

1 **PLANNING BOARD**

2 Minutes of October 1, 2014

3 **ATTENDEES:** Arnold Rosenblatt – Chairman, Sally Wilkins – Vice Chairman, Gordon Leedy,
4 Michael Dell Orfano, Cliff Harris, Richard Hart – Conservation Commission, John D’Angelo – Ex
5 Officio, Allen Merriman - Alternate, Colleen Mallioux – Community Development Director
6 Absent: Marilyn Peterman – Alternate, Eric Hahn - Alternate
7

8 Arnie began by noting the first agenda item had been tabled from the September 3, 2014 meeting to
9 allow time for the board to seek legal advice. That document has been received and reviewed and since
10 it is privileged information, Attorney Drescher advised the board they needed to decide whether to
11 release the letter to the applicant. Arnie felt it would be appropriate to release the letter but noted there
12 could be consequences in doing so if there were any questions by the board. He noted if the board had
13 any questions regarding the document, they would need to discuss them in a non-public session but if
14 there were no questions, they could release it.

15 Gordon made the motion to release the letter from Attorney Drescher to the applicant.

16 Mike seconded the motion and all were in favor.

17 Arnie suggested the applicant take time to read the letter and the board could move on to the next case
18 while they do so.

19 Kyle Burchard stated they would take the time to look at the letter and the board could proceed to the
20 next case.
21

22 **NEW BUSINESS:**

23 **Case #5327 - 082914 – William and Dorothy Larson – 37 Broadway, PIN #025-061-000: Request for**
24 *a Conditional Use Permit to raze an existing home and rebuild a new one with additional area and a*
25 *lakeside deck.*

26 Tom Carr, Meridian Land Services, was representing the owners and their daughter Elizabeth. This
27 home has been in the family for many years and is on a municipal septic system. The existing home has
28 four (4) bedrooms but the new one will only have three (3) bedrooms. They have two (2) approved state
29 permits: Shoreland Water Quality which deals with disturbance within 250 feet of a great pond, which
30 Baboosic Lake is and Wetlands. There is a stone wall on the waterfront that is in very poor shape and
31 needs to be repaired and the wetlands permit is required to do so. They have also obtained three (3)
32 variances which were granted on August 19, 2014. The existing condition is the lawn is sparsely
33 vegetated and is very thin and rain water currently sheet flows off the house and into the lake. They are
34 taking steps to make the situation better and have gone before the Conservation Commission as well.

35 The Conservation Commission made one revision to the proposed plant list, to include Bar Harbor
36 junipers. The retaining walls will be rebuilt; they will remove the grass and replace it with winterberry
37 holly, high bush blueberries, sweet pepperbush, red osier dogwood and the junipers, which are all plants
38 from the NHDES plant list “Native Shoreland/Riparian Buffer Plants for NH”. There will also be a new
39 deck which will have pea stone underneath it to prevent drip/splash erosion and works very well. There
40 are two (2) existing driveways that are asphalt that will be removed and replaced with porous pavement.
41 The new house will have gutters and downspouts that will go into an infiltration trench that is able to
42 handle a flash rain event of two (2) inches in five (5) minutes. They have addressed all the criteria in the
43 zoning ordinance section 4.11. The applicant has no issue with staff recommendations numbered 2 and
44 3 but the first one regarding posting the limits of the wetlands would be difficult to do since the border
45 of the wetlands is off the property; in other words, the entire parcel is within the wetland buffer zone.
46 They are requesting this in lieu of a formal waiver request. They are requesting waivers from section
47 4.11.J: stormwater calculations, because of the obvious environmental benefits of the proposed
48 stormwater recharging methods and from section 3.18, Conditional Use Permits, 6: because the property
49 is currently a single family use and will continue to be a single family use.

