



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JULY 23, 2013

Planning Board members present: Alastair Millns, Tom Koenig, Michael Redding, Stanley Bonislowski, and Desirea Falt.

Planning Board member absent: Robert Best, Lynn Christensen, and Alternates Nelson Disco and Matthew Passalacqua.

Community Development staff: Community Development Director Tim Thompson and Recording Secretary Zina Jordan.

1. Call to Order

Alastair Millns called the meeting to order at 7:30 p.m.

2. Planning & Zoning Administrator's Report

Tim Thompson announced that the new Assistant Planner Donna Pohli would assume her duties on August 13, 2013.

Alastair Millns announced that the Master Plan public hearing is scheduled for the next Planning Board meeting on August 6, 2013.

3. Northview Homes & Development, Inc. (applicant) and Raymond A. Cota and David R. & Dorothy E. Cota (owners) – Pre-Submission Hearing to discuss a proposed consolidation and re-subdivision of five residential lots into a 13-lot residential cluster subdivision. The parcels are located at 14 & 16 Pearson Road within the R (Residential) District. Tax Map 6D, Lots 046, 047, 047-2, 047-3, & 047-4.

Attorney Greg Michael, Bernstein Shur, said the proposed subdivision will measure 21.47 acres, which is more than the 15 acres required for a cluster subdivision. Sewer and water will be brought onto the property; there will be no septic system or wells. That explains the current configuration. There will be no contamination of wetlands toward Baboosic Brook. The proposed 13 units represent no more lots than there would be in a grid subdivision, so no variance is necessary. The applicant will appear before the July 31, 2013, Zoning Board of Adjustment (ZBA) for a 30' rather than a 100' buffer on the sides. The ZBA approved the same for Lilac Court in 2003. A conventional subdivision/duplex housing would allow a 20' side setback. The proposal improves distance and space. The lots will be the same or larger than those on nearby Woodhaven Circle. In his opinion, the plan is far superior to a conventional subdivision, which would come right up to Baboosic Brook. The Ordinance requires covenants to

protect open space. The whole area east of the Brook will be open space in perpetuity. The Cota lots will become part of the cluster. David Cota's lot will be expanded and made more conforming: An access easement into the open space will be created. He opined that the Ordinance never intended the 100' buffer from road frontage that Planning and Zoning Administrator Nancy Larson's July 19, 2013, memo indicates. It does require side and rear buffers from direct abutters. The Ordinance requires 100' from land uses - not 100' from the road. He believes that Nancy Larson's interpretation is inaccurate about cluster buffer setbacks. That standard is too difficult and would stall projects. The driveways would not be on Pearson Road, which is much safer and better for traffic and sight distance. This plan would be the same as the Lilac Court yield plan/cluster design, which the ZBA and Planning Board supported. This is a small cluster, so 100' setbacks on the side do not do much. As Nancy Larson requests, the applicant will submit a formula for calculating permitted density and the land area to be subtracted from the density calculation, but they are not ready yet. One concerned abutter lives 500' away. This plan meets abutter concerns better.

In answer to Board questions, Attorney Michael said that sidewalks would be discussed later. The applicant is coming to this meeting only to discuss the cluster concept. No recreation area is required; rather, there will be open space that will be kept wild and to which each home will have access.

Michael Redding likes the idea, which is a progressive concept, addresses current needs, is good land planning, and is less dense than a typical cluster.

Attorney Michael said the homes would be single family and that the covenants would require maintaining the open space/wildlife area. The cluster will meet appropriate town drainage and engineering standards. No stormwater impacts and no sheetwater on Pearson Road.

Alastair Millns said the real issue is the 100' buffer. Referring to a previous case, Attorney Michael said the Planning Board has preliminary power to make a non-binding recommendation. He opined that the Ordinance never meant that someone who lives across the street is an abutter.

Tim Thompson quoted Section 3.08(9) of the Zoning Ordinance requiring a cluster to have "a 100' landscape buffer to provide adequate division of the transition from abutting land uses". Attorney Michael saw no need for one. When Alastair Millns asked him to make clear that there would be only a single-family unit on each lot, Attorney Michael stated that there would be 13 single-family units including the existing Cota home.

Tom Koenig said a 30' buffer on the south side does not cross two lots, making them deep lots, while the buffer on the north side intersects the property lines, making those shallow lots. Attorney Michael said they are large lots, over 20,000 square feet. The Lilac Circle lots are all smaller. A cluster has no front setback requirement. Tim Thompson said the minimum setback requirement is only 5' from all property lines in a cluster. Desirea Falt asked what the buildable area on

the north side for lots 10 and 11 would be after removing the 30' buffer. Attorney Michael will bring a house location/large map to the next hearing.

