

**Town of Northwood
Planning Board
July 26, 2012**

Chairman Robert Strobel calls the meeting to order at 7:02 p.m.

PRESENT: Chairman Robert Strobel, Vice-Chairman Tim Jandebour, Joe McCaffrey, Rick Wolf, Town Planner Elaine Planchet, and Board Administrator Linda Smith.

VOTING DESIGNATION: Bob Strobel, Tim Jandebour, Joe McCaffrey, and Rick Wolf.

ABSENT: Babette Morrill, Herb Johnson, Alternate Victoria Parmele, and Alternate Adam Sprague.

MINUTES

July 12, 2012

Mr. Jandebour makes a motion, second by Mr. McCaffrey, to approve the minutes of July 12, 2012, as amended, as follows:

Page 2: Add: *...as different communities compete for grants.*

Motion passes; 3/0/1. Mr. Wolf abstains.

OLD CASE

Case 12-07: John & Karen Fernandes; North River Lake Rd. Map 233; Lots 5 & 6. Applicants seek boundary line adjustment to adjust the lot line of Map 1; Lot 37 in Nottingham and Map 233; Lots 5 & 6 in Northwood; lots 5 & 6 proposed to be consolidated.

Mr. and Mrs. Fernandes are present along with their surveyor Peter Landry.

Ms. Planchet provides an overview of the status of the application. She states that at last month's regular meeting, the board was waiting to receive a legal opinion requested. Ms. Planchet explains that the application and plan were reviewed at the June meeting and the board deemed the application not complete citing specific reasons. She states that the legal opinion has been received and is provided to board members for review. She explains that the process for legal opinions is that the board reviews the opinion and decides whether or not to make it public before it can be discussed. Ms. Planchet distributes the legal opinion to the board.

Mr. McCaffrey makes a motion, second by Mr. Jandebour, to make the document a public document. Motion passes unanimously; 4/0. The legal document is made public and provided to the Fernandeses and their surveyor.

Ms. Planchet reminds the board that the case was not accepted as complete last month and the board will need to address this matter before opening the public hearing. She adds that nothing new has been received from the

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applicant since the last meeting. She adds that she has reviewed the septic design plan provided by the applicant last month. She refers the board to her follow-up review notes and states that she does not believe the plan meets the requirements. She states that no additional waiver requests have been received. Ms. Planchet states that the legal opinion indicated that the boundary line adjustment application could proceed but as a minor subdivision application.

Mr. Landry states that his opinion of the legal opinion is that this is one lot. He states that this is a classic boundary line adjustment because there are two lots that the project begins with and in the end there are still two lots. He states that there are two separate deeds provided with two tax map and lot numbers and he believes there are two lots. Mr. Landry explains that the intent is to obtain a 2 acre lot and the remainder will be added to adjacent land of the applicant in Nottingham. He states that in the end the lot will be bordering on North River Lake Road, a private road, with 277' of frontage, and deemed with no frontage as per the regulations. He stated that there will be a 2 acre lot and they are trying to make the lots more conforming.

Ms. Planchet notes that the town's requirements for a boundary line adjustment require topo and contour lines, which is why the board members were looking for these items as noted on the checklist. Discussion ensues regarding the location of the lots and the town boundary. Ms. Smith provides a history of the land. She states that the previous owner came to the zoning board, who came to the conclusion per their counsel's opinion that this was one lot and the variance request to build on the lot as a separate lot was denied, based on the fact that there was never a subdivision and the town's zoning ordinance did not recognize the deeds being recorded without benefit of having been subdivided, per the town's regulations. She states that this is the same conclusion from the ZBA and their attorney as the planning board's legal opinion, who is a separate attorney.

Mr. McCaffrey asks about the town boundary line. Mr. Landry states that this is not what was just stated because then there should be three deeds: McMahan, Daskey, and the Nottingham lot. He states that the town line was used and he feels that if Northwood believes that this is an illegal subdivision, he wonders what Nottingham thinks.

Ms. Planchet refers to Mr. Landry's plan note for a 2008 recorded plan from Pohopek Land Surveyors, stating that lot 6 has a total area of 2.11 acres; 1.78 is in Northwood and .33 is in Nottingham. Mr. Landry states that the town lines have not moved since 1730.

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Ms. Smith states that the original Pohopek survey is when it was first determined that some of the parcel was in Nottingham. She states that it was the opinion of one attorney to record deeds, not without subdividing in the Town of Northwood, both town board attorneys came to the same conclusion that this is one parcel of land that goes into the Town of Nottingham. Mr. Landry states that there is a deed that describes the triangle lot as an existing lot with the town line as the lot line from 1730.

Ms. Planchet states that the board's counsel did not reference the establishment of the town and she believes that the board's role is to decide whether to follow the legal opinion received; and if not, that is a big weight on the board's shoulders. She states that the board should decide to proceed or not and then determine if the application is complete in order to proceed.

Mr. Wolf asks when the deeds were written for the .33 acre lot. Ms. Smith replies early 2011.

Ms. Smith states that Nottingham did not create the deeds and Northwood does not know nor is it the role of Northwood to determine what Nottingham was thinking when they issued a building permit. Ms. Planchet states that a letter was sent to Nottingham and she has spoken to someone in the planning department; however, nothing has been received in writing to date.

Mr. Landry states that Nottingham approved the building permit and a pre-approval for a septic design was granted. He explains the process of the building department to approve septic plans prior to the plan being sent to the state. He explains that Northwood did the same process; there is an approval for lot 6 as well, 1.7 acre lot. Ms. Smith states that the health officer signs the septic design plans; he does not review for zoning compliance.

Mr. Landry states that the lots were created at two different times. He states that this process is doing the town a favor and consolidating the lots and making the lots more conforming.

Mr. Wolf suggests that the board follow the decision of the attorney. Mr. Jandebour states that counsel's opinion is that the application should be amended with a minor subdivision application as opposed to the boundary line application. Mr. McCaffrey asked when lot 5 was added. Mr. Landry states that the lot was always there.

Discussion continues regarding the intent of the submission of the application and if it should be amended. **Mr. Strobel makes a motion to continue the discussion to next month with the intent to amend the application, if the applicants wish. No second is provided.**

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Ms. Planchet states that counsel stated that the BLA application can continue but as a minor subdivision.

Mr. McCaffrey discusses town boundary lines.

Ms. Smith explains that for many years the town had a policy that when an application required zoning board approval, applicants would not come to the planning board until zoning board approvals were secured first. She explains that the legislature passed a new statute in which the town can no longer force applicants the order in which they obtain permits. In this case, she states that there is an inherent risk either way the board goes for an applicant with a subdivision and all the requirements of a subdivision, even if the board were to grant it, there must be a condition added that the proposal meet all zoning ordinances. She states that it would be prudent for an applicant to consider this since they would need the variances for frontage for the lot and to obtain a building permit on a lot with no frontage requires relief from RSA 674:41.

Mr. Fernandes states that they do not want to build on the lot, just add to their existing home lot to make it larger.

Lengthy discussion ensues as to prior cases and property lines of these three parcels. Ms. Smith states that counsel clearly recommends that the lots need to be subdivided in order to do the boundary line.

Mr. Jandebour makes a motion, second by Mr. Wolf, to follow town counsel's opinion and that the proposal should be presented as a subdivision application. Motion passes; 3/0/1. Mr. McCaffrey abstains.

Mr. Jandebour makes a motion to continue the issue to the August meeting. No second is provided.

Ms. Smith states that her understanding is that discussion of an incomplete application with specific items needed can be continued for a month but that an application that is deemed to be another type of proposal than the application submitted should be re-noticed and begin again. Discussion ensues.

Ms. Planchet suggests recessing the case to later in the meeting to allow the applicants to confer with their surveyor as to how they would proceed with the proposal of a subdivision as an amendment to the boundary line application. Discussion ensues regarding conditions of approval. Mr. Landry states that he could amend the application and provide additional information. Discussion is held regarding the process of the planning board and zoning board.

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Ms. Fernandes states that they do not want to subdivide the property so they are finished.

Mr. Strobel calls for a recess. The session resumes ten minutes later.

NEW CASES:

Case 12-08: Phyllis Sanborn Irrevocable Trust, Map 119/16, and Daniel and Meredith Briggs, Map 119/Lot 17; Becker Ln. and Sellar Rd.

Applicants seek a boundary line adjustment with 0.3559 acres proposed to be conveyed from Map 119; Lot 16 and transferred to Map 119; Lot 17.

Mr. Jandebour makes a motion, second by Mr. McCaffrey, to accept the application as complete. Motion passes unanimously; 4/0.

Mr. Strobel reads the abutters list.

Paul Carideo from TF Moran is present along with Edgar and Sue Gurnee representing Sanborn Trust. Applicants Daniel and Meredith Briggs are also present.

Ms. Planchet states that there are no notes from the TRC meeting. She states that the applicant has requested three waivers.

Mr. Strobel refers to the waiver request form and asks Mr. Carideo to discuss the requests.

Mr. Carideo states that this lot was created back in the late 40's. He adds that by adding land to the lot, state subdivision approval is not required because the lot is over 5 acres.

Mr. McCaffrey makes a motion, second by Mr. Jandebour, to grant the waiver for 2.03(A)(5). Motion passes unanimously; 4/0.

A discussion is held regarding showing the location of buildings. Mr. Carideo states that the buildings are shown on the owner's parcels, not abutting parcels. He states that the 16 acre lot did not affect any of the lots around the ones being changed. He adds that it is a cost savings to the owners as well.

Mr. Jandebour makes a motion, second by Mr. McCaffrey, to grant the waiver for 4.10(B)(4). Motion passes unanimously; 4/0.

Mr. Jandebour makes a motion, second by Mr. McCaffrey, to grant the waiver for 4.10(F)(2), contours at 2' intervals. Mr. Carideo states that there are not changes to the contours proposed. **Motion passes unanimously; 4/0.**

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Mr. Carideo provides an overview. He explains that the proposal is to add a 33' wide strip, 15,000 sq. ft., from the Sanborn property to the Briggs' property. He states that a property survey of the entire parcel was done and there were some discrepancies with the deeds and as surveyors they had to stripe the line and this clears up the lot lines. He states that new deeds will be done.

Mr. Strobel opens the public portion of this case. With no additional comments from the public or other parties present, Mr. Strobel closes the public hearing.

Mr. Jandebaur makes a motion, second by Mr. McCaffrey, to approve the application for the boundary line adjustment, as presented. Motion passes unanimously; 4/0.

Case 12-09: Michael Sullivan, 783 First NH Tpke. Map 222; Lot 47.

Applicant seeks site plan approval for farm and agriculture.

Staff review notes are reviewed along with new information provided by the applicant in response to previous staff requests. Ms. Planchet states that there was a waiver request for fees based on Mr. Sullivan's belief that his farm stand is exempt from site plan review. She states that "out of pocket expenses" for abutters and public notices were paid.

Ms. Planchet states that there was some question as to the application being submitted for farm and agriculture rather than for retail use and she contacted counsel. Ms. Planchet reads RSA 674:32-b and explains that 35% of the revenue must be from the applicant's farm or land owned by him in order for site plan review not to be required. She states that the board must first make a decision on whether or not a site plan application is required.

Legal counsel comments are provided and reviewed.

Mr. Jandebaur states that with the information provided by the applicant it appears that 100% of the sales are from the applicant's land. Mr. Sullivan refers to the figures he provided to the board to show his intent to have sales from his property well more than 35% of his total sales volume. He explains that he will complete the season with items he has and will look into having other small items to bring in such as maple syrup products, etc. He states that he intends the majority of sales from this farm stand to be from his crops on this property.

Ms. Planchet states that the issue is that the board needs to make a determination regarding other sales of items that have not been grown on the property and what the hopeful sales percentage is of those other items. Mr.

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Jandebeur states that he believes that the applicant has demonstrated that at least 35% of sellable items will be produced on the property.

Mr. Jandebeur makes a motion, second by Mr. McCaffrey, to make counsel's comment a public document. Motion passes unanimously; 4/0.

Further discussion is held regarding site plan requirements, specifically parking. Ms. Planchet reviews the RSA and states that there is a provision that a new business may be regulated from adverse impacts to the public safety.

Mr. Strobel reads a letter received from abutter Helen Manheit expressing concerns about traffic safety. Mr. Wolf notes that the police chief has provided comments related to adequate parking.

Karen Smith, resident and member of the Harvey Lake Watershed Association, provides a handout and expresses concerns for the water quality of the lake from phosphorous contained in many fertilizers. She states that Tucker Brook on this property flows directly into Harvey Lake and she is concerned about runoff from fertilizer. She provided a handout of phosphorous levels and data tables comparing Harvey Lake to other Seacoast lakes/ponds. She requests that the board consider these concerns and, at a minimum, have the Conservation Commission review the application. She states that she is a strong proponent of local agriculture but also is concerned about the water quality. Mr. Jandebeur states that he understands her concerns but is not aware of anything that the board can do in this regard.

Ms. Linda Smith states that according to the attorney, the board's concerns are the 35% threshold. She suggests that the board ask for additional clarification regarding the board's authority relative to RSA regarding traffic matters.

Mr. Jandebeur makes a motion, second by Mr. McCaffrey, that the applicant is not subject to site plan based on town counsel's letter. Motion passes unanimously; 4/0.

Mr. Sullivan states that he intends his hours of operation to be afternoons and weekends.

OTHER

Mr. Landry returns to the meeting and states that the Fernandes' have withdrawn their boundary line adjustment application.

Budget

Ms. Smith provides an overview of the board's budget. General discussion is held. Ms. Smith suggests that the board increase the contracted services line to \$400.00, which covers the recording fees for plans. She adds that this is an in

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and out item as applicants pay for the recording. Ms. Smith suggests increasing the Strafford Regional Planning Commission's (SRPC) line based on anticipated increases. Discussion ensues about budget items.

Mr. Jandebeur makes a motion, second by Mr. Wolf, to increase the planning board's budget as follows:

Line 331 - \$400. for Contracted Services Clients

Line 620 - \$600. for Supplies

Line 690 - \$1,300. for Equipment

Total: \$36,049, with the understanding that there could be an additional increase based on the anticipated costs of SRPC for 2013. Motion passes unanimously; 4/0.

Master Plan Discussion

Ms. Planchet asks if it would be appropriate to forwarding a summary of the Community Survey results to the selectmen and economic development committee. Mr. Jandebeur asks to also send it to the school board. The consensus of the board is that it is a good idea. Ms. Planchet states she will prepare a summary.

A brief discussion is held regarding members and picking up their packets. Mr. Wolf mentions the letter noting that member's packets will be ready for pickup on the Monday prior to the meeting. In addition, Mr. Strobel requests that members call him if someone cannot attend a meeting.

ADJOURNMENT

Motion to adjourn is made by Mr. Jandebeur and seconded by Mr. McCaffrey. Motion passes unanimously at 10:15 p.m.

Respectfully submitted,

Lisa J. Fellows-Weaver
Board Secretary