

**Town of Northwood
Planning Board Meeting
May 27, 2021**

Cases heard during this meeting:

Case 19-12 Michael Sullivan (Aroma Joes)

Case: 21-4 Site: Chestnut and Cape, INC.

Case: 21-4 Sub: Chestnut and Cape, INC.

CASE 21-7: Chris Meyer/Cerebral Development.

CASE 21-10: Coe Brown Northwood Academy

Chair Strobel called the meeting to order at 6:30 PM.

Chair Strobel stated: As Chair of the Northwood Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

PRESENT: Chair Bob Strobel, Betty Smith, Joe McCaffrey, Lee Baldwin, Hal Kreider, Duane Curry and Tim Jandebour. (All members participated electronically)

TOWN STAFF PRESENT: James Burdin, Town Planner and Susan Austin, Land Use Assistant

VOTING DESIGNATION: Chair Bob Strobel, Betty Smith, Joe McCaffrey, Lee Baldwin, Hal Kreider, and Tim Jandebour.

MINUTES:

May 13, 2021

Ms. B. Smith made a motion to approve the minutes of May 13, 2021 as amended. Selectman Kreider seconded. Motion carried by roll call vote 5/0

674:41

Jason Dillion, Willow Lane Map 119, Lot 3

Board Comments: If there is not a formal road maintenance agreement, the Board requests that one be put in place.

Ms. B. Smith made a motion to send the comments of the board as stated. Selectman Kreider seconded. Motion carried by roll call vote 5/0

Conceptual Consultation:

Fatherland Family Trust, Map/Lot 222-54; 1.8 Acres; Corner of Harmony Hill Road and Route 4

Mr. Burdin read a letter from Mr. Carter.

RE: 2005 Vested DOT Permit; Assessors 222-54; 1.8 Acres; Corner of Harmony Hill Road and Route 4

Dear Chairperson and Town Planner,

Approved by the Planning Board on June 24, 2021

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After reviewing my last request letter of a change of use to a minimal impact of one (1) office building I reviewed the past history and found in my notes that in 2005 my partner Sherwood Builders applied for a building permit. It was reviewed and approved by the building inspector and vested.

Based on the fact that the site was completely cleared, graded, a fire pond excavated and a 24' State storm drain was extended from Route 4 to the fire pond on Harmony Hill Road, it included a D.O.T. Permit for entrances on Route 4 and Harmony Hill Road which was constructed.

After consulting with an attorney, it is his opinion that I am still vested in the 2005 decision.

I have an updated D.O.T. approval by the D.O.T.

All local, state and federal permits were executed in 2005 with the exception of the three (3) buildings.

With the major reduction to 1/3 of the use of the office park I respectfully request the Boards' decision to accept the vested opinion.

Mr. Burdin stated that they have discussed this briefly with town legal, and it is their opinion that the decision of whether or not this plan is vested is not the Planning Board's decision, rather the Building Department. The appropriate procedure would be for him to try and pull a building permit under the vested site plan, and for staff to either process it or deny it and set off an appeals process. Staff has not issued a formal opinion as to whether or not this is a vested plan or not. He'd like to look back on the plans of record and identify if there are any discrepancies with that plan that would not currently meet today's regulation.

CONTINUED CASES:

Case 19-12 Michael Sullivan (Aroma Joes) 8 Bow Lake Road Map 222 Lot 61. Applicant is proposing to build a drive thru and walk-up coffee shop on a lot that has an existing seasonal green house and single-family home that will have an office.

Lee Baldwin recused herself

VOTING DESIGNATION: Chair Bob Strobel, Betty Smith, Joe McCaffrey, Hal Kreider, and Tim Jandebaur.

Scott Frankiewicz, Attorney Brett Allard, Steve Pernaw, traffic engineer and Michael Sullivan, the applicant were present.

Chair Strobel stated that they have received a letter from the applicant requesting that the public hearing be ended tonight.