Public comment

David Batt, 2 Woodhaven Circle, asked whether abutters would be offered a connection to sewer and water. Attorney Michael said they would; the water line is already there. An abutter is supposed to connect to sewer if it is brought up to the road. It is the Town's decision whether to extend it down Woodhaven Circle. There is no requirement to connect if a septic system works.

David Batt noted that Pearson Road is a dangerous road and asked about traffic impact. Alastair Millns said the Board has no power to require a traffic study. Tim Thompson explained that there is no requirement for one for a development of this size. Trip generation can be done if the Planning Board wants the information.

David Batt, noting that most abutters are on wells, asked if the wells would be endangered. Alastair Millns said that is precluded and the owner would have redress from the developer.

David Batt asked whether the 2003 proposal was approved. Alastair Millns replied that the Lilac Court was the 2003 plan. An applicant can always return to the Board with a different plan. Tim Thompson explained that the most recent plan was approved in August 2012 as a four-lot subdivision and was recorded. When David Batt asked whether there is an advantage to the developer to build single-family vs. duplex homes, Alastair Millns stated that is not a Planning Board issue.

David Batt noted much open space toward Baboosic Brook and wants construction not to interfere with the 100' buffer. Attorney Michael stated that the buffer issue is not at that location but in another part of the subdivision. David Batt suggested that the project expand more toward Baboosic Brook, but Attorney Michael said that is not the best scheme/use. A buffer larger than the required 20' will be provided. Merrimack wants to keep as much contiguous open space as possible. This is the best plan. It preserves the integrity and intent of the zoning. Alastair Millns added that extending the project would make it hard for lots to be available to wildlife and would impinge on open space.

David Batt asked how 30' was derived. Attorney Michael explained that is an area the applicant could work with that is greater than a 20' single-family setback while establishing an appropriate use of the parcels. He is trying to be sensitive to the abutters and to keep as far away from them as possible while developing the land. Alastair Millns stated that the plan would show what would be in the buffer and will not disturb buffers already in place. A duplex plan would have to do the same.

Douglas Botham, 9 Brenda Lane, lives on the other side of the creek and is concerned about open space and who will have title to it. Alastair Millns explained that the required homeowners' association would share it. Douglas

Botham asked when the use would be set and whether there would be amenities such as tennis courts and pools. Alastair Millns stated that there could be no construction on the site. Recreation may be allowed only if the entire association applies to the Planning Board, but it is unlikely that the Board would approve. The intent is to leave the land virgin.

Darcy LaBrosse, 6 Woodhaven Circle, asked about the angle of the lots, placement of the houses, and the 30' buffer. Attorney Michael repeated that he would show the location of the houses on the lots at the next hearing. A 30' buffer is included as part of the lot size. Darcy LaBrosse prefers 100'. Alastair Millns repeated that a single-family home is required to have only a 20' setback, which is less than the proposed 30' buffer. Traditional single-family home owners with a 20' setback can do what they want with the rest of their lot, including building right up to the 20' point, chopping trees, installing pools, etc. This proposal is superior and requires no variance except for the 30' landscape buffer. Tim Thompson added that a 30' buffer is a ZBA rather than a Planning Board decision. A cluster subdivision requires a 100' buffer and must maintain the landscaping, while a conventional subdivision has a 20' setback and can clear-cut all the way to the property line. Alastair Millns said trees and vegetation provide a (sound) barrier. Tim Thompson added that there are no specifics in the ordinance about a landscape buffer in a cluster. Staff usually asks that existing vegetation be maintained or new vegetation be planted if there is none.

David Batt asked whether the Planning Board could make a decision tonight. Alastair Millns explained that it could not because this is just a preliminary hearing; the necessary information is lacking. The applicant will return with detailed plans at a separate meeting to be announced to abutters and the public. David Batt asked whether the Planning Board could decide the 30' vs. the 100' buffer tonight. Alastair Millns repeated that it is a ZBA decision. Tim Thompson said that the Planning Board could provide non-binding feedback about whether the 100' buffer is required along Pearson Road.

Michael Redding said a cluster is the right use for this land and there is no need for a front buffer. The plan provides the right controls about appearance and setbacks from Pearson Road and achieves the intent of the Ordinance. Desirea Falt was concerned about the 30' buffer to the north along Woodhaven Circle because those smaller properties would be impacted more. Tim Thompson explained that those areas without mature vegetation must be planted and if vegetation is there already, it must be retained as part of the buffer. Michael Redding asked the applicant to bring photos to the next hearing to show the location of mature vegetation.

