

# Approved

Planning Board Meeting  
7:00 p.m. Town Hall  
Wednesday, March 28, 2018

**Members Present:** Darcy Horgan, Margaret Sofio, Rich Landry, Geof Potter, Kate Murray

**Others Present:** John Chagnon, Peter Fregeau

**Members Absent:** Bill Stewart, Tom Hammer

Chair Darcy Horgan called the meeting to order at 7:03 p.m. and named voting members as those five in attendance.

## 1. Approve minutes of the February 21, 2018 meeting

*Mr. Geof Potter moved to ACCEPT the minutes of the February 21, 2018 meeting of the Planning Board as written. Ms. Margaret Sofio seconded. Motion carried unanimously.*

## 2. Work Session for a proposed subdivision by Neal Toomey Corporation for Map 15, Lot 9, 158 Portsmouth Avenue

Mr. Peter Fregeau, the proposed new owner, and Mr. John Chagnon, Ambit Engineering, appeared to solicit Board feedback on their subdivision plans for 158 Portsmouth Avenue. Mr. Fregeau described the plan to create two lots and extend the driveway behind the existing home to the second lot as its right of way access. Lot 1 consisting of 20,000 s.f. on the Portsmouth Avenue side would include the existing dwelling, a duplex, which would be refurbished and remain as a two-family, but eventually transition the units to condominiums. A new single family home, to be used by Mr. Fregeau as his primary residence, would be constructed on Lot 2 which consists of 25,143 s.f. closest to the river. An existing garage would be moved or replaced behind the existing house, if allowed.

The driveway is depicted on the plans as a 20' roadway, with a 30' right of way, providing 100' of frontage to meet the requirements for a road. Currently the driveway is approximately 12' wide and extends only as far as the existing garage.

Mr. Rich Landry questioned the plan for condominiums, noting the requirement for 20,000 s.f. per unit. With a total of 45,143 s.f., the existing parcel legally accommodates the two-family structure. If subdivided, the land area would be insufficient to allow for two units on the front lot, unless one of them meets the requirement for an Accessory Dwelling Unit (ADU) -- including the need for owner occupation of one of the units.

Chair Horgan asked whether the area designated for the proposed right of way can also be included as lot area. Without adding the right of way, the remaining lot area doesn't meet the minimum lot requirement. Mr. Landry believes that the town's definition of Frontage ("the horizontal distance measured along a lot line dividing a lot from a street...") disallows its inclusion. The town's definition of Street encompasses a private way. A 30' wide right of way is required by the town's Subdivision Regulations.

Mr. John Chagnon referred to a similar situation from a proposed subdivision plan for the Tarbell property at 148 Portsmouth Avenue, where the right of way was an easement and therefore included as lot area. However, Chair Horgan noted that the Tarbell subdivision plan is not precedent since it had been discussed, but never approved, and the discussion had not extended to the right of way.

As currently planned, the right of way is carved out so the lot is nonconforming. A number of potential solutions were discussed; perhaps the deed could apportion a percentage of the right of way to each of the lots to meet the minimum lot area requirement, perhaps an easement could be negotiated with the neighbor at 168 Portsmouth Avenue for an easement use of their driveway that abuts the subject property, or perhaps a land condominium agreement can be utilized. Mr. Fregeau asked whether the existence of an abutting driveway on neighboring property meets the frontage requirement. Board members indicated that frontage requires legal access to the fronted right of way.

Chair Horgan identified other items for consideration in the planning process:

- By adding a road, the Subdivision meets the definition of a Major Subdivision and those regulations apply.
- While plans currently comply, she recommended that any future changes uphold the 100' wetlands setback.
- Be certain to adhere to the regulations regarding sewer and water hookups, as well as any potential issues that would impact septic, if that is planned.
- The plan should note the sight line and distances as required by Subdivision Regulation 6.2.4.9.
- Be certain to notice the buffer zone ordinance in section 9.2.5 applicable to area within 150' of the high tide line.
- In changing the existing driveway to a private right of way, there is likely the need to consult NH DOT.
- In creating the private right of way, there needs to be a legal acknowledgement of responsibility for the road by the property owners as well as a maintenance plan.

The work session concluded at 7:35 p.m.

### **3. Other Business**

Members discussed whether a right of way can ever be included in a lot's area and concluded that it can't, given the definition of Frontage in the existing ordinance.

The Board considered whether the creation of private roads for small subdivision development is desirable. Ms. Margaret Sofio cited density and excessive paved surface areas as negatives. Ms. Kate Murray believes it is an inorganic way to develop a community. Mr. Landry suggested that in order to change the practice, the definition of Frontage would need to indicate that it be "to" an existing street", unless three or more lots are developed. To avoid "porkchop lots", the ordinance could be written to require that the lot line carry straight back from the street for a prescribed distance before it can balloon out.

The Board's primary concern is the excessive creation of roads. Mr. Landry believes that restricting the creation of private roads to service small subdivisions (e.g. a second lot created in back of the front lot) would preclude most lots from subdividing. Chair Horgan suggested revisiting the topic when the full Board is present.

### **3. Adjourn**

There being no further business to discuss,

*Mr. Landry made a motion to adjourn. Ms. Murray seconded, and the motion was unanimously approved.*

Meeting adjourned at 8:07 p.m.

Respectfully Submitted,

Anne Miller, Secretary