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Mr. Frankiewicz stated that the professionals involved with this project are MH Land Consultants, Brown Engineering and surveys, Steve Pernaw, Traffic Engineer, Verne Gardener as a real estate appraiser, and Attorney Brett Allard. He stated that this application had been submitted two years ago, in 2019. Throughout the two years, until last March, they went back and forth with plans and studies. When COVID hit it stopped. They submitted the latest plans, which are dated May 17, 2021. They received a staff report, as well as a public comment. To address the public comment, he states that Attorney Allard had submitted a letter to the Board. The public comment was written in 2019, so they have addressed everything that is on there, but he will go through what they have submitted to date to address these comments.

There is nothing about Mr. Sullivan’s existing well that can or should serve as a basis for this Board to deny his site plan application. The Abutters suggest that this Board should deny Mr. Sullivan’s site plan application because the 100-foot SPA well radius set forth in NHDES regulations encroaches into their property. This claim is without merit. While the radius does reach a small portion of the Abutters’ property, it is not a basis to deny Mr. Sullivan’s site plan application. In making its decision, this Board is bound by the Town’s Site Plan Review Regulations. Notably, the Abutters do not discuss the Town’s regulations in making this argument. Instead, they focus upon a perceived lack of compliance with NHDES regulations. It is not this Board’s job – and this Board lacks jurisdiction – to interpret state administrative rules and then grant or deny a site plan application based upon perceived compliance (or lack thereof) with same. Section IX(E) of the Town’s Site Plan Review Regulations provides that “[a]ll developments shall make adequate provision for a water supply of potable water for domestic consumption. [and] the location of private wells shall comply with all standards of the . . . applicable New Hampshire regulatory agency” – i.e., NHDES. On February 27, 2020, Mr. Sullivan obtained from NHDES a registration approval for a transient, non-community water system for the existing well on his property. By issuing the registration, NHDES necessarily determined that Mr. Sullivan satisfied all of the State’s administrative rules relating to same. To the extent the Abutters believe the decision of NHDES was in error (it was not), their remedy is or was an administrative appeal of that decision to the applicable appellate body within NHDES. Their remedy is not to try to convince this Board that NHDES was wrong as a basis for denying Mr. Sullivan’s site plan application.

Granting site plan approval would not “irreparably degrade the historic character of the area” nor would it “substantially alter the character of the area.” The Abutters’ argument that the proposed use will degrade the historic character of the area and alter the character of the area conflates and confuses zoning issues with planning issues. Mr. Sullivan’s proposed coffee shop/existing dwelling mixed use is expressly permitted under the Town’s Zoning Ordinance. As such, the proposed use is inherently consistent with the character of the area as a use permitted by right. Permitted uses are per se reasonable. See *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007). 15 New Hampshire Practice: Land Use Planning and Zoning §30.09 (Limits on Site Review) contains an excellent discussion of this principle: Site plan review authority does not give the planning board the authority to deny a particular use simply because it does not feel that the proposed use is an appropriate use of the land. Whether the use is appropriate is a zoning question. If the

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planning board could deny uses it thought to be inappropriate, there would be no point in having zoning, for it would afford no protection to a landowner. If the use is permitted by the zoning ordinance, it cannot be barred by the site review process unless the use would create unusual public safety, health, or welfare concerns. While this Board has authority to impose conditions that are reasonably related to the purposes set forth in the Town's Site Plan Review Regulations to promote the safe and attractive development of the site, see id., this Board must accept the determination of the Town's residents as a whole – as expressed through the terms of the Zoning Ordinance – that Mr. Sullivan's proposed, permitted use is an appropriate use of the site. His proposal does not create unusual public safety, health, or welfare concerns. This Board's duty is to ensure that Mr. Sullivan's proposal complies with the Town's Site Plan Review Regulations, which it does. His application should be granted.¹ To the extent this Board can consider the alleged "historic nature" of the area, the Abutters' assertion that an approximately 640 square foot coffee shop along Route 4 – the main commercial thoroughfare in Town – would "irreparably degrade the historic character of the area" is nothing more than exaggeration. This Board should not simply accept this representation at face value. Section II(A) of the Town's Site Plan Review Regulations provides that the Board seeks to establish "patterns of growth which acknowledge the present but honor the past."