50 Arnie asked if the board was comfortable with the waivers; the board was fine with the waivers.
51 Rich stated the Conservation Commission reviewed the application and thought it was fine. The
52 applicants are making improvements rather than worsening the situation. He asked if the house was
53 already connected to the community septic system.
54 Tom replied it was and has been for two (2) or three (3) years.
55 John had no questions.
56 Gordon suggested they use porous pavers instead or porous pavement as they are nearly the same cost
57 and maintenance on the pavement is different from regular asphalt. The pavers would be easier to
58 maintain and would be more attractive.
59 Sally saw there was a note on the plan stating the entire property is within the woodland buffer zone and
60 the wetland protection buffer zone. She noted in the demolition of the home, if there is any lead paint, it
61 would need to be dealt with in accordance to the regulations regarding removal of hazardous materials.
62 She noted the demolition of the house would have to comply with regulations due to its proximity to
63 water.
64 Allen had no comment.
65 Mike noted the applicant should consider switching the construction sequence numbers 2 and 3 to
66 remove the topsoil before the demolition in order to prevent soil contamination.
67 Cliff asked about the fire department's recommendation regarding the use of fire resistant materials on
68 the exterior of the new home.
69 Tom stated that was the case because the home is seventeen (17) feet away from the diagonally adjacent
70 home, which is less than the required twenty (20) feet. He and the fire chief discussed this.
71 Allen noted the fire chief recommended the materials be looked at by the fire department prior to
72 construction.
73 Cliff asked why there was a reduction in the number of bedrooms and if they would return to the
74 original four (4) bedrooms at any point.
75 Tom replied the applicant is looking to retire there and are looking to the future for possible handicap
76 accessibility, as needed. In order to allow room to maneuver a wheelchair, a bedroom had to be
77 removed. This house is on a community septic system that has been designed to handle a large volume
78 of use. He was unfamiliar with the design of this particular system and how it was sized but he assumed
79 it would still be able to handle the volume.
80 Arnie asked if the board had any additional questions; they did not. He asked if the applicant agreed
81 with the staff comments and conditions.
82 Rich stated he understood there is an issue with the wetlands boundary being beyond the property line
83 and suggested a sign stating the entire property is within the wetland buffer would be appropriate.
84 Tom replied he was fine with the second two conditions but the first one regarding the signage was a
85 difficult one. He was not sure what good the signs will do since the boundaries are beyond the property
86 line. The whole lot is developed and the owner knows it's in the shoreland buffer.
87 Sally suggested a reference in the deed would be appropriate.
88 Arnie asked if there were any comments from abutters or concerned citizens.
89 Ken Easton, 40 Broadway, stated there was a right of way on the original plan that a neighbor has built a
90 carport and fence on and along. This blocks his view of the lake and so will the construction of the
91 larger home. He also noted the existing well is off the property and the piping runs on his land.
92 William Larson replied he didn't want to block the view but he did speak with all of the abutters when
93 they started this project. Mr. Easton still has a view of the lake from where the house will be situated.
94 They will be adding lines to run the well water in a different location during construction.
95 Tom stated any issues with the view of the lake was something that should have been brought up during
96 the zoning board process but was not.
97 Kevin Corriveau, 24 Broadway, stated this would enhance property values and won't be affecting his
98 view.

Arnie asked if there were any additional comments or questions; there were none so he asked if there was a motion.

Sally made the motion to approve the requested waivers from Section 3.18 – Conditional Use Permit, Item #6 and Section 4.11.J – Stormwater Calculations.

Gordon seconded the motion; all were in favor with none opposed.

Sally made the motion to remove the requirement Article IV-Section 4.11.F.6 of the Zoning Ordinance identifying the boundaries of the WWCD with placards.

Gordon seconded the motion; all were in favor with none opposed.

Gordon made the motion to accept the application.

Sally seconded the motion; all were in favor with none opposed.

Gordon made the motion to accept the request for a Conditional Use Permit subject to the following conditions: 1. The applicant shall install and effectively maintain all temporary erosion and sedimentation control measures and practices specified on the project plans throughout the duration of any work performed; 2. The applicant shall document their existing house with photos (inside and outside) and accurate measurements of the house and property to be submitted to the Heritage Commission for inclusion into the next revision of the townwide historic resource survey, as requested by the Heritage Commission; 3. Change the construction sequence of top soil removal to go before the demolition of the house.

