

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – November 19, 2012

Call to Order: Chair Denis Hebert called the November 19, 2012 meeting to order at 6:29 PM.

Present: Mike Marconi, Vice Chair; Patty Borkland; Bernie Christopher; Dick Spinney; Board of Selectman Representative, Rick Stern (arrived at 8:30 p.m.); Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Jack Pare and Alternate Member, Peggy Lamson

Public Guests: Jane & Michael Mazeau; Attorney, Bernie Pelech; Kathleen & Joe Akerley; Dave Hislop, Knight Hill Surveying; Konstantin Routetski; David Vincent, Land Surveying Services; Nancy (Berounsky) Anderson; Michael Berounsky; John Frink

1) Public Hearings:

A) Proposal by **Michael & Jane Mazeau** for lot line adjustments and a subdivision that would convert two lots into five lots at 124 Fox Point Road, Tax Map 11, Lots 13 & 14

Vice Chair, Mike Marconi recused himself due to phone contact on the case by Attorney, Bernie Pelech counsel for the Mazeau's.

Attorney Pelech informed the Board that he, the Mazeau's engineering consultant, Alex Ross, Town engineering consultant, Eric Wientreib with Altus Engineering, and Town Planner, Tom Morgan all met to review the plans, questions and revisions. Attorney Pelech said he had sent all easements and deed documents to Town counsel for review as well.

Attorney Pelech then proceeded to go through each waiver request. Tom Morgan said the subject of waivers had gone to Supreme Court, and applicants were required to provide their reasons for hardship, and record them in the meeting minutes. Discussion and motions ensued as follows:

1. Requesting a waiver from conforming to the Master Plan due to wetlands particular to the site, with variances granted by the BOA.

Board Chair, Denis Hebert asked specifically why they were asking for the waiver, and Attorney Pelech said it was in response to Tom Morgan's assessment. Mr. Morgan said the 10-foot strip for frontage on Lot 14-7 doesn't comply with the Master Plan. Chair Hebert said, unfortunately, a variance for the lot was granted, despite the

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word “shall” which dictates obedience to the rule unless no other alternative could be found to solve a hardship.

Patty Borkland moved that the Planning Board need not take action on the Mazeau subdivision waiver request #1 because the Board of Adjustment had already granted a variance. Bernie Christopher seconded, and all were in favor.

2. Seeking a waiver from Section 6A, water supply to offer the option of a private well to future owners of Lot 14-6 due to length of driveway and necessity of crossing pond berm, with relief given under Section 4E because of topographical conditions peculiar to the site.

Patty Borkland moved to approve the applicants’ request to offer the option of a private well to future owners of Lot 14-6. Dick Spinney seconded and all were in favor.

3. Seeking a waiver from Section 5P to use 4’x4’ granite monuments along street, and reference pins on all other property lines, as well as setting drill holes and placing granite boundaries at corner of Lot 14-8 and 14-9, and corner of Lot 11-13 and Lot 14-8 due to boundary falling in middle of rock wall.

Tom Morgan commented that the request for granite monuments and pins seemed no different than what had already been discussed and approved. Chair Hebert asked how big the rocks were, and Dave Hislop with Knight Hill Surveying said they could be moved with a bar, making them between 300-400 lbs. Chair Hebert said the intent for markers is to prevent them from being moved at all, but he would accept the waiver if the Board accepted it.

Bernie Christopher moved to approve a waiver of granite boundaries at the corners of Lot 14-8 and 14-9, and corner of Lot 11-13 and Lot 14-8 to avoid disturbance of a rock wall. Patty Borkland seconded and all were in favor.

4. Seeking waiver from Section 4D which requires a bond to cover cost of any damage to streets and utilities, as construction will be on driveways with single service connections to all lots with exception of electrical service to Lots 11-13 and 14-8, which will share common transformer.

