

**Town of Farmington
Planning Board Meeting Minutes
Tuesday, July 17, 2018**

Board Members Present: Chairman David Kestner, Vice Chairman Martin Laferte, Secretary Bill Fisher, Selectmen's Rep. TJ Place, Stephen Henry, Charlie King, Rick Pelkey

Board Members Absent: Brandy Sanger

Others Present: Town Administrator Arthur Capello, MMRG Executive Director Patti Connaughton-Burns, Michelle Flynn, Debbie Leary, Robert Leary, Surveyor Randy Orvis, Surveyor Stephen Perron, Rod Thompson

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman Kestner called the meeting to order at 6 p.m.

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Meeting Minutes:

June 19, 2018 – Page 2, 9th line from the bottom- strike "said" after "Mr. King".

Page 6, 18th line from the bottom-add "a" before "storm"; 12th line from the bottom- strike "the" before "some".

Motion: (Fisher, second Pelkey) to accept the minutes as amended passed 6-0-1 (Laferte abstained).

Correspondence:

Mr. Capello said he was sitting in for the Town Planner and that he did not have any correspondence to share with the board.

Recess:

Motion: (Laferte, second King) to take a 15 minute recess passed 7-0 at 6:15 p.m. The meeting reconvened at 6:33 p.m.

Public Hearings: 6:30 P.M.

CONTINUED CASES:

Application for Site Plan Review by: Joseph and Janet Gray (Tax Map R18, Lot 005); for property located at 36 Brown Road. The applicant is proposing to establish a commercial organic farm. The parcel is located in the Rural Residential (RR) district. - CONTINUED TO AUGUST 21, 2018

Application for Minor Subdivision by: James Woodman (Tax Map R57, Lot 13-1) by Randy Orvis/Geometres Blue Hills, LLC as agent: To subdivide the existing 17.28 acre parcel into two (2) parcels. The property is located in the Agricultural Residential (AR) District. Minimum lot size is three (3) acres and minimum frontage is two hundred fifty (250) feet. Applicant is requesting a waiver of Subdivision Regulations Section 4 "Definitions"- definition of street frontage. Parcel is located at 1173 Ten Rod Road. Proposed lots, R57, Lot 13-1A and R57, Lot 13-1B. Lot 13-1A will become 8.57 acres and Lot 13-1B will become 8.71 acres.

Surveyor Randy Orvis said the application for this project was submitted in 2016 and at the last public hearing the board asked that his design be sent out for review by the Town engineer or to have an engineer design the plans for the project. He said they then hired a civil engineer from Norway Plains to design the plans and to provide the cross section the board requested. He said new staff came into the Planning Office and they found that the definition of street frontage in the Subdivision Regulations is different from the one in the Zoning Ordinances and the applicant was advised to get a Variance from the Zoning Board of Adjustment.

Mr. Orvis said he applied for an Appeal of Administrative Decision with the ZBA which was granted last month. He said the ZBA agreed that the zoning does not require that the frontage must be all on one street and if you add up all of the distances there is 300' of frontage on each lot which meets the zoning requirements.

He said a waiver of the definition of street frontage is still needed because the Subdivision Regulations say the 250' frontage must be on one street. He said the zoning determines the dimensional requirements for subdivisions and the Subdivision Regulation is de facto zoning without a vote of the town. This also puts the board on notice that there is a conflict with the definitions and a resolution should be considered in time for the next Town Meeting he said. Mr. Orvis then asked for a conditional approval of the application as the previous conditions requested by the board have been met.

Mr. King asked if the Planning Board was provided with a copy of the decision made by the ZBA. Mr. Kestner said the Planning Board did not receive a copy of the ZBA decision as requested and that Mr. Fisher, who is also a ZBA member, just informed him of their decision. He said that he just took part in a conference call with Mr. Capello and the Town Attorney who attended the ZBA meeting.

