

**TOWN OF DUNBARTON, NH
PLANNING BOARD MEETING MINUTES**

February 19, 2020 ~ 7:00 p.m. at Dunbarton Town Offices

IN ATTENDANCE: Chairman Ken Swayze, Vice Chairman George Holt, Secretary Chuck Frost, Alison Vallieres, Brian Pike, Jeff Crosby, Ex-Officio Mike Kaminski, P/Z/B Department Administrator Donna White

BUSINESS: Secretary Chuck Frost stated that meeting notices were posted on the Town's bulletin board and website. Chairman Swayze stated that all members are present and will be voting as allowed.

1. Approval of Minutes: **Chuck Frost made a motion to approve the minutes of the January 15, 2020 public hearing and meeting as presented; Brian Pike seconded the motion.** There was no discussion. **All were in favor.**
Brian Pike made a motion to approve the minutes of the January 29, 2020 public hearing; Chuck Frost seconded the motion. There was no discussion. **All were in favor.**
2. Correspondence: None
3. Selectmen's Office Report: Mike Kaminski said the proposed zoning amendments have been accepted by the selectmen and will go on the ballot as presented. There was a 54% voter turnout at this week's primary election.
4. Planning/Building Department Report: Donna informed board members of the following: 1) the newly adopted Rules of Procedure need to be signed this evening; 2) the terms of George Holt and Brian Pike expire next month; and 3) the Master Plan has been printed; copy available for the Board's viewing this evening.

OLD BUSINESS:

Application 2019-PB-004 – Brian F Nordle & Dolores J Richard-Nordle - 3-Lot Subdivision of Tax Map B7-01-05, Purgatory Pond Road, in the Low-Density Residential District. Donna gave an update on the application as follows: 1) Application was accepted as complete on January 15, 2020; 2) there was a question about impact on the Wetland Conservation District; it was confirmed that the WCD does overlay this parcel; 3) Jacques Belanger did new test pits and realigned boundaries; all lots have building pockets outside the 125' WCD setback.

Peter Weeks, employee of Jacques Belanger, spoke on behalf of the applicant in the absence of Mr. Belanger. Mr. Weeks pointed out that they have reconfigured the lots and all meet the subdivision requirements. He also pointed out that the WCD overlay has been shown on a revised plan. The new lines have been staked out. Mr. Weeks said bounds will be set as best as they can, noting the amount of wet areas. He said bounds will be set where the lots meet/tie to the wetlands.

Chairman Swayze stated that the Conservation Commission has a highly involved interest because of the WCD. He asked George Holt if he had any questions or comments on behalf of the

Commission. Mr. Holt said that Mr. Belanger met some of the questions by reconfiguring the lots. He said he spoke with Mr. Belanger and thought he was going to have the wetland scientist go back out to look at a couple of smaller pockets but doesn't see anything changed on the plan. Mr. Weeks confirmed that Mr. Belanger spoke with Josh Brien, wetland scientist, who confirmed that there is nothing more to delineate. In a meeting with Donna the day before his meeting, Mr. Belanger stated that he would not be having Mr. Brien back out there as he is certifying his work.

Brian Pike asked about the closeness of the well radius and 4K area on the bigger lot. Mr. Swayze pointed out that they aren't overlapping, and they have some latitude with the 4K area, depending on the type of system used. Hearing no further questions or comments from board members, the chairman opened the hearing to the public. There were no questions or comments from the public. The chairman brought the hearing back to the board, asking if members had any more questions. George Holt said he was all set as long as the wetland scientist certified his work. There were no further questions. **George Holt made a motion to approve the application, subject to the following conditions:**

1. Submittal of a final, technically accurate, and graphically correct plan-set in full compliance with all current subdivision regulations and incorporating any and all additional requirements established during deliberations with the Board (per status reports, Planning Board meetings & minutes of January 15, 2020 and February 19, 2020, and other acknowledgments).
2. Approval and receipt of all other required local, state and federal permits. There shall be no change(s) to the base plan(s) without re-consultation with the Board, as a result of such other permit approvals.
3. Payment of all fees and costs associated with the Dunbarton Planning Board application process.
4. That all specified work and improvements at the site, as specified by the Land Subdivision Regulations, be completed prior to the signing and filing of the mylar (survey monumentation must be complying, etc.).
5. Preparation, submittal, and filing of all deeds, legal instruments, and/or documents required or intended to be filed at the Merrimack Country Registry of Deeds; in such content and form acceptable to the Town.

