



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, December 4, 2008
Mary Herbert Conference Room
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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Phil Wilson, Chairman; Shep Kroner, Vice Chairman; Joseph Arena, Barbara Kohl, Tom McManus and Craig Salomon, ~~Selectmen's~~ Select Board Representative.

Members absent: Laurel Pohl

Others present: David West, RPC Circuit Rider and Wendy Chase, Recording Secretary.

Alternates present: None

Mr. Wilson convened the meeting at 7:00pm and noted for the record that the agenda was properly posted and that there was a quorum.

Old Business

08:14 – James G. and Karen S. Confalone, PO Box 415, Rye Beach, NH 03871. The Applicants propose a 3-lot subdivision on contiguous land located in Rye, NH and North Hampton, NH. Property owners: James and Karen Confalone. Property location: 41 Causeway Road, Rye Beach, NH, M/Lots 005-012, 013, 014, zoning district R-2. This case is continued from the November 6, 2008 meeting.

The Board was in receipt of a letter from James Verra, representative of the Confalones, requesting a continuance of their case, #08:14 to the January 8, 2009 meeting.

Dr. Arena Moved and Mr. McManus seconded the Motion to grant the request to continue case #08:14 to the January 8, 2009 meeting.
The vote was unanimous in favor of the Motion (6-0).

New Business

08:15 – Richard Skowronski and Leila Hanna, 142 Mill Road, North Hampton. Preliminary Consultation for a proposed Conservation Subdivision under Section 417 of the North Hampton Zoning Ordinances. Property owners: Richard Skowronski and Leila Hanna. Property location: 142 Mill Road. Tax Map & Lots 012-47, 48-2, 63, 65, 67, 68, 69, 70, 71, 73, 74, 76, 77, and 78. Zoning district R-2.

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In attendance for this application:

Attorney Robert Field

Richard Skowronski, Owner/Applicant

Leila Hanna, Owner/Applicant

Mr. Wilson stated that the Zoning Ordinance, Section 417 – Conservation Subdivision was adopted in March of 2008, and that the proposed conservation subdivision design application from the Skowronski²s would be the first application of its kind presented to the Board. He explained that it was a preliminary consultation, and not a formal application where abutters needed to be notified or a notice needed to be placed in the newspaper.

Mr. Field, representing the Applicants, began by disclosing that he is a member of the North Hampton Forever Committee, and serves as a member of the North Hampton Zoning Board.

Mr. Field asked Chairman Wilson if Selectman Salomon intended on sitting on Skowronski case #08:15.

Mr. Salomon replied, and said that his usual procedure is to recuse himself if he feels that he has a conflict. He told Mr. Field that if he were uncomfortable then he would have no problem stepping down with no offense taken.

Mr. Field said that there are matters that occurred last April that raised concern with the Skowronskis regarding Mr. Field's appointment to the ZBA, and that they are uncomfortable with Mr. Salomon sitting on the case.

Mr. Wilson said that it was Mr. Salomon's decision whether or not to recuse himself.

Mr. Salomon said that he has always been consistent, and that if someone is uncomfortable then that frustrates the process so he very willingly stepped down from the Skowronski case.

Mr. Field explained the proposed plan to the Board:

- The driveway to access the lots that was once shared by the Skowronskis and the Saunders is now solely owned by the Skowronskis.
- The combined lots contain between 60 and 70 acres of land.
- The proposal is to create 3 additional lots.
- The Applicants expect to build a new house on one of the newly proposed lots and sell their existing home and either retain or sell the two other newly proposed lots.
- Developers have shown interest in purchasing and developing the land, and mentioned possible access ways via Boutilier Lane and the Town of Rye.
- The proposal included extending the current driveway to access the back lots and to do it in a manner that will impact the wetlands in the least amount.

Mr. Skowronski commented that the Application consists of his best guess as to what suits the requirements of the Conservation Subdivision Ordinance. He also said that they are very willing to work with the Planning Board to design a plan that would be best for the Town as well as for themselves.

Mr. Wilson commented that there are many lots involved and suggested combining the lots without relinquishing the rights of the already approved lots to simplify the project. He further stated that access to the lots will be a major project, and that since the Ordinance requires a conditional use process the Board has the authority to waive requirements, but questioned whether or not they had the authority to waive the requirement that a road be acceptable by the Town in order to access the lots that don't have frontage on a road.

