

**TOWN OF FARMINGTON  
PLANNING BOARD MEETING  
Tuesday, June 17, 2014  
356 Main Street, Farmington, NH**

**Board Members Present:** Paul Parker, David Kestner, Charles Doke, Glen Demers

**Selectmen's Representative:** Charlie King

**Board Members Absent/Excused:** Martin Laferte

**Town Staff Present:** Director of Planning and Community Development Kathy Menici,  
Department Secretary Bette Anne Gallagher

**Public Present:** Randy Tetreault, Eben Dorr, John Dorr, Arthur Hoover, Esq., Jill Tozier,  
David Tozier

**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 June 3, 2014**

*Charlie King motioned to approve the minutes of June 3, 2014 as written; 2<sup>nd</sup> Charles Doke. Motion carried with all in favor.*

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

There was no additional business to come before the Board. The Chairman said the public hearings were scheduled for 6:30 pm and asked for a motion to recess until that time.

*At 6:06 pm Charlie Doke motioned for a recess until 6:30 pm; 2<sup>nd</sup> David Kestner. Motion carried with all in favor. Meeting reconvened at 6:30 pm.*

**PUBLIC HEARING - 6:30 pm**

**Application for Special Use Permit by: Eben Dorr, applicant/property owner through Norway Plains Associates, Inc., as Agent (Tax Map R38 Lot 2) for property located on Ten Rod Road. The applicant proposes to upgrade an existing gravel logging road to a subdivision road within the Wetlands Overlay Protection Zone. The parcel is located in the Agricultural Residential (AR) Zoning District.**

Chairman Parker asked Attorney Arthur Hoover if he wanted to make a brief statement. Mr. Hoover said he represents Eben Dorr and prepared the road maintenance agreement. He explained that Mr. Dorr wants to put a single family home on each of the two lots and showed on a simple diagram the proposed configuration. He also pointed out that if the parcel was left as is a duplex could be sited.

Randy Tetreault introduced himself as a surveyor from Norway Plains representing the applicant. He said the applicant came before the Board on a conceptual basis some time ago but at that time the road regulations were a separate document and any waiver of them would have required a variance. Now that the road standards are a part of the Subdivision Regulations and can be looked at on an individual basis, the applicant is back. The project

is within the controlled development zone (250 feet from a water body) where site development is allowed but 100-foot setbacks are required.

Planner Menici said that everything for the three applications was submitted on one plan which created some confusion. She said the wetlands were clearly depicted and a special use permit is required to construct or enhance a road through them. However, upon further review it appears that a second special use permit is needed for the waterfront. As only one special use was noticed the second one will need to be done. Mr. Tetreault disagreed stating that the applicant is not impacting anything more than what has already been permitted and the special use is only for enhancement. He said if a new crossing was being put in he would agree.

Charlie King said as he understood it the applicant would enhance the road and crossing and add the turnaround. Mr. Tetreault said that they would also be adding guardrails at the crossing. He added that there was some confusion at TRC between surface width and traveled way. He submitted photos of the road and crossing as it is now.

Chairman Parker read from pages 102 and 103 of the Zoning Ordinance regarding Special Use Permits.

Charlie King said the applicant is stating that the subdivision is for the purpose of two single family dwellings only but has not submitted any language for deed restrictions. Mr. Tetreault said the approval can limit dwellings to one per parcel and that could be put on the plan.

Planner Menici clarified that there are no power lines on site now and said the applicant needs the additional Special Use Permit due to the power line issue. She read the applicable portion of the Wetlands Ordinance.

Mr. Tetreault asked David Kestner to comment on what the utility would require for the overhead power lines. He said the utility would require the grantor to grant easements. Mr. Tetreault said they were proposing that the 50-foot fee ownership easement stay with Eben Dorr but that it could be conveyed to one of the lots in the future adding that the proposed road agreement gives the right to pass and repass.

Discussion took place about the easement on the separate lot with some members stating that it was not the best proposal.

Chairman Parker reminded the Board that Planner Menici had brought up the additional notice required for waterfront. The Planner said that the Board could proceed with what was in front of them and if the Board moves to approve the Special Use Permit the second permit could be a condition of approval. It would have to be noticed as waterfront and the Conservation Commission would have to review it prior to a public hearing. However, Planner Menici said the Board would have to act on what was in front of them tonight.

David Kestner said the cross sections on C2 and any elevational changes needed to be addressed to reflect the road as proposed. This was briefly discussed but Charlie King pointed out that the road was part of the subdivision application and not the Special Use Permit.

Chairman Parker opened the hearing to public comment and cautioned that anyone wishing to speak could only address the Special Use Permit which allows the existing gravel road to be upgraded from a logging road to a private road for the subdivision.

David Tozier, an abutter, said the pond is a watershed for the Town of Farmington but there is always backfilling taking place and that the access is not a road but a cow path.

