

**TOWN OF FARMINGTON
PLANNING BOARD MEETING
Tuesday, October 1, 2013
356 Main Street, Farmington, NH**

Board Members Present: Paul Parker, Charles Doke, David Kestner, Glen Demers, Martin Laferte
Selectmen's Representative: Charlie King
Board Members Absent/Excused: Joshua Carlsen
Town Staff Present: Department Secretary Bette Anne Gallagher
Public Present: Neil Johnson, Randy Orvis

BUSINESS BEFORE THE BOARD:

- **Pledge of Allegiance**

At 6:04 pm Chairman Parker called the meeting to order and all present stood for the Pledge of Allegiance.

- **Review and approve Meeting Minutes of September 17, 2013**

David Kestner motioned to approve the minutes of September 13, 2013 as written; 2nd Martin Laferte. Motion carried with 3 in favor and 3 abstaining.

- **Preliminary discussion regarding Amendment of Conditions of Approval for the Minor Subdivision of Map R38 Lot 8 granted on January 22, 2013**

Charles Doke recused himself and took a seat in the audience.

Chairman Parker said that this preliminary discussion is only for deciding if the board will approve hearing the request at a public hearing and nothing discussed tonight is binding on the Board or the applicants.

Randy Orvis, acting as agent for the applicants, said he had submitted an abutters list with fees so the discussion tonight and the hearing on the application could be held all at the same time at the meeting later in the month but Planner Menici had recommended this preliminary discussion.

Chairman Parker said tonight's discussion was whether the Board would consider hearing the application for amendment at a future public hearing. Charlie King clarified that this request is to amend the condition of approval that states no further subdivision for a period of five years because the subdivision had been submitted as a minor. Mr. Orvis agreed that the condition was imposed because it was a minor subdivision and there was potential for future subdivision.

Mr. Orvis was reminded that at the time of approval he was asked if the five year restriction was acceptable. Mr. Orvis acknowledged that he had agreed but said some financial matters changed and this appeared to be the best way for his clients to raise money.

The Chairman reminded Mr. Orvis that the Board does not take finances into consideration. Mr. Orvis then asked what it was going to take to get this done.

There was disagreement between the Board and Mr. Orvis about the number of lots that were created under the approval. The Board's opinion was that three new lots had been created in the January subdivision and this new request would make it four lots.

Mr. Laferte said in January this year the subdivision had been approved with a 5-year moratorium on any other subdivision and yet 8 ½ months later here is an application to amend the condition to allow further subdivision. Mr. Orvis said money is tight and that is why the applicant wants to subdivide. He added that he had been granted waivers for complete topography and the approval was conditioned on that.

Mr. Laferte read the letter submitted by Mr. Orvis. He said as a retired individual on social security he understands that money is tight but the problem is that the applicant had agreed to the condition in January and now is back for further subdivision.

Mr. Orvis said he would certainly show the topography and potential for future subdivision but would also ask for a waiver of what is beyond the large swamp area. He would show the swamp across both lots and all the remaining uplands that are developable.

Chairman Parker asked if the request was to amend the original approval from January or to consider a new application for the fourth lot. Mr. Orvis explained that the applicant wants to subdivide this lot and in order to do so he would provide the information for which waivers were granted in January. He said that he could not go back because one lot was sold to the neighbor and one was transferred.

Mr. Orvis said that he is asking the Board to consider the new lot and at the same time consider removing the condition from the approval. He said he wants the fourth lot and will provide the information for which the waiver was granted at the time of the January subdivision.

Chairman Parker said that the Board may need the advice of Town Counsel even though they have granted amendments in the past.

Charlie King said that the Board has in the past amended completion dates based upon issues that arose after approval and they have the ability to do this. He said that if his understanding is correct, Mr. Orvis wants to now meet all conditions of a major subdivision. Mr. Orvis said he would still request a waiver of topography across the swamp because it is not practical to cross. Mr. King said the entire delineation must be shown because the property could be transferred at a later date.

Martin Laferte said it appeared to him that the agreement to accept the condition did not mean a lot now that the applicant wants to start over and that is a problem for him.

David Kestner stated that his concern is that this could be considered precedence setting regarding the differentiation of what is major and what is minor. He said that in January approval was given as a minor subdivision and if a fourth lot is allowed he was seriously concerned about repercussions that could arise from other applicants that have unforeseen events. He added that one piece had already gone to the neighbor and Lot 8-2 had also changed hands. He said he was not sure the Board could undo the conditions of the original approval.

Chairman Parker said he had the same concern.

The Board considered how this would be different from other “amendments” to conditions such as an extension of time. It was pointed out that in that example the length of time could be extended but the original condition would still be met.

Mr. Orvis said that he was not asking to do another minor subdivision for one lot but would instead submit as a major. He said the condition he wanted to amend was only required because the original subdivision was submitted as a minor with waivers but it could have been done as a major.

The Chairman stated that this was not the only subdivision that was approved with that condition. Mr. King said if the applicant had applied for a major subdivision the condition would not have been required.

