

**PLANNING BOARD
SEPTEMBER 8, 2015 at 7:30 PM
TOWN HALL, 41 SOUTH MAIN STREET**

In attendance:

Members: Kate Connolly, Judith Esmay (Chair), Michael Mayor; Iain Sim; Nancy Carter (Selectmen's Representative);

Alternates: Kelly Dent, Brian Edwards

Staff: Vicki Smith

Others: See Attendance Sheet

1. **MINUTES:** The minutes of August 11th were approved.

2. **P2015-28 SUBMISSION OF APPLICATION FOR MINOR LOT LINE ADJUSTMENT BY HENRY & JUDITH HARJES TO ANNEX 20.2 ACRES FROM 368 DOGFORD ROAD, TAX MAP 9, LOT 40 TO 384 DOGFORD ROAD, TAX MAP 12, LOT 26. BOTH PROPERTIES ARE LOCATED IN THE "RR" ZONING DISTRICT.**

ESMAY read the Notice of Public Hearing.

Tim Rockwood, of Rockwood Land Services, LLC, presented the application. He said the two lots in question, created from subdivisions in the late 1960's, do not meet the minimum frontage requirements. A Variance was sought and granted by the Zoning Board to address the non-conforming frontage lengths. A Wetland Special Exception was also sought and granted by the Zoning Board to place a leach field and associated fill within the 125' wetland buffer area. The location of the proposed septic system is the only location on the lot that can be accessed without having to cross a wetland.

Public Comments/Questions: None

Board Comments/Questions:

- The location of the road frontage for each lot was questioned and pointed out on plans displayed at the hearing.

It was moved by CONNOLLY, seconded by MAYOR, to find application P2015-28 complete. There being no further discussion, **THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION.** DENT and EDWARDS participated as voting Alternates.

It was moved by CONNOLLY, seconded by MAYOR to approve P2015-28 submission of application for Minor Lot Line Adjustment by Henry & Judith Harjes in the RR zone. There being no further discussion, **THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION.** DENT and EDWARDS participated as voting Alternates.

3. P2015-29 SUBMISSION OF APPLICATION FOR SITE PLAN REVIEW, BY CREARE RESEARCH & DEVELOPMENT TO IMPROVE AN EXISTING PARKING LOT (CONFIGURE SPACES, CREATE SEPARATE ENTRANCE/EXIT, RELOCATE LIGHTING) AT 16 GREAT HOLLOW ROAD, TAX MAP 2, LOT 3, IN THE “BM” AND “RR” ZONING DISTRICTS.

Smith said the applicant requested a continuance to the October 6th hearing. DENT said she found the plan submitted in support of this application to be difficult to read and incomplete. It does not indicate the area proposed for paving, location of trees, call out new features, etc. EDWARDS requested a plan of existing conditions. Smith was asked to convey those concerns to Creare.

It was moved by CONNOLLY, seconded by SIM, to continue P2015-29 to October 6th. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. DENT and EDWARDS participated as voting Alternates.

4. P2015-11 CONTINUATION OF SUBMISSION OF APPLICATION FOR MINOR LOT LINE ADJUSTMENT BY JOHN VANSANT, AS AGENT FOR THE TRUSTEES OF DARTMOUTH COLLEGE, PROPERTY OWNER OF RECORD, TO ANNEX 8,920 SQ FT FROM 10 HILTON FIELD LANE, TAX MAP 40, LOT 9, IN THE “NP” ZONING DISTRICT TO 6 ROPE FERRY ROAD, TAX MAP 37, LOT 40 IN THE “SR-1” ZONING DISTRICT.