Jill Tozier, an abutter, said she was concerned about pollution and water disturbance and that she was the person who originally contacted David Price from DES in 2006 when the wetlands were being crossed for logging without a permit.

Charlie King said the photos presented to the Board showed a cleared area with stakes and asked Mr. Tetreault if that would be the turnaround. He said it was and originally was to be a cul de sac but the T-turn would require less disturbance to the wetlands. He presented a letter from DES that the crossing permit as permitted could be used for this purpose. The letter was accepted into the record.

Planner Menici said the Special Use Permit is only to allow the road and the specifics would be addressed in the subdivision application. She said the applications were getting muddled.

Chairman Parker closed the hearing to public comment.

Charlie King said it appeared that Planner Menici's interpretation that two Special Use Permits are required was correct.

***Charlie King motioned to approve the Special Use Permit for the use specified in the application for the Wetlands Overlay Protection District only; 2<sup>nd</sup> Charles Doke.***

Discussion: David Kestner brought up that some of the cross sections needed to be looked at with regard to impacts along the road and there was brief mention of utility poles. However, the Planner said the Board must focus on this Special Use Permit that was noticed for the Wetlands Overlay Protection District.

***Motion carried will all in favor.***

**Application for Subdivision by: Eben Dorr, applicant/property owner through Norway Plains Associates, Inc., as Agent (Tax Map R38 Lot 2) for property located on Ten Rod Road. The applicant proposes to create two (2) lots from an existing 46.91 acre parcel resulting in lots of 12.63 acres and 14.71 acres; the remainder parcel of 19.57 acres is to be annexed to Tax Map R29 Lot 14. The parcel is located in the Agricultural Residential (AR) Zoning District.**

Randy Tetreault said there are two existing lots of record owned by Mr. Dorr: R29-14 that has 34.9 acres and R38-2 that has 66.2 acres. The 50-foot strip to Ten Rod Road is included in R38-2 and that parcel will be subdivided into two parcels of 12.64 acres and 13.76 acres unless the Board decides to add the 50-foot strip into one of them.

The frontages for these lots on the private road as proposed exceed 250 feet. The remaining parcel of 19.57 acres has frontage on Ten Rod Road. The proposed road will be enhanced at a set width of 16 feet top to top and can be considered as a 12-foot road with 2-foot shoulders or a 14-foot road with 1-foot shoulders.

Chairman Parker read the waiver requests from the Planner's memo.

The application requests the following waivers from Section 9 Paragraph R – Streets and Roads:

1. a reduction in the required width of the traveled way from 16' to 12';
2. an exemption from the requirement that the roadway be paved; and
3. a reduction in the required shoulder width to allow a 1' shoulder width and a side slope of 2:1 where 2' and 3:1 are required. This waiver would apply only in the area of the existing culvert.

The Chairman said they would deal with one waiver at a time starting with #2 – an exemption from the requirement that the roadway be paved. He said that Ten Rod Road in that area is gravel and that staff is fine with a gravel road.

***Charlie King motioned to grant the waiver based upon current conditions; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.***

The next waiver discussed was #1 – a reduction in the required width of the traveled way from 16' to 12'. Chairman Parker said this goes along with #3 which has to do with the water crossing area.

Mr. Tetreault said the proposal is 16 feet top to top up to the area approaching the existing crossing and the crossing itself which would be taken down to 14 feet. He said at TRC the Assistant Fire Chief had no problem with the reduction in width. Planner Menici said she did not think the Assistant Fire Chief understood that the 16-foot width included the shoulders. Mr. Tetreault said Assistant Chief Bonneau had a question on weight but not on the width. The Planner will have Assistant Chief Bonneau clarify.

The Board discussed the proposed reduction in width and shoulder slope. Chairman Parker pointed out that there must be room for two vehicles to pass and a 12-foot travel way would not provide that. Mr. Tetreault said there is an area that is about 20-feet wide that will allow passing but otherwise someone will have to wait. He said they are trying to present the best situation for servicing two single family homes and he felt the road as proposed is reasonable.

Mr. Tetreault said if the applicant wanted to get a building permit for the lot without subdividing he wouldn't need to do anything because the road would meet requirements for a driveway. Charlie King disagreed. He said the applicant is creating a roadway for frontage requirements and under that circumstance should meet minimum local street standards. He said it would be different if the lots already had frontage. He pointed out that there is nothing in the application to show that development is limited to single family dwellings. He said the potential for re-subdividing the lots is high and because of this the private road should meet minimum local road standards.

Mr. Tetreault said he understood that but he is saying there is no difference between this proposal and siting a duplex on the lot. Mr. King said one difference would be that it would not be one owner but strangers. Mr. Tetreault said that if it were brought up to road standards there could be 12 single family homes. Mr. King maintained his position that it is a road not a driveway.

