

Town of Farmington
Planning Board Meeting Minutes
Tuesday, April 16, 2019

Board Members Present:

Charlie King, Chairman
Rick Pelkey, Vice Chairman
Bill Fisher, Secretary
Stephen Henry
TJ Place, Selectmen's Rep.
Bruce Bridges

Others Present:

Steven Luger
Jack Bielagus
Nick Mason

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman King called the meeting to order at 6:05 p.m.

Pledge of Allegiance:

All present stood for the Pledge of Allegiance.

Review of Minutes:

April 2, 2019 – No errors or omissions

Motion: (Pelkey, second Fisher) to approve the minutes as written passed 5-0-1 (Henry abstained).

Any Other Business before the Board:

Subdivision Regulations Guidance -The board received a memo from the new Interim Town Planner James Burdin requesting clarification and the board's interpretation of some sections of the Subdivision Regulations.

Chairman King asked the members for their thoughts on the following issues:

Section 6.B.1.f (regarding lot shape)- the regulation states lots shall be generally configured as rectangular or square; odd shaped or contorted configurations including joining narrow strips to other parcels to meet buildable area requirements are prohibited; sections i and ii detail the dimensions for zones requiring a minimum building area of 30,000 sq. ft. and 40,000 sq. ft. Mr. Burdin asked for clarification on whether sections i and ii are used to determine if a lot is odd-shaped or if the proposed lot meets the criteria of these sections it is automatically considered a regular shaped lot that satisfies section f.

Mr. Pelkey said f, i and ii are describing what they consider to be a regular shaped lot. He said as he reads it, it says these are the criteria of a regular shaped lot as described. In my opinion if the lot meets the criteria stated in i or ii it is considered a regular shaped lot he said.

Mr. Henry disagreed and said that as he read it, you need to be able to fit the shape of one of those designations inside the lot and if you had a big enough triangle or L-shaped lot you could fit any one of those shapes inside it.

Mr. Pelkey said it also says it must be generally configured as rectangular or square.

Mr. Henry said he understood the question to be if the lot meets i or ii does that mean it is generally rectangular and that he would say a triangle shaped lot is not even though you could fit a big rectangle inside it.

Mr. King said that a large triangular area could contain one of the 3 minimum (buildable) areas. He agreed that it could be considered a regular shaped lot but that "automatically" is the wrong word because it is up to the discretion of the Planning Board at that time. He said this is a general scope and because it is not in the zoning ordinance someone could come in with a lot that is 310' x 80' and the board could determine that is reasonable based on those expectations even though it doesn't meet the "letter of the law". The intent is to have contiguous uplands that are readily usable by the lot owners he said.

Mr. Henry said if someone has a lot that is bordered by roads that go off in different directions they may end up with a triangular piece where the roads meet but it still may be big enough. The Planning Board is going to say given where the roads are you can't make a rectangular lot but it is a reasonable lot. If the intent was to prohibit the creation of unusable lots, the board stays with that by approving the triangle that can fit a rectangle in it and the rest of the lots in the subdivision are generally rectangular he said.

Mr. Pelkey said they don't have to have pass/fail criteria that is written in stone if the board can entertain a waiver on the shape of any piece of property. He said the question is really about who does/does not need to process a waiver with their application and is not about what the board will or won't approve it because they will hear whatever anyone brings before the board. Mr. King said Mr. Henry made a good point because a lot of the larger lots that come before the board have irregular boundary shapes and have readily available buildable uplands. But when you get to the lots with the minimum lot size required such as with the 1 acre requirement in the Rural Residential zone, to have usable buildable lots you are going to have to closely meet these requirements because you wouldn't have a triangular shaped or strip lot there because it wouldn't meet the frontage requirements. As the lot size becomes bigger you have more room to consider it as acceptable he said.

