

**Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, November 27, 2018**

**Board Members Present:**

David Kestner, Chairman  
Bill Fisher, Secretary  
Stephen Henry  
Rick Pelkey  
Charlie King

**Board Members Absent:**

Martin Laferte, Vice Chairman, excused  
TJ Place, Selectmen's Rep., excused

**Others Present:**

Dan DeSantis, Town Planner  
Danielle Harris, Steven Luger, Steve  
Labbe, Doris Bernadette Labbe

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Chairman Kestner called the meeting to order at 6:05 p.m. He said this meeting was rescheduled from Nov. 20, 2018 due to the snow storm.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Minutes:**

**November 6, 2018** – Page 4, 8<sup>th</sup> line- add "said" after "Arnett"

**Motion:** (Fisher, second King) to accept the minutes as amended passed 4-0-1 (Pelkey abstained).

**2019 Planning Board Meeting Calendar:**

Chairman Kestner noted there will be no workshop meetings on 1/1/19 (New Year's Day), 7/2/19 (Independence Day) and 9/2/19 (Labor Day). He asked the board if they had any issues with the calendar as presented.

Consensus of the board was to accept the 2019 Public Hearing and Workshop Meeting Schedule as presented.

**Review of Proposed Ordinance Changes:**

The board reviewed the proposed changes to Section 3.01 Relationship of Buildings to Lots, Section 1.14 Definitions: Street Frontage, Section 1.14 Definitions: Accessory and Section 2.00 Base Zoning Districts: Principal Uses.

Mr. DeSantis requested that the board schedule 2 public hearings on the proposed ordinance amendments and suggested the first public hearing be held at the next meeting in December. Chairman Kestner said the public hearing dates must be properly publicized and held before the Jan. 15, 2019 deadline.

Some members suggested that one public hearing on the ordinances be scheduled for each of

the second board meetings in December and January.

Mr. Kestner asked about the definition of Street Frontage on page 2 of the handout. He read the proposed definition aloud and suggested they add "lot line" before "shall be deemed the frontage street" in the second sentence.

Mr. DeSantis agreed with Mr. Kestner's suggestion. He recalled a previous case where the applicant's agent found that the definition of street frontage did not match in the Subdivision Regulations and the Zoning Ordinances.

Mr. Pelkey asked if by making this additional change if they also need to change the definition in the Zoning Ordinance.

Mr. Kestner then read aloud the definition of street frontage on page 28 of the Zoning Ordinance.

Mr. Pelkey asked if the Zoning Ordinance mentions the front lot line of the street right-of-way limits.

Mr. DeSantis said he did not know.

Mr. Kestner said the issue was with the Subdivision Regulations not matching the Zoning Ordinance. He then read aloud the definition of street frontage as found on page 3 of the Subdivision Regulations. He said if they are going to match the Subdivision Reg.'s to the Zoning Ordinance they need to match verbatim and that is not what we have here.

Mr. DeSantis said they can change both to include the words "lot line".

Mr. Kestner noted that the second sentence in the Subdivision Regulations definition includes "only one shall be designated by the Planning Board as the frontage street" which is missing from the Zoning Ordinance definition. He suggested that the Subdivision Regulation definition be brought over to the Zoning Ordinance verbatim.

Mr. King said that ideally there should be a 100% match but there may need to be a change to both of them if the intent is not 100% clear. The Zoning Ordinance change must get approved at Town Meeting and once that is approved the Subdivision Regulation could be changed to match it by posting for 2 hearings about the change he said.

Consensus of the board was to agree with Chairman Kestner's suggestion that the Subdivision Regulation definition be brought over to the Zoning Ordinance verbatim.

Mr. King said that under Section 3.01, Relationship of Buildings to Lots (page 1 of the handout) it says for the purpose of this section, the lot must meet all dimensional requirements for subdivision and asked if they could develop a checklist for these lots to make sure that the staff adequately addresses all of the requirements. On some of these items the staff may have to tell the applicant that they have to prove that it meets the requirement and they may be requested to provide specific evidence such as for contiguous uplands or wetlands delineation he said.

Mr. DeSantis said it would not be a problem to create the checklist.

Mr. Henry asked about Section 3.01(B) where it proposes to change the word "buildings" to "structures". He said a structure could be a swing set.

Mr. DeSantis said this wording change was suggested by the Town Attorney.

Mr. King asked if they should add the word "dwelling" to read "dwelling structure".

Mr. Henry said this section pertains to the Commercial/Industrial zones so the buildings would not be considered dwellings and that a structure could be something that is not a building.

Mr. King asked if the ordinances contained a definition of "structure".