Alastair Millns suggested that he write to the ZBA that the Planning Board recommends not requiring a 100' front buffer, supports a 30' side buffer rather than a 20' setback that could be clear-cut, and likes the cluster plan. Stanley Bonislowski agreed. Tim Koenig said a cluster is better because of the open space, minimal impact on Pearson Road and reasonable sight distance. By consensus (5 – 0), the Board voted to recommend that the 100' buffer not apply

to the land adjacent to Pearson Road. Tim Thompson said that Nancy Larson would consider this non-binding consensus in her determination of the applicability of the buffer along Pearson Road.

Tim Thompson suggested a short trip generation/traffic analysis about daily trips at peak hours and how they are distributed from the development rather than a full traffic study. Alastair Millns said that the road is most congested at 8:00 a.m. on school days and on Saturdays. Michael Redding wants data but no formal submittal is needed. The school is the issue, but it does not tip the scale. The Board can make an informed decision when listening to the engineer. Attorney Michael said he would present information on that issue at the acceptance hearing. Alastair Millns objected that trip generation is not enough. Stanley Bonislowski said it is not necessary for such a small piece of property. Tom Koenig agreed that 10 houses would not make a significant traffic impact. Attorney Michael will inform Meridian Land Services, Inc., of the Board members' views.

4. Keach-Nordstrom Associates, Inc. (applicant) and Valleyview Revocable Trust, Carol Maggio, Trustee (owner) – Review for Acceptance and consideration of Final Approval of an application proposing to subdivide one lot into two single-family residential lots located at 15 Valleyview Drive in the R (Residential) District. Tax Map 5C, Lot 142.

Tim Thompson said that the applicant received variances from the ZBA in 2012 to subdivide the same lot into a total of three residential lots with insufficient lot depth and area, which are still valid, but withdrew the application prior to the December 4, 2012, Planning Board meeting. The plan provided for a full road connection to Valleyview Drive, but did not get the necessary slope easements for a roadway. On August 24, 2012, the Planning and Zoning Administrator granted Administrative Approval to allow a portion of the remaining roadway (650±) to be constructed as a 12' wide emergency access road to connect the existing lots. (All of the lots achieve minimum frontage along Valleyview Drive.) This plan calls for subdividing into two lots rather than three and maintaining an emergency access but not a full roadway.

Pete Julia, Project Manager, Keach-Nordstrom Associates, Inc., said that neither single-family lot needs a variance, since they exceed the required minimum 80,00 square feet in area (84,611 s.f. and 87,331 s.f. respectively).

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 5-0-0 to accept the application for review, on a motion made by Stanley Bonislowski and seconded by Michael Redding.

Alastair Millns asked why the boundary line has a peculiar "z" shape. Pete Julia explained that, since the road cannot be connected to town standards, the line has to jog over so the two lots conform to minimum frontage. Alastair Millns said

that is so both lots conform to town frontage regulations for a lot on a road. Stanley Bonislowski said that it is so a road can get onto the property and asked when the 12'-wide road would be finished. Tim Thompson said an access for emergency vehicles is required in order to obtain Certificates of Occupancy for the homes.

Michael Redding asked about grading, an infiltration basin, the emergency outlet, the commitment to operate and maintain it, how sites would be built, and how lawns would be prevented from eroding because of the steep slope. Pete Julia agreed the lots are steep. He will prepare a subsurface plan indicating house placements, septic system, grading, and driveways. Stormwater management is the responsibility of each home, with the exception of a portion of each driveway, which was included within the previous stormwater mitigation design associated with the recent Valleyview Drive roadway improvement completion. Keach-Nordstrom recommends that sites be located at the mid- to upper third of each parcel where there is more flat land and less site disturbance. The 275'-300'-long driveway construction parallels Valleyview Drive and existing contours and marries well with the existing topography. The slope would be diminished because of the driveway length and the house would be uphill from the septic system. The costs of the extended driveway are offset by less disturbance to the existing parcels. Michael Redding asked about stormwater disturbing over 20,000 square feet. Tim Thomson explained that, if less than 20,000 s.f. is disturbed, stormwater regulations do not apply because the lots are part of an already existing subdivision. The Building Department and the Department of Public Works (PWD) will review the drainage and disturbance. The stormwater Ordinance requires (and Note 16 of the plan mentions) that the applicant must meet with Community Development and PWD for a pre-construction meeting and ongoing reporting/monitoring takes place during construction.

