

PLANNING BOARD
May 11, 2016

APPROVED as amended & clarified:

5/25/16__jrl_____

AGENDA: CONTINUED 15SPR02 SITE PLAN REVIEW, NEW ENGLAND FAMILY HOUSING, 409 Lake Street, #112-037 & 224-001

ATTEND: Denice DeStefano (Chairman), Clay Dingman (Vice Chair), Paul Manganiello (Sel. Rep.), Bob Curtis, Steve Favorite, Dan Paradis, Elizabeth Seeler

ABSENT: -----

OTHER: Sandra Heaney (resident, Conservation Commission), Barbara Greenwood, Fred Schneider, Kevin Lacasse (applicant), Kevin French (surveyor), Anna Barbara Hanz (attorney), Kent Brown (engineer), Ray Courchaine (filming), Bernie Waugh (town attorney), Betsy Schneider, Rebecca Boudreau, Les Dion (Selectman), Christina Goodwin (assessing), police officer.

The meeting opened at 7:00 p.m. with a quorum.

15SPR02, CONTINUED SITE PLAN: NEW ENGLAND FAMILY HOUSING

Kevin Lacasse, Kevin French, Attorney Anna Barbara Hanz, Kent Brown (engineer)

Ms. DeStefano gave a recap of the project to date and added that the Board met with Town Attorney Bernie Waugh, who is here this evening. She then read the Conservation Commission recommendation letter which suggested a detailed & timely ongoing maintenance plan for storm water drainage systems, siltation controls during site work, and that the project adheres to the Town's Wetland Conservation Overlay District buffer zone. Ms. DeStefano then read the letters from Police Chief Lewis, who had no issues, and Fire Chief Steve Yannuzzi who was concerned with safety issues on the increased traffic.

Ms. DeStefano asked for public comments and there were none. She then asked for applicant comments. Mr. Lacasse had none at this time. She asked for additional Board comments. Mr. Dingman read 3 lengthy comments: one from Dave Flynn (via Christina Goodwin) of NHDOT, From Nik Coates (Town Administrator/past Transportation Planner, Chair of NHDOT Bicycle & Pedestrian Transportation Advisory Committee, and writer of more than a dozen Safe Routes to School Travel Plans), and one from Mark Bucklin (Highway Superintendent).

Again Ms. DeStefano asked for comments from the Board, the public, and the applicant. Mr. French stated that the applicant has no intent to make the access into a road. Atty. Hanz asked for input later, if they wished. Atty. Waugh stated that the motion to be discussed is a draft that he and Mr. Dingman drew up and may be just one to contemplate. At this time, Ms. DeStefano closed the public portion of the hearing.

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NEW ENGLAND FAMILY HOUSING continued:

Mr. Dingman distributed the draft and read it allowed for all to hear. It consisted of: Findings of Fact (Proposed), Board's Reasoning (Proposed), and Proposed Action (the initial motion and conditions).

C. Dingman moved the MOTION, second by E. Seeler, to APPROVE WITH THE LISTED CONDITIONS.

Mr. Dingman stated that the Board will need to look at the Site Plan regulations (5.1.0 & 6) to see what they agree to waive. Atty. Waugh stated that he will add the 3 documents that Mr. Dingman read tonight, as well. Ms. Seeler felt that this will help everyone to find the entrance to the property. Ms. DeStefano stated that the property does not have any frontage and these conditions would support that issue. Mr. Dingman felt that how much we waive would be up to the Board and we could use Mr. Bucklin's comments. There are concerns for pedestrian safety with the access. Also, the line of site is a concern and the town can require more stringent requirements than DOT. We shall have to look at our standards.

Atty. Hanz asked that, if they had the required frontage, if this process would not be needed and Mr. Dingman answered that this is true though they would still have to meet State regulations. Mr. Lacasse stated that they would have liked to have had more feedback and Atty. Hanz added that there is no clarity. DOT and the Town can add what they wish. She feels that we can have standards to follow but not make any up for an individual case. She added that sidewalks are not a requirement. Mr. Dingman read Site Plan/Subdivision regulation 5.10.G7 which addresses sidewalks.