Alison Vallieres seconded the motion. The chairman asked if there was any discussion. Brian Pike asked if regional impact was addressed at the last meeting. To reaffirm, Brian Pike made a motion that this application does not have regional impact; seconded by Jeff Crosby. All were in agreement. There was no additional discussion. **All were in favor of Mr. Holt's motion.**

Application 2019-PB-005 – Falcon Heights Properties, LLC - 2-Lot Subdivision (using Large Lot Zoning with Reduced Frontage) of Tax Map H5-02-02, 35 Gile Hill Road, in the Low-Density Residential District. Jeff Crosby recused himself and moved to the public seating. Donna said the application was accepted as complete and hearing opened on January 15, 2020. Only minor typographical revisions have been made to the plan since that date. Peter Weeks, employee of Jacques Belanger, represented the applicant in the absence of Jacques Belanger. Maria Dolder, attorney for the applicant, said she is familiar with the project and would address any questions.

The chairman stated that there was discussion at the last meeting about exaction fees and tree removal on this project. He asked Mr. Weeks if there have been any major revisions since last month. Mr. Weeks said there had not. Mr. Swayze said he would like to have the road agent address the matter of the trees and the scope and oversight of the road improvement project. Jeff

Crosby, Road Agent, said it was established at the last meeting that this new lot would be assessed an exaction fee, as others were in the area, for the improvement of Gile Hill. He said he spoke with Joe Beauchemin, the applicant, about the tree removal that would aid in the road widening and grade, in lieu of an exaction fee. He said in the past Richard Burchell blasted an area, and that helped move the Town's position forward. Mr. Crosby said the Chan subdivision involved extensive road upgrade and exaction fees because he had to bring the Class VI portion of the road to Class V standards to even be considered for a subdivision. He said two of those lots have been sold, and exaction fees were triggered at the time building permits were issued. Mr. Crosby said he currently has \$8,000 in a fund to be used, along with some town funds, toward the improvement of this road. He said a landowner can cut their trees without the involvement of the Conservation Commission, whereas the Town must go through meetings and hearings with the Commission. Mr. Crosby said these are not majestic trees; there are two large pines and two large oaks, the rest are dying ashes and scrub brush. He stated he thought this was a good move for the Town, seeing immediate action rather than the Town having to sub out the work which would be more expensive. Jeff said Mr. Beauchemin was agreeable to possibly doing it that way.

Ken Swayze noted if the applicant removes the trees it would be done prior to the filing of the plan and the Town would not be holding onto someone's money for six years. He asked the applicant of the value attached to taking the trees down compared to the exaction fee. Mr. Beauchemin said he got an estimate of \$4,000 to do the trees the road agent asked him to cut. He explained the trees could be dropped on his own property, not interfering with the road, whereas the Town would have to drop them in the road. Jeff Crosby stated that he got an estimate of \$7,750 from another logger. He explained that the Town would have to sub out the work, noting that the highway department could easily stump, fill, and grade the area once the trees were down. Mike Kaminski pointed to past practice where an applicant on County Road had to remove ledge rather than be assessed an exaction fee. Brian Pike noted that Mr. Chan upgraded the road and his lots were assessed exaction fees, so they have seen it both ways. Jeff Crosby said the key on the Chan project was that the road had to be upgraded from Class VI to Class V, which was a lot more work, including moving power lines. This subdivision is on an existing Class V road. George Holt said, as a member of the Conservation Commission, this is a scenic road, and the trees and walls are protected from the Town removing them. He said having the property owner remove the trees subverts the spirit and intent of the scenic road ordinance. Mr. Holt said the Commission is opposed to having the exaction fee used as leverage and is opposed to the Town requiring the applicant to remove the trees, although they have no mechanism to prevent that from happening. Jeff Crosby explained that the same process was done on Rangeway Road several years ago when Falcon Heights had property there. There were two new houses, no exaction fee was charged, and they removed trees. He said the trees on this proposed subdivision are marginal; their removal will not affect the quality of the scenic road, noting again he thought this was a good opportunity for the Town.

