

DRAFT
Planning Board
Minutes of November 6, 2007

Members Present: Barbara Freeman, Chair; Bill Weiler, Vice-Chair; Jim Powell, Ex-Officio; Tom Vannatta; Travis Dezotell; Ken McWilliams, Advisor

Chair Freeman called the meeting to order at 7:05 p.m. The Board reviewed the minutes of October 2, 2007 and made corrections.

Mr. Weiler made a motion to approve the minutes of October 2, 2007 as amended. Mr. Vannatta seconded the motion. All in favor.

Chair Freeman circulated advertisements for upcoming workshops. She asked Mr. Powell when he thought the Board of Selectmen may be able to participate in a Joint Board Meeting.

Mr. Powell advised that sometime in the spring would be best. The Board agreed that the next Joint Board Meeting will be planned for Wednesday, January 9, 2008 at 7:00 p.m.

Chair Freeman introduced Mr. Bruce Freeman as a potential candidate for becoming a Planning Board Alternate. Mr. Freeman will be observing the meeting tonight.

CASE: Adm1-061: Masterplan – Public Forum

Mr. Vannatta asked the other Board Members what their opinions were regarding the effectiveness of the last November 3, 2007 Masterplan Public Forum.

Mr. Powell commented that he thought the public forum was disappointing due to the low turn-out of people from the public. He commented that he is concerned that the 21 people who showed up to the meeting will affect the whole town of 2400 residents. Everybody at the meeting seemed to be of the same mindset and there was not a wide range of views and opinions.

Mr. Weiler commented that he believes that reflects the fact that people in Town are generally satisfied with the way things are run.

Mr. Vannatta commented that many people may not have spoken up on the issues because most people did not see the material ahead of time. He suggested that the next public forum should begin with a review and highlights of the material prior to asking for comments.

CASE: 2007-020: Conditional Use Permit – Peter & Erika Helprin – 611 Mountain Road – Tax Map/Lot 24-672-494.

Notice is hereby given that the Planning Board will receive submission of an application from Peter & Rika Helprin for a Conditional Use Permit for a driveway located at 611 Mountain Road, Tax Map 024- Lot 672-494, on Tuesday, November 6, 2007 at 7:15 p.m. in the Town Office Building at 937 Route 103 in Newbury, N.H. If the application is accepted as complete, a public hearing on the accepted application will commence at the same meeting.

The Board reviewed the application for completeness.

Mr. Vannatta made a motion to accept the application as complete. Mr. Weiler seconded the motion. All in favor.

Chair Freeman read the Helprin's proposal...*'proposing to build a driveway to reach a 28'x38' garage with living space above. The proposed driveway starts 18' from a perennial stream and tapers away from it as it goes in. To put the driveway anywhere else would require encroaching on abutters' land and require blasting. As designed, this driveway would only need fill to go over rocks, with minimal disturbance of terrain. In a previous submittal to the Zoning Board, Mr. Helprin explained 'I am proposing to put in a 300 foot driveway which will e 18 feet from the stream. The driveway will be 300 feet from the road to the parking area and house site. For erosion control, I plan to put in hay bales along the driveway on the stream and marsh side and also behind the septic field. The finished driveway will have hard pack blue stone and 1/5 crushed stone on the stream side banking.*

Mr. Helprin presented photographs of what he explained as 14ft – 16ft rocks in the vicinity of the driveway. Mr. Helprin stated that if he does not build the driveway where it is proposed, then those rocks will have to be blasted. He stated that Daniel's Drilling & Blasting advised him that any blasting activity within 300 ft. of a foundation or well could make the foundation(s) crack or shut off an aquifer to a well(s). Mr. Helprin informed the Board that all of the trees are cut for the driveway where it is currently proposed to accommodate Public Service of New Hampshire. If the driveway is to be built anywhere else, there will be blasting required.

Chair Freeman opened the hearing up to questions from the Board.

Mr. Weiler commented that it was not apparent to him until today that the stream that is being considered is a permanent stream, West Branch North. Therefore, this application is subject to the 50 ft. buffer of shoreland overlay regulations plus it is within the 75 ft. buffer of the wetlands regulations. Mr. Weiler stated that he appreciates the fact that Mr. Helprin does not want to blast and advised Mr. Helprin that he may put the driveway right up to the property line to maintain as much distance away from the stream as possible.