Mike seconded the motion; all were in favor with none opposed.

Colleen noted staff will deal with the signage of the property with regard to the shoreland buffer.

Tom also noted the Baboosic Lake Association might be able to provide some help with that as well.

OLD BUSINESS:

Case # 5149-070814 – Terry & Kelly Connor, 1 Smith Lane, PIN #003-027-000: A Subdivision and Non-Residential Site Plan Application to create a thirty-unit senior living condominium development.

Gordon made the motion to untable Case #5149-070814.

Sally seconded the motion; all were in favor with none opposed.

Arnie stated the board had received the letter from Attorney Drescher and have provided a copy to the applicant.

Kyle Burchard, Meridian Land Services, asked what the board's questions were.

Sally noted the special exception was granted but the question was did the plan comply with the zoning ordinance; in Attorney Drescher's opinion, it did not.

Kyle asked if the letter stopped the application due to the questions regarding the validity of the special exception.

Gordon replied the issue was the subdivision dimensional regulations versus the lot area.

Kyle replied they need to discuss the differences in the interpretation of the ordinance by the board and the applicant which may lead to misinterpretations of certain terms. One issue is the minimum lot area, which is the requirement for the special exception, and this application meets the dimensional requirements of the zone. The requirements are two (2) acres of land outside of the flood plain and wetlands and without steep slopes and there are certain frontage and setback requirements, which is where the minimum lot area applies and is a qualification for special exception. He didn't know where in the ordinance net tract area is cited.

146 Sally stated the minimum lot requirement is fifteen (15) acres for elderly housing that does not contain
147 slopes, is out of the flood plain, etc. Also, the entire net tract area is not less than fifteen (15) acres and
148 both are allowed under special exception.

149 Arnie stated they could poll the board and clarify but they did ask Attorney Drescher for his opinion and
150 he will rely on Attorney Drescher's advice. He wondered if Kyle was asking if the board agrees or
151 disagrees with the analysis or is he looking for an interpretation of the analysis?

152 Kyle thought the board should be polled as to their opinion on the letter. He felt this seemed open to
153 interpretation.

154 Arnie replied if the applicant looks at the summary on page two (2) of the letter: *"In my opinion, the*
155 *applicant is required to meet both standards. Thus, it would appear from the information that was*
156 *provided to me that the project is non-compliant as to density but this should be confirmed by*
157 *calculating the percentage of area consisting of the non-eligible soils and conditions."*

158 Kyle replied his interpretation is Attorney Drescher isn't misinformed but if the opinion of the board is
159 the application doesn't conform to the zoning ordinance, he didn't know where he stood with regard to
160 the letter.

161 Arnie offered to get a sense of the board.

162 Cliff stated he was not sure.

163 Mike was confused by the applicant's request. It seems if the board interprets net tract acreage as they
164 do and they push this back to the ZBA, that as a solution would be the path of least resistance.

165 Allen agreed. There are two (2) issues: a fifteen (15) acre minimum for the special exception and
166 Attorney Drescher's representation of other criteria: minimum lot area and net tract. The bottom line for
167 the board, based on the opinion letter, is the planning board does have authority to reject the plan due to
168 the lack of net tract area. The applicant can appeal or go to the ZBA for density related to net tract area.

169 Sally stated there is no question the property doesn't meet the net tract area and they can't approve a
170 project that doesn't meet the zoning requirements. There is a lot line adjustment that has yet to be
171 recorded, and if the applicant chooses to redo the LLA to have fifteen (15) acres of dry land, do they
172 deny the plan and tell them to reapply and the special exception stands? They have three (3) lots and
173 they have to record the LLA before they record the NSRP. The applicant could make the situation right
174 and reconfigure the land.

175 John agreed; he didn't see how this plan meets the zoning requirements as presented. If they reduce the
176 scale, they wouldn't have to go back to the ZBA.

177 Sally replied, in reality, they still have to meet the minimum net tract area of fifteen (15) acres for
178 elderly housing.

