



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, APRIL 16, 2013

Planning Board members present: Robert Best, Alastair Millns, Stanley Bonislowski, Desirea Falt, and Alternates Nelson Disco, Pete Gagnon (arrived 7:35 p.m.) and Matthew Passalacqua.

Planning Board members absent: Tom Koenig, Michael Redding and Lynn Christensen.

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

1. Call to Order

Chairman Best called the meeting to order at 7:30 p.m.

2. Planning & Zoning Administrator's Report

None.

3. Discussion of the Subdivision Regulations - Section 5: Building Permits and Performance & Construction Bonds

Tim Thompson said that Section 5 was completely rewritten in order to streamline the process and bring the regulations into conformity with modern standards. The big change is that approval and release of bonds/sureties will be the responsibility of the Public Works Department (PWD) rather than the Planning Board. He outlined the process when the Planning Board approves a subdivision that would have public roads.

Pete Gagnon arrived at 7:35 p.m.

Public Works Director Rick Seymour explained that, when the town accepts a road, it is built correctly because a bond release is based on PWD inspection. A road in a development has been inspected throughout the process when it is declared a town road and should last 20-30 years.

Chairman Best said the performance bond process deals only with a right-of-way and improvements and not with issues that the town has not fixed. Nelson Disco said a drainage system that may be on private property is also included.

Based on history, Alastair Millns had two concerns: 1) How to announce to the public that a bond will be released in case they have an objection (e.g., Wasserman Heights) and 2) How the town creates a maintenance bond when it takes over and completes the work (e.g., Holt Pond). Rick Seymour said PWD does not usually take over a project. The developer abandoned Holt Pond and the bond was used to finish the road. PWD had to figure out how to put together a maintenance bond for its own work. The situation was outside the norm.

Alastair Millns suggested adding the following to the regulations: “The Town is not responsible for posting maintenance or performance bonds.”

Rick Seymour agreed to Alastair Millns suggestion that the Chairman make bond announcements as part of the “Reports” item on the Planning Board meeting agenda and that the result would be final after 10 business days unless a citizen lodges an appeal.

Chairman Best suggested posting a notice/sign on the property. Tim Thompson said it would be more appropriate as part of a notice of public hearing for site plan review for a subdivision rather than for a bond and it belongs in a different part of the regulations.

Nelson Disco was concerned about not requiring a public hearing. It is an opportunity to discover that something was not done right and can be corrected. Tim Thompson noted that it is just an agenda item rather than a public hearing. Rick Seymour added that the change is for the sake of expediency, so a contractor will not have to wait for the Board to meet. Tim Thompson said that Merrimack is the first community in which he has worked where the Planning Board, rather than staff, approves and releases bonds. Stanley Bonislowski said that, if something goes wrong, most people will complain either to PWD or Community Development before the time for bond release. A public hearing does not help, since most people do not know when it is on the agenda. Chairman Best agreed there is a time limit for maintenance but not performance bonds. The bond process can be handled administratively, but there should be a public hearing if there is a problem. There must be a relief valve so people can have their say.

Chairman Best asked about a performance bond that was a condition of approval, but was continually delayed/extended. After several years, the bond may be insufficient to cover the cost. Rick Seymour said that a maintenance bond is usually for two years. If there is an issue, PWD requires the developer to use part of the bond to fix it. PWD builds in a certain amount for inflation. He suggested that the Planning Board ask PWD’s opinion about what a performance bond should cost. If an extension is approved, PWD will ask the contractor for an additional bond. PWD asks the developer to get the figures, which it checks and asks the developer to rework if it does not agree. Tim Thompson explained that, if a performance bond were a condition of approval, PWD review would be based on the cost at the time the work is done.

Alastair Millns noted that Section 5.08 describes an appeal process, but only for the applicant. Tim Thompson agreed to change it to “any interested party”.