Mr. Field said that the ordinance reads that a parcel needs 100-feet of frontage but does not say that each subdivided parcel needs 100-feet of frontage. He also stated that the Planning Board, on a prior case, has declared that the driveway could serve two lots.

Dr. Arena questioned whether or not the driveway and proposed extension of the driveway would eventually be built up to town standards if the Conservation Subdivision is approved.

Mr. Field said that there is no intention of constructing the road to town standards, but assured the Board that the Applicant's resolution will be satisfactory both qualitatively and quantitatively for emergency vehicle access.

Mr. Kroner opined that from a conceptual standpoint it is a great concept for the Town. He voiced concern over numbers 4 and 5 of the purpose and objective clause in the ordinance that states *to reduce sprawl by requiring a more efficient form of development and enhance the quality of life by increasing open space and the public access to land for walking and aesthetic enjoyment*. He commented that the plan looks more like a conventional subdivision because of the size of the proposed lots and that the application presents that the conservation land would be used for private use only.

Mr. Field said that the conservation land would be used as an equestrian area to ride horses and that the Applicant's would prefer limited public use.

Mr. Kroner also voiced concern on creating lots with the lack of frontage on a town road, and the access to those lots. He referenced Article XX1 of the Conservation Subdivision Ordinance; *nothing contained in this ordinance shall be construed as repealing or modifying any other ordinance or regulation of Town, except such as may be specifically repealed or modified by this ordinance*.

Mr. Field said that with the waiver provision the Board has a vast discretion to deal with the overall project and make it work in a way that would be best for the people of North Hampton. He said that based on the Conservation Commission's report and the National

Resource Assessment the area in question is a very important conservation area and critical water resource area.

Dr. Arena asked if the Applicants anticipate any problems concerning the landlocked lot in the middle of the proposal identified as Map 12 Lot 72.

Mr. Field explained that the owners of that lot (Parkhurst) have been approached and they believe their lot is much more valuable than the Skowronski²s believe it to be, and added that the Applicants will honor any rights that the Parkhurst²s have.

Mr. Wilson voiced concerns that if the Board allows the shared driveway's extension, it may set a precedent.

Mr. Field said that the land will either be retained by the owners with an easement on it or their will be a conveyance of the easement to someone else.

Mr. McManus remarked that if the proposal is approved, then the lot 12-72 would be surrounded by conservation land in perpetuity.

Mr. Wilson explained that landlocked wood lots can be accessed legally to cut wood, but there are no vested rights to build on the lot.

Dr. Arena voiced concern that a clever lawyer may try and find a "loop hole" in the easement allowing potential development in the future.

Mr. Field said he could not speculate what someone may do with the easement, but reminded the Board that within the last 10 years the Selectmen tried to allow a cell tower to be placed on town conservation land and were unsuccessful.

David West opined that the 100-feet of frontage requirement can be taken in different ways, and asked what the Board's intentions were when creating this requirement.

Mr. Field offered that if the Applicants are permitted to build a road that is not up to Town standards, but wide enough for emergency vehicles to access, then each lot would have 100-feet of frontage off of that new road.

Dr. Arena questioned the wetlands crossing from lot 2 to lot 3. Mr. Field said that the narrowest portion of the crossing would be at least 15-feet. Mr. Skowronski mentioned that the soils there are poorly drained soils, not very poorly drained soils.

Mr. Wilson opined that the Board has the authority to waive the 100-feet frontage requirement. Mr. Wilson explained that he, along with Ms. Jill Robinson, primarily created-drafted the Conservation Subdivision Ordinance, and it was the intention to vigorously steer clear of the cluster housing concept because it was to be a conservation subdivision. He further stated that the proposal, if approved, would be maintaining a very large portion of land in permanent conservation.

Mr. Wilson commented that in general the concept before the Board meets the intent and purposes of the Conservation Subdivision Ordinance, and that it's a very positive thing for the Town, but questioned whether or not the Board has the authority to approve a shared driveway of such magnitude.

Dr. Arena opined that the shared driveway is not a big problem, he is more concerned with ensuring that the lots ~~to~~ remain unchanged in perpetuity, and questioned how that could be accomplished.

Mr. Field said that they would be able to produce easement language that would satisfy the Board.