Other issues raised by the Abutters: To the extent the Abutters, in their March 12, 2020 letter or otherwise, raise issues regarding application or plan completeness and traffic issues, those points have been fully and adequately addressed by Mr. Sullivan's surveyor. They have received a conceptual approval from DOT to improve Bow Lake Road, even though DOT mentioned in their letter that they didn't feel that it was a requirement for this project to improve Bow Lake Road, the applicant has decided to do it and pay for it with his own money.

Mr. Burdin stated that the applicant has requested that the public hearing be closed at this meeting and that no additional testimony be accepted after that point. The applicant is amenable to continuing deliberations regarding this case to allow the board to review all materials that are part of the record prior to rendering a decision. It is ultimately the Planning Board's decision whether to formally close the public hearing. This case was accepted as complete at the June 13, 2019 meeting. RSA 676:4 requires that the planning board act to approve, conditionally approve, or deny an application within 65 days of finding it substantially complete. RSA 676:4.I.(f) states that the applicant may waive this requirement "and consent to such extension as may be mutually agreeable". In an email from Attorney Brett Allard dated May 26, 2021 the applicant's team explicitly confirmed their desire to close the public hearing at tonight's meeting. Mr. Burdin stated that he interprets this email as a withdrawal of their consent to further continuances as described above (with the exception of an additional meeting for deliberation and to render a decision). He stated that he wanted to note that the above intent was not clear to him prior to Attorney Allard's email of the 26th. He did not previously understand any statements by the applicant to indicate a wish to alter their standing request to resume official proceedings once an in-person hearing could be scheduled. The revised plan set was delivered to the Town electronically on Monday, May 17th as required by the planning board for consideration at the May 27th meeting.

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Governor Sununu issued Emergency Order 23 effective April 2, 2020 pursuant to the state of emergency declared by Executive Order 2020-04 and subsequently extended, most recently by Executive Order 2021-08. Emergency Order 23 paragraph 5 states that “Municipal or local governmental bodies are relieved from complying with statutory or local deadlines or deadlines set forth in a municipal charter for taking actions on applications and requests including, but not limited to: a) deadlines for accepting, hearing, and acting on planning board applications under RSA 676:4 and for zoning board of adjustment applications under RSA 676:7;”

If the Board chooses to close the public hearing, no further testimony may be submitted by the applicant, abutters, or members of the public without reopening the public hearing. The Board could conceivably reopen the public hearing at the same meeting by passing a motion to do so but could not reopen a hearing at a subsequent meeting without due notice. A public hearing as it relates to a site plan application serves two purposes. First, it guarantees legal due process to the benefit of all parties that can demonstrate an interest in the application. This includes the applicant, direct abutters, and any other members of the public who could demonstrate that they will be impacted by the application. Since the applicant bears the burden of proof they are entitled to the final word on the application, including a last opportunity to rebut any statements or answer any questions posed by members of the public. Conversely, members of the public are typically afforded a reasonable opportunity to comment if substantial changes are made to an application. Second, the public hearing is an opportunity for the Board to seek additional information or clarify its understanding of the materials presented.

Mr. Burdin stated that he feels confident that the terms of Emergency Order 23 grant the board authority to continue the public hearing if it sees fit. The applicant’s request to discontinue the hearing should therefore be interpreted as simply that – a request. Staff recommends that the board only vote to close the public hearing if it feels that both of the following circumstances are true:

The board is satisfied that it has all necessary information to render a decision to approve, conditionally approve, or deny this application and will have no further questions for any party following closure of the public hearing.

Legal due process has been met for all parties. The applicant has had sufficient opportunity to present their case and the Town has fulfilled its obligation to reasonably guide the applicant through the review process. The public have had a meaningful opportunity to testify regarding this application. Revisions in the final plan set either do not rise to the level of substantial changes that would warrant the opportunity for additional testimony, or the public was afforded a reasonable opportunity to be informed of the revisions and deliver such testimony before closing the public hearing.

