

1 **PLANNING BOARD**

2 Minutes of September 3, 2014

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

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8 Arnie asked Marilyn to vote for Cliff and Allen to vote for Mike.
9

10 **OLD BUSINESS:**

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

13 Kyle Bouchard, Meridian Land Services, LLC, began by stating after the August planning board meeting,
14 a site walk was proposed and occurred on August 20, 2014. In addition, third party review of the plan
15 was requested by the board and has occurred. He added not all of the revisions suggested have been
16 added to the plan but he is able to speak to them. The number of units, thirty (30), remains the same
17 and there has been a slight change at the entrance, as suggested by the third party review.

18 Arnie noted he had referred to the third party document prepared by Steve Keach and asked if the
19 applicant agreed to them or not.

20 Kyle replied he has seen them and they agree with most of the suggestions and he has addressed the
21 ones they don’t agree with in his response letter. Item #2 – reference of legal documents and whether
22 or not they have been submitted to the OCD for review – they have been submitted and they feel that
23 request is arbitrary and should not be part of the plan. Item #7 – sight distance at the proposed
24 driveway to the development off Merrimack Road – the sight distance profiles have been added to the
25 plan. Item #8 – parking and loading per unit and off-street spaces – they have been provided and are
26 adequate for the development noting that two car garages are provided for each unit and parking near
27 the clubhouse is provided for larger vehicles. Item #10 – traffic analysis – the applicant feels this
28 project will not adversely affect the already failed intersection and will not trigger any further issues.
29 They request not to have any further analysis done and felt the granting of an easement for a future
30 turning lane is enough. Item #12 – construction of pedestrian ways – the roads are short and vehicle
31 speeds would be low. It is a private road that is isolated from traffic and there is no parking on the
32 street, per the condo documents. Item #22 – complete septic designs for all units – the septic design is
33 being reviewed by the town and will be subject to state approval prior to construction. Item #28 –
34 slope of the road entering Merrimack Road – they have reduced the slope to allow three (3) cars to line
35 up at the intersection.

36 Arnie asked Colleen what the board was to determine this evening; he noted the ZBA is satisfied this
37 project meets the zoning ordinance.

38 Colleen replied the ZBA approved a special exception for density for senior housing, that the density is
39 appropriate for this particular lot. The variance is for a reduction in the scenic road setback, fifty (50)
40 feet instead of the required one hundred (100) feet. This is a review to see if the plan complied with
41 the site plan regulations which is necessary for any development over one (1) or two (2) houses.

42 Arnie clarified the obligation of the board is to look at the non-residential site plan regulations and
43 conclude they are satisfied.

44 Rich stated he noticed there is an inspection and maintenance manual included and wanted Kyle to go
45 over it.

46 Kyle noted there is a maintenance plan and a pest management plan. There is an outline of
47 maintenance and care of the storm water facilities, rip rap, pipes, inlets and bio retention areas. There
48 is a description of major invasive species and a chart to deal with the disposal of said invasive species.
49 State guidelines for deicing and salt application are included. Section E is a schedule for fertilizer and
50 pest management. Maintenance of the pump house and water system guidelines are still under
51 development and they have provided the well report.

52 Rich asked about the inspection and maintenance log and noticed there were no specifications for how
53 often each piece needs to be inspected.

54 Kyle replied the inspection schedule was listed at the beginning of each section; some are annually,
55 biannually or after a rainfall.

56 Rich thought the schedule could be put into a form; it would be hard to remember when everything
57 needed to be done.

58 John asked about the applicant's response to the parking item, #8. The statement that parking is
59 adequate isn't true. It might be too far for delivery trucks to park at the clubhouse and make their
60 deliveries, especially with large items.

61 Kyle replied there is no requirement for delivery parking spaces in the regulations.

62 John also noted moving vans will not fit in the driveways; he suggested a more responsive solution
63 would be better in keeping the road passable.

64 Kyle asked if a truck is parked along the curb, does it make the street impassible.

65 John replied there are no sidewalks and the street is narrow. Trucks can be there for quite a while. If
66 the applicant's response is that they are not concerned with it, then he would consider the answer to
67 be non-responsive.