Mr. Kroner referred to Article IV, Section 406.6 of the Zoning Ordinances; *no building shall be constructed on any lot that does not have frontage on a street that has been accepted by the Town of North Hampton*. He opined that the section, XXI of the Conservation Subdivision Ordinance leads him to believe that nothing about the Conservation Subdivision Ordinance allows the Board to repeal or modify any other Ordinance of the Town. He suggested that the Board seek clarification from Town Counsel.

Mr. Field referred the Board to RSA 676:5 and read from Section 417.F.3.c. of the Conservation Subdivision Ordinance; *upon written request by the applicant, the Planning Board may grant a waiver of one or more of the provisions of this Article as it deems appropriate*. Mr. Kroner said that he sees Section 471.F.3.c as written specifically to the Conservation Subdivision Ordinance and not to the rest of the Zoning Ordinances.

Mr. Kroner read a section from Article XXI of the Conservation Subdivision Ordinance, *other ordinance or other regulation or restriction, that provision which imposes the greater restriction or the higher standard shall govern*. Mr. Kroner stated that he is in favor of the concept of the proposal, but he is just trying to follow the laws that govern the Town on this case.

Mr. Wilson said that a developer could put in a road and put in a conventional subdivision. He said that the fundamental purpose of the Ordinance was to conserve land.

Mr. Field said that in order to preserve this as conservation land it is impossible to build a road to town specifications.

Mr. Wilson asked for "feedback" from the Board and said that one main question is whether or not the Board has authority to safely and legally proceed under the waiver requirements or does the ZBA have to be involved in some way.

Ms. Pohl said that the proposal is not what she envisioned, but with all the safe guards in place it looks like a good way to use the land.

Mr. McManus said that he likes the proposal, but is concerned with the lot (12-72), and what the impact would be on it if the proposal is approved forever isolating the lot.

Mr. Field opined that maybe the Conservation Commission would be interested in purchasing the parcel.

Dr. Arena likes the proposal and said that every “loop hole” has to be closed. He first had concerns over the lot 12-72 but after reviewing the application he is no longer concerned because Ms. Parkhurst still owns the land and it remains unbuildable either way.

Mr. Kroner said his primary concern is the idea that the Planning Board has the authority to waive any element of the Zoning Ordinance, and is concerned on a development pattern that depends on driveway built upon driveway. Mr. Kroner referenced a similar development in Eliot, Maine, that ended up in years of litigation.

Mr. Field said that the proposed driveway would “feed” five lots in perpetuity.

Dr. Arena said that the easement on the driveway should be written in a way that it could not be manipulated and that it would serve only those five proposed lots.

Mr. West remarked that he hopes everyone is not married to the idea on the shape of the lots being presented, and that the Board will have the ability to perhaps change some of the shapes of the lots.

Mr. Field said that his clients are willing to work with the Board to come up with a plan everyone would be happy with.

Mr. Skowronski had Verra Associates do the boundary survey and once the reference points were established Mr. Skowronski developed the plan from there.

Mr. Field informed the Board that all the proposed lots (3) had perk test done on them and they were successful.

Dr. Arena said that if the conservation land is contiguous then the shape of it makes no difference.

Mr. Wilson stated that it was the sense of the Board that they are favorably inclined to the proposed conservation subdivision and that the proposal fulfills the purpose and intent of the Ordinance and suggested that if the applicants build a road close to town standards then that may alleviate a lot of the access problems.

Mr. Kroner suggested that the Board obtain a legal opinion on Section XXI of the Conservation Subdivision Ordinance so that the Board and Applicants are better protected.

Mr. Field requested that if the Board decided to meet with Counsel that he would like to attend.

Mr. Wilson said that the Town voted to grant the Planning Board conditional use permitting process authority for the Conservation Subdivision Ordinance, and RSA 674:21 says that any appeal under the conditional use process goes to the Superior Court.

Mr. Kroner moved and Ms. Kohl seconded the motion to seek attorney input as it relates to Article XXI of Section 417 – Conservation Subdivision Design to ensure that the Planning Board in fact can waive other requirements of the Town’s Zoning Ordinances in order to proceed with the Application.

Mr. Field opined that the Motion not be restrictive to include the entire Zoning Ordinance.