Brian Pike asked Mr. Holt if the Conservation Commission is averse to cutting any trees. Mr. Holt said they are not opposed to cutting dead trees but do feel there is a process of meetings and hearings that should be followed. Mike Kaminski said there are quite a few smaller trees and pines of no aesthetic value that impede the progress of road improvement. He said not having to wait for an exaction fee would be an immediate benefit to the residents. Alison Vallieres said she agrees with Mike Kaminski and Jeff Crosby and feels it would be best to make use of the opportunity before the situation gets worse. Chuck Frost said he, in the element of fairness, agrees with Brian Pike about the Chan subdivision doing both but feels the exaction fee should be more than \$4,000. He said the

trees are of no value; proper drainage and safety are most important, noting the worst part of the road is below this area. He asked Mr. Crosby if the highway department can handle the job after the tree removal. Mr. Crosby said they could, pointing out a narrow point in the road right near there that would be part of the scope of the project. He said there is a lot of raw land up there and there would be more opportunities to collect exaction fees in the future. He explained how exaction fees are established. Ken Swayze said he echoes what others have said and agrees with the road agent. He said the trees are of no value and this would be the practical, financial way to go. Mike Kaminski said this adds the instant benefit of improvement to the road, again citing the County Road example that worked.

The chairman addressed the applicant and his counsel, saying some members want both, yet he is hearing the majority are in favor of the tree removal. Attorney Dolder said the applicant knew about the exaction fee and intended to pay it, then the road agent spoke with him about removing the trees instead. She said the applicant is agreeable to that but is opposed to doing both. Ms. Dolder pointed out that Mr. Chan chose to do a subdivision on a Class VI road and even to be allowed, had to upgrade the road. This is on a Class V road, and tree removal is not required to build on this new lot. She said they would do the tree removal to accommodate road improvement, but both is excessive, adding that they are willing to work with the Town.

The chairman opened the hearing to the public. David Herrick, 47 Gile Hill Road, said his builder took care of trouble trees in front of his property when he built, and he paid the \$4,000 exaction fee. The road agent said Mr. Herrick elected to do that to enhance his property; it was not part of widening the road. David Naugler, 71 Gile Hill Road, said the reason he bought there was because it is a scenic road. He spoke about trouble with kids making a mess of the end of the road, public safety, and the need to improve the whole road, doing it right at one time. Mr. Naugler said he heard there was potential for multi-family dwellings or multiple houses on this property and that would affect the road and public safety. David Herrick spoke about the new lot not meeting required frontage or acreage. Chuck Frost explained large lot zoning as permitted in the Zoning Ordinance.

The chairman closed the hearing to the public and brought it back to the board. Mike Kaminski said this is an opportunity to make some improvements to the road and not have to wait for a building permit to be pulled. He said the road needs work now, and he is not in favor of requiring the tree removal and exaction fee. Alison Vallieres said now is the time; the Town pays if they wait. Chuck Frost said he agrees with the part about taking the trees, noting this is a poor-quality road and he thinks there should be some additional fee. George Holt said he feels the same as Mr. Frost, but feels the exaction fee is the way to go, not requiring the trees to be removed, leaving that up to the owner. Brian Pike said he can see both sides but is geared more toward the fairness aspect and tends to agree with Chuck's point. Chuck Frost pointed out that Mr. Chan had to upgrade the road and be assessed the fee, asking if it wouldn't be fairer to impose an exaction fee as well as remove the trees. Ken Swayze said he is hearing the desire to have the applicant cut the trees to the satisfaction of the road agent and impose an exaction fee. He asked the applicant and counsel if they would like to take a few minutes to discuss their options.

Attorney Dolder said the applicant would like to know if the Board would accept a \$5,000 exaction fee, paid upfront as opposed to when the building permit is issued, and not do the tree removal. Ken Swayze said he agrees with Mike Kaminski and the road agent, get rid of the trees under the easiest conditions. Ms. Dolder said that several board members seemed to feel the road improvement was more important; therefore, the applicant is willing to give them the exaction fee, plus a little more, now rather than having to wait for a building permit to trigger the fee payment. Ken

Swayze said there is some need on the scenic roads to address the trees. He said he is starting to lean toward both things now. The road agent said he wished he'd never brought up the option to remove the trees. He said he felt it was a good alternative for the Town. He said he got an estimate from a vendor the Town has used before and would be paying double. He spoke about work on the road, doing the choke point, widening both sides, and having the applicant cut the trees. Mr. Crosby said everyone is telling him how bad the road is and how it needs to be fixed, saying he wants the Conservation Commission to come out and give him free reign to cut the trees to make that happen. George Holt said the Commission would be glad to discuss it with him. Mr. Crosby said he doesn't feel it is fair to make the applicant do both as it hasn't been done before.

George Holt made a motion to approve the application, subject to the standard approval conditions, and imposing a \$4,000 exaction fee. Brian Pike said he would second the motion for discussion purposes. Mr. Holt said the motion is fair, not onerous to the applicant, is consistent with what has been done in the past and meets the spirit and intent of the scenic road ordinance. He said it would put money toward fixing the choke point, and the Conservation Commission would be very willing to work with the road agent toward figuring that out. Ken Swayze said he is against the motion as the \$4,000 is an old figure. Chuck Frost said he disagrees with the \$4,000, saying it is not enough, the tree removal would cost more. He said the tree removal is more important, noting this proposal is for one additional lot. Alison Vallieres said she is not in favor of the motion; she recommends cutting the trees now, taking advantage of the situation. Mike Kaminski agreed. Brian Pike said he agrees with the motion, but the figure is too low. He said the fee needs to be revaluated; until that time, he is torn on which way to go. The chairman asked for a vote on the motion. In favor: George Holt. Opposed: Mike Kaminski, Brian Pike, Alison Vallieres, Chuck Frost, Ken Swayze.
Motion failed 1-5.

Mike Kaminski made a motion to approve the application, subject to the following conditions:

1. Submittal of a final, technically accurate, and graphically correct plan-set in full compliance with all current subdivision regulations and incorporating any and all additional requirements established during deliberations with the Board (per status reports, Planning Board meetings & minutes of January 15, 2020 and February 19, 2020, and other acknowledgments).
2. Approval and receipt of all other required local, state and federal permits. There shall be no change(s) to the base plan(s) without re-consultation with the Board, as a result of such other permit approvals.
3. Payment of all fees and costs associated with the Dunbarton Planning Board application process.
4. That all specified work and improvements at the site, as specified by the Land Subdivision Regulations, be completed prior to the signing and filing of the mylar (survey monumentation must be in compliance, etc.).
5. Preparation, submittal, and filing of all deeds, legal instruments, and/or documents required or intended to be filed at the Merrimack County Registry of Deeds; in such content and form acceptable to the Town.
6. Variance and conditions granted by the Dunbarton Zoning Board on November 28, 2019 to be noted on final plan.
7. Trees along the frontage of said subdivision to be removed in lieu of any exaction fee; tree removal to be done under the guidance of the Dunbarton Road Agent.