68 Gordon spoke to item #2 regarding surety and he agrees there is no public improvement on this
69 property, per se. The town does have an interest in proper erosion and sedimentation control. It has
70 not been unusual for the board to require a restoration bond to be posted by the applicant. The board
71 can come up with numbers for that and propose them; just because the town hasn't published a price
72 schedule doesn't mean that doesn't need to be addressed. With regard to item #10, he applauds the
73 granting of an easement and feels it is a reasonable contribution. He was not sure how to judge its
74 adequacy without doing a traffic analysis, though. Item #12 caused concern with the prohibition of on
75 street parking, especially if residents have more than two (2) visitors. With item #29, he agreed with
76 the landscape standards and preserving the buffer on Merrimack Road and Route 101. He would
77 encourage them to increase the landscaping in those areas. Also, a note in the maintenance manual
78 only covers stormwater management and facilities and is not meant to include any integrated pest
79 management.

80 Kyle replied there is a plan for pest management in the condo documents, which is how it is done,
81 according to their attorney.

82 Gordon noted there is only a note in the stormwater management section regarding the pest
83 management.

84 Kyle stated there were some additional notes from the Conservation Commission they will be adding
85 to the maintenance sections. Can they manage to contain and try to eradicate the invasive species?
86 The guidance to at least containing them is referenced by the NH Department of Agriculture and from
87 outside consultants later on in the process.

88 Gordon suggested they need to make sure who does the inspection and that it does occur, at least
89 annually.

90 Kyle stated it was difficult to know who will do this as it will be up to the condo association to choose a
91 provider.

Gordon suggested Seacoast or AOT, which will only be in effect during construction. They need to make the plan clear to those who follow.

Arnie asked if there was a landscape plan.

Gordon replied he had looked at it and it was adequate. He noted they are proposing to take all the living trees out of the area to be developed and that he does not like.

Marilyn asked if each unit would have trees.

Kyle replied there wouldn't be street trees in front of every unit. If they could relax the requirement for the buffer on Merrimack Road, they could increase the number of trees in the development.

Gordon noted he would rather see more trees near houses than on Merrimack Road.

Marilyn noted the Summerfields development on Route 122, Peacock Brook and the Fells have roads that are twenty two (22) feet wide. In the Fells, the driveways are short. The point is not all the residents will be moving in at the same time and the trucks will be in the development longer than one (1) hour but are typically parked out of the way of traffic, which can pass in either direction. There is no parking overnight in the other developments. At the Fells, there are approximately thirty five (35) parking spaces for overnight guests.

Gordon noted there are also smaller lots for visitor parking.

Marilyn noted that while the streets are narrow, cars can pass by with street parking allowed during the day. They are creating a situation that is not typical of any other development in town. She suggested trees be planted on the street side of each unit as well.

Kyle replied if trees aren't substantially currently on the plan, he can make sure it happens.

Sally stated she was trying to figure out why this project is dramatically different from other special exceptions and found that in December 2013, when the applicant went before the ZBA, no survey had been done. The planning board has seen two (2) different lot line adjustment plans and she can't remember which one they approved; it hasn't been recorded. The ZBA approved thirty (30) units on fifteen (15) acres but with the flood plain and slopes taken into consideration, the net tract area isn't enough. They were given ½ acre per unit and in reality it is ¼ acre. The amount of net tract can support only sixteen (16) units and not thirty (30). The ZBA's decision was made before a survey was done and now there is only half as much usable land as the ZBA had thought.

Allen echoed Gordon's concern regarding the performance security; it is the town's liability and they have to come up with a reasonable amount. He noted by providing curbs, that might do a disservice to access and traffic in the development.

Kyle replied they are installing a Cape Cod berm and it is mountable.

Allen noted the parking restriction of no overnight parking was more typical instead of no parking at any time.

Sally asked about shared propane tanks and how that would work.

Kyle replied each unit would have a meter.

Arnie stated he agreed with many of the comments made by the board and he noted the applicant's response to items #28 and #8 in Steve Keach's report seem thin. The applicant needs to tell the board how they will address Steve's concerns.