He asked Mr. Fisher to give the board a summary of what occurred at the ZBA meeting.

Mr. Fisher said there is a discrepancy between the zoning and the planning requirements and based on that and the discussions with the Town Attorney the denial of Mr. Orvis' request was overturned by the ZBA.

Mr. King asked what the administrative decision that was appealed stated.

Mr. Capello said the decision was a denial for the subdivision based on lack of road frontage. He said that there is a direct conflict between the zoning and subdivision regulations. The zoning regulation states that the road frontage required can be on multiple roads and the subdivision

regulation states it has to be all on one road.

Mr. King asked if the ZBA recommended that Mr. Orvis seek a waiver of the subdivision regulation from the Planning Board.

Mr. Orvis said because it is a subdivision regulation he has to request a waiver.

Mr. Capello said the ZBA is not allowed to make recommendations and can only grant or deny overturning the administrative decision.

Mr. Fisher said the ZBA agreed there is a conflict and granted the appeal so he could proceed through the normal process with the appropriate boards.

Mr. Pelkey asked if the ZBA said there was conflict in the zoning ordinance and told Mr. Orvis he had to come to the Planning Board.

Mr. Orvis said he had to come back to the Planning Board to finish the process.

Mr. Capello said based on zoning the plan meets the regulations but based on the subdivision regulation the plan does not meet the requirements.

Mr. Henry asked if that means that subdivision regulations don't have the force of law but the zoning regulations do.

Mr. Capello said that either regulation could be appealed and defended but that ultimately a judge would have to make that decision. It does have the force of law and the board is within its rights to accept or deny the waiver of subdivision regulations and if it went to court then the court would decide the issue he said.

Mr. Orvis said his understanding of state law is that zoning sets the dimensional requirements and that subdivision regulations are how the zoning is administered. Subdivision regulations do not set the dimensions he said.

Mr. Henry said the proposed road is being built to accomplish some of the frontage needed.

Mr. Orvis said they are not asking for any waivers to the road requirements. It will be a private road but it still must be built to Town specs he said.

Mr. Kestner said the plan to construct a "hammerhead" road to Town specs will administer the additional frontage for the subdivision in the Agricultural Residential District.

Mr. King asked how much frontage was lacking from each lot without the hammerhead.

Mr. Orvis said the total frontage for the property was approx. 480' so there is less than about 20' of frontage needed.

Chairman Kestner said that Mr. Orvis did his due diligence on behalf of his client and pointed out the difference between the zoning ordinance and the subdivision regulations. He said they have seen this issue before and it is not out of the board's realm.

Mr. King said this is something that needs to be addressed in the zoning and that although it is not badly abused in this case the interpretation of the regulation could get "ugly".

Chairman Kestner said the Planner will present the proposed regulation changes to the board and they will then discuss it and decide if any changes are needed. He said it would be best to have the requirements the same in both places so everyone can read it plain and simple.

Mr. Orvis said it would be fairly simple to fix the conflict. In Alton their zoning says for corner lots there must a minimum frontage on at least one street and in other towns their zoning says you must have 250' of frontage on both streets he said.

Mr. Henry said if they were to require that the 250' frontage has to be on one road that would require the applicant to build a dead end private road.

Mr. Orvis said the applicant would have to build a longer street than what is planned to get that amount of frontage.

Mr. Henry asked how society would benefit from that requirement and that it would cost them more money to build a dead end street.

Mr. King suggested it would have been better to go for a Variance to the frontage requirement if there were only a few feet missing from the required amount.

Chairman Kestner said the application was previously accepted as substantially complete and the public hearing portion of the meeting was left open from November 2016.

He then opened the hearing for public comments/questions at 6:52 p.m.

Mr. King said based upon extenuating circumstances based upon a conflict between the ordinance and the regulation he offered the following motion:

Motion: (King, no second) to grant the waiver;

Chairman Kestner said the attorney advised the motion should contain specific wording.