Mr. Kestner said the Zoning Ordinance (page 30) defines a structure as "anything constructed or erected on or in the ground, or an attachment to something having a fixed location on the ground including permanent or temporary buildings, carports, porches and other building features including stacks and antennas. This definition shall not include sidewalks, fences, driveways, septic systems, utility poles or lines, boundary markers, flagpoles or retaining walls. He then said a swing set is a structure.

Mr. Henry said he thought it was a bit restrictive that a daycare facility in that zone could only have their building and a swing set.

Mr. King suggested they seek advice from the Town Attorney as to whether they need to revise the definition of "structure" or if they should use different verbiage in Section 3.01 (B).

Mr. DeSantis reminded the board that they are under a timeframe.

Mr. Fisher said they can't put the wrong things out to the public, timeframe or not.

Mr. DeSantis said this came from the Attorney and that he trusted her.

Mr. Fisher suggested it was possible the Attorney didn't think about their definition of structure when making her suggestion.

Mr. Henry said it could include a roof over a picnic table in a break area or a gazebo.

Mr. DeSantis said he would contact the Attorney and discuss the issue with her.

Mr. King said that the staff should make whatever changes are needed and then put it out as the public notice posting as it can be amended at the first public hearing if needed.

Mr. Kestner said this issue came up before the Zoning Board of Adjustment and there is an explanation for each change at the bottom of each page of the handout.

Mr. Henry said the issue before the ZBA involved a residential lot not a commercial lot.

Mr. King said that Section 3.01 is inclusive of all the different zones in town.

Mr. Pelkey suggested it may be better to use buildings than structures in this case.

Mr. King said a salt shed for a parking lot could be considered a building and that the intent of the ordinance is to limit 2 commercial/industrial buildings on a lot so that still may be unclear. He said a salt shed with a lean-to to park the plow is an accessory structure and not a primary structure.

Mr. DeSantis said the ordinance says "principal structures".

Mr. King said the definition is not clear enough.

Mr. Henry asked if someone could have as many accessory structures as they want.

Mr. King said maybe they should add "principal structure" to the definitions section.

Mr. Pelkey said there is also a discussion about "principal uses" in the proposed amendment to

Section 2.00 Base Zoning Districts. He said that a principal structure has to address the principal use for the lot.

Mr. King said that the explanation under the proposed amendment to Section 1.14 Definitions: Accessory states that "This is to make the terms consistent throughout the ordinance where "principal use" and "principal structure" are already defined in the ordinance; "primary" is not defined".

Chairman Kestner said the definition of "principal structure" is included in the Zoning Ordinance (page 27) and read the definition aloud which states it is a structure intended for the principal use of the lot and does not apply to those structures that are clearly accessory and incidental to the principal use.

Mr. Henry said that addresses his concern and agreed to the use of the word "structures" as the proposed amendment to Section 3.01 (B) as long as the word "principal" remains with it.

**Motion:** (King, second Fisher) to move the changes listed forward to a Public Hearing passed 5-0.

#### **PUBLIC HEARING – 6:30 P.M.**

##### **NEW CASES:**

**Application for Minor Subdivision by: Doris Bernadette Labbe (Steven Luger, Agent)** to subdivide 15.38 acre lot into four lots, one with existing house, Lot 2-1 1.904 acres; Lot 2-2 1.329 acres; Lot 2-3 10.651 acres and Lot 2-4 1.495 acres. Property located at 139 Governors Road, Map R16, Lot 002-0001; Rural Residential zone.

Property owner Doris Bernadette Labbe and Surveyor Steven Luger came forward to discuss the application with the board.

Mr. Luger said the plan being presented at this meeting was before the board back in 2012 and that according to the original Surveyor the application was approved but the plan was never signed or recorded.

Mr. Luger said they did some topography and additional wetlands location at the site. He said they did not do the topography all of the way to the back of the site but the site is pretty consistent. He said all of the lots meet or exceed the Subdivision Regulations, all have 30,000 sq. ft. of buildable area and the bounds have been set for the lots.

He said there is an existing well for the house shown on Lot 2-4 and that originally they planned to keep the well with Lot 2-4 and give an easement for Lot 2-1 which is the current house lot.

Mrs. Labbe has now decided she would like to keep the existing well with the house and they will need to create a 75' well easement for Lot 2-4 so some of the notations will need to be changed. If approved, the proposed well shown on the back of the lot will have to be put somewhere on Lot 2-4 he said.

Mr. Luger said that whenever a well easement goes over a property line the state requires a well waiver which is recorded at the Registry of Deeds. The waiver says that the lot owner has

75' on someone else's land and they can do anything, including installing a septic system within that area, not that we want that to happen he said.

Chairman Kestner asked if this "blows out" the proposed Lot 2-4.

Mr. Luger said it does not necessarily prohibit plans for the lot as he thought they could move the well to a point where the 75' well radius will have some easement on Lot 2-1.

Mr. Kestner said that there was a change in the Subdivision Regulations in 2016 regarding well radius placements. He directed Mr. Luger to the Subdivision Regulations, Page 27, Section I, #2 Well Radius Placement and read that each newly created lot shall show the entire well radius protection area, the entire required well radius shall be located within the boundaries of the lot served by the well and that well radius easements covering neighboring parcels are not permitted in new subdivisions. Because the subdivision was never recorded it is considered a brand new subdivision he said.

Mr. Kestner said that Lot 2-4 also does not meet the required configurations and noted that the applicant came forward with a waiver because someone must have made them aware of the change to the requirement for lot configurations requiring them to be rectangular and not contorted (Page 6, Section 6 B Lots, F).

Mr. Luger asked if it is possible to get a waiver from this requirement.

Mr. Kestner said it is possible if the board members choose to do so. He said he thought the bigger issue is that they want to keep the existing well for the existing house on an adjacent parcel and that is not allowed by the regulations. He said that is why he advised them to revisit the issue of removing the triangular lot from the plan if they want to keep the well for the existing house.

Mrs. Labbe asked if she were to drill a new well for the existing house and sell Lot 2-4 as a rectangular open lot if that would be acceptable to the board.

Mr. Kestner said the reconfigured lot would need to have the well radius kept within the proposed lot. That is only if the board members are willing to waive that section of the Subdivision Regulations. We currently do not have a well circle on Lot 2-4 as to whether a well would be able to fit in there along with a house he said.

Mr. Luger said it may be possible to move the planned location of the septic system back to accommodate a drilled well on that lot.

Mr. King said the board made these changes in 2016 because they were seeing lots that met the requirements but didn't render a lot of useable land for the buyer. With the issues of where are you going to site the well, the septic system and the house because of its irregular shape you need to prove to us that it will be able to be built out in a reasonable manner without problems such as the well radius on another property he said.

Mr. Luger said most of the lot is usable with the exception of a small area at the rear of the lot. Mr. King suggested one additional waiver is needed because the entire lot is not delineated for the topography and wetlands.

Mr. DeSantis said that he was concerned about the potential for creating a major subdivision should Lot 2-3 come back to the board to be further subdivided in the future. He suggested the board consider asking the applicant to agree to a deed restriction prohibiting further subdivision of Lot 2-3 so that it doesn't become a major subdivision.

Mr. King said the board has accepted waivers to providing the topography on large parcels of land because it wasn't part of the subdivision. He said that as for Mr. DeSantis' concern, it is true that they have seen large parcels that will have multiple subdivisions over a period of time. Mr. DeSantis said that he did not understand why this parcel didn't come before the board as a major subdivision.

Mr. King said it may not be their current intent but it could happen. He said there is a difference in the requirements for the minor and major subdivisions and there are more requirements for major subdivisions but that it's not excessive. He said he was more likely to accept putting a restriction on Lot 2-3 that if it comes back to be subdivided it must be treated as a major subdivision than to require that it not be subdivided.

Mr. Luger said the reason for the proposed configuration of Lot 2-3 is because there is a wetland area coming in just below the 30,000 sq. ft. buildable area. There is probably not a lot of usable land there with the slope and the wetland areas he said.

Mr. King said they are required to show all of that information on the plan unless the board grants a waiver from the requirement.

Mr. Henry asked considering the wetlands and the slope there, if Lot 2-3 would qualify for subdivision in the future.

Mr. King said that it could as it is located in a 1 acre zone.

Mr. Luger said they would probably have to construct a road and determine the amount of the wetland area before further subdividing that lot.

Mr. King said there is adequate frontage now for 2 lots there so a road would not be needed and they would just have to build a driveway. He said it could be subdivided in the future but that is not what is before the board at this meeting.

Chairman Kestner said the board should be more concerned with the triangular shaped lot, what will happen with the well for the existing home, the delineation of Lot 2-2 and where a buildable area for a house would fit on the lot. He said that "wetlands flooding" is noted on the plan for the back of Lot 2-1 by the wetlands scientist.

Mr. King said the applicant needs to figure out what they want to do differently, make the changes and to submit additional information to the board for them to consider it as a viable lot and to include at least one more waiver request. He said it is up to the applicant to present the information to the board with all of the reasons why they should consider granting the waivers.

Mrs. Labbe agreed.

Mr. Kestner said it may be advantageous for them to include the well radius and the buildable areas on all the parcels that are missing it if they plan to continue to go forward. He said they



definitely will need to see the potential house placement for the triangular shaped parcel to be convinced that the lot is usable. He said he believed there are more wetlands than shown on the plan because of the wetland scientist's notes written along the back of the parcels.

Mr. Henry asked if the proposed Lot 2-3 meets the definition of generally square or rectangular in shape or if they need a waiver on that configuration as well.

Chairman Kestner said his interpretation would be that they should be asking for a waiver on that lot too based on the Subdivision Regulations.

Mr. King said that is a sizable lot and it is readily useable.

Mr. Henry said if they need a waiver due to the shape of the lot he would rather let them know now than to "send them packing" again at the next meeting.

Mr. Kestner said the issue of the well is totally against regulations.

Mr. King said in order for him to approve a waiver for the lot in that shape they need to show the well radius and the buildable envelope all on that lot and that it is readily usable. If they can't then he would not be in favor of the waiver he said.

Mr. Luger said he felt it will be possible to put a house, garage, a septic system and maybe a well all within the lot and they will just have to prove it to the board. He asked if they should withdraw their application without prejudice at this time.

Consensus of the board was to continue the hearing on the application.

Chairman Kestner said he did not think the applicant would be ready to return for the workshop meeting on Dec. 4 as it about 1 week away and asked if they would be ready to come back in 3 weeks at the Dec. 18 public hearing meeting. He said that the notes portion of the subdivision plan needs to be adjusted based on decisions they make about what to present to the board.

Mr. Henry asked if the applicant would be required to provide the full wetlands delineation.

Mr. King said he would consider a waiver as he has done with larger parcels in the past.

Mr. Kestner said it may be contingent upon what they decide to do with the potential reconfiguration of the lots. He said he would like to see delineations of the back of the lots as there are a lot of notes that were done by the soil scientist on the original plan.

Mr. King asked if that information was readily available to be added to the plan.

Mr. Luger said it would mostly be a continuation of the wetlands line behind Lot 2-1. He said if it is all wet it would be foolish to go out there to get further topography of the area.

Mr. Kestner showed Mr. Luger where the wetlands were delineated all the way through Lot 2-3 on the plan. He said he interpreted as where the topography wasn't done is wetlands.

Mr. King said he was okay with a waiver for the full delineation of the site as presented to the board but if the larger lot comes back to be subdivided in the future it will have to meet the requirements and desires of the board at that time.

Mr. Pelkey said that Lot 2-3 has an intrusion of wetlands into the middle of lot coming from the top requiring another whole look at the proposed plan.

Mr. Luger said that is why they made that area as one lot and they are not seeing any further

building being done on the rest of the property. He said there is a small upland area there but it is jagged and has wetland intrusions.

Chairman Kestner requested that the dashed lines denoting the wetland flagging be darkened to make it easier to determine the wetland areas on the plan.

Chairman Kestner then asked if a motion was needed to consider the application substantially complete.

Mr. King said he did not think that was necessary to continue the hearing as the application was not opened to a public hearing.

**Motion:** (King, second Pelkey) to continue this hearing until Dec. 18;

**Discussion:** Mr. Luger asked for a copy of the meeting minutes.

Chairman Kestner asked if Mr. Luger had enough information from the board.

Mr. Luger said that other than the waivers, the triangular shaped lot is the most problematic and that they have already submitted a waiver for it. He asked the board to keep the waiver and they will supply the additional information about the buildable portion of the lot, the well and well radius and the septic system.

Mr. Pelkey said the other waiver needed is for the delineation of the topography for Lot 2-3.

Chairman Kestner said the same information is needed for Lot 2-2 as it is not noted on the plan. He said there is only 107 sq. ft. of buildable area noted on the back of the parcel and they are trying to fit in a 75' well radius so 150 feet is needed.

Mr. DeSantis suggested they include the building areas and infrastructure radius for each lot.

Mr. King said that if they change any lot configurations that some of boundaries may need to be re-set.

**Vote:** The motion passed 5-0.

**Correspondence:** None

**Any Other Business before the Board:**

Mr. Pelkey said he was unable to represent the Planning Board on the Downtown Revitalization Steering Committee and asked if another member would take his place on the committee.

Mr. Fisher said he is a committee member and volunteered to represent the Planning Board.

**Adjournment:**

**Motion:** (Fisher, second Henry) to adjourn the meeting passed unanimously at 7:15 p.m.

Respectively submitted

Kathleen Magoon, Recording Secretary



David Kestner, Chairman