Mr. Pelkey said his answer would be it is considered to be a regular shaped lot if it is generally rectangular and meets the criteria in sections i or ii. If it not generally rectangular shaped and doesn't meet those criteria the application should be accompanied by a waiver request he said. The Planner also asked if the board has any guidance as to what constitutes "odd-shape" and if the provision for a rectangular lot is a literal requirement and that a waiver request would be required for any other configuration.

Mr. Pelkey asked if there is a cost to submit a waiver request with an application.

Chairman King said there is no cost for waivers.

Mr. Pelkey said he would advise the Planner that if he is not sure that the lot meets the requirements to have the applicant include a waiver request and when it comes before the board they can determine if it is needed or not needed.

Mr. King suggested when an applicant submits a waiver request they should state the reasons why their proposal meets the spirit of the ordinance which is to have a reasonable amount of contiguous uplands that is well usable for the next owner. He gave an example of this with the application before the board tonight that has lots that don't meet the guidelines on its face but is attempting to meet the spirit and intent for a quality subdivision.

Mr. Henry asked if the Planner determined that a proposal for a non-regular shaped lot is fine and doesn't need a waiver and the board says they don't want to set precedence and wants a waiver, if the board could still approve the application with the condition of submitting a waiver and doesn't have to see the waiver to approve the application.

Mr. King said they can make it a Condition of Approval stating the reasons for the waiver so the reasons the board gave them consideration to not meet the requirements would be in writing and as part of the meeting minutes. Before it goes to final sign off the waiver must be included in the packet he said.

Mr. Henry said he wanted to be sure that everything is treated the same and that the waiver process isn't onerous and doesn't cost anything.

Section 6.B.1.g (regarding length to width ratio) – the regulation states that the ratio should generally not exceed 4:1; the lot width is not defined in the zoning ordinance or the regulations. The Planner asked the board to clarify the board's practice for determining a single width for lots that have different widths and suggested defensible options would include using the width of the frontage, the lot's widest point, the narrowest point or an average of the widest and narrowest points.

Mr. Henry said he would suggest using the width of the frontage.

Mr. Fisher agreed.

Mr. King said he thought that the frontage could be applied but that this is similar to the last discussion in that it is a size and shape requirement where the board would consider reasonable designs and he did not think it should be a general rule. If it significantly exceeds the ratio then the applicant should request a waiver and give the board the reasons why they should consider it. The 4:1 ratio needs to be a general application and not an exact application he said.

Mr. Henry said he could see the board accepting a lot with a 1:10 ratio because the back three quarters of the lot is wetlands and couldn't be otherwise subdivided.

Mr. Pelkey said he also did not think the board needed to see a waiver for a parcel that is just under the 4:1 ratio either as it is a general requirement.

Mr. King said the Planner's other question asking if this section is a literal requirement so that

any ratio exceeding 4:1 would require a waiver request has already been answered by the board.

Section 6.B.1.h (regarding double frontage lots) – the regulation states double frontage lots shall be avoided wherever possible; if allowed the driveway access for the lot shall be from the street with the lowest traffic volume

The Planner asked for clarification as to whether a waiver is required for double frontage lots or if they are intended to be approved at the board's discretion without submittal of a waiver request.

Mr. Pelkey asked if there is a definition of double frontage lots.

Mr. Fisher gave an example of where a corner lot is fronted by 2 streets and it would have to be determined which one would be considered the frontage.

Mr. Pelkey said the Town does not allow double frontage on lots.

Mr. Henry asked how they would not allow it if it's a corner lot.

Mr. Fisher said that only one side would be designated as the frontage for the lot.

Mr. Pelkey said that only one road or access would be designated as the frontage and that this issue was just redefined at Town Meeting.

Mr. King said if it is a corner lot and 250' of frontage is required the 250' has to be on one side on one road and can't be split up between the 2 roads to meet the requirement. He asked if the zoning updates approved at Town Meeting have been added to the Zoning Ordinances and if the Planner has seen them.