Mr. Wilson said that he could not vote in favor of the Motion because it was too narrow, and it includes a statement that the Board would be consulting a lawyer to determine whether or not the Board *can* do something; he opined that lawyers are consulted to obtain an opinion, not to tell the Board what they can and can’t do. He suggested that if a lawyer were to be consulted then they should find out how broad the authority is conveyed in the language of the Conservation Subdivision Ordinance that is written. Mr. Wilson questioned the Board’s intentions when drafting the Ordinance; was it the intent to allow the Planning Board to grant significant relief from the conventional requirements in order to achieve the objective of conserving land, or was the Board trying to say that the conservation subdivision needs to be designed in a specific way?

Mr. Kroner said that the four step design process clearly talks about the design of street layouts.

Mr. Kroner withdrew his Motion, and Ms. Kohl withdrew her second to his Motion.

Dr. Arena suggested consulting the Local Government Center for a legal opinion.

The Board agreed to consult the Local Government Center and to forward the information to the Applicants.

The Applicants next step is to formally apply to the Planning Board for the Conservation Subdivision.

Mr. Salomon was reseated.

08:16 – Christian Barone, P.O. Box 551, Rye Beach, NH 03871. The Applicant proposes a change of use from a pet grooming shop to a hot dog eatery. Property owner: TSR Realty, LLC, P.O. Box 695, North Hampton. Property location: 77 Lafayette Road, M/L 013-032, zoning district I-B/R.

In attendance for this application:

Christian Barone, Owner/Applicant

Mr. Barone informed the Board that he owns the steak ~~house sandwich~~ eatery located on Route 1 next to the Rye Airfield. He proposes a change of use from a pet grooming business to a hot dog eatery that will be mainly “take-out”. He will have one employee, and the hours of operation will be Monday through Sunday, 9:00am to 10:00pm with 5 parking spaces in the front of the building and 3 in the back. He explained that prior to the pet grooming business the building was used as a fish and chips eatery, so he would be reverting it back to a prior approved use.

Mr. Barone answered the Board’s questions:

- The square footage of the building is 324 square feet
- The building has electric baseboard heat
- There will be an above ground propane tank in the back of the building with fencing around it, and maintained by the gas company
- There will be a dumpster in the back of the building also screened by fencing
- A griddle will be used and no fats will be disposed of in the septic system
- The Applicant proposes a smaller menu than from his steak shack eatery
- There is a hot water heater in the basement and only access to the basement is from outside
- Customers will enter the parking lot from Glendale Road
- There is a 1000 gallon septic tank
- The bathroom will be used for employees only
- The sign and outdoor lighting will remain the same

Mr. McManus Moved and Dr. Arena seconded the Motion to take jurisdiction of the change of use application, case 08:16.

Mr. Kroner voiced concerns with the capacity of the septic system, especially with the summertime crowd. He also informed the Board that the area was once 100% wetland, and it was filled with gravel, and all runoff water from the Irving site flows into the Glendale Road development.

Mr. McManus commented on the septic capacity and reminded the Board that the previous use for the building included washing animals.

The vote passed in favor of the Motion (5 in favor, 1 opposed and 0 abstention). Mr. Kroner voted against.

Mr. Salomon said that the site mainly consists of parking and voiced concern of possible picnic tables on the site.

Mr. Wilson opened the Public Hearing at 9:20pm.

Mr. Rick Fucci, member of the Business Association, said that he is glad to see a small business come in rather than a “chain” restaurant. He opined that the septic capacity should not be a big concern, and reiterated what Mr. McManus said that the previous business washed animals.

Mr. Wilson closed the public hearing at 9:25pm.

Mr. Wilson said that he spoke to the Building Inspector earlier, and he confirmed that the septic has been checked, and is adequate. He mentioned to the Applicant that the screening of the propane tank and dumpster must be ~~screened~~ according the site plan review regulations.

Mr. McManus Moved and Mr. Salomon seconded the Motion to approve the Change of Use Application, case #08:16 with the following conditions:

1. The dumpster shall be located on the concrete pad in back of the shed and screened according the site plan regulations
2. Picnic tables will not be located in the parking lot
3. No more than two employee parking spaces, located on the easterly end of the lot, shall be used
4. All outdoor lighting shall remain as is, and will not be changed, without prior approval of the Planning Board
5. The sign shall be replaced with signs of exactly the same dimensions, materials, and foot print as the current signage
6. Hours of operation shall be opening no earlier than 7:00am and closing no later than 12:00am
7. The propane tank shall be located at the southeasterly corner of the main building and properly protected and screened according to site plan regulations

The Motion passed (5 in favor, 0 opposed and 1 abstention). Mr. Kroner abstained.