Alison Vallieres seconded the motion. In favor: Mike Kaminski, Brian Pike, Alison Vallieres, Chuck

Frost, Ken Swayze. Opposed: George Holt. **Motion passed 5-1.**
Jeff Crosby returned to the Board.

Application 2019-PB-006 – Thomas Corrado - 2-Lot Subdivision (using Large Lot Zoning with Reduced Frontage) of Tax Map H3-04-04, 259 Stark Highway North, in the Low-Density Residential District. Donna said minor revisions to the plan have been made since the last meeting (Winslow Road was added; a soil type was corrected). Peter Weeks, employee of Jacques Belanger, represented the applicant in the absence of Jacques Belanger. Mr. Weeks said they would be applying to NH DOT for a change of use of the driveway, going from a single to shared driveway. A waiver was granted at the first meeting; there is no new information. Hearing no questions from the board members, the chairman opened the hearing to the public. Hearing no questions from the public, the chairman returned the hearing to the board. **Jeff Crosby made a motion to grant the subdivision, subject to the following conditions:**

1. Submittal of a final, technically accurate, and graphically correct plan-set in full compliance with all current subdivision regulations and incorporating any and all additional requirements established during deliberations with the Board (per status reports, Planning Board meetings & minutes of January 15, 2020 and February 19, 2020, and other acknowledgments).
2. Approval and receipt of all other required local, state and federal permits. There shall be no change(s) to the base plan(s) without re-consultation with the Board, as a result of such other permit approvals.
3. Payment of all fees and costs associated with the Dunbarton Planning Board application process.
4. That all specified work and improvements at the site, as specified by the Land Subdivision Regulations, be completed prior to the signing and filing of the mylar (survey monumentation must be in compliance, etc.).
5. Preparation, submittal, and filing of all deeds, legal instruments, and/or documents required or intended to be filed at the Merrimack County Registry of Deeds; in such content and form acceptable to the Town.
6. Shared driveway to be constructed to Fire Department standards; shared driveway agreement required. All work must be completed and inspected to the satisfaction of NH DOT and/or the Planning Board's assignee prior to the signing and filing of the mylar.

Chuck Frost seconded the motion. All were in favor.

NEW BUSINESS:

Application 2020-PB-001 – David Nault & Joshua and Leigh Nault – 3-Lot Subdivision of Tax Map B6-01-10, Montalona Road, in the Low-Density Residential District. Ken Swayze recused himself from this case, asking George Holt to step in as the acting chair. Peter Weeks, employee of Jacques Belanger, represented the applicant in the absence of Jacques Belanger. Donna introduced the application as follows: The intent of the plan is to subdivide the 100.26-acre lot, with 1,126.15' of frontage, in a total of three residential lots. Proposed lots will be 89.66 acres with 348.21' of frontage, 5.20 acres with 326.43' of frontage, and 5.40 acres with 451.51' of frontage. There are two requests for waivers, State subdivision approval is not needed because the lots are over five acres each, the parcel is in the Eversource ROW/Eversource has been contacted, and a portion of the parcel is in the Wetland Conservation District (WCD).

George Holt said he doesn't feel the WCD is an issue, but it's not shown. The vice chair proceeded to address the requests for waivers. Jeff Crosby asked if the application should be accepted first. He said the application for the Falcon Heights project on Stark Highway South was not accepted, and the Board didn't give them any direction. Mr. Crosby said he thought the board had to accept an application to even begin a discussion on the matter. Donna reported feedback from the Office of Strategic Initiatives that said waivers cannot be acted upon before accepting an application; however, the chairman has been told otherwise by NHMA. There was brief discussion on how to proceed. **Jeff Crosby made a motion to accept the application as complete to open discussion; seconded by Brian Pike. All were in favor.**