At this time, Atty. Waugh advised the Board not to discuss particular waivers. The secretary mentioned that the 2nd lot shown as #224-0012 should be #224-001. The numbering in the first two sections will also be corrected. Mr. Favorite stated that the Board has been concerned about the width of the access and need of sidewalks for safety for some time. There is the Disability Rights Act and we, as a town, have been improving our sidewalks for Safe Routes to School. There will be more people in this area. Mr. Dingman asked if the motion addresses all of this well and was told that the Board feels that it does. Mr. Manganiello added that the snow removal plan is a solution, as well, and he thanked Mr. Dingman and Atty. Waugh for their proposal and all the hard work that it entailed.

Ms. DeStefano then asked the Board if they were okay with the various sections once the numbering and correction of the lot number are done. The Board was fine with section 1 and 2. As to section 3.c, they realize that this shall have to be worked out with DOT. Ms. Seeler asked that the one way out can be shown on the new plan. Mr. Manganiello stated that the left hand turn, coming out of the access, is the problem. One cannot see the traffic coming from the

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NEW ENGAND FAMILY HOUSING continued:

north, partially due to the guard rail. He asked what the town's recourse is. Mr. Favorite stated that it is actually making this a 4-way intersection. Mr. Dingman stated that this is part of the proposal and Ms. DeStefano added that she has worked with the State in the past and this can be addressed.

With no other comments, a vote was taken on the MOTION and it was APPROVED UNANIMOUSLY. (The proposal is attached to these minutes).

Mr. Lacasse said that he understands that the plan is to show how this can be done and Atty. Hanz added that it would be on condition of the AOT approval. The Board agreed.

MINUTES OF APRIL 13, 2016

The following amendments and clarifications were made: Page 1, ATTEND, Ms. Seeler was absent. Last paragraph, 1st line, a space is needed between "#112-037" and "lost". Page 3, 1st paragraph, 6th line, following "standards" insert "in Subdivision 5.10 for road design and construction.". S. Favorite made a motion, second by P. Manganiello, to approve the minutes as amended. The motion carried with 2 abstentions.

COMMUNICATIONS: A survey of John Bianchi's property on Green St. was looked at.

REPORTS:

HDC – Did not meet.

SELECTMEN – They held their meeting for working together as a team. The Space Needs is their #1 priority.

CIP – Will not meet until August.

OLD BUSINESS: Mr. Dingman apologized for holding up the Land Use section of the Master Plan. The requested maps have been done but he has yet to look them over before accepting them. Mr. Dingman is not sure of the limit of the extension time. Ms. DeStefano will check with the Town Administrator.

NEXT MEETING: The next Planning Board meeting is scheduled for May 25th, 7:00pm. Ms. DeStefano and Ms. Seeler will be unable to attend. There is a PCC for Davidson Campground on the agenda. A discussion on what it is that they are looking for was held (additional sites). The secretary explained that the problem is that we have no record in the files of any Site Plan. The applicant has been asked to try to find one.

With no other business before the Board, they adjourned at 8:30pm.

Respectfully submitted,
Jan Laferriere, recording secretary

Town of Bristol Planning Board
Case No. 15SPR02 – New England Family Housing

Members sitting: DeStefano, Paradis, Dingman, Seeler, Favorite, Mangianello
Discussion draft prepared by Dingman, with assistance of Town's Legal Counsel

FINDINGS OF FACT

1. The Applicant, New England Family Housing has submitted a set of plans for site plan approval and lot merger. The Applicant seeks to merge two existing lots – Lot 112-037 (2.4 acres) and Lot 224-001 (0.66 acres) for purposes of constructing a 32-unit apartment complex (14 one-bedroom units and 18 two-bedroom units) in two buildings on the resulting 3.06-acre lot. The property is the site of former fish hatchery, now in disuse.