Waiver Status: At its March 12, 2020 meeting the planning board denied a request for a waiver to Section IX-Q Sidewalks. The redesigned plans depict a sidewalk running the entire length of the Bow Lake Road frontage with the intent of complying with this section.

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Ms. B. Smith made a motion to continue Case 19-12 until June 10, 2021. All new applicant submissions must be received by June 1 at 4 PM. All new public comment must be received by June 8 at 4 PM. Selectman Kreider seconded. Motion carried by roll call vote 5/0.

Lee Baldwin rejoined the meeting

VOTING DESIGNATION: Chair Bob Strobel, Betty Smith, Joe McCaffrey, Lee Baldwin, Hal Kreider, and Tim Jandebaur

Case: 21-4 Site: Chestnut and Cape, INC. Olde Canterbury Road Map 110 Lot 29. Applicant proposes a Major Site Plan to build a 21-unit elderly home development on the existing undeveloped lot.

Case: 21-4 Sub: Chestnut and Cape, INC. Olde Canterbury Road Map 110 Lot 29. Applicant proposes a Major Subdivision to accommodate a 21-unit elderly home development on the existing undeveloped lot.

Geoff Aleva, from Civic Consultants and Curtis Naleid were present to speak for the application. Mr. Aleva stated that he met with the Highway Foreman at the property to look at the condition of the roadway and what the roadway requirements would be for improvements. The existing paved area on Cemetery Street will be milled and repaved. The millings would be used to supplement the base, and then a new top coat 18 feet wide would be installed from the intersection of Route 107 up to where the pavement ends. Where the pavement currently ends on the west side of the property all the way over to the east side of the entrance will be paved as well. He stated that they presented to the Town copies of the condo documents that are specific to the age restrictions and how that is handled through affidavits and review and compliance for the homeowners group. He stated that they made a few revisions based on comments they received back from the AOT permit. They plan on sending the revisions back to DES within the week. While on site they met with one of the neighbors, and they discussed some ideas of looking at some low shrubs along the line between the property line and the proposed access way. Some other discussions were centered around which units will have a basement and what units won't. The townhouse buildings will all be on slabs, with the exception of two units. There was a question about lighting, all of the lighting will all be placed on the buildings, and they are all down lit.

Mr. Aleva shared his screen with the board and explained the road plans.

Chair Strobel opened public comment.

Sally Aseltine

"In terms of the road, my question to the applicant would be; We just spent a lot of money to redo our driveway last year, how much of that will be taken and how much will be taken by this?"

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Geoff Aleva: “Typically, when a road is rebuilt and repaved and they come upon an existing driveway that abuts the road, they go in and saw cut that area and they will remove the pavement that abuts it, and blend in the new pavement. It creates a little bit of a turn out into the residential property, so that driveway ties in.”

Ralph Blackey

“My concern is, if you’ve ever been down this road at all, not only kids, but people fly from Main Street just to see how fast they can get on this road. If you pave that road, with this elderly housing, they are going to be walking to and you’re going to have people flying down this road regardless if it’s paved or not. You’ve got the culvert down there, and that needs to be repaired. I’ve got photos of that. To mill that end down there, that was paved 130, 35 years ago. It would probably be easier just to tear that up and put a whole new base down. I believe it was 35 years ago. Sally Aseltine would know a little better than I would.”

Jason Johnson

“I am actually in favor of improvement of the whole road. Many people have said today that you will drive everyone to School Street. They are all entering 107 on a blind hill. It’s a dangerous intersection, there are a lot of accidents there.”

Geoff Aleva:” When we were out there looking at the road with the Highway Foreman, who is also on the emergency crew, I asked how many accidents happened there, and he did not recollect many accidents occurring at that intersection. I did check the sight distance at that intersection, and it does meet the minimum standards set by DOT for the posted speed. I understand people exceed that.”