Mr. King withdrew his motion.

Chairman Kestner said based upon these unique circumstances we the Planning Board can either grant or deny the waiver as written.

Motion: (Kestner, second King) to grant the waiver as proposed of Subdivision Regulations, Page 3, Section 4 "Definitions"- definition of street frontage passed unanimously.

Mr. Orvis said the total frontage to the lots was 484.05 feet making it 16 feet short of the frontage requirement.

There were no comments/questions from the public present.

Chairman Kestner closed the public comment portion of the hearing at 6:55 p.m.

Mr. King said there is an existing dwelling on one of the lots and asked if the other lot being subdivided is for sale.

Mr. Orvis said he believed the applicant intends to build a house on the lot and rent or sell it.

Mr. King asked when the hammerhead road will be installed.

Mr. Orvis said he assumed the road would be installed before he obtains an occupancy permit for the new home or by whatever conditions are set by the board.

Mr. King said there have been past situations where the road wasn't built correctly or the driveways weren't abandoned, etc. so there needs to be some conditions to this approval tied to the Building Permit. The last thing you want is for this lot to be sold to a stranger who doesn't see the plan and suddenly there is a problem for Code Enforcement he said.

Mr. Capello suggested it be tied to the Certificate of Occupancy instead of the Building Permit

because you don't want to give final approval and then have trucks and heavy equipment running over the road.

Mr. King said it will only be a dirt road.

Mr. Orvis said it will be paved because it is being built to Town specs which call for the road to be paved.

Mr. Henry asked if all private roads in town now have to be paved.

Mr. Capello said if the road is built to Town specs it must be paved unless the board waives the requirement.

Mr. Orvis said they are not asking for a waiver of any of the Town specs for the road.

Mr. Henry agreed that the condition of approval be on the Certificate of Occupancy due to the use of the road by the heavy trucks.

Mr. King said that the house could be completed, someone could start living there and the road ends up not be built. He said they could require that the base work for the road be completed before the Building Permit is issued and that the final road work is completed before the Certificate of Occupancy is issued.

Discussion included other conditions of approval such as a street sign, a STOP sign, compliance with the E-911 system and a street number for dwelling.

Mr. Orvis said the street name has been approved by the E-911 system and suggested that a street sign be made a condition of approval as it is not included in the Subdivision Regulations. Chairman Kestner said the street sign should also designate the road as a private road.

Mr. Henry asked why the board would require them to designate the road as private.

Chairman Kestner said to differentiate a private road and a Town road in "black and white".

Mr. Capello said one benefit would be if the lot is ever sold the buyer would know they are buying on a private road.

Mr. Henry said that wasn't a significant enough benefit to society for the board to require it.

Chairman Kestner asked the board if there were any other conditions they wished to include.

Mr. Fisher said the applicant has met all of the other requirements previously set by the board and that it would be unfair to add additional conditions at this time except for the road to be finished before a new home is occupied.

Mr. Henry asked if there is a curb cut now on what will be the second lot.

Mr. Orvis said there is a barway in the wall that went into the field and there is a note on the plan that says the existing gravel driveway will be discontinued.

Mr. King asked how the board could be assured that the first driveway for the existing house will be abandoned.

Mr. Capello said the board could make it a condition of approval that the Certificate of Occupancy won't be issued on the new house until the first driveway is abandoned.

Mr. King asked what would happen if the parcel of land gets sold to a third party and the new owner decides that he doesn't want to abandon the driveway.

Mr. Capello said there would be recourse through the court system as that was one of the conditions of approval of the subdivision.

Mr. King said the Town has not done so in the past by the Code Enforcement or the Town calling people to task and asked how they would do it in this case.

Mr. Capello said it would be up to him to make sure the Code Enforcement Officer called the owner to task.

Mr. King said the hammerhead is the problem of the house to be built not the existing house. The current owner of the existing house sells out to a new owner and the new owner could say they don't feel like complying with the condition. He asked how they would tie the condition back to the parent lot.