5. P2015-18 CONTINUATION OF SUBMISSION OF APPLICATION FOR MINOR LOT LINE ADJUSTMENT BY JOHN VANSANT, AS AGENT FOR THE TRUSTEES OF DARTMOUTH COLLEGE, PROPERTY OWNER OF RECORD, TO ANNEX 1,875 SQ FT FROM 10 HILTON FIELD LANE, TAX MAP 40, LOT 9, IN THE “NP” ZONING DISTRICT TO 6 ROPE FERRY ROAD, TAX MAP 37, LOT 40 IN THE “SR-1” ZONING DISTRICT.

6. P2015-12 CONTINUATION OF SUBMISSION OF APPLICATION FOR MINOR SUBDIVISION BY JOHN VANSANT, AS AGENT FOR THE TRUSTEES OF DARTMOUTH COLLEGE, PROPERTY OWNER OF RECORD, TO DIVIDE 6 ROPE FERRY ROAD, TAX MAP 37, LOT 40, IN THE “SR-1” AND “NP” ZONING DISTRICTS INTO TWO LOTS (CREATING LOTS OF 30,435 SQ FT AND 30,395 SQ FT). THIS WILL CREATE LOTS IN THE “SR-1” AND “NP” ZONING DISTRICTS.

[Previously before the Board May 5, June 2, July 7]

Ellen Arnold, Counsel for Dartmouth College, and John Vansant continued their presentation of these applications. Arnold distributed handouts to the Board. She said since the last meeting, the area of NP to be merged with SR was reduced by about 30%. This represents the minimum amount necessary to create conforming lots. Proposed language was also developed to be incorporated into the deeds that refer to the NP zoning restrictions and statement of intent.

Board Comments/Questions:

- What has changed of the previously approved minor lot line adjustment involving 6 & 10 Rope Ferry Road?
 - Arnold said that application was rescinded.

- What were the results of the research regarding the intent of the owner when the land was first deeded to the College?
 - Arnold said the conclusion, after a considerable amount of effort, is that the NP property is not restricted by will of anyone who owned property in that area.
- The warranty deed provided does not say anything about the Town of Hanover considering Occom Pond a special area.
 - ESMAY said that is already accomplished by declaring the land to be zoned NP. NP is the most protected area we have by way of zoning.
- What sort of assurance is there that those parts of the NP will be duly respected?
 - Arnold said this area was designated by the College, of its own volition, to be zoned NP. Dartmouth's history for maintaining it would indicate that they share the concern for the ecological health in that area. She said she is not aware of any other deed that lists restrictions regarding a zoning issue.
 - MAYOR said it is not an unfamiliar thing for owners to see their deeds with constraints contained in them.

Public Comments/Questions:

- Lisa Young of 2 Hilton Field Lane asked to see more documentation about the deed research and time to mull it over. She said the pond should become a park with a walkway all the way around it including the inner part.
- Robert Russell of 9 Occom Ridge asked of the demarcation of the zoning district boundary. He said he worries that this will constitute a major change that will enable people to nibble at the NP. This area is an asset to the Town of Hanover. It would be a grave error to allow this change.
 - ESMAY said she does not believe there is any requirement for demarcation of a zoning district boundary.
 - Arnold said the boundary will be indicated on the approved site plan and by reference in the deed. The use of the NP portion of the lot cannot change. There is no intention, nor any ability under the Town zoning, to do anything with the land in the NP district.
- Christine Foley of 16 Choate Road said she was expecting additional conditions in the warranty deed.
- A female speaker said she is not concerned about the College owning the land. Her concern is if/when the College sells it.
- How many properties around the pond does the College have right of first refusal? If the College is not planning to build anything on these lots, why not include language that they will remain this way forever?
 - Arnold said she was sure that the College has right of first refusal for some of the properties but she did not know how many. The reality is that the College rarely exercises that right because they cannot afford to.
- Is the College planning to sell these properties any time soon with a first right of refusal imposed?
 - Arnold said the locations are perfect for a lot of the College's needs, but it is not beyond the realm of possibility that the property could be sold. The College is always looking for ways to raise revenue.
- Rick Macleay of 2 Hilton Field Lane asked if the land around the pond is open to the public to walk upon.