2. The materials submitted by the Applicant include the following, all of which are in the case file, and are incorporated into this decision by reference, even though not all details are reiterated here:

- Board's Site Plan Review checklist.
- A set of Plans for "Newfound River Apartments" consisting of 11 sheets, most recently updated on January 4, 2016, prepared by Brown Engineering & Surveying, LLC. (The landscaping plan – Sheet 5 – is the version last revised on 12/15/15).
- A soils map, and colored soils plans, together with a soils analysis by Stoney Ridge Environmental.
- A drainage Report (17 pages plus two diagrams) dated December 1, 2015 by Brown Engineering & Surveying, LLC.
- A traffic analysis dated December 7, 2015, prepared by Stephen G. Pernaw & Co. and concluding that the development will not significantly impact traffic on Route 3A, or lower the level of service at any nearby public intersections.
- Copies of submissions to the N.H. DES for purposes of a Shoreland Permit.
- Copies of submissions to N.H. DES for purposes of an Alteration of Terrain permit.
- Project Review by N.H. Div. of Historic Resources, finding that the site is not archeologically sensitive.
- Documents pertaining to the removal by FEMA of portion of the property from the Special Flood Hazard Area.
- A 2-8-16 letter from SRW Environmental Consulting, concluding the lack of any environmental hazard on the property.
- A series of economic impact studies concerning schools, prepared by Applied Economic Research, and by the N.H. School Administrators Assn.
- A Letter dated April 11, 2016 from Attorney Robert H. Miller, addressing the adequacy of the access driveway and legal issues associated therewith, and attaching several exhibits.

3. Public hearings were held on November 18 and December 9, 2015, and on January 13, February 10, March 9, March 23, April 13, and May 11, 2016. The details of the testimony given at those hearings – as reflected by the minutes – are also incorporated into this decision by reference.

4. The following items were submitted by parties other than the Applicant, in addition to the testimony at the public hearings:

- A letter dated March 1, 2016 from James Houle and Thomas Ballestero, from UNH Stormwater Center, who reviewed the design of the project, and found that the stormwater design met applicable standards, but recommending that there be third-party engineering oversight during construction.
- A letter dated March 15, 2016 from Police Chief Michael Lewis concluding that he had no concerns about traffic or pedestrian safety.
- A memorandum from Fire Chief Steve Yannuzzi stating that the driveway leading to the development was of adequate width for a fire engine, but expressing concerns about the safety of the intersection with Route 3A, due to the limited field of vision.
- A March 2, 2016 letter from Stacy Buckley, Newfound Area Superintendent of Schools, stating that the District will have the capacity to support additional students attributable to this development.
- Letter of 2-5-16 from Paul Fraser.
- E-mail letter of 3-10-16 from Donna Nashawaty.
- E-mail of 3-15-16 from Carol Huber
- E-mail of 3-22-16 from Kent Brown, discussing the flood hazard area issue.
- E-mail dated May 11, 2016 from Board member Clay Dingman reflecting comments by Nicholas Coates, Town Administrator and transportation planner.
- E-mail dated May 11, 2016 reflecting comments by Bristol Road Agent Mark Bucklin, and discussing the applicability, and possible waiver of the road standards in Section 5.10 of the Board's Subdivision/Site Plan regulations to the access road for this project.
- E-mail dated May 10, 2016 from Christina Goodwin (Bristol Assessing Dept.) and relating to a conversation she had with David Flynn of N.H. DOT, concerning the relationship between state regulation and local regulation.

5. At one time during the review process, the Applicant indicated that this application was being submitted as “workforce housing” under the provisions of RSA 674:58-:61. However, after it became clear that some of the procedural requirements of that statute had not been followed, the Applicant withdrew the request to treat the project as “workforce housing.”

6. Both lots are located in the Village Commercial zoning district. Existing Lot 224-001 has no street access. Lot 112-037 has access to NH Route 3A via an access road built along a private easement within a 20-foot right-of-way, approximately 200 feet from the state highway. Around 100 feet of this access road, at the end connecting it with NH Route 3A, is coincident with a NH DOT right-of-way. The private easement is across land owned by Upper Bristol Ramp, LLC (the owner of Lot 112-36).

The easement deed is found at Book 2312, Page 966, Grafton County Registry of Deeds. The submitted plans contain no provisions for improving or otherwise altering this access way.

BOARD'S REASONING

7. The Board is generally satisfied that the layout of the apartment buildings and site, as proposed, meet the Town's Site Plan Regulations. The main issue of concern to the Board involves the access roadway.

8. The proposed merged lot does not meet either Town or State frontage requirements. Specifically:

(a) The plan, being in the Village Commercial zone, requires a minimum frontage of 75 feet. "Frontage" is defined in the town's zoning ordinance as "the length of the lot bordering on a town or state road, or a subdivision road approved by the Planning Board, excluding Class 6 and limited access highway." The proposed merged lot borders neither a town nor state road, nor a subdivision road approved by the Planning Board.