The discussion turned to how the applicant would control no further subdivision to ensure that someone would not take advantage of one of the Zoning Ordinances that allows one dwelling for each three acres on a single lot. Planner Menici said in that circumstance only sufficient acreage is required, not frontage. Mr. Tetreault said in order to obtain a building permit, an owner must show that the homes could be subdivided or CEO Roseberry will not issue a permit. The Planner said that is not what the Zoning Ordinance states and Mr. King suggested that this should be clarified.

Mr. Hoover said he met with Planner Menici and CEO Roseberry last year to discuss the best way to approach subdividing the lot and he read from his letter of December 18, 2013 that the resulting three lots can never be subdivided, there will only be one dwelling on each lot and that this will be put in the deeds and on the plan. Planner Menici said that they also discussed that his client would meet minimum road standards.

Chairman Parker asked if the deed restriction could be changed in the future. Mr. Hoover said it would be difficult because once it is put in place it becomes part of the title to the property.

Charlie King remained firm in his opinion that if the applicant is using the road to create frontage then he should meet the minimum local street standards. Charles Doke said it is somewhat confusing and hard to predict what can happen in the future but he was okay with the recommendations of staff one of which is to get the opinion of the Town's outside review engineer.

The Planner said the staff recommendation was that with the exception of the wetlands crossing the driveway meet the road and driveway standards. Mr. Doke agreed. David Kestner said he was opposed to granting the waiver from 16 feet to 12 feet for the entire width except for the existing DES crossing at 14 feet because the applicant was attempting to create road frontage. Planner Menici clarified that Mr. Kestner wanted the width to be a total of 20 feet top to top or 16 feet of travel way with 2 foot shoulders on each side.

Chairman Parker said he did not like the proposed 12 feet but would consider 14 feet. Mr. Tetreault said there would be 16 feet not 12 feet. The Chairman said he understood what Mr. Tetreault was describing however he was trying to make the shoulders part of the travel way.

Mr. Hoover said if this was a residential driveway with a duplex it would have the same traffic as was being proposed with the subdivision. Mr. Kestner said that the lot does not currently meet road frontage and the applicant is attempting to create the frontage through the private road.

Mr. Tetreault said he did not understand the difference except if the Board did not want the applicant to create an additional lot out of his 60 acres.

There was additional discussion on the requirement for the private road to meet minimum local street standards and that this would create more impact to the wetlands. Planner Menici said the Fire Department should be consulted to make sure they understood the width issue. Mr. Tetreault said granting the waiver for reduced width would have no impact on life safety or fire safety for the two single family homes.

Charlie King said that comparing a shared driveway to a private road was a slippery slope. David Kestner said the Board would be creating a precedent.

***Paul Parker motioned to grant the waiver for the road to have a 14-foot wide travel way with 1-foot shoulders except in the area of the wetlands crossing; 2<sup>nd</sup> Glen Demers. Motion carried with three in favor and two opposed.***

For waiver #1 it was clarified that the reduction in road width would start approximately 12 feet approaching the existing crossing and continue approximately 12 feet to the other side of the crossing.

***Charlie King motioned to grant the waiver to allow a 1-foot shoulder width and a side slope of 2:1 where 2 feet and side slope of 3:1 are required up to 12 feet away from the existing crossing; 2<sup>nd</sup> Glen Demers.***

Discussion: Charlie King said the proposed 12 feet in each direction was okay  
***Motion carried with all in favor.***

***Charlie King motioned to accept the application as substantially complete; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.***

***At 8:08 pm David Kestner motioned for a 5 minute recess; 2<sup>nd</sup> Charlie King. Motion carried with all in favor. Meeting reconvened at 8:15 pm.***

Randy Tetreault said that the proposed lot areas as shown on the second plan sheet depict the septic, wells and building envelopes. The Chairman asked the percentage of wetlands on each lot. Mr. Tetreault said he had not done the wetlands calculation because these are large lots of approximately 13 acres each and the building envelope is shown.

Charlie King said the wetlands on the north side are shown but asked where the high point would be and Mr. Tetreault showed this to the Board adding that the grade of the lot from the T-turn to the building area is about 6 percent and then there are steep slopes that would impact the possibility of further subdivision. The remainder lot that is to be annexed to R29 Lot 14 is basically a cliff.

Charlie King asked the age of the crossing. Mr. Tetreault said the permit date is 2006 and it was amended in 2009. It was constructed with culverts and headwalls. Mr. Dorr said there is maybe a foot of water in a 30-inch pipe and when the water is at its lowest there is maybe 6 inches of stagnant water. During the last hurricane there was perhaps 10 inches of water.

Chairman Parker opened the hearing to public comment.