Other Business

GFI – (Greystone Village) update

There was no one in attendance from GFI to give the Board an update on the Greystone Village development. The Board was in receipt of the engineering report from Altus Engineering, dated November 19 2008. Mr. Clifford stated in his review letter that there is a strong possibility that a build-out may not occur for many years to come due to the slow economy. He suggested that the Board may need to consider Phase 1 to be a semi-

permanent situation and require that the developer provide features that will allow Phase 1 to stand alone as a community, and offered recommendations based on that.

Mr. Wilson said that the large drainage pond is really essential for this project and needs to be completed by 2009. He also commented that there was not much the Board could address without representation from GFI.

Fred Demar, 24 Greystone Way, Greystone Village, spoke of the concerns the tenants currently have. They are worried that the trash will not be picked up and that snow removal this winter won't be taken care of especially in light of the fact that the Company may be in financial trouble. Mr. Demar also mentioned that there is no lighting at the entrance of the development and it is very difficult to see turning into the development at night. He further mentioned that the stop signs are not illuminated and the mailboxes are falling apart. The owners of Greystone Village have promised to fix the mailboxes as soon as they have the money to do so.

Mr. Wilson explained that the Board is exercising their authority by not allowing the Building Inspector to issue building permits or certificates of occupancy permits until a surety bond is put in place in the amount the Board agrees upon.

Mr. Salomon said that unfortunately the bond may fix the infrastructure problems at Greystone Village, but not the individual homeowner's problems. He further explained that even though it doesn't look like the Town is addressing the concerns of the residents of Greystone, by not allowing the issuance of building permits and certificates of occupancy permits, it is placing pressure on them to take care of a lot of the issues. Mr. Salomon said that he would speak with the Town Administrator and the Road Agent about the snow plowing and trash concerns because they can potentially become health and safety issues. He further stated that he cannot promise anything because the trash removal is not the Town's responsibility, but if it becomes a health issue then the Town may have to step in.

Mr. Salomon thanked Mr. Demar for bringing his concerns to the Planning Board's attention, and said that the Town is working on getting the bond situated.

Crown Properties Landscape surety reduction request (M/L 021-001-000-001)

The Board was in receipt of a request from Crown Properties to draw down on the landscape bond that was put in place in June 2008 for the property at 203 Lafayette Road as a condition of approval on their site plan approved application. They were also in receipt of a letter from the Building Inspector confirming that landscape plantings are in place at the storage unit site.

Dr. Arena Moved and Mr. Salomon seconded the Motion to grant the drawdown request from Crown Properties on the landscape surety bond plus interest, and to retain 25% as listed as a condition of approval in the amount of \$1,750.00 for two growing seasons.

The vote was unanimous in favor of the Motion (6-0).

Rite Aid Landscape surety release (M/L 007-124)

There was no one in attendance from Rite Aid. It was determined that a representative from Rite Aid would need to come to a Planning Board meeting with a request to release the landscape surety bond.

Proposed Inclusionary Housing Ordinance discussion

Mr. Salomon presented added language for Section X of the proposed Inclusionary Housing Ordinance concerning violations of the Ordinance, giving it “teeth”. He also said that there may be a need for Legislation changes and spoke with State Representative Judy Day about it, and was going to provide suggested language to her, but may have run out of time.

Mr. Wilson said that the Senate has extended the deadline so Mr. Salomon still has time to get the suggested language to Ms. Day.

Mr. Wilson said that he gave copies of the proposed Inclusionary Housing Ordinance and asked for his opinion, and has not received a reply as of yet.

The Board agreed to place the proposed Workforce Housing Ordinance as the first item on the December 16, 2008 Work Session Agenda.

Mr. Wilson informed the Board that the NH Department of Environmental Services has published a chapter on model ordinances for “dark sky” standards. He made little changes to it and replaced the name of the Town throughout the document. He asked the Board to review it so that they could discuss it at the December Work Session.

Mr. Salomon distributed copies of revised language to Section 406.2 to the Board for their review. The Board will review and discuss it at the December Work Session.

**A Motion was made and seconded to adjourn at 10:30pm.
The vote was unanimous in favor of the Motion (6-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary