

HOLLIS PLANNING BOARD MINUTES
January 5, 2021
Final

PLANNING BOARD MEMBERS PRESENT: Bill Moseley – Chairman; Doug Cleveland – Vice Chairman, Virginia Mills, Ben Ming, and David Petry (Ex-Officio for Selectmen) Alternates: Julie Mook, Rick Hardy

ABSENT: Jeff Peters, Rick Hardy

Julie Mook will be voting for Jeff Peters.

Brain Major, Chair of the Zoning Board of Adjustment was also present.

STAFF PRESENT: Mark Fougere, Town Planner

**THIS MEETING WAS CONDUCTED VIRTUALLY WITHOUT A PHYSICAL LOCATION
IN COMPLIANCE WITH GOVERNOR SUNUNU’S EMERGENCY ORDERS #12, 16, & 17**

1. CALL TO ORDER: 7:00 PM. B. Moseley led the group in the Pledge of Allegiance.

2. APPROVAL OF PLANNING BOARD MINUTES:

- a. October 20th Meeting – Motion to Approve – motioned by D. Petry; seconded by C. Rogers – V. Mills abstained – motion passed

3. DISCUSSION AND STAFF BRIEFING

- a. Agenda Additions and Deletions:
- b. Committee Reports – none
- c. Staff Report – none
- d. Regional Impact – 2 Howe Drive in Amherst, NH. Site Plan for the conversion of an existing warehouse into a multi-tenant commercial rental space with 5 units. The Board did not request any action be taken by staff in regards to this notice at the meeting.
- e. Planning Board Meeting Schedule 2021 – motion to approve meeting schedule – motioned by D. Petry; seconded by V. Mills – motion passed unanimously

4. SIGNATURE OF PLANS: PB2020-030 20-23 Broad Street Minor Subdivision – Board decided to wait to sign due to outstanding conditions of approval needing to be met.

5. HEARINGS

- a. **File PB2020:024 – Design Review** Proposed site plan/subdivision for the development of a 50 unit Housing for Older Persons development on a 36.09 acre property, Map 41 Lots 25, 28 & 44, 365 Silver Lake Road, Applicant: Fieldstone, Owner: Raisanen Homes Elite, LLC, Zoned R&A.

V. Mills recused herself. Rick Hardy voting in her place.

M. Fougere explained that this application was tabled due to the amount of waivers required for the proposed road. The Board directed the applicant to come up with a way to provide a compliant road profile that did not require waivers. He noted that the Board has met with the applicant multiple times to work on this road profile. He stated that the applicant believes that this is the best they can do to meet the intent of the regulations.

There are still two areas of the road that are in need of waivers. The first area is where the new road meets Silver Lake Road and the second is where the new road loops back around to connect with itself. He added that the Board should discuss the possibility of granting waivers but should not vote on waiver requests at this time. He also stated that the discussion about waivers was non-binding and the Board could change its mind at a later date.

D. Petry asked why the Board did not receive a plan that did not require waivers. He stated that it appeared that the road the applicant wants to construct is not possible without waivers. He does not understand why the Board is looking at this plan since the Board specifically requested a plan without waivers.

Chad Branon P.E., Fieldstone Land Consultants – stated that he has been working with the Town Engineer to improve the road plan. He stated that he has been trying to balance a number of interest while designing the road. They have done subdivision projects where they have encountered the need for waivers that has been evaluated by the Planning Board. In regards to this proposal, he stated that even though the Town Engineer identified two waivers required, they formally requested one waiver because they can internally modify the design to remove the need for a waiver on the internal intersection.

C. Branon described the road plan and noted that they realigned the road so that it did not cross Witches Spring Brook. He noted that the proposal meets the cut and fill and total disturbance requirements. He also noted that they thought this proposal was compliant because they were unaware of the 3% grade maximum for intersections with stop conditions. He stated that the current proposal is better from an environmental and safety standpoint and a waiver should be considered. The only alternative would be to move the road closer to Witches Spring Brook. He noted the Hollis Road Spec Guidelines which refer to flexibility with considerations for environmental and safety implications. He believes that this proposal is the best design for the site with consideration for the road's proximity to Witches Spring Brook but that does not mean they cannot create a road plan that is 100% compliant.

D. Petry explained that it is the Board's decision on what conditions warrant the granting of a waiver and that the Board specifically asked for a road plan that does not require waivers. If the Board does not like the no waiver road plan they will then make suggestions on how to change the plan. He does not need the applicant to explain the regulations to the Board.

C. Branon stated that he was following the guidance that he received from the Town Engineer and planning staff to submit this proposal with the waiver request. It was not his intent to lecture the Board, he was just trying to put the best plan together for the site.