Jason Johnson: “For someone that actually lives there and has had many cars end up in their property, I would strongly disagree with the road agent’s assessment.”

Mike Magoon

“One question that has come up with abutters before is about the lighting situation, specifically it sounded good what I heard today and I appreciate that, you know the lighting not projected upward. The other question that came up was the powerlines. Is the applicant planning to have powerlines strung, will it be buried lines? What would that look like because I don’t remember seeing anything on the proposal.”

Curtis Naleid: “Our discussions with Eversource have been that they would all be underground.”

Martine Canfield

“I want to back up Mr. Johnson. That intersection is dangerous. To the point where last weekend I was putting up the flags for Memorial Day, I actually chose to take a left onto West Street, because I will not take a left at the blind bluff. I can have my windows open and people stop but they are very fast people and maybe the near misses aren’t being reported. For the few people that cross the road, you’re taking a big chance. We need more signs up, more police and maybe we need some of those radar detecting signs that flash when you’re going too fast. Otherwise, I want to know if my field going to be affected by the road being paved? Are you taking any land away from along my fence?

Geoff Aleva: No, that’s untouched.

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Martine Canfield” I just want to say one thing, and keep in mind I’m 62.5 years old, so I’m saying for the benefit of old people. Tim and a few people keep saying that they are in favor of more senior housing to benefit the seniors, but I am not sure if this development will benefit any of the Northwood seniors. Or any New Hampshire seniors because I’m kind of curious as to as you crunch numbers, do you have a hard target price for each condo? I realize there is a lot in play because building costs are up and materials are up, but it just seems like whatever you are building is going to cost more than any New Hampshire senior can afford, and it’s just going to appeal to out of state seniors who have more spending power because their states are more expensive to live in. Are you going to reserve a couple of units for Northwood seniors? It just doesn’t seem like anything that will benefit any of the seniors in town. Some of them are living in trailers and stuff and they certainly can’t afford a nice new condo. So, I just want to say that. I’m for seniors and all kinds of people’s living situations, since it’s been mentioned a few times at every meeting that everyone is all for helping the seniors, but I just don’t see how this will benefit any seniors that I know. I work very hard to try to keep up with my taxes. It’s a struggle, and I work full time in manufacturing now 6 days a week, but it just doesn’t seem that this will actually help our community. I realize your drawings are in the preliminary stages, but I just wanted to point out on your design for these senior condos, it just doesn’t seem like you are making any effort to make it ecofriendly. Coming from the Massachusetts area, a lot of new architecture, and keep in mind you are building in a field with edges on the wetlands and we are in a drought so it’s really a wetland, there’s no effort to make the roofs green and also, I did look up online that instead of paving the private roads through the condos, there are available paving systems that would let water go through, make it more permeable. But I would like you to at least consider that as you work on your designs going forward. Try to make it greener and maybe lower the profile to blend in with the country landscape. It just seems to make your condos look very cookie cutter and soulless and kind of a blight on the landscape but maybe they could be a little bit kinder to our country ambiance.”

Kim Keller

“I feel kind of selfish about this, but if the history of the field has to go, then I’d like to keep the dirt road as much as you can. We live up going towards Main Street, and I have a 7-year-old daughter that rides her bike to the brook, I have grandchildren that come over, we own the house across the street as well. I would just like to see less traffic going up towards our way. Considering a one-way road or take a left after, if that’s possible it would be greatly appreciated. We moved here for the view of the field; my husband’s family has been here for many generations. It’s extremely sad that this is happening, but I understand that we don’t own it. Again, I’d really love to keep the history of the dirt road. We have a lot more walkers than we have cars. It’s just sad to see that all gone.”