Attorney Pelech said the utilities would service private property lots, and no construction for utilities were on any public streets. Tom Morgan said the utility plan showed utilities crossing a Town road in three places, and past experience taught them that the Town would need assurance that the road would be restored to its original

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condition if disturbed. Michael Mazeau said he thought the bond required for the excavation permit with the Board of Selectmen would cover that.

Mr. Morgan also pointed out that the conduit dimensions on the utility plan don't line up with regulations, which stipulate 4 inches. Mr. Morgan asked what size of the conduits being proposed would be, and Michael Mazeau said he thought they were 4 inches. Chair Hebert said he was shown a utility plan showing 3-inch conduits, and he would need a letter from PSNH showing their approval. adding that the Board had only received an email from a field technician with no reference that the plan meets all their requirements, so the Board still required a signed letter from the chief engineer with PSNH as requested. Board member, Patty Borkland said she also noted an email, not a signed letter from Fairpoint.

Patty Borkland moved to approve a waiver from Section 4D requiring a bond be posted to the Planning Board because a bond would be posted to the Board of Selectmen with the excavation permit. Bernie Christopher seconded and all were in favor.

Tom Morgan said he couldn't find the shutoff for Lot 14-7. Michael Mazeau said three 1-inch lines were in the same trench. Chair Hebert said the law requires separate shutoffs. Mr. Morgan also said Town engineering consultant, Eric Weintrieb recommended that the wetland boundaries be flagged with permanent markers. Attorney Bernie Pelech said there were markers, but permanent markers were not listed as part of the requirements. Chair Hebert said Pelech was correct, but they are still a good idea.

Patty Borkland asked about the deed and easement of Lot 14-6, and the 10-foot strip for frontage. Attorney Pelech said there is an exclusive landscape easement for the strip, and the owner cannot plant trees or construct a fence there.

Tom Morgan asked who owned one of the culverts that appeared on the shared driveway, and Dave Hislop said it fell on the lot line. Chair Hebert said it would need to be moved one way or the other onto private property. It was agreed that it should be on Lot 14-8.

Mr. Morgan also noted that the driveway for Lot 14-7 is depicted with a 25-foot difference in different locations on the Hislop and Ross plans. Michael Mazeau said they had moved it so it wouldn't shine into the Watson's windows. Chair Hebert said the two plans needed to be in agreement to avoid future lot disputes, and so that the curb cut applications would be in agreement to the plans.

A motion was made to approve the curb cut application for a common drive for Lots 14-9, 14-8, and Lot M11, L13, dated 11/13/12, seconded by Bernie Christopher and then withdrawn for further discussion and amended as follows:

Patty Borkland moved to accept all 11/13/12 applications for curb cuts on Tax Map 11 as shown on Knight Hill Surveying plans. Bernie Christopher seconded and all were in favor.

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A brief discussion ensued whether to approve the subdivision prior to corrections to the plans as requested. Attorney Bernie Pelech said they wouldn't be able to record the plan until they had received a letter of approval from the Board anyhow, but would appreciate not having to attend another meeting.

Discussion ensued regarding having a Town representative like engineering consultant, Altus Engineering, or the Town building inspector. Tom Morgan said this subdivision would be one of the first shared driveways that the Board has approved of recently, and that experience is showing from other projects that there can be problems with construction and erosion control for instance when there is no inspection. Mike Mazeau asked why inspection would be required for a private property owner building a driveway, and Chair Hebert said a private property owner building his own driveway would look out for his own interests, but the builder of a driveway shared by others may not be so inclined. Hebert said inspection would only be a necessary during critical points of the construction. Hebert asked Tom Morgan to make an inquiry with the Town building inspector about doing the inspection.