93 D. Petry stated that it is the Board that decides what is best and staff can provide
94 guidance but ultimately the Board votes on the proposal.
95

96 B. Moseley asked about the curb cut onto Silver Lake Road and if NHDOT has had any
97 input into their preferred location.
98

99 C. Branon stated that he has had discussions with NHDOT and have done many projects
100 like this proposal and have been told by NHDOT that as long as the proposal meets safe
101 sight lines distance requirements there will be no requirements for off-site
102 improvements. So as long as all of NHDOT requirements are met the proposed location
103 of the curb cut is acceptable. He noted that the Board has had issues with NHDOT
104 changing their driveway location for other projects but that was mainly due to the
105 intensity of the use and the requirement for off-site improvements.
106

107 M. Fougere stated that staff did not get the impression that the applicant could have
108 submitted an alternative road plan that did not require any waivers. Staff believed that
109 this was closest that the road could get to meeting all of the regulations but now it
110 sounds like a road plan that does not need any waivers is achievable.
111

112 C. Branon stated that if the road alignment was moved approximately 100' closer to the
113 brook then the road would not need any waivers.
114

115 M. Fougere asked about the waiver condition for the internal intersection.
116

117 C. Branon stated that they could raise the road at the intersection and shift it so that the
118 wavier would not be needed.
119

120 Mike Vignale P.E., Town Engineer – stated that he was also under the impression that
121 the presented plan was the best that could be achieved. He explained that he thought the
122 waiver request for the 7% to 5% differential was relatively minor if that was all that was
123 needed. He was surprised to hear that a compliant road plan could be achieved and the
124 applicant did not inform staff of that option.
125

126 D. Cleveland stated that he too believed that a plan could not be done without a waiver.
127 If there was a way to make a compliant road plan then that should be presented to the
128 Board. He also suggested that the applicant present several scenario road plans including
129 the applicant's preferred plan, a plan that has the curb cut lined up with Toddy Brook
130 Road, and a plan that crosses the brook.
131

132 R. Hardy asked if the frontage of the lot has been cut and if the work was initiated by the
133 former or current owner.
134

C. Branon stated that no work has been conducted in regards to this proposal. There were some trees cut to improve the sight lines for the existing driveway that leads to a SFR that was performed by the current owner.

Motion to table to the February 16, 2021 meeting – Motioned by D. Petry; seconded by D. Cleveland – V. Mills recused – motion passed

6. Other Business –

a. Potential Zoning Changes

Amend Section XI: General Provisions, by adding the following new Section S. Residential Uses: Side Yard Setback Encroachment: Residential uses may be allowed to encroach into Minimum Side Yard requirements as required in the Agriculture and Business Zone, Recreation Zone, Residential and Agriculture Zone, Rural Lands Zone and the Town Center Zone, provided a Special Exception is obtained as outlined in Section VI Zoning Board of Adjustment (ZBA) , paragraph B, as well as adherence to the following criteria as determined by the Zoning Board of Adjustment:

- a. Proper screening, as determined by the ZBA, is provided. Bonding of landscaping shall be required, as provided for by Planning Board regulation. Any required landscaping shall be overseen by Planning Staff.
- b. Encroachment shall not exceed 20% of the Minimum Side Yard requirement.
- c. Any decisions (ZBA approval letter) allowing encroachment shall be recorded for both the subject property and the affected abutter, unless prohibited by law or Registry of Deeds practices.
- d. Applicant must prove that the ZBA approval letter has been properly recorded prior to the issuance of any building permit.

M. Fougere explained that this proposed Zoning Amendment has been discussed at several meetings. At the previous meeting the Board asked how many cases the ZBA has heard that would be changed by this proposal in the past two years. He stated that in the past two years the ZBA heard four cases that would have been affected by this amendment. He explained that this proposed provision would allow, by Special Exception, a minor encroachment of a structure into the side yard setback of a property by no more than 20% of the required side yard setback.

B. Major noted that the ZBA has had many cases seeking relief from the side yard setback over the years. He stated that all the cases are for properties that are subject to a 35' side yard setback. In many cases the variance request is for 1 to 2 feet of encroachment and that the ZBA found the request to be *De Minimis* in nature and would grant the relief. He noted that this was not really the correct way to rule on a variance but the Board still had the authority to do so. The proposed mechanism is the more proper way for the ZBA to rule on these instances of minor relief.

B. Ming asked for an example of a case that was requesting a minor encroachment into the side yard setback.

B. Major discussed a former case before the ZBA where the applicant wanted to construct a garage that encroached into the side yard setback. The side of the property to be encroached on abutted conservation land that would never be developed. He described another case where it was just the corner of an addition that encroached into the setback.

B. Ming asked if the Variance requirement to prove hardship was part of the reason to create a Special Exception.

B. Major stated that was correct. In some cases the ZBA would have to go to great lengths to identify hardship just to appease that provision when the relief requested was so minor. R. Hardy asked about screening and adhering to the Rural Character Ordinance. He noted that the current language of the proposed amendment refers to proper screening as determined by the ZBA.

B. Major noted that the ZBA has had a challenging time properly identify the proper amount of screening required in the past and relied on input from the Planning Board. He note that in many cases there was already vegetative screening in place so additional plantings was not necessary. The ZBA has conditioned in the past that existing vegetation must be maintained. He stated that the ZBA would look at existing screening and if deemed inadequate would take steps to address that.

D. Petry stated that four cases in two years is not significant enough to warrant changing the Zoning Ordinance over. He stated that this was essentially reducing the require side yard setback and raised concerns related to expansion creep where, a few years down the line, the amount of allowed relief is increased which further reduces the required side yard setback. He noted that the HOSPD lots in particular can be challenging due to the fact that they are one acre and narrow. He raised a concern about this proposal affecting the rural character of the community.

B. Major stated he believed that the proposal was an opportunity to see if the voters would support some flexibility in regards to the side yard setback.

D. Petry asked to clarify that if the request was for greater than 20% encroachment then the applicant would still require a variance.

M. Fougere stated that was correct.

B. Major stated that this would eliminate the argument that the amount of relief is *De Minimis* since it exceeds the threshold of 20% and the hardship requirement is more prominent. He noted that this would help the ZBA be more consistent with their decisions.

D. Petry stated that the screening requirement would need to be better defined in the provision.

M. Fougere read the definition of screening as defined in the Rural Character Ordinance.

D. Petry stated that referencing that definition would be sufficient. He noted that bonding for the screening should be required per Planning Board practices.

R. Hardy asked how the ZBA came up with 20%.

B. Major stated that the ZBA decided on 20% because it met the idea of a *De Minimis* encroachment.

Motion to move the Zoning Amendment to Public Hearing – Motioned by V. Mills; seconded by D. Petry – passed unanimously

The Board began Public Hearings on Proposed Zoning Amendments.

Public Hearing for Housing for Older Persons Amendment

Rob O'Hannon; 351 Silver Lake Road – asked to clarify M. Fougere's comment about change the acreage requirement from 20 to 30 acres. He also asked about lot size requirement. He stated that he was in support of making the regulation more restrictive.

M. Fougere explained that the current requirement is that a HOP development needs at least 20 acres of land and the proposed change is to increase that to 30 acres. He explained that a 2 acre lot is typical in Town but density for a HOP is based on net tract area for the site. The proposed change also reduces allowed density.

D. Petry stated that the proposed change reverts the regulations to pre-2017 language.

Public Hearing closed

Motion to send the HOP Amendment to ballot – Motioned by D. Petry; seconded by D. Cleveland – passed unanimously

Public Hearing for Workforce Housing Amendments

J. Mook asked to clean up the first sentence of the proposed change as it was a run on sentence.

M. Fougere stated that could be done without needing to re-notice the proposed amendment.

C. Rogers commented on Section G of the proposal in regards to project cost estimates and profit. He stated that he believed that it was not the Board business in regards to a developer's profit margin. Secondly he stated that the Board was not qualified to judge if the applicant was going accurate information regarding the economics of a proposal. He stated that this will only cause trouble and nothing is enforceable. He raised concern about progress reports midway through construction of a project and asked if the Board would shut a project down if the cost is something different.

D. Petry asked if it was part of the RSA and Workforce Housing guide book to determine what the Workforce Housing units will cost to the end user. H stated that the Board does need the information that Section G requires.

C. Rogers stated that the unit cost or rent for Workforce Housing units is not controlled locally but is set based on Federal benchmarks.

M. Fougere noted that the information in Section G is at the Board's discretion but it allows the Board to review the data that justifies the project to the developer. He noted that if the data gets too complicated then the Board can bring in an outside consultant. He added that a developer could argue that provisions in the Ordinance make the project economically unviable and providing the financial data can either prove or disprove that argument.

D. Petry noted that the Board needs as much information as possible to make a fair and unbiased decision on applications.

C. Rogers asked what was the definition of a fair profit and why does the Board care. He noted that if the application was for just market rate dwelling units then the Board does not ask all these questions.

No public comment.

Public Hearing closed

Motion to send WFH Amendment to ballot – Motioned by D. Petry; seconded by D. Cleveland – C. Rogers voted against – passed

Public Hearing for Industrial Zone Amendment

No public comment.

Public Hearing closed

Motion to send Industrial Zone Amendment to ballot – Motioned by D. Cleveland; seconded by D. Petry – passed unanimously

7. ADJOURN

There being no further business, D. Petry presented a non-debatable motion to adjourn. Motion seconded by C. Rogers and unanimously approved. Meeting adjourns at 8:30 PM.

Respectfully submitted,

Evan J. Clements,

Assistant Planner