Martine Canfield

“We’ve been in a drought for the last year and a half, and I know last year that a lot of people lost water pressure and were having issues. Today in another part of town people are complaining about rust. My question is, going forward with this development of 21 units, if it ends up negatively impacting the abutters water access,

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are they going to be compensated in some way if they have to dig deeper wells? Because 21 units is a lot, and you have two bedrooms, so at least 42 people in there showering and pulling water and then they have room for visiting family members, they will use a bit of water. I don't think it's fair to the people living next to this monstrosity to be forced to have to dig deeper wells to offset the impact. I think there should be a fund set aside for that. The condo development is definitely going to affect the water levels. We do know that Northwood Brewery just dug a deeper well. It's putting a lot of pressure on the local ecosystem."

Sally Aseltine

I just have to comment and support Mr. Johnson's comment about that road and that intersection, because as one of the people who goes out this road many times a day and walks across it many times a day. You cannot rely on sight coming up over that hill. I have to stop and listen very carefully. I would be considered one of the elderly people on this road. I know that my hearing may be a little less, but you have to really listen for cars that are coming up and over."

Mike Magoon

"I just wanted to reiterate about what Ralph and Kimberly had said. I wasn't quite aware of the shape of that culvert until they pointed it out to me. I couldn't believe the condition of that culvert. It's just something to consider."

Chair Strobel closed the public comment, subject to reopening at a later date.

Selectman Kreider made a motion to send the condo docs to legal for peer review, as soon as the applicant submits the full document, as well as to send the drainage report to the town engineer for review. Ms. B. Smith seconded. Motion carried by roll call vote 6/0.

Ms. B. Smith made a motion to continue Case 21-4 until June 24, 2021. Mr. Jandebaur seconded. Motion carried by roll call vote 6/0

CASE 21-7: Chris Meyer/Cerebral Development, 134 First NH Turnpike, Map 234 Lot 11. Applicant is requesting a Minor Site Plan Review. Applicant is proposing to renovate a 24x42 building into retail space and take out window, and to construct a protective farmers porch and flower/herb bed areas.

Mr. Jandebaur made a motion to find Case 21-7 incomplete. Ms. B. Smith seconded. Motion carried by roll call vote 6/0.

CASE 21-10: Coe Brown Northwood Academy, Map 217 Lot 1. Applicant is requesting a Minor Site Plan Review. Applicant is proposing to expand the parking lot on site in order to create sensible traffic flow and an increase in parking spots.

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Neil Rapoza from Civil Consultants was present. He stated that the project is an expansion of the parking lot at Wiggin Hall that commenced prior to coming to the Planning Board. It started in the Spring of 2020, after the school was told by the town that the Planning Board process wasn't necessary, they went ahead and received the DES approval for the shoreland permitting portion of it. They performed the design to expand an existing 9 lot circular parking area at Wiggin Hall and created a safer 24 space parking lot design that pulled the traffic off of the back access way that comes around the building. The design itself incorporates some subsurface stormwater storage to keep the flows similar. The DES has reviewed and approved all of the work that has been done in the shoreland up to this point, but the parking and some of the pavement towards Route 4 is within 20 feet of the property line. That required ZBA approval, which they approved. With this minor site plan, they are requesting a waiver for the parking lot within the property line.

Ms. B. Smith made a motion to find the Case 21-10 had no regional impact. Selectman Kreider seconded. Motion carried by roll call vote 6/0.

Mr. Jandebaur made a motion to approve the waiver to 7-B 5. B. Mr. McCaffrey seconded. Motion carried by roll call vote 6.0.

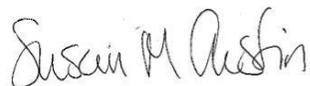
Mr. Jandebaur made a motion to approve the waiver to 9-8:3 (Parking) Mr. McCaffrey seconded. Motion carried by roll call vote 6.0.

Mr. Jandebaur made a motion to approve Case 21-10 with conditions. Mr. McCaffrey seconded. Motion carried by roll call vote 6.0.

Adjournment

Mr. Jandebaur made a motion to adjourn at 9:53 pm. Ms. B. Smith seconded. Motion carried 6/0.

Respectfully Submitted,



Susan Austin, Land Use Assistant.

Approved by the Planning Board on June 24, 2021