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November 18, 2015

Fritz Green, Planning Board Chair
Town of Madbury
13 Town Hall Road
Madbury, NH 03823
via e-mail only: fritz.green.bari@gmail.com

RE: Pamela Curran
Bunker Lane Condominium Unit 33
(Proposed Site Plan Review to replace single-wide unit with double-wide)

Dear Fritz:

Upon receipt of your Tuesday, November 17, late afternoon e-mail, we spoke by phone. I was inclined to agree with Jack, but wanted to confirm through some relevant research whether the Bunker Lane Park condominium form of ownership constituted a multi-family housing development over which the Planning Board does have Site Plan Review jurisdiction.

Having done some research this morning (as well as review some Bunker Lane Registry of Deeds information on-line to understand its current status), I agree with Jack. The Planning Board does not have jurisdiction to consider Pamela Curran's Site Review Application.

Jack's memo refers to RSA 674:43,I, which is a grant of power to the Town of Madbury (presuming it adopts a Zoning Ordinance, Subdivision and Site Review Regulations . . . which it has) for its Planning Board to review, approve or disapprove Site Plans "for the development or change or expansion of use of tracts for non-residential uses or for multi-family dwelling units." The statute specifically defines multi-family dwelling units "as any structures containing more than two dwelling units, whether or not such development includes a subdivision or re-subdivision of the site."

While the Bunker Lane mobile home park condominium is, in essence, a multi-family land use in general, I have found no other relevant NH law (under my general planning or condominium research) allowing this multiple lot condominium to be considered "multi-family dwelling units" for purposes of the Planning Board's jurisdiction under RSA 674:43. The statutory definition quoted above is precise. In Bunker Lane, all the structures are single family dwelling units. By a condominium amendment, uses are specifically restricted to structures that contain no more than three bedrooms.

Bunker Lane is clearly a residential use. Its structures are not multi-family dwelling units, so, consequently, the Planning Board has no jurisdiction to consider a Site Review Application concerning a unit's (lot's) change.

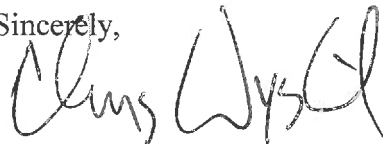
Reviewing Madbury's Zoning Ordinance, the condominium units (lots) do fit Madbury's Zoning Ordinance definitions of both "lot" and "lot of record." The lots are nonconforming. Consequently, under Article XIII, Section 3A, the replacement of a structure with another twice its size is an intensification of the use because the intensification increases interior living space by more than ten percent of the original structure. This section of the Zoning Ordinance thus requires the applicant to apply to the ZBA for a Special Exception under Article XV, Section 2.

Under Article XV, Section 2, Subsection B is applicable. Among the criteria for the ZBA to consider is whether or not the Planning Board has granted Site Plan Review approval. Because the Planning Board has no jurisdiction, the ZBA should acknowledge that and indicate that this particular criteria is not applicable to the current application. The ZBA may properly consider the remaining criteria and grant or deny the Special Exception as it sees fit.

I don't think any amendment to the Zoning Ordinance is called for. Certainly we can imagine facts dealing with nonconforming lots and uses where, in Article XIII, Section 3, reference to the Article XV, Section 2B Special Exception need might require both Planning Board (Site Plan approval) and ZBA approval. In a case like this where the Planning Board has no jurisdiction, the ZBA simply needs to acknowledge that (and the Planning Board not do anything, because it has no jurisdiction as a matter of State law, which trumps the Zoning Ordinance).

Call me if you have any questions.

Sincerely,



Christopher A. Wyskiel

CAW/nl

cc: Robert Sterndale, for Madbury Board of Selectmen
Donald Sylvester, ZBA Chair
Jack Mettee
Eric Fiengenbaum

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