- ESMAY and Smith suggested that the owners of 14 Rope Ferry Road might have a problem with people crossing their property.
- Smith said in New Hampshire, unless land is posted, there is a presumption that you can go onto it. However, there is no obligation that there be public access on any property.
- ESMAY said the NP designation does not make the land a public park.
- A female speaker said the perimeter of the pond is loaded with poison ivy. It is not possible to walk all the way around it.
- ESMAY asked if the main concern of those against the application is the freedom of access to the pond.
 - Russell said there is a natural desire to be able to walk around the pond. It just so happens that you are stopped at the Montgomery House and its neighboring property.
 - Susan Boyle said her concern is the principle of the matter of encroaching into differing zoning districts. Why couldn't the College subdivide land on Clement to create a buildable lot?
 - ESMAY said it would not make sense to do this in any other area around the pond. All of the other lots are already big enough for the uses allowed on those lots. She said 6 Rope Ferry Road is the only lot that has sufficient frontage to be subdivided.
- Could the College purchase 2 Hilton Field Lane and utilize the same type of encroachment in the future?
 - Smith said they would have to meet the minimum frontage requirements for both lots.
- There are areas along Occom Pond that the Board is not looking at that could be interpreted later on as buildable.
 - ESMAY said you cannot build a house on NP land. NP land cannot be changed to SR without Town Meeting approval.
- Annexing portions of the NP will allow a larger building than is allowed in the SR district.
 - CONNOLLY said building footprint and lot coverage requirements will limit the size of a home on the SR portion. There can be no lot coverage on the NP portion.
- CARTER asked, if denied, can the College seek approval of the ZBA to create a non-conforming lot?
 - Arnold said only the Planning Board has the authority to create a lot. The only reason to appeal to the ZBA in this case would be because the Planning Board's decision is based on an interpretation of zoning.
- CARTER asked if the College could seek a variance relative to lot coverage.
 - Smith said yes.

Board follow-up:

- ESMAY said there is nothing in the Ordinance that would preclude this annexation to permit two building lots. The Master Plan directs housing density to the in-town urban area. The College has agreed to a condition that preservation of the NP area be affixed to the deed so that it will be protected forever. ESMAY said she has a lot of problems turning this down.
- SIM said even if written into the deed, the owner may not honor the statement about preserving the NP area. He said his interpretation is that this is not creating a lot that meets the definition of "lot" per the requirements of the SR-1 or NP districts. Creating a non-conforming lot, with land in two zoning districts, to make one lot that will comply

with one of the zoning districts in which it resides, is not what he would have thought the intent would have been in creating this zoning. SIM said he cannot vote in favor of the application.

- Arnold said the definition of “lot” has to be read in conjunction with Section 302 which deals specifically with lots in two zoning districts. There are two distinct requirements. The one that applies to this specific situation is explicitly set forth in Section 302.
- ESMAY said she presented, as an applicant, a similar application to the Planning Board years ago involving property on School Street. The lot was bifurcated east/west by the D and GR-2 districts. The Board granted the application to create two lots out of one, each of the lots in two zoning districts. She said she doubts there was enough space in either portion of those lots to support GR uses, and yet to her recollection, that issue was not raised.
- CONNOLLY said there is no other opportunity to encroach any further into the NP. The deed inclusion provides the desired protection of the NP area. There is plenty of room on the remainder of the lot to build a house. CONNOLLY said she would approve the application.
- EDWARDS said some lots like 10 Rope Ferry Road are less than 30,000 sf. The proposed deed language is not as strong as some would like. He questioned whether that language can retain its force of law going forward. EDWARDS said he personally does not believe that Section 302 applies; the situation at hand is not covered in the Ordinance.
- The Board agreed that they did not require any additional information to act on the applications.

It was moved by MAYOR, seconded by CONNOLLY, to find P2015-11 complete. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. DENT and EDWARDS participated as voting Alternates.