Patty Borkland moved to approve the Mazeau subdivision of two lots into five lots at 124 Fox Point Road, Tax Map 11, Lots 13 & 14 contingent upon the receipt of a signed and dated letter from chief engineer with PSNH, that 4" conduits be used for all utilities, that the culvert shown on the lot line be moved to private property, that the water shut offs be shown on the utility plan, that the nine easements and deeds refer to the last plan, that Note 17 on the plan be a stipulation to approval, and that there be an inspection of the common drive, and utilities. Bernie Christopher seconded and all were in favor.

B) Proposal by **Kathleen Akerley** for a 2-lot subdivision at 325 Fox Point Road, Tax Map 9, Lot 2; and a proposal by Kathleen Akerley and Charles & Jan Stuart for a lot line adjustment at 311 Fox Point Road, Tax Map 10, Lot 24.

Dave Hislop with Knight Hill Surveying presented his plan for the Akerley subdivision. Board Chair, Denis Hebert asked if they had a curb cut application, and Mr. Hislop said he did not, but the curb cut was on the plan. Tom Morgan said it was the same plan as shown during the previous meeting, which had been okayed except for septic approval from DES which had just come in.

Mike Marconi moved to approve Kathleen Akerley's proposal for a 2-lot subdivision at 325 Fox Point Road, Tax Map 9, Lot 2; and a proposal by Kathleen Akerley and Charles & Jan Stuart for a lot line adjustment at 311 Fox Point Road, tax Map 10, Lot 24. Dick Spinney seconded and all were in favor.

Chair Denis Hebert asked about the location of the curb cut, and how far it was from the lot line. Dave Hislop said it was about 30 feet from the lot line, which meets requirements.

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Mike Marconi amended the above motion to include approval of the curb cut as shown on Knight Hill Surveying revised October 20, 2012 plan. Dick Spinney seconded and all were in favor.

C) Proposal by **Konstantin & Lilia Routeski** for a 2-lot subdivision at 17 Swan Island Road, Tax Map 53, Lot 15.

David Vincent with Land Surveying Services noted that the Town had already accepted the road deed, the Board had already approved a curb cut, the test pits had been done and witnessed by the Town representative, and the City of Portsmouth Public Works had supplied a letter approving water. Mr. Vincent showed the Board the subdivision plan which included a pork chop strip for frontage. Board Chair, Denis Hebert replied that the Town doesn't allow subdivision curb cuts on primary roads to prevent traffic from backing onto main streets, and that there are also trees along the road that make visibility poor. Town Planner, Tom Morgan added that Newington Road is a State road. Mr. Vincent confirmed that they would then need to make the curb cuts on Swan Island Road.

Nancy (Berounsky) Anderson, sister of Michael Berounsky owns the property near Great Bay, which abuts the Routeski lot. Anderson who sold the land to the applicant said her parents, Henry and Sophie Berounsky originally bought the land for their family in 1991, and came to the Board with a subdivision proposal and were turned down. The property was then sold to her, and she in turn sold the property to the applicant; but there were covenants and restrictions recorded in the Rockingham County Registry of Deeds with a 30 year duration that could be renewed each year for a period of 10 years without notice, and she and her brother would like to support the intentions of the covenant to protect the property. David Vincent said he did a search and found no such covenants or restrictions in Book 2880, Page 2399. Nancy Anderson said Book 2843, Page 2311 dated 6/21/91 specified maintaining environmental conservation and character, and Book 2880, Page 2390, dated 6/29/12 specified there were to be no subdivisions, but she was not able to provide all of the pages of the documentation.

Bernie Christopher asked the applicant if he was aware of the restrictions at the time of purchase, and the applicant said he was not and hadn't intended to subdivide at that time. Nancy Anderson said she thought the realtor would've made sure the buyer was aware, but Mike Marconi said that would be the responsibility of an attorney who did the title search, not the realtor's responsibility. Bernie Christopher and Mike Marconi both said they had looked at the property when it was up for sale and were made aware of the covenants by the realtor, however. Chair Hebert recommended they do a title search on the deed and restrictions, which seem to disagree, and said they would need to consult with legal counsel. Dave Vincent said covenants are civil matters and are not a zoning issue under the Planning Board's jurisdiction. Chair Hebert said the Planning Board would not be able to resolve the issue and would need legal counsel to review. Tom Morgan said Town counsel would want copies of all documents from both parties.