Mr. Helprin commented that the neighbor's outbuilding is only 2 ft. from that property line. He stated that the rocks that are impeding the shift of his driveway were apparently

rolled there out of the way by the neighbors when they built their outbuilding. The property line was originally thought to be at the culvert, but a survey was completed to find out where the property line actually is located. Mr. Helprin stated that the stream is only 4 ft. across, and DES categorizes a major stream as 10 ft. or greater.

Mr. Weiler clarified that in this case, the width of the stream does not matter because West Branch North is designated as a permanent stream in Newbury's zoning ordinances.

Chair Freeman asked Mr. Helprin if there was any room on the other side of the boulders to construct the driveway.

Mr. Helprin stated no. He explained that the boulder shown in the picture is only one of many. If the driveway comes in from an angle near the property line, there will be a conflict with the setback for the septic field.

Mr. Weiler explained that if the driveway maintains 50 ft. setback from the stream near the entrance of the lot, it can then wind up toward the planned driveway layout and maintain the septic setback.

Mr. Helprin presented a driveway plan with measurements of setbacks. He explained that he took measurements each 25 ft. until he was 75 ft. from the wetlands. The proposed driveway is only close to the stream at the very beginning. If the driveway is moved further down the road, more trees will have to be cut and blasting may have to be done.

Mr. Weiler informed Mr. Helprin that there is no restriction on cutting outside of the buffer zone in this situation.

Mr. McWilliams clarified that if Mr. Helprin wants to maintain the plans for the driveway as proposed, he will need to go to the Zoning Board of Adjustment for a variance for a setback from a permanent stream, then back to the Planning Board for a conditional use permit; or, he can come back to the Planning Board for a conditional use permit for the driveway in a new location.

Mr. Helprin informed the Board that he already applied to the Zoning Board of Adjustment for a variance but was told on the date of the meeting that he needed to go to the Planning Board instead.

Mr. McWilliams explained that if Mr. Helprin wants to develop through the buffer zone, he will need to go to the Zoning Board of Adjustment.

Mr. Weiler commented that this is a difficult lot with a situation that raises a lot of issues all at once.

Mr. McWilliams commented that the Planning Board could continue and consider the issue before the Board tonight on the provision that Mr. Helprin obtains a variance from the Zoning Board of Adjustment.

Mr. Weiler commented that one of the conditions for granting the Conditional Use Permit is that the Planning Board is that the Board has to be sure that the applicant is using the least impacting alternative in the wetlands buffer.

The Board discussed the proper protocol between the Boards. The sense of the Planning Board was that the applicant should first obtain a variance from the Zoning Board of Adjustment for development in the shoreland buffer zone, then return to the Planning Board for a conditional use permit with in the wetland buffer zone. Or, move the driveway and return to the Planning Board for a conditional use permit outside of the 50 ft. shoreland buffer zone.

Mr. Helprin informed the Board that PSNH and TDS have already looked at the site and have approved services to this location, but the lines are not yet there.

Chair Freeman commented that the rocks in the pictures look like boulders, not ledge. They ought to be able to be moved without blasting. If the abutters moved them onto the lot, then they ought to be able to be moved again.

Mr. Helprin agreed with Chair Freeman that there is no ledge, and stated that the rocks are too large to move even with heavy equipment.

Mr. Weiler commented that this particular wetland, as with others, has flooded a lot and the floods have carried away much of the sand and soil leaving only a bowlful of boulders.

Chair Freeman opened the hearing to the public.

Richard Marzelli commented that he is extremely concerned about his well and the health of the brook. He explained that his well is very near to West Branch North which is a tributary to the larger streams, brooks and rivers below. He stated that this area is the third largest of three major aquifers in this area. This proposed driveway is also within the wetland overlay district. Mr. Marzelli quoted from Article 8.0 of the Zoning Regulations -Wetlands Conservation Overlay District: *'The purpose of this article is to protect the public health, safety, and general welfare by controlling and guiding the use of land areas which re wetlands as defined in Article II. It is the intent that this article shall: 8.0.1 – Restrict the development of structures and land uses on naturally occurring wetlands, which will contribute to pollution of surface and ground water by sewage, toxic substances, or sedimentation.* He explained that his well is downhill from the proposed driveway and the whole project and that is a great concern.

Chair Freeman explained that as long as the building setbacks from the wet areas are met, Mr. Helprin is allowed to move forward with construction.

Mr. Marzelli emphasized his concern for potential run-off and pollution control. The proposed driveway is very near the stream which floods relatively often and also floods across Mountain Road. A significant rise in the water level of the stream could potentially wash the driveway out altogether which will pollute the stream which is Mr. Marzelli's water source.

Barbara Marzelli stated that she is concerned for the protection of the wetlands and the protection of her family. She stated that her family will suffer if something adverse does happen since their well sits downstream and down hill from the Helprin property. She informed the Board that they have already experienced adverse impact from other projects that have happened in the area. She asked the Board to please consider her family's safety.

Jeff Evans, Land Surveyor/Licensed Forester/Certified Wetland Scientist/Septic Designer, commented that moving the driveway closer to the property line is not going to work. He stated that Mr. Helprin has a limited area within which to work, and there will be no impact on the wetland.

Alison Kinsman informed the Board that she has resided at her home on Mountain Road for over 30 years and would like to make sure that the water in the stream and in the wetland is protected and that all development is done with as minimal impact as possible. The water level in the stream always fluctuates and it does flood over the road on occasion. She stated that that particular area has always been wet.

Mr. Helprin commented that the water does come up, but then when it reaches the level of the road, it slowly dissipates over the road in sheet run-off which slows the velocity. The proposed driveway is 18 ft. away from the culvert area and elevated higher than the road.

Chair Freeman asked Mr. Helprin if he was concerned that there is a potential that he may not be able to pass through the driveway if it floods out.

Mr. Helprin said no. He stated that that is the nature of Mountain Road. He explained that the construction plans for his driveway are the same as the driveway he currently has at Chalk Pond. It is riprap and bluestone over the top and 1½" crushed stone on the embankment for stabilization. The Chalk Pond driveway is much steeper than this one.

Mr. McWilliams advised Mr. Helprin that the shoreland ordinance states that any land disturbance within 300 ft. of a permanent stream needs erosion control measures.

Mr. Helprin stated that he already has erosion control measures in place.

Mr. Weiler asked Mr. Helprin if he had contacted any other vendors regarding stone excavation.

Mr. Helprin explained that he has contacted two other companies, and both companies say the area will need to be blasted if the driveway is placed along the property line.

Being no further public input, Chair Freeman closed the meeting to public input.

Mr. Vannatta made a motion to approve the application for conditional use permit to construct a driveway in the proposed area. Mr. Powell seconded the motion. Discussion followed.

Mr. Vannatta commented that he understands the points of view from all concerned and stated that his concern is what happens with the driveway. He commented that he understands the concern from the public and the need for a variance, but also there are alternatives as to where the driveway can go.

Mr. Vannatta made a motion to amend his motion to include a condition that the applicant obtains a variance from the Zoning Board of Adjustment for work in the buffer zone. Mr. Powell seconded the motion to amend. All in favor. Motion was amended.

Mr. Dezotell commented that he believes the applicant is going to be able to put a house on the lot, and the important thing is that construction is done responsibly and the driveway has the least amount of impact on the wetland. He stated that he is in agreement with the proposal as long as the driveway is in the least impacting place with the least amount of tree cutting.

Mr. Weiler commented that he believes the trees are secondary to the impact on the wetlands.

Mr. Powell stated that he has no questions.

VOTE on Mr. Vannatta's motion as amended *to approve the application for conditional use permit to construct a driveway in the proposed area conditional upon the applicant obtaining a variance from the Zoning Board of Adjustment for work in the buffer zone.* Unanimous not in favor.

Mr. Weiler commented that a "NO" vote is not a clear statement for the record and another motion should be made in order for the Board to make an affirmative vote.

Mr. Weiler made a motion to **deny** the application for conditional use permit to construct a driveway in the proposed area conditional upon the applicant obtaining a variance from the Zoning Board of Adjustment for work in the buffer zone. Mr. Dezotell seconded the motion. All in favor.

The reason for the denial is that there is another place to construct the driveway.

Mr. Weiler advised Mr. Helprin that his options are to

1. move the driveway and apply for a building permit and come back to the Planning Board in December for a condition use permit in a new location closer to the property line, or
2. continue with this location and apply to the Zoning Board of Adjustment for work in the 50 ft. buffer zone under Article 7.6.8 AND an Appeal From The Planning Board's Administrative Decision.

CASE: Code-038: Storm Water Management

Mr. Hirshberg was present to discuss the **Storm Water Management Ordinance** draft.

Mr. Powell asked if this proposal applies to the whole Town or just the Chalk Pond area.