The Board and Mr. Orvis went back and forth on this requirement. Chairman Parker said that the five year restriction on further subdivision is required under the Subdivision Regulations. Mr. Orvis stated that he only agreed to it because five years was not permanent and he wanted the approval but he wasn't sure the condition was legal. However, he was here to find out what it will take to remove the condition so he can come back in for the additional lot.

Chairman Parker said the thirty-day appeal period had passed and he would like to ask Town Counsel if the conditions could be amended after 8 ½ months. Mr. Orvis insisted it could with abutter notification.

The Board discussed with Mr. Orvis that tonight was a non-binding, preliminary discussion and the Board could only consider the change at a properly noticed public hearing with abutter notification. Mr. Orvis said during his discussion on this matter with Planner Menici she had suggested that he could submit both the amendment to the condition of approval and the new subdivision application at the same time. The Board could consider the amendment first and if granted then move on to the subdivision. Ultimately, Mr. Orvis decided to submit the application to amend the condition of approval first and, if approved, move forward with the subdivision application at a separate hearing so that his clients would not be faced with the expense of the subdivision if the amendment was not granted.

Charlie King motioned to consider this matter at a public hearing if the applicant applies for amendment to the conditions of approval; 2nd Glen Demers.

Discussion: Chairman Parker said it would be up to the applicant to decide if he wants to submit an application for the fourth lot at the same time. Mr. Laferte asked for the motion to be restated.

Motion restated: Charlie King motioned to consider at public hearing an application regarding amending the conditions of approval for the prior subdivision; 2nd Glen Demers. Motion carried with all in favor.

Charlie King clarified for Mr. Orvis that he would still meet the time frame for a public hearing at the October 22nd meeting.

Chairman Parker asked if there were any questions to ask Town Counsel. Mr. Kestner said he would like to ask if the Board can amend the condition and if there is a timeline for the amendment. Mr. King said to make sure to ask the question clearly – does the Board have the ability to consider and amend that particular condition of approval.

Mr. Orvis said he is asking to remove the condition and meet the higher standard for a major subdivision.

At 6:50 pm Martin Laferte motioned for a five minute recess; 2nd Glen Demers. Motion carried with all in favor. Meeting reconvened at 7:06 pm.

- **Continued discussion of high density development node**

Chairman Parker said there were three members unable to attend last week's meeting that was chaired by Mr. Kestner and there were a couple of things to bring up for discussion this week.

David Kestner said that Mr. Mettee had questioned whether the residential properties on Route 153 should be included as part of the TIF area because it was not a good mix. He said that those members present did not want to agree or disagree and decided to wait until all members were present to discuss. If the residential area is included either a change to the zoning district or an overlay will be necessary. Mr. Kestner said this was in the approved September 17th minutes and read a portion to the other members.

The Board discussed the options:

- An overlay would give additional flexibility and be more attuned to a commercial business
- Overlays have been used in the past and are easier to implement and easier to change
- An overlay gives the Board flexibility and does not change zoning

- If the overlay becomes obsolete or is not what was wanted it is easier to change
- Not sure why the district goes that far up rather than keeping it within the commercial area
- Adding and subtracting properties within the node would be easier with an overlay

Charlie King felt that the Board was at a sticking point and thought it would be better to have this discussion with Jack Mettee and Planner Menici present.

Chairman Parker polled the Board:

- Keep the TIF district within the confines of what is commercial today to keep it from overflowing into residential areas
- Need to decide where the boundary line should be
- Over time potential for conflict in the overlay district could increase – as an example a resident might want his property to be a drive through Dunkin Donuts because it qualifies under the overlay
- At the last meeting those members present did not want to cause any conflict between residential and commercial
- Look at the Route 153 corridor when it comes off Route 11 – there are a number of businesses there now but also a lot of houses
- Use an overlay district

Charlie King motioned to advise Jack Mettee that the Board prefers an overlay strategy instead of changing the base zone; 2nd Martin Laferte. Motion carried with 5 in favor and 1 opposed.

Chairman Parker asked if there were any other items the Board should discuss. David Kestner said one item was dimensional standards and read that section. He had researched the DOT manual which is extensive and felt the best plan would be for Mr. Mettee to contact Division 6 of the DOT in Durham that has control of the Route 11 corridor in Farmington to get a better understanding of how the DOT sight line distance requirement of 400 feet in each direction works with the Town's regulations.

Mr. Kestner read the section on access management and suggested that it should be in line with what DOT requires. He will give the District 6 contact information to Bette to pass along to Jack Mettee.

Chairman Parker commented that the State is looking to decrease driveway cuts. He said that when the Board discussed access management years back DOT had encouraged communities to make access management plans. He thought the Town's plan was sent to them but was not sure comments were ever received back from DOT.

Mr. Kestner said he wanted Jack Mettee to talk to DOT so everyone was on a level playing field.

- **Any other business to come before the Board**

The members will review the draft of the 2014 meeting schedule for discussion at the October 22nd meeting.

At 7:30 pm Martin Laferte motioned to adjourn the meeting; 2nd Glen Demers. Motion carried with all in favor.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Chairman, Paul Parker