Kyle apologized for the vague nature of the responses and stated they did find a way to make the suggestion for the entrance to the development work. They pushed back the slope at the intersection and the slope is a bit steeper in one (1) direction but it does work and allow for cars to line up.

Arnie stated the board is in the peculiar situation of a failed intersection and they are going to allow a development there that will increase the traffic without anything in place that will keep the situation from getting any worse.

137 Gordon replied any unsignalized intersection will be in failure and the question is does the queue back
138 up to the intersection.

139 Allen stated the applicant says there won't be a huge increase and the need for a traffic study would
140 be of trivial impact; the situation needs to be fixed.

141 Sally asked if it would be appropriate to ask for an easement for enough space for a turning lane in the
142 area, since this is not close to being ok'd. The ordinance doesn't address this kind of use near a failed
143 intersection.

144 Rich noted pest management is not mentioned.

145 Colleen stated the last three (3) pages of the thick document, Section E, is where the information is.

146 Sally replied the special exception had to meet the dimensional requirements of the zone and for this
147 use the minimum requirement is fifteen (15) acres.

148 Colleen replied the ZBA determined the minimum lot area and that was how the special exception was
149 granted. She did not believe the ZBA was in error.

150 Sally stated they granted the special exception on a lot that hadn't yet been created.

151 Colleen replied they needed to look at the plans submitted to the ZBA and see if they are substantially
152 different.

153 Sally noted in the ZBA minutes, it was mentioned that no formal survey had been done.

154 Marilyn interjected when there is a question of law, it was best to take it to town counsel.

155 Gordon stated the ZBA granted a special exception for a specific number of units. Can they grant a site
156 plan that doesn't meet the zoning requirements? This goes beyond administrative law.

157 Sally stated the lots could be reconfigured as the lot line adjustment hasn't been recorded. They could
158 do it and she was not faulting the ZBA but this is what they are looking at.

159 Arnie noted we have to determine if this application meets the non-residential site plan requirements;
160 that is our job.

161 Marilyn stated the special exception was granted for a specific number of units and that puts the board
162 in a bind with the incomplete information.

163 John thought they could either proceed and try to address this or ask town counsel to review it. Even if
164 the applicant has permission for thirty (30) units, the property doesn't conform.

165 Arnie noted they still have nine (9) residential site plan regulations that need to be satisfied for this
166 application to be approved.

167 Marilyn thought the ZBA decision preempts this.

168 Sally noted there were two (2) issues: Does Section 5.2.A.1.1 (*Section 5.2 Standards Applicable to All*
169 *Special Exceptions. A. CONDITIONS FOR SPECIAL EXCEPTIONS. 1. Before the Board of Adjustment*
170 *considers the approval of an application for a special exception, the applicant shall prove to the*
171 *satisfaction of the Board of Adjustment that all the following conditions have been met: 1. That the*
172 *property in question is in conformance with the dimensional requirements of the zone; and that the*
173 *minimum lot area shall contain no wetland as defined in Art. IV, Sec. 4.11; no flood plain as defined in*
174 *Art. IV, Sec. 4.10; and no slopes greater than twenty percent (20%); ...*) apply to this property, on which
175 the special exception for elderly housing was approved and; given the fact the survey hadn't been
176 done at the time of the special exception, is the number approved by special exception appropriate for
177 the upland area in this case.

178 Arnie noted there was a third issue, even if that answer is yes, his view is such that they still have the
179 obligation to make sure the application satisfies the NRSP regulations.

180 Gordon didn't believe there was an issue there. He asked if the application was complete.

181 Colleen replied in her opinion, the checklist has been satisfied.

182 Sally stated she would vote no as the density is too great. They can accept the plan if Attorney
183 Drescher says it's okay.

184 Colleen noted the clock starts when the plan is accepted. She said they could accept the plan, table it
185 for action or determine it is incomplete.

186 Sally noted if they accept the plan and table it, they are then thirty (30) days into the sixty five (65) day
187 clock.

188 Arnie asked if there were any comments or questions from abutters or interested parties; there were
189 no comments. He then asked for a motion.

190 **Gordon made the motion to accept the plan for review.**

191 **Marilyn seconded the motion. Allen, Marilyn and Gordon were in favor with Sally, John and Rich**
192 **opposed. Arnie cast his vote in favor.**

193 Sally reiterated she didn't believe the plan is in conformance with zoning.

194 Marilyn felt the plan meets the criteria although there are questions that are outside the realm of the
195 approval.

196 John noted the lot line adjustment hadn't been recorded and there was no survey at the time of the
197 ZBA approval.

198 Colleen replied the survey was complete at this time but the recording of the lot line adjustment
199 wasn't required for review; it is not a checklist item.

200 **Marilyn made the motion to table Case #5149 until October 1, 2014, pending receipt of reply from**
201 **town counsel.**

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

203 Colleen noted this serves as an indication of continuance. She will talk with Attorney Drescher to see
204 how soon he can complete his opinion.

205 Kyle stated he appreciated this discussion but it is a separate issue from whether this plan meets the
206 regulations for a NRSP. Is the intent to apply this to the subdivision as well as the plan?

207 Gordon stated it is a subdivision.

208 Kyle noted the chairman has expressed his distaste for the development. Is the plan dead in the water,
209 even if it complies with the NRSP and SD regulations?

210 Arnie noted he rarely votes and two (2) regular members were absent tonight. The final result may
211 change. Everyone will look at the criteria and listen to what Attorney Drescher has to say and then
212 make their decision. This project is an effort to exploit the property and ordinance and it is the board's
213 responsibility to apply the standards appropriately and that is why they are seeking legal advice. The
214 board will apply the appropriate standards and he voted to accept a plan he didn't like.

215 Terry Connor stated after the last meeting, they did everything required and now there are more
216 issues; he wondered why that was the case since the previous discussions went well, in his opinion.

217 Sally replied until they went on the site walk, they didn't understand the situation.

218 Colleen noted any previous review and conceptual discussions were non-binding and that had been
219 pointed out very clearly.

220 Gordon stated it was a mischaracterization to say no one had any concerns after prior discussions but
221 that is water over the dam. They are trying to arrive at the best case scenario for the town and
222 landowner. They are not trying to stop the landowner from legally using his land; they are just making
223 this comply with town regulations.

224 Sally stated they don't normally question ZBA decisions but in this case, the decision was made without
225 a survey.

226 Gordon also suggested there were several things for the applicant to respond to from this discussion
227 and from Steve Keach's review of the plan.

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NEW BUSINESS:

Case #5243 - 080514 – Roger L. & Betty Jo Labonte – 2 Ponemah Hill Road, PIN #001-008-001:

Request for approval of a subdivision on one residential lot into two.

Dawn Tuomola, of Monadnock Survey, noted the property consists of four (4) acres and is on the corner of Ponemah Hill Road and Hollis Road in the Rural Residential (RR) district. The applicant is looking to put two (2) single family residences, one existing and one new, on the two (2) lots. The existing house is on the corner and they have received a variance for a reduced net tract of 1.89 acres. They are using part of the brook as a natural boundary. The second lot has the existing barn and the soils have been testing well for septic. The leach field on the existing house lot is close to the pond and they are also testing an area that would be acceptable for a leach field. The second lot will have a smaller house and meets all zoning requirements; the first lot was granted a variance in July 2014.

Allen asked about the location of the existing septic system.

Dawn replied it is shown on the plan along with the scenic road setback.

Sally reiterated they have been granted a variance.

Dawn replied the ZBA did see this plan and approved this plan.

Sally wondered why this parcel was unique; she noted the ZBA minutes indicated the answer was due to it being bordered by the brook.

Marilyn, Gordon and John had no questions.

Rich asked if Peacock Brook was a steady or intermittent stream.

Dawn replied it does run dry during certain times of the year but there was currently a little water in it from the recent rain. She noted the buffer from the stream was four hundred (400) feet.

Arnie asked if the board had any additional questions; there were none so he asked if there were any comments or questions from abutters or concerned citizens. There were no questions so he asked if there was a motion.