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Nancy Anderson asked why the Board would not accept a subdivision proposed by her parents in 1991, but consider one now. Patty Borkland suggested that Swan Island Road was a private driveway at the time, not a Town owned road, and there was not enough frontage for a subdivision. John Frink said he recalled that Henry Berounsky wanted a family owned driveway, but they had to turn it into a Town owned road. Mike Berounsky agreed.

Mike Marconi moved to continue the public hearing on the Routetski subdivision proposal at 17 Swan Island Road, Tax Map 53, Lot 15 to next month, Monday, December 10, 2012. Patty Borkland seconded and all were in favor.

D) Proposed Amendments to Article XI of Zoning Ordinance

1) Setbacks for Signs in Residential District

Discussion ensued, and John Frink of the Darius Frink Farm on Nimble Hill Road agreed that allowing signage to be 10 feet from the road would improve visibility over 40 feet, though he expressed concern that many of the rural roads in Town are lined with stone walls and trees, and the shoulder depth and right of way varies from place to place. Mr. Frink said even 10 feet would require cutting trees in some places for visibility. Frink suggested it might be more practical to place signs on property lines instead.

Dick Spinney agreed that some signs cannot be read when passing, but added that he wouldn't want to require a new survey be done for every sign application. Board Chair, Denis Hebert also agreed that the edge of pavement shifts, and would prefer to see signs placed at the edge of the right of way. Town Planner, Tom Morgan said the right of way is 20 feet from the pavement, and asked John Frink where his sign is currently placed. Mr. Frink said it is in the right of way to make it visible outside of tree line. Board of Selectmen representative, Rick Stern said that is an example of why individuals would request relief from the BOA. Chair Hebert said he would be concerned that signs be tastefully done, and not impede traffic visibility, especially on corners, and Tom Morgan said the ordinance states that they are not to impede traffic so would advocate their placement be 20 feet from edge of pavement.

Chair Hebert announced that the proposal would continue at the next scheduled meeting on Monday, December 10, 2012.

Discussions:

A brief discussion ensued regarding the need for a backup representative to attend BOA meetings if there were a conflict of interest. Chair Hebert said felt strongly against applicants going to the BOA without going to the Planning Board first, and therefore felt it important to have a Planning Board representative attend BOA meetings. Hebert said he would ask Jack Pare, but would attend himself if no one would be willing to attend. He said he would also like to propose a joint meeting with the BOA.

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Rick Stern moved to have Jack Pare appointed as a BOA alternative representative, but if he is not willing to serve, then Board Chair, Denis Hebert would attend. Patty Borkland seconded and all were in favor.

There was brief discussion of the TWA construction site at 521 Shattuck Way concerning erosion control, possible runoff to Great Bay, and traffic safety with construction vehicles. Chair Hebert said they can follow through with legal counsel and have the right to pull their construction permit if they are not complying.

Patty Borkland moved to request Town engineering consultant, Altus Engineering and Town Building Inspector visit 521 Shattuck Way to see if they are following site plans and to report back to the Planning Board. Bernie Christopher seconded, and all were in favor.

New Business: Planning Board's 2013 Budget

The Board reviewed last year's budget and made adjustments that for the following year, which would be presented at their Budget review in December.

Mike Marconi moved to approve the amended budget with a total of \$75,650. Bernie Christopher seconded and all were in favor.

Minutes: ***Patty Borkland motioned to approve the Planning Board Minutes for October 22, 2012. Mike Marconi seconded the motion, and all members voted in favor.***

Adjournment: The meeting adjourned at 9:30 p.m.

Next Meeting: Monday, December 10, 2012

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary