about this. I don't know. I'm very unclear of what actually is going to happen. What's going to be built where actually it is and I just live, you know, two houses up. This is a beautiful neighborhood. I understand the want to build here but is it best for the neighborhood? Is it best for the community? I don't think so. That's all I have to say. Thank you.

Chairman O'Brien

Thank you very much. Again, we're in testimony for opposition. Anybody would like to come forward? Seeing no one, I will close the testimony in opposition.

I will now very shortly open up testimony in favor. I will allow you to speak again but please refrain it to something that is earth shattering or will help us make the decision. You all were very eloquent in your first presentation so I think we got the gist.

So enough said, I will say testimony in favor. Anybody would like to come forward? Counselor.

TESTIMONY IN FAVORDaniel Muller, Esquire

Thank you Mr. Chairman. I will keep it brief. The only thing I'm going to actually sort of speak to is there's this concern about precedent in the area. If you take a look at the GIS map, there is actually very little opportunity for further development in this area. Most of the lots in this area are subject to conservation restrictions. The conservation restriction because there was just for an explanation for some in the audience who brought it up. It's basically an easement or a covenant that goes on a piece of property to make sure that it isn't developed. A lot of those in the area are like that.

In terms of going up and down, my memory looking at the GIS, I'm hoping it is accurate, as I said if you go north, you're going to hit the airport access road. I actually understand right now that there are cement blocks that sort of block the road going north to where it's discontinued. To the south, there really isn't that much in the way of land that would be developable. There's an odd triangular piece south of the intersection of Massasoit and I believe that you saw the GIS it shows the road ending along that area. So we're talking, again, about a very limited opportunity for development in this area just because you have this one over three acre lot. Thank you.

Chairman O'Brien

Thank you Counselor.

Okay, again, open up for testimony in favor. Seeing none.

TESTIMONY IN OPPOSITION - None

Chairman O'Brien closed the public hearing on the Petition at 7:31 p.m.

ADJOURNMENT

MOTION BY ALDERMAN COMEAU THAT THE JUNE 28, 2023, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED

ON THE QUESTION

Alderman O'Brien

I would like before we take a vote on that, I would like to invite the public. You are welcome. We're going to go right into the Infrastructure meeting. You're all welcome to stay with us.

MOTION CARRIED

The meeting was declared adjourned at 7:31 p.m.

Attest: Alderman Alex Comeau