The Staff memo expressed concern about the building of the roadway and the general consensus was that the Town's contract engineer review the plans and inspect as construction goes along. Mr. Tetreault requested that the Board not use FST but he did not want to discuss his reasons during the public hearing, but would later in private conversation with the Chairman and the Planner. He suggested that his design engineer, Scott Lawlor, could make inspections and provide periodic reports.

Chairman Parker asked Mr. Tetreault if he understood that the firm of Fay, Spofford and Thorndike are the Town's designated engineers. Charlie King said professional oversight was needed and he did not want to task Public Works Superintendent Dale Sprague with this although he should receive copies of the information as construction progresses.

Planner Menici said that if Mr. Tetreault was suggesting that the engineer who designed the road should also have the responsibility she would seriously caution against that. He responded that he would caution against a company screwing up and costing an applicant money and he would not allow FST to be used.

Mr. Tetreault was informed that it was not his choice to make. The members agreed that it was not a good idea to give the design engineer oversight and that Norway Plains would not be used for that reason. David Kestner said that oversight could be determined at a later date and the Chairman added that it needed to be an independent designee of the Town.

Mr. Dorr said he understood the need for some oversight and he just wants to do what is required to get this done.

Planner Menici said the road agreement should go to Town Counsel for review and comment and that could only be done by agreement of the Board. She added that at the same time the deeds should be drafted to allow only one single family dwelling unit per lot and this restriction should be on the plan as well as in the deeds. All review by Town Counsel would be at the expense of the applicant.

Chairman Parker asked if there were any concerns about the road maintenance agreement. Mr. King said it must be approved by legal but he was concerned that the roadway was not attached to either lot but in fee simple. Planner Menici suggested that Town Counsel could comment on that as part of the review. The members agreed to this and also asked that an opinion be given as to which of the lots the road should be attached.

Chairman Parker summarized that the Board was requesting legal review for the easement and the Road Maintenance Declaration and Agreement.

Planner Menici asked the members if they wanted to continue the public hearing until all comments were back from Town Counsel. There was consensus to move forward with the public hearing and any concerns could be addressed as conditions of approval.

Chairman Parker closed the hearing to public comment.

***Charlie King motioned to approve the application for subdivision of R38 Lot 2 to create two lots of 12.63 acres and 14.71 acres with the remainder of 19.57 acres to be annexed to R29 Lot 14 with the following conditions:***

- 1. Add building setback lines to plan;***
- 2. Add elevations to each contour line and show all contours to building areas;***
- 3. Deed restriction to allow one (1) dwelling unit per each newly created lot and no further subdivision;***
- 4. Add to plan as a note #3 above;***
- 5. Review of deed and road maintenance agreement by Town Counsel at applicant's expense and to the satisfaction of Town Counsel;***
- 6. Town's Contract Engineer to review and comment at applicant's expense on Norway Plains memo regarding the culverts' ability to support fire apparatus;***

7. *Construction inspections to be conducted by the Town's Contract Engineer at the applicant's expense; and*
8. *Road to remain a private road in perpetuity as a deed restriction and a note on the plan with language to the satisfaction of Town Counsel.*

*2<sup>nd</sup> Glen Demers. Motion carried with all in favor.*

**Application for Boundary Line Adjustment by: Eben Dorr, applicant/property owner through Norway Plains Associates, Inc., as Agent (Tax Map R38 Lot 2 and Tax Map R29 Lot 14) for property located on Ten Rod Road. The applicant proposes to annex 853,354 square feet (19.59 acres) from R38-2 to R29-14 and to annex 17,317 square feet (0.4 acres +/-) from R29-14 to R38-2. The parcels are located in the Agricultural Residential (AR) Zoning District.**

Mr. Tetreault explained that the lot line adjustment is needed to facilitate the configuration of the parcels in the subdivision and that the approximately 20 acres being added to R29 Lot 14 were basically all steep slopes. Mr. Dorr explained that the cliffs cannot be built on and he wanted to keep them for his own enjoyment. Planner Menici said that staff had no concerns.

Chairman Parker opened the hearing to public comment and closed the hearing to public comment.

*Charlie King motioned to accept the Boundary Line Adjustment application as substantially complete; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.*

*Charlie King motioned to approve the application for Boundary Line Adjustment as presented; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.*

Attorney Hoover reminded the Board to notice the second Special Use Permit. Mr. Tetreault asked if it would be done at the time the poles are depicted. Planner Menici said it should be submitted now to provide for the utility poles within the waterfront area and the application would go to the Conservation Commission and then back to the Planning Board for a hearing after the appropriate public notice. This must be done before the Board gives final approval.

*At 8:52 pm Charlie King motioned to adjourn the meeting; 2<sup>nd</sup> Glen Demers. Motion carried with all in favor.*

Respectfully submitted,  
Bette Anne Gallagher, Department Secretary

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Chairman, Paul Parker