Mr. Henry said the regulation requires the driveway to be on the street with the lowest traffic volume so it could be argued that the frontage also has to be on the street with the lowest traffic volume.

Mr. Fisher said that is the way it leans even with the new definition. He said if someone owned a lot on the corner of Hornetown and River Roads and the property has 500' of frontage on each road and was a double frontage lot, the Town would say that River Road has less traffic than Hornetown Road so the driveway would have to be on River Road when the applicant wants to put it on Hornetown Road. He said when an applicant presents their plan to the board with both sides being equal and without having to do a traffic study we would pick which side would be called the frontage and have him put his driveway there.

Mr. Pelkey said this applies when a lot size doesn't have the required frontage on 1 road so they are trying to get the required frontage by using 2 roads and we don't allow that. The questions have been overtaken by the changes to our ordinances and he (Mr. Burdin) must not have seen them he said.

Mr. King said the regulation does state the driveway access will be from the street with the lowest volume but that is also potentially subject to a request for a waiver. He said a good example of this is if a corner lot is fronted by 2 roads and one of the roads is a private road or a Class V gravel road and the other is a paved Town road. There are instances where the owner

may not want the access on a particular road because it is a dirt road or has a slope or sharp corner and wants to come out on a paved road he said.

Mr. Pelkey added that it enhances the value of a property to come out onto a paved road.

Mr. King said the intent of this regulation is for access management where roads get overly congested and in some cases the board would say they want the applicant to come in on the lower traffic volume road as it makes sense.

Chairman King said he would formulate the board's discussion into an e-mail to Mr. Burdin and then planned to meet with him to explain how the board would like him to proceed.

Recess – Motion: (King, second Henry) to take a 5 minute recess passed unanimously at 6:30 p.m. The meeting reconvened at 6:40 p.m.

PUBLIC HEARING – 6:40 P.M.

NEW CASES:

Amended Minor Subdivision by: Doris Bernadette Labbe, (Steven C. Luger, Surveying Agent)

The applicant requests an amendment to a previously approved minor subdivision. The approval, granted on December 18, 2018. SCRD Recorded Plan #118-001, N.O.D., Book 4629 Page 0577. Amendment to remove parcel known as School House Lot; depicted as Map R-16, Lot 3, +/- .10 acres (4,207 sq. ft.) from original approved minor subdivision. Subject property located at 139 Governor's Road, Map R-16, Lot 2-1, 15.38 acreage. Proposed numbers of lots to remain the same at (3) three; Map R-16, Lot 2-1 to be 5.25 acres; Map R-16, Lot 2-2 to be 3.05 acres; Map R-16, Lot 2-3 to be 6.98 acres.

Surveyor Steven Luger came forward and gave the board a copy of the proposed amended site plan. He said the property owner Doris Labbe went to the Town of Milton and spoke with their Town Planner. She had originally planned to donate the triangular piece of land (at the rear of the lots) that is about 1,000 sq. ft. from the town line and at first they denied her offer and then later decided it would be better to accept the donation than to cut the property up into 3 non-conforming lots without frontage. Their argument was she only pays \$3 in taxes on that 7,000 sq. ft. of land and Milton probably wouldn't make any money on it by the time they got through paying for postage and their staff time so they have given their blessing to this action he said.

Mr. Luger said the only thing being required by the Town of Milton is a note on the plan under the Farmington notes stating that the new lot located in Milton is not a buildable lot because it does not meet Milton's zoning dimensional requirements and that the proper metes and bounds be added to the property line that mirrors the Town boundary so that adequate deed description language may be crafted for the lot. They did not ask for a signature block he said.

Mr. Luger said they have removed the lot known as the "School House lot" and reduced the area on the original Lot 2-1 which is 5.25 acres as presented at this meeting. The other 2 lots have pretty much stayed the same although they are now in new ownership he said.