Gordon made the motion to approve the waiver request from fiscal impact, environmental impact, traffic, drainage plans, water supply, hydrogeological and other studies.

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

Gordon then made the motion to accept the plan for review.

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

Gordon made the motion to approve the application for a subdivision of one residential lot into two lots with the following conditions: 1. If granted, a note be added stating the Planning Board waived the requirement to submit fiscal impact, environmental impact, traffic, drainage plans, water supply, hydrogeological and other studies. 2. Note 5 be amended to identify the parcel as partially within the Floodplain Conservation District. 3. Note 6 be revised and the 100' scenic setbacks be identified on the plan. 4. The parcel number for the proposed lot be changed to 1-8-3 and the street address of 4 Ponemah Hill Road be noted on the plan. 5. A letter shall be submitted to the Office of Community Development by a licensed land surveyor certifying that all boundary monumentation has been set as noted on the approved plan, or in lieu of a letter, the final subdivision plan to be recorded may be submitted noting that the bounds have been set. 6. The NHDES Subdivision approval number shall be noted on the plans. 7. One mylar, 3 full size plan sets and one pdf of the revised plan set shall be delivered for signature by the Planning Board Chair. 8. All fees associated with the recording of the plan shall be submitted to the Office of Community Development prior to recording.

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

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Case # 5244 – 080514 – Bird Dog Investments, LLC, 340 NH Route 101, PIN # 008-052-000: Request for conceptual review of a subdivision of one lot into eight.
Colleen noted the applicant had withdrawn the application.

OTHER BUSINESS:

MINUTES:

August 6, 2014

Sally made the following corrections:

Line 37: change “it” to “expedited minimal impact application”

Line 38: remove entire line

Line 63: change “draining” to “drainage”

Line 65: add “flow” after “won’t”

Line 150: change “He” to “Kyle”; add “they don’t have jurisdiction on” before “Merrimack”; add “.” after “Road”; add “It” before “is”

Line 151: add “current” before “plans”

John made the following correction:

Line 310: add “e” to “lin”

John made the following corrections:

Line 221: change the first “target” to “determine

Line 223: remove “d” from “stated”

Gordon made the motion to approve the minutes of August 6, 2014 as amended.

Allen seconded the motion; all were in favor with none opposed and Marilyn abstaining.

August 20, 2014 – Site Walk

Colleen noted the date was incorrect for the date of the site walk; it should be 2014 not 201.

Gordon made the motion to approve the minutes of August 20, 2014 as amended.

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

August 20, 2014 - Worksession

Sally made the following corrections:

Line 26: add “elderly or mixed use” after “workforce”

Line 64: remove “removes” and replace with “excludes”

Gordon made the motion to approve the minutes of August 20, 2014 as amended.

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

REGIONAL IMPACT:

Colleen noted there was one (1) item with regional impact. It is a request for a Conditional Use Permit for the demolition and replacement of a house on 37 Broadway on Baboosic Lake. They have obtained a variance from the ZBA for reduced setbacks.

Marilyn made the motion there was no regional impact.

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

PUBLIC HEARING DATE DEADLINES:

319 Collen stated she would be notifying the board of the hard and drop dead dates for public hearings for
320 any zoning ordinance amendments.

321

322 **CHANGE TO AN APPROVED PLAN:**

323 Collen also noted the board had approved a site plan application last year for Ekstrom Lawn Care on 4
324 Tech Circle with an 88'x60' asphalt pad. They would like to only pave the storage bin areas and use
325 compacted gravel in the other areas; they have already build stormwater controls.

326 Marilyn felt less asphalt was a better solution.

327 Sally agreed this was an improvement.

328 Colleen stated they are keeping the 44'x44' pad for bulk material storage and a 12'x27' area for salt
329 storage. She asked if the board wanted to see this plan again.

330 The board agreed that wasn't necessary.

331 Collen also stated she would make sure the applicant is planning on covering the stored salt.

332

333 Arnie asked if there was a motion to adjourn.

334 Gordon made the motion with Rich seconding; all were in favor.

335 Meeting was adjourned at 9:30 pm.