179 John stated it would have been nice to have a survey before the board dealt with this issue.

180 Gordon indicated the threshold question is the criteria for a special exception. The lot as it stands meets
181 the conventional standards of the zone in which it sits, which is Rural Residential. The net tract
182 calculations must fit within the elderly housing standard, not only does it need to meet the criteria for a
183 special exception, but it also needs to meet the density calculations in the zoning ordinance. He wasn't
184 sure if this plan did.

185 Kyle asked which section contained the definition of net tract area.

186 Rich agreed with what had been previously said; they need to go back to the ZBA for net tract area.

187 Arnie stated he thought Attorney Drescher gave his review and he was uncomfortable rejecting the
188 advice. Unless the question of the net tract area is satisfied, they can't go forward; the board's hands
189 were tied on this.

190 Gordon agreed and stated there was no way they can move forward based on town counsel's
191 recommendations unless the applicant goes back to the ZBA. They can only action the board can take on
192 this plan is whether it meets or doesn't meet the zoning requirements.

193 Sally clarified if the planning board denies the application they have to appeal to the ZBA.

194 Kyle stated he understood the position of the board but it was not clear where net tract area is mentioned
195 in the ordinance.
196 Sally noted Attorney Drescher mentions Section 5.2.A.1.1 but it also appears in Section 4.3.C.1.
197 Allen noted the ordinance does not use the term “net tract area” but what is written is the definition of
198 “net tract area”.
199 Kyle stated the minimum lot area is a dimensional requirement of the zone and fifteen (15) acres equals
200 ½ acre for every dwelling.
201 Colleen stated Attorney Drescher’s letter is clear and the criteria are being combined to meet the density
202 requirement. On page 8 of the letter: *“The foregoing would appear to indicate that the ‘density’ for an*
203 *elderly housing project requires a minimum of ½ acre per unit (as opposed to the larger lot sizes that*
204 *would apply to conventional subdivided single family lots). However, as noted, that appears to identify*
205 *the minimum standard and it also appears clear that the standard for the special exception identifies an*
206 *additional criteria requiring the application of soil/slope/floodplain...”* That layer is what the
207 interpretation is based on. A half-acre of dry land per unit is the minimum lot area for elderly housing in
208 the RR zone.
209 Kyle asked the board if they could vote to approve or deny the application.
210 Mike asked if the board needed to deny the application to push the issue back to the ZBA.
211 Gordon stated the applicant can go where ever they choose to take it.
212 Sally replied they would have two (2) cases to take to the ZBA: an appeal and a variance.
213 Arnie asked if there was a motion.
214 **Gordon made the motion to deny the present application on the basis that it is non-compliant with**
215 **the zoning ordinance, specifically the calculation of the minimum lot size, recommended in the**
216 **opinion issued on October 1, 2014 by Town Counsel William Drescher.**
217 **Mike seconded the motion; all were in favor with none opposed.**

218
219 **MINUTES:**

220 September 3, 2014

221 Sally made the following corrections:

222 Line 85: change “them” to “invasive species”

223 Line 111: change “substantially there” to “currently on the plan”

224 Line 123: change “malleable” to “mountable”

225

226 Allen made the following corrections:

227 Line 58: remove “be”

228 Line 74: change “off” to “on”

229 Line 142: change “ok” to “ok’d”

230 Line 159-106: change “they” to “we”; change “their” to “our”

231 Line 181: change “it” to “in”

232 Line 192: remove “but didn’t like it”

233

234 John made the following corrections:

235 Line 66: change “applicant responds” to “applicant’s response is that”

236 **Sally made the motion to approve the minutes of September 3, 2014 as amended.**

237 **Gordon seconded the motion; all were in favor with none opposed with Mike and Cliff abstaining.**

238

239 **REGIONAL IMPACT:**

240 Colleen noted the deadline for the next meeting was Friday, October 3, 2014 and if any regional impact
241 items show up at that time, she would inform them at the worksession on October 15, 2014.

242

243 **OTHER:**
244 There was no other business.
245
246 Arnie asked if there was a motion to adjourn.
247 **Cliff made the motion with Gordon seconding; all were in favor.**
248 Meeting was adjourned at 8:56 pm.