Peter Weeks said he met with Donna the day before to review the plans. As a result of that meeting, he has added the WCD layer on the plan, pointing out its proximity to the proposed new lots. The first waiver request was read: *The applicant is requesting a waiver of Subdivision Regulations Section VI C. Location of property lines and their approximate dimensions; existing easements, buildings, water courses, ponds or standing water, rock ledges and other essential features.* Mr. Weeks stated that the wetlands pertaining to the subject area were delineated and are shown on the plan. **Chuck Frost moved to grant the waiver; seconded by Jeff Crosby. All were in favor.**

The second waiver request was read: *The applicant is requesting a waiver of Subdivision Regulations Section IX A. a) Requirement to replace known and documented monuments (lot corners) with granite bounds.* Mr. Weeks stated that the original subdivision plan that is on record at the registry shows the entire parcel monumented. He pointed out the area that has been recently surveyed, noting that Jacques Belanger does not want to be responsible for the area west of that. Mr. Weeks said bearings were added to that back portion; those will be removed. Applicant Dave Nault stated there is a record of survey on file and the other monuments are on it. He said Mr. Belanger didn't want to survey the entire property; this is a fairly common request on large parcels. George Holt said he would like to see all of the monuments on this plan. Mr. Nault said Mr. Belanger did not want to be responsible for re-monumentation. **Chuck Frost made a motion to grant the waiver; seconded by George Holt.** Mike Kaminski noted there is a loose pipe shown as a marker; he asked if that would be replaced with a granite bound. Mr. Nault said it is not affecting this subdivision. Brian Pike said it is part of the three lots, not way at the back of the parcel. Jeff Crosby said he is not in favor of having to replace existing bounds. He said the limit of this survey calls out what is there. Mr. Nault said they would place new bounds on the lots being created. **All were in favor of the motion.**

Peter Weeks said he has a couple of revisions to make, those being to correct dates on test pit data and to move the 4K area of Lot 10-2 out of the setback. George Holt asked about the monument at the corner of Lot 10 and the Owen Bellows lot, noted as 3/4" iron pipe (fnd), loose – shot base. Applicant Dave Nault explained that this pipe is in the stone wall. Mike Kaminski mentioned adding a drill hole might resolve the issue since this pipe is loose. Mr. Nault said the Town has received legal opinion in the past that it is best to leave existing monuments. He pointed out this pipe is not part of the new lots. Mr. Nault said the pipe is secure; it is just bent. Peter Weeks said the point was shot at the base where the pipe is bent. It was said that abutter permission would be required to replace the pipe. George Holt said he would like to see it repaired. He suggested a site walk might be in order.

The vice chair opened the hearing to the public. Donna read the list of abutters; Michael Guiney was the only one present and he had no questions or comments. The vice chair closed the hearing to the public and brought it back to the board. Dave Nault spoke about the 345' wide

Eversource ROW, pointing out the proposed driveway location on Lot 10-1. Because the driveway is in the setback of the easement, Eversource asked for a release of liability if the driveway is paved or it can remain as a dirt driveway. Mr. Nault said he would come back next month with an agreement. He said the proposed area is the best location for the driveway because of ledge in the area and an existing break in the wall.

Brian Pike made a motion to continue this hearing to the next meeting on March 18th at 7:00 p.m.; seconded by Chuck Frost. All were in favor. There will be no further notification.

Ken Swayze returned to the Board.

OTHER BUSINESS:

Zoning Ordinance Review: Chuck Frost reported that the committee met earlier this evening; they will meet again on March 18th at 6:00 p.m.

Rules of Procedure: All members signed the newly adopted Rules. Donna will have them certified by the Town Clerk, then distribute them.

Exaction Fee Policy: Brian Pike suggested that it might be good to create some type of guideline to go by when considering future subdivisions. All agreed that the current figure of \$4,000 is outdated and should be revisited.

Brian Pike moved to adjourn the meeting at 8:52 p.m.; seconded by Chuck Frost. All in favor.

Respectfully submitted,
Donna White