Mr. Hirshberg explained that this ordinance applies to the whole town with the problems at Chalk Pond/Sunapee Hills in mind.

Mr. Powell asked Mr. Hirshberg if he knows how many properties are affected by this ordinance.

Mr. Hirshberg explained that this ordinance does not deny building and/or development. Its purpose is to address the storm water effects.

Mr. Hirshberg gave the Board an overview of the ordinance. He explained that this ordinance proposes address land disturbances of 1,000 sq. ft. or greater on slopes of 15% or greater which is a rise of 7 ½ ft. in a distance of 50 ft. The SWM Ordinance addresses erosion and sediment control which is basically taken from Article 7.8 of the zoning regulations but instead of being applied to only the shoreland overlay district, it is to be applied throughout Town. It requires erosion control plans for more areas than just the shoreland. Also, work and/or development within 20 ft. of a 15% slope will fall under the SWM Ordinance. The procedure is that the homeowner/developer will submit an erosion/sediment control plan with their building permit application. The Board of Selectmen must verify that the temporary erosion control measures are in place prior to construction. After construction is complete, the building inspector will be alerted by the Board of Selectmen to inspect the permanent erosion control measures prior to a certificate of occupancy. The erosion control plan must be approved before the building permit is issued. There are also items in the SWM Ordinance that provide for posting a bond and inspection by the Conservation Commission. There is also a provision for requiring a fee for the inspections if necessary. Failure to comply puts the homeowner under Section 22.

Mr. McWilliams asked Mr. Hirshberg how the SWM Ordinance is prompted if there is land disturbance but no building such as converting to pasture land and road building. Therefore, the landowner would not be applying for a building permit.

Mr. Hirshberg commented that he will have to figure something out prior to the first public hearing.

The Board agreed to have a public hearing on the SWM Ordinance in December to finalize the Ordinance and public hearings for ballot the first and last week of January 2008.

Mr. Hirshberg commented that the committee involved with creating the SWM Ordinance tried very hard to keep the Ordinance as simple as possible. There has also been interest in the document from other organizations. Nothing has been shared at this point in time, nor will it be until the document is finalized and posted.

CASE: Adm1-065: Conservation Commission – Conservation Plan

Present from the Conservation Commission was Bill Weiler, Conservation Commission Chair; Katheryn Homes, Conservation Commission Vice-Chair; Bill Annable; Eric Unger.

The Conservation Commission presented the Newbury Conservation Plan that they drafted with the assistance of Anne Poole.

Chair Freeman commented that the Planning Board is very excited about this document because it will be a good tool for the Planning Board to help to create the zoning regulations and to help plan for the preservation of natural and historic resources. She noted that there are no recommendations listed at the end of the plan.

Mr. Weiler explained that the Commission wants to consult with the Planning Board and the public before it decides on recommendations. They will be added prior to publication.

The Board agreed to give any comments and input to Mr. Weiler as soon as possible for inclusion prior to a final draft for publication.

Chair Freeman commented that it would be useful to describe the areas subject for preservation, why are they worthy of consideration for preservation, and what was the methodology of how they were selected. She also commented that an overlay map of all of the maps would be a useful planning tool.

Mr. Powell commented that the Board has to be careful not to restrict personal property rights when deciding what and how certain areas need to be protected.

Mr. McWilliams advised that not identifying certain properties, but identifying the attributes of property that make it desirable to preserve is a more subtle and effective way to approach the identification.

The sense of the Board was to develop a list of attributes for preservation instead of listing particular parcels is more desirable for preservation purposes.

Mr. Powell suggested publishing an Executive Summary for the Conservation Plan.

CASE: Adm1-044: Fees and Penalties

Mr. Dezotell informed the Board that he attended a website conference, and it was brought to his attention that sometimes people are able to access old information and thereby apply to the Town under old fee structures.

Mr. Powell asked Mr. Dezotell to alert the Town Administrator of this possibility to make sure that does not happen in Newbury.

CASE: Adm1-043: Flood Plain Areas

Mr. McWilliams informed the Board that FEMA is in the process of updating its flood plain maps. It is basically the same bad data on good base maps. There is no remapping of new flood plain boundaries. The new maps will have to be adopted by the Town. They are asking for Towns to update their new model regulations in March 2008.

Mr. Dezotell made a motion to adjourn. Mr. Powell seconded the motion. All in favor.
Meeting adjourned at 9:30 p.m.

Respectfully submitted,

Linda Plunkett