Michael Redding asked about different rear setbacks, size of home and its location in relation to the subsurface system. Pete Julia said he addressed all planning staff technical comments, which are insignificant, and edited the plan accordingly. That is why the plans in the Board's packets differ from the plans he is showing on the easel. Pete Julia recommends an optimum building envelope area where the contours are 7' apart with a 25'-30' window. The building location impacts only a 4' vertical grading change, which is very reasonable. There is a significant grade change, so he will put the house where there is 65+ feet between the easterly limits of the 4K area and the 30' side setback.

Michael Redding asked about blasting of ledge. Pete Julia said two test pits encountered no ledge and no water within 20' of what he recommends as the optimum building envelope. The likelihood of surprise is remote on Lot 1. Lot 2 has ledge at 50", but it is 100+' away, so he must wait and see. Concerns will be addressed through the town building and subsurface application processes. Pete Julia will inform the applicant of Michael Redding's concerns.

Pete Julia repeated that, at the outset, the homeowner and developer would discuss the length and alignment of the driveway, grading, and placement of the

homes. In the future, the responsibility for stormwater management will be shared between the future homeowner and the developer.

Stanley Bonislowski recalled that drainage changed and went into two homes on Valleyview Drive when a house was built on the hill. He is concerned about how to protect other homes from a change in the flow of water down the hill. Pete Julia said that Keach-Nordstrom would design a responsible plan for the land that is compliant with regulations. The town will ensure compliance during construction. He cannot speculate about what will happen after that. Alastair Millns cited Section 4.16.c of the Subdivision Regulations: the engineer must certify that there will be “no adverse impact on downstream properties”. Tim Thompson added that stormwater regulations require monitoring and protection.

Stanley Bonislowski said there would be only a few feet of sidewalk in an area where there are no sidewalks. He cited the criterion that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations.

The Board voted 5-0-0 to waive the requirements of Section 4.05(f) of the Subdivision Regulations - Sidewalks - on a motion made by Stanley Bonislowski and seconded by Desirea Falt.

Public comment

Steve Amick, 11 Valleyview Drive, is concerned about the privacy of his abutting lot and about the steep hill. He asked whether the house would be put close to his. The front of the road has been torn up for a year and there is no turnaround. He asked when the access road would be finished and whether it would be gated. He would rather have a through street than an ungated access road. Tim Thompson said Trustee/Owner Carol Maggio wanted three lots and a full road originally. The income generated by selling the lots would justify the cost of road. She was unable to get necessary easements, so the connection for a full road cannot be made. Noting slow progress, Steve Amick asked again when the road would be finished and whether his end would be made visually pleasing. Alastair Millns said emergency vehicles do not want to slow down to open a gate during an emergency. Steve Amick asked what would prohibit people from using the emergency road on a regular basis. Alastair Millns replied that nothing would, which Steve Amick called absurd, opining that people will use the road as a shortcut. He asked why there is no dead end sign or one with Valleyview Drive house numbers. Alastair Millns agreed that numbering signs might help. Tim Thompson repeated that the emergency access road was already approved. There is no plan for a gate. The Planning Board approved a full road for a three-lot subdivision, but it cannot meet town standards without easements. The Fire Department and PWD required an emergency access road. Because no new lots were created beyond those approved in the 1960s, it did not come to the Planning Board. The issue must be raised with the Fire and Public Works Departments. Steve Amick wanted completion date of the road to be specified. It comes in front of his house and ripped up his pavement. Tim Thompson explained that it must be completed before issuance of a Certificate of

Occupancy. When Steve Amick noted a drainage concern on Lot 1 that would be a stone's throw from the house behind the development, Alastair Millns repeated that the ZBA approved a depth variance. Steve Amick countered that the variance was based on a full road. Tim Thompson noted that this proposal is more conforming than the one the ZBA approved with a depth variance. Michael Redding said everyone is concerned about steep slopes and construction management. The new stormwater Ordinance requires town staff to monitor and mitigate impacts.

Tom Koenig asked about the different setbacks. Tim Thompson said the north lot is different because the paper street to the north is considered the front setback. If a lot has two fronts, all other setbacks are considered to be side setbacks. There is no rear setback.