Mr. Orvis suggested they tie it to the road construction and the inspection of the road.

Mr. Henry asked if the lot remains as one lot if there is anything to prevent the second house from being built on the lot anyway.

Mr. Capello said the entire lot as it is now does not have enough road frontage to meet the zoning regulations to build 2 houses on it.

Mr. Henry then asked if the subdivision has to go through before they can build another house.

Mr. Capello said that is correct.

Mr. King asked if the current driveway is paved.

Mr. Orvis said it is not paved and is steep and that one of the reasons the applicant wanted to do the new road is to give him a better grade to enter Ten Rod Road.

Mr. Henry asked how they would define "abandoned".

Chairman Kestner said the plan states that the existing gravel driveway is to be discontinued, reseeded and barricaded to prevent continued use as part of the construction of the proposed road.

Mr. Henry asked if it is stated on the plan if that makes included as one of the conditions of approval.

Mr. King said it makes it part of the conditions but enforcement has to come with when it will be required.

Mr. Henry suggested it be tied to the Certificate of Occupancy to allow a place to park while the construction is going on.

Motion: (King, second Henry) to approve the application for Minor Subdivision by James Woodman based upon the following Conditions of Approval:

1. Base work of hammerhead road to be installed before Building Permit is issued;
2. The roadway will be finished and the existing driveway will be abandoned and blocked per the plan before a Certificate of Occupancy is issued;
3. A street sign giving the road name and designating it as a private way to be placed per Town staff.

Vote: The motion passed unanimously.

Recess:

Motion: (Laferte, second Kestner) to take a 5 minute recess passed 7-0 at 7:15 p.m. The meeting reconvened at 7:25 p.m.

Mr. Capello left the meeting at 7:15 p.m.

NEW CASES:

Application for Minor Boundary Line Adjustment by Robert & Deborah Leary: Property #1: Map R57, Lot 2-1: Robert & Deborah Leary owners; -14.49 acres; Property #2: Map R57, Lot 2-2; Robert & Deborah Leary owners; +2.63 acres; and Property #3: Map R57, Lot 2-3; Robert & Deborah Leary, owners; +11.86 acres. The three lots are in the Agricultural Residential (AR) District.

Surveyor Steve Perron said these 3 properties are all abutting properties and are all owned by the Leary's. The large lot, Map R57, Lot 2-1 has frontage on Meaderboro Road and Hornetown Road and is currently 153.54 acres and the proposal is to reduce it to 139.05 acres with no reduction in road frontage on either road. He said that 77.12 acres of this lot is subject to a conservation easement by the federal government through the Natural Resources Conservation Service (NRCS).

Mr. Perron said there is a proposal underway to add an additional 61.93 acres into a conservation easement which will be held by Moose Mountains Regional Greenways so that leaves the whole 139.05 acres proposed to be Lot 2-1 as all conservation land. The only structure there is the old saw mill which is no longer in use he said.

The 14 acres that is proposed to be annexed to the next 2 lots consists of: Lot 2-2 which is currently 9.03 acres located on Russell Lane which is a Class VI road which goes out to Ten Rod Road and is the lot where the Leary's residence and the sugarhouse are located. They propose to add 2.63 acres to make it a total of 11.66 acres he said.

Lot 2-3 is on the other side of Russell Lane and is currently 2.78 acres. The proposal is to add 11.86 acres to the lot bringing it to a total of 14.64 acres. He said there are no new lots planned and the proposal is to make Lot 2-2 and 2-3 larger.

Mr. King asked if the only structure on the properties is located on Lot 2-2 and if there are any houses or driveways on the other lots.

Mr. Perron said Lot 2-2 has the Leary's house, there is nothing on 2-3 and on Lot 2-1 there is an old saw mill on the northeast corner of the property on Hornetown Road. There are no other residences on the other lots he said.