Nelson Disco did not like removing the Planning Board from the process. Desirea Falt preferred to incorporate it into the report at the beginning of a meeting. Chairman Best argued that it saves no time, so the Board might as well vote and eliminate the 10-day wait. Alastair Millns noted that Section 5.06C states, “PWD shall act to approve or deny the release of the maintenance surety within 45 days of the request to PWD following a final inspection.” The only delay could be if there is no Planning Board meeting within that time, but that is unlikely. Stanley Bonislowski does not like the current process. Staff makes the decision before coming to the Planning Board, which never denies it. That is a waste of the Planning Board’s time. The developer should be able to go to staff or PWD if there

is a complaint. Chairman Best would agree if there were appropriate public notice. If no one complains within a certain period, the staff can handle it. Alastair Millns would agree if a notice were posted on a board at the site.

Tim Thompson suggested that the process be amended to keep the Planning Board part of the maintenance bond process and that the performance bond be handled by administrative process. PWD would not release a performance bond if standards were not met.

Stanley Bonislowski suggested that the contractor notify abutters. Tim Thompson repeated that there is no abutter notice, just an agenda item. Chairman Best said it is too onerous to notify all condominium residents; a sign will do. Desirea Falt said a contractor should not notify abutters because there could be a conflict of interest.

Tim Thompson will revise the process. Chairman Best asked him also to consider how to handle increased costs over time and the town not posting a bond for itself.

4. Maverick Development Corporation (applicant) and James A. & Evelyn I. McSweeney Revocable Trust (owner) – Review for Acceptance and consideration of Final Approval of a minor subdivision application proposing to subdivide one lot into two residential lots located at 63 Turkey Hill Road in the R (Residential) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 5C, Lot 668.

Chairman Best designated Nelson Disco and Pete Gagnon to sit for Lynn Christensen and Michael Redding, respectively.

Tim Ferwerda, Meridian Land Services, said there is an existing house in the center of the 2.4 acre-lot. He wants to make an additional house lot that would be 46,413 square feet, leaving 40,668 square feet of contiguous dry land. There is a wetland in the back of the lot. Because the proposed subdivision line dividing the two lots will cut through the existing leach field, he will construct a replacement leaching area. State approval is pending. Each lot will have town water and a private on-site septic system. Tim Ferwerda asks to waive the sidewalk requirement because there are no sidewalks on Turkey Hill Road and there will be no more subdivisions there. The sidewalk would go nowhere.

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 6-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Stanley Bonislowski.

In answer to Nelson Disco's questions, Tim Ferwerda stated that he used NRCS and town maps to map the soils. As a wetland scientist, he delineated the wetland and stamped the map. He certified that the wetland is where it is shown on the plan; he did not certify the soils. The wetland is 4,927 square feet, leaving 40,668 of dry land that satisfies the minimum contiguous upland area requirement of 40,000 square feet for a septic system.

Tim Thompson told the Planning Board to base its decision on the November 17, 2012, plan. The plans presented tonight would address the proposed conditions of approval.

Tim Ferwerda explained that the flag in back is to account for the wetland area. Alastair Millns explained that the tail in the back helps to meet the contiguous upland area requirement.

Chairman Best asked why there should not be a sidewalk on the 350' of frontage, even if it does not connect to another one. Tim Ferwerda said the spirit of the Ordinance is to have a continuous sidewalk so that people would not have to walk on the road. There is little chance of development or making a new sidewalk on Turkey Hill Road. Chairman Best said that is true of the whole town. A 350' sidewalk is better than nothing. Tim Ferwerda said it would look strange to have only 350' of sidewalk on the entire road. Chairman Best explained that the spirit of the Ordinance is that developers install sidewalks whether or not they may connect.

Desirea Falt said that the Planning Board would be amenable to considering a waiver so that the rock wall in the northwest corner would not be lost, but Nelson Disco noted that it is not in the right-of-way where a sidewalk would be built.

Alastair Millns noted that there are some sidewalks near Turkey Hill Road and pedestrian ways over the new Turkey Hill Bridge and on Weston Park. Chairman Best noted some on Meeting Hill Road.

There was no public comment.

Steve Febonio, Maverick Development Corporation, said there is no sidewalk on Turkey Hill Road, which is 11.4 miles on both sides. Alastair Millns and Chairman Best agreed that it is on the bridge rather than the road.

Steve Febonio said this is a minor subdivision. It is foolish to build such a small section of sidewalk that will go nowhere. Stanley Bonislowski explained that it is a safety issue. People walk and jog on the narrow Turkey Hill Road. He and Chairman Best explained that, in order to waive a sidewalk, it has to meet statutory waiver requirements. Steve Febonio said it is more of a threat for a child to bike onto the sidewalk and then come back onto the road when the sidewalk ends. Tim Ferwerda said the topography is fairly level and dry.

Alastair Millns and made a motion to deny a waiver of the requirements of Section 4.20 – Pedestrian Ways and Sidewalks – of the Subdivision Regulations. Nelson Disco seconded the motion.

Owner James McSweeney said a section of sidewalk makes no sense and would detract from the two properties. There is a sidewalk on Turkey Hill Bridge only because it was required as part of the funding. This is a small minor subdivision. Several utility poles would be in the middle of the sidewalk, making it difficult to plow and to maintain. Drainage goes directly across the driveway and must be redone and may cause flooding on the property. The driveway is lower than a sidewalk would be, so the driveway grade would have to change. There could be an impact on the stone wall west of the property. Tim Thompson noted two PSNH poles, a traffic speed limit sign and a mailbox that is west of the driveway.

Chairman Best reiterated that the Subdivision Regulations, not the Planning Board, require sidewalks everywhere.

Desirea Falt asked about slopes; significant re-grading could cause unnecessary hardship. Nelson Disco said there is no evidence for that. Tim Thompson explained that a minor subdivision does not require topographical information. Chairman Best said a paved pedestrian way could go around the pole and slope 10 degrees. Matthew Passalacqua noted a second pole close to the rock wall. Nelson Disco disagreed; the rock wall ends at the property line. Tim Thompson noted guy wires going off the pole. James McSweeney said that, to the east of the drive, 4'-6' inward, there would probably be a drop of 18"-20" from the level of road to the existing dirt area. Pete Gagnon said this is a tough decision because of the lack of topographical information. The land appears flat. The high water table is 20" below the surface. The foundation must go 4' above it. Tim Ferwerda showed with topography for the septic system but not for the entire lot.

Stanley Bonislowski and Chairman Best agreed that there is no appropriate criterion for granting a waiver without more information.

Tim Thompson said a sidewalk would cost approximately \$15 per linear foot or \$5,250 for 350'.

Alastair Millns and Nelson Disco withdrew their motion and second to deny a waiver of the requirements of Section 4.20 – Pedestrian Ways and Sidewalks – of the Subdivision Regulations.

The Applicant requested a break in order to decide whether to continue.

5. Approval of Minutes.

The minutes of March 26, 2013, were approved as submitted, by a vote of 5-0-1, on a motion made by Desirea Falt and seconded by Alastair Millns. Pete Gagnon abstained.

6. Discussion/possible action regarding other items of concern

Desirea Falt asked how to deal with liquor bottles and cans left as trash on her road. Chairman Best stated that littering and underage drinking are town issues. Nelson Disco suggested looking up the town report that lists town roads adopted by groups who take responsibility for cleaning litter. Stanley Bonislowski noted that they do a mass cleanup only twice yearly. Most homeowners pick up litter themselves. Alastair Millns stated that it is a major problem.

4. (continued) Maverick Development Corporation (applicant) and James A. & Evelyn I. McSweeney Revocable Trust (owner) – Review for Acceptance and consideration of Final Approval of a minor subdivision application proposing to subdivide one lot into two residential lots located at 63 Turkey Hill Road in the R (Residential) & Aquifer Conservation Districts, and Wellhead Protection Area. Tax Map 5C, Lot 668.

The Board continued discussion of agenda item #4 and requested a more detailed profile and photographic evidence of the area.

At the applicant's request, the Board voted 6-0-0 to postpone this item to May 7, 2013, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

7. Adjourn

The meeting adjourned at 9:03 p.m., by a vote of 6-0-0, on a motion made by Alastair Millns and seconded by Desirea Falt.