It was moved by MAYOR, seconded by CONNOLLY, to find P2015-18 complete. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION. DENT and EDWARDS participated as voting Alternates.

It was moved by CONNOLLY, seconded by ESMAY, to approve P2015-11, annexation of 8,920 sq ft from 10 Hilton Field Lane in the NP zoning district to 6 Rope Ferry Road with the condition that for so long as the parcel is located in the NP Zoning District, or any successor zoning district with the same or substantially the same purposes as the NP Zoning District, use of that portion of the parcel in the NP Zoning District is limited to those uses permitted in the NP Zoning District. As of the date of this conveyance, such uses are limited to (a) conservation; (b) pedestrian trails; (c) forestry; and (d) uses accessory to such permitted uses. THE BOARD VOTED FIVE IN FAVOR OF THE MOTION (Connolly, Mayor, Carter, Dent, Esmay), TWO OPPOSED (Edwards, Sim). The Motion carried.

It was moved by CONNOLLY to approve P2015-18, the annexation of 1,875 sq ft from 10 Hilton Field Lane in the NP zoning district to 6 Rope Ferry Road with the condition that for so long as the parcel is located in the NP Zoning District, or any successor zoning district with the same or substantially the same purposes as the NP Zoning District, use of that portion of the parcel in the NP Zoning District is limited to those

uses permitted in the NP Zoning District. As of the date of this conveyance, such uses are limited to (a) conservation; (b) pedestrian trails; (c) forestry; and (d) uses accessory to such permitted uses. **THE BOARD VOTED FIVE IN FAVOR OF THE MOTION** (Connolly, Mayor, Carter, Dent, Esmay), **TWO OPPOSED** (Edwards, Sim). **The Motion carried.**

It was moved by MAYOR, seconded by CONNOLLY, to find P2015-12 complete. **THE BOARD VOTED SIX IN FAVOR OF THE MOTION** (Connolly, Mayor, Carter, Dent, Edwards, Esmay), **ONE ABSTAINING** (Sim). **The Motion carried.**

It was moved by MAYOR, seconded by CONNOLLY, to approve P2015-12, minor subdivision to divide 6 Rope Ferry Road in the “SR-1” and “NP” zoning districts into two lots (creating lots of 30,435 sq ft and 30,395 sq ft) with the condition that for so long as the parcel is located in the NP Zoning District, or any successor zoning district with the same or substantially the same purposes as the NP Zoning District, use of that portion of the parcel in the NP Zoning District is limited to those uses permitted in the NP Zoning District. As of the date of this conveyance, such uses are limited to (a) conservation; (b) pedestrian trails; (c) forestry; and (d) uses accessory to such permitted uses. **THE BOARD VOTED FIVE IN FAVOR OF THE MOTION** (Connolly, Mayor, Carter, Dent, Esmay), **TWO OPPOSED** (Edwards, Sim). **The Motion carried.**

7. OTHER BUSINESS

Meeting schedule: 10/6 (application reviews), 10/20 (Zoning Ordinance technical review), 11/3 (application reviews), 11/17 (zoning amendment proposals), 12/1 (application reviews), 12/15, 01/05 (application review)

Zoning amendment proposals: a submission deadline of 11/15 was set for receipt of zoning amendment proposals. The Board discussed how to move forward with the changes identified during the technical review.

Municipal law lecture: Smith said she is working with Dartmouth and the Municipal Association to host one in Hanover.

West Wheelock Working Group: Smith advised of a Group member’s request to reconvene the Group. The Board agreed the Group should meet and decide how to move forward with a zoning amendment proposal for Town Meeting 2017.

Development of Regional Impact: Smith advised of DHMC’s request for a two-year extension of the approved site plan to widen the Hitchcock loop road to accommodate a 4’ bike lane. The Board agreed to support the request.

8. ADJOURN: The meeting adjourned at 9:40 PM.

Respectfully submitted, Beth Rivard