Steve Amick asked whether the plan shows a finished emergency road. Tim Thompson said that staff technical comment #1 is to incorporate the design into the plan set. It will have a jog where it goes from 24' to 12'. Steve Amick asked whether the Planning Board determines how it would look. Alastair Millns repeated that PWD and the Fire Department set the requirements. Steve Amick said he was told he would receive a detailed plan of how his property would look when the original connection was discussed, but not with this plan. Alastair Millns reiterated that the applicant was unable to build the road to town standards and had to revert back to this arrangement. Tim Thompson repeated that the emergency access road was already approved before the three-lot subdivision was approved. Pete Julia offered to show Steve Amick all plans on file and to explain the plan to him. The emergency road on those plans was well within the right-of-way. All disturbance must be contained within the right-of-way. It will be as pretty as possible. He can only recommend a location to the builder. It is more than 250' from Steve Amick's residence. To move trees would cost more money, so he doubts the builder would do it.

After the public comment, Michael Redding wondered what lesson could be learned from relying on an old plan. Tim Thompson stated that the likelihood of this situation recurring today is slim. Subdivision standards were different in 1966. Stanley Bonislowski noted that this plan is 50 years old. Tim Thompson warned the Board to be wary of landowners' vested development rights that protect them from changes in regulations. Alastair Millns cited *caveat emptor* (buyer beware) when purchasing property. Tom Koenig said he was uncomfortable voting for final approval because the property is too difficult to develop and too much is up in the air.

Staff recommends that the Board vote to grant Final Approval to the application, with precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

The Board voted 3-2-0 to grant final approval, with the following conditions, on a motion made by Michael Redding and seconded by Desirea Falt. Tom Koenig and Stanley Bonislowski voted in the negative.

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Any waivers granted shall be listed and described on the recordable sheet of the Final Plan set;
4. Copy of State Subdivision approval to be submitted to the Community Development Department. General Note #18, Sheet 1 of 2 to be revised to include the Approval Number and expiration date;
5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works and Building Departments;
6. Address planning staff technical comments.

Planning Staff Technical Comments

1. Revise plans to show the layout of the emergency access roadway. Emergency access roadway to be labeled with a reference to the Administrative Approval (Reference Plan #5) for roadway design, including the emergency access roadway;
2. Applicant to coordinate with the Assessing Department regarding approval of Map 5C, Lots 142-1 & 142-2 as parcel i.d. numbers (the Assessing Department may not want to abandon the parent Map/Lot number of 5C/142). Written approval (e-mail is sufficient) from the Assessing Department to be submitted to Community Development;
3. Reference to the Administrative Approval on August 24, 2012, to be incorporated into Reference Plan Note #5 on Sheets 1 & 2 of 2. Also include a note that the plans are on file with the Town of Merrimack Community Development Department;
4. General Note #7 to be revised to read “public” water rather than “municipal” water;
5. In accordance with previous interpretations, the 60 ft. setback graphically depicted and labeled on Sheets 1 & 2 of 2 to be revised to reflect a 30 ft. side yard setback. The proposed lot line for this parcel adjacent to Proposed Map 5C Lot 142-2 and perpendicular to abutting Map 5C, Lot 202 (7 Quincy Lane) shall also be considered a side lot line;
6. Add the Book/Page number to the “existing slope easement” label on Sheet 1 of 2;

7. Add a note to the recordable plan sheet referencing MVD's requirement that the main water line is to be extended from the north end of Valleyview Drive to the south end, via the emergency access roadway.

5. Discussion/possible action regarding other items of concern

Stanley Bonislowski met with the Directors of Community Development and PWD concerning the sidewalk construction schedule using the town's fund in lieu of providing sidewalks. Nothing is in the pipeline. A tracking form is needed. Alastair Millns explained his Sidewalk Development Funds spreadsheet that lists project number and name; amount of money; dates logged, returned and completed; and detail and suggested that it be discussed regularly. The Planning Board wants PWD to spend the money and ensure that the projects are done. Tim Thompson said he would ensure that the information is up to date. The only money currently in hand is \$42,899 from Dunkin Donuts. He will propose utilizing some of the money to hire engineering consultants to study Continental Boulevard and Industrial Drive and the best use of a sidewalk in the area consistent with the Master Plan. It is unlikely that the funds will be sufficient to construct a full-length sidewalk. It would be a better use of the funds to do a study and require future applicants to do parts of a sidewalk at a time or to give money instead.

Michael Redding explained the cyanobacteria and its consequences found by the study in Horseshoe Pond. Very little remediation is possible. He listed good preventive practices needed for the watershed, such as a buffer system, vegetation, and stormwater management. Alastair Millns stated that the issue is important because it relates to the YMCA/Melton application.

6. Approval of Minutes

None.

7. Adjourn

The meeting adjourned at 10:05 p.m., by a vote on 5-0-0, on a motion made by Michael Redding and seconded by Desirea Falt.