Chairman King said the Farmington Planning Board did receive correspondence from Milton

Consultant Town Planner Bruce Woodruff regarding their response to the proposed amended site plan and from Farmington Town Counsel Keriann Roman containing her advice to the board on the school house lot and the triangular parcel issues. He said that Att. Roman's interpretation of the proposed conditions is consistent with the notes added by Mr. Luger. Chairman King then asked the board for any questions or comments on the amendments. Hearing none, he opened the hearing to public comments or questions at 6:45 p.m. Mr. Pelkey said asked how they were able to make any determination on the corner piece (School House lot).

Att. Jack Bielagus of Accurate Title said he was representing Doris Labbe and that when she purchased the property they did the title work and the school house lot was not included in the most recent deed or the 2 prior deeds so none of the prior owners had that lot. He said he did not know where it went and when Mr. Luger did the subdivision plan they decided to include it because it made sense and to then "see what everyone feels like".

Mr. Bielagus said that was well and good until that lot was sold and another title company for the bank that was handling the financing said the school house lot couldn't be included because they didn't own it and there was no prior ownership of the lot. He said they researched the lot back into the 1800's and back then there was a School House on the lot. It appears that the land was just left off because of the school and they couldn't find any reference as to who owned it. To satisfy the bank and the title we are here to cut that piece off and we have talked to Town Counsel and gave her copies of our title work showing that the other parcels were clearly owned including the Milton property and that is where we are today he said.

Mr. King asked if the chain of title for the school house lot dropped off in 1892.

Mr. Bielagus said it never really came in and they couldn't find any reference to who owned it and it was never mentioned in any of the prior deeds. He said the bank didn't feel comfortable putting a mortgage on that piece and that is why they are here today. There are people currently living on that property and Ms. Labbe has been very tolerant about working with the occupants he said.

Mr. King asked what happens with this lot now.

Att. Bielagus said he would suggest they talk to Town Counsel about that and that they discussed this with Att. Roman and she understands it will remain an orphan lot. He said there is potential to do something with it in the future but this is what they agreed to with Town Counsel.

Mr. King suggested there may be a case made for adverse possession of the property by the current owner but that takes 20 years to rectify.

Att. Bielagus said it doesn't take 20 years to rectify and the legal principle says if you had unremitted "open and notorious" use of the property for 20 years you could defeat a claim by someone else. He said before the current home was built it was vacant land so no one could make a claim of its being used to claim adverse possession.

Mr. Luger said another issue was that at one time the lots were merged by a previous owner and that is why it was included as one lot for the original subdivision plan. They then learned there was no title to it so now they have to submit an amended plan because that is the only way to unmerge the lots he said.

Mr. Bielagus said there was no paperwork trail of the merger.

Mr. Luger added that none of the deeds included the merger.

Mr. Henry asked if there is still enough frontage for Lot 2-1 (without the School House lot).

Mr. Luger said there is still more than enough frontage for the lot with that piece removed.

Motion: (Pelkey, second Fisher) to accept the application as substantially complete passed 6-0.

Chairman King said Att. Roman's letter contained her recommendations for Conditions of Approval for the amended site plan and it appears that the applicant has fulfilled those recommendations in preparation for this meeting with the amendments made to the plan.

Chairman King asked for any other questions or comments and hearing none closed the public portion of the hearing at 6:50 p.m.

Motion: (Henry, second Fisher) to approve the amended subdivision application with the following conditions: 1). That a statement be added to the plat stating that the new lot located in Milton is not a buildable lot because it does not meet Milton's zoning dimensional requirements; 2). That proper metes and bounds be added to the property line that mirrors the Town boundary so that adequate deed description language may be crafted for said lot;

Discussion: Chairman King noted that both of the Town Counsel's recommendations have already been included on the amended subdivision plan.

Vote: The motion passed unanimously.

Chairman King then signed the Mylar copy of the plan.

Adjournment:

Motion: (Henry, second Fisher) to adjourn the meeting passed 6-0 at 6:55 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

Charlie King, Chairman