Mr. Pelkey asked if Lots 2-2 and 2-3 will be split by the Class VI road.

Mr. Perron said that is correct and that they will be bounded by Russell Lane.

Chairman Kestner asked for an interpretation between sheet 1 and sheet 2 of the plan as there is a Class VI road shown on sheet 1 but no Class VI road shown on sheet 2; Lot 2-1 is mentioned on both sheets but there is a Map R57, Lot 3 (Kenneth and Celeste Leary owners). The two sheets don't seem to jive with each other and are tough to put together he said.

Mr. Perron pointed out on the map that the line down the middle of Lot 2-1 is the existing easement line for the existing federal conservation land and is not a boundary line. The Class VI road comes off Ten Rod Road onto the northern end of property and goes through all 3 lots out to Meaderboro Road he said.

Mr. Kestner said on sheet 2 there is only a general property location with no tie-in to Ten Rod Road for the Class VI road.

Mr. Perron said the Leary's property does not go out to Ten Rod Road.

Mr. Kestner said he was aware of that but with a locust map there should be some type of tie-in depicted on the plan.

Mr. Perron said the locust map does show where the property is in relation to Ten Rod Road and the location sketch shows how the property is blocked by Ten Rod, Hornetown and Meaderboro Roads and then pointed out the location of Russell Road.

Mr. Perron said Lots 2-2 and 2-3 just have frontage on Russell Lane. That is the existing condition and will not change he said.

Chairman Kestner opened the hearing to questions/comments from the public at 7:25 p.m.

Ms. Connaughton-Burns said Moose Mountains Regional Greenways will be accepting the new conservation easement and approved of the proposed lot line adjustment as it makes a lot of sense as it was so carefully marked out around the existing stone walls when it was completed.

Mr. Thompson said he is an abutter to the Leary's and that he fully supports what they are doing. I think it's a great idea he said.

There were no other comments from the public.

Chairman Kestner asked the board if there were any other issues or concerns with the lot line adjustment that they wished to address.

Mr. Pelkey thanked the Leary's for putting their property into a conservation easement. It is a beautiful piece of property and it is great that it will be preserved like that he said.

Mr. King asked if there are any lien holders that had to be notified and give their consent to proposal.

Mr. Fisher said there is no block to check for the existence of lien holders and if so, that proof of their consent has been provided.

Chairman Kestner said the wrong form was completed by the applicant once again.

Mr. Leary stated there are no liens on the property.

Mr. King said he wanted it stated for the record as often there are lien holders who must give their consent to the changes. He said he would accept Mr. Leary's statement for the record and if there are lien holders he will be the one with the problem.

Mr. Pelkey said there have been some changes made to the forms by the Planning Dept. and that question is supposed to be on the forms for this purpose.

Mr. Leary said he will stop by the Planning Dept. office and fill out the correct form.

Chairman Kestner asked Mr. Leary to sign an affidavit or a statement that there is no lien holder

to the 2 parcels that are being adjusted and give it to the Town Planner to be become part of his case file so if there is ever a question in the future the information has been provided.

Motion: (King, second Henry) to approve the lot line adjustment as proposed with the condition that Mr. Leary bring down a written statement that there are no liens on the property;

Chairman Kestner closed the public comment portion of the hearing at 7:40 p.m.

Vote: The motion passed unanimously.

Mr. Perron asked if the board sends a set of plans to the Registry of Deeds for recording.

Chairman Kestner said Mr. Perron should provide a set of plans to the Town Planner and that when he receives the actual Mylar copies of the plan he will sign it and they will be forwarded to Mr. Perron for recording. He suggested that Mr. Perron check with the Town Planner for the proper procedure for recording the plans.

Adjournment:

Motion: (Laferte, second Place) to adjourn the meeting passed 7-0 at 7:45 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in dark ink, appearing to read 'D. Kestner', is written over a horizontal line.

David Kestner, Chairman