(b) For purposes of state law (RSA 674:41), the "street giving access to the lot" for purposes of the plan, is a private easement within a private right-of-way. The right-of-way is not a public street, nor is it a private road approved by the town's Select Board under RSA 674:41, I(d), and therefore, as is, does not meet the provisions of RSA 674:41.

9. Attorney Miller's letter April 11 letter with attachments claims that the lots are "grandfathered" from the above requirements. The Board has serious doubts about this "grandfathering" argument. In particular Atty. Miller's claim that the right-of-way constitutes a "street shown on a subdivision plat" for purposes of RSA 674:41, I(b)(2) is based on a December 28, 1988 "Proposed Boundary Line Adjustment Plan." That plan, while approved, was never implemented. No vested rights ever attached to it, and it would be subject to revocation today under RSA 676:4-a.

10. However, even assuming, solely for argument's sake, that the *lots* involved were "grandfathered" in some sense from the frontage and access requirements, the fact is that the current proposal for 32 apartment units in two buildings is a brand new proposed use with completely different needs and impacts from any prior use. The N.H. Supreme Court has held that nonconforming aspects of a property cannot be carried over to a brand new proposed use, *see, e.g. New London Land Use Ass'n v. New London ZBA*, 130 N.H. 510 (1988). Here there will be up to 32 different family units, including both adults and children, using this access way both for vehicle and pedestrian access. The project is close enough to the town center that the Board expects pedestrian use – to schools and other in-town destinations – to be substantial. (It should be noted that the safety of this roadway was not addressed by the Pernaw traffic analysis, nor any other Applicant submission)

11. Moreover, even though submitted as a site plan application, the project is in reality a "subdivision" as defined in RSA 672:14 and Section 3.126 of the Subdivision Regulations, because it creates multiple "sites" for "building development" and also creates "divisions of land" for "rent" and "lease." The N.H. Supreme Court case of *Davis v. Town of Barrington*, 127 N.H. 202 (1988) involved a one-building condominium building served by what was termed an access "driveway." The applicant

claimed that the subdivision street standards should not be applied to a condominium all under one roof. But the Court (Justice Souter) held that “*there is no basis in policy that would support the plaintiff’s position. Although a condominium subdivision under one roof will not entail multiple lot or dwelling ownership in the traditional sense, it will involve multiple unit ownership. Therefore, if its common features are deficient in matters of health or safety, they must be seen as affecting the public, not merely one family.... Hence the board’s standards for street construction clearly do and should apply.*”

12. While the application before us does not involve condominium units, we believe the language from the *Davis* case applies. State law prohibits treating property differently merely because of the form of ownership (*see* RSA 356-B:5), and in fact, once this project is approved as rental apartments, the units could legally be converted to condominiums without further local regulation (*see Town of Rye Selectmen v. Town of Rye ZBA*, 155 N.H. 622 (2007)).

13. For the above reasons, the Board will insert a condition requiring the Applicant to prepare a plan for making the access roadway into a “street” as detailed below.

ACTION OF THE BOARD (MAY 11, 2016)

It was moved by Dingman, seconded by Seeler, to ***approve*** the application of New England Family Housing for lot merger and construction of a 2-building, 32-unit apartment complex on Tax Lots 112-037 and 224-001, subject to the following ***conditions of approval***:

1. The housing project will be constructed and implemented substantially in accord with the plans, testimony and representations made in the above-summarized submissions and meeting minutes. Any substantial or material deviation for those plans, submissions and representations shall require further action by this Board.

2. In accord with the March 1, 2016 letter from James Houle and Thomas Ballestero, from UNH Stormwater Center, the Applicant shall provide for and fund a third-party engineering oversight for the project. A proposal for such supervision shall be submitted to and approved by the Board.

3. The Applicant shall re-submit proposed plans, so that the plan intended for recording will show the access roadway as a “street” which will allow the development to comply with the frontage requirement in the Zoning Ordinance as well as RSA 674:41, I(b)(2). The plans for street construction shall be based upon the town’s street standards as detailed in Section 5.10 of the Town’s Subdivision/Site Plan Regulations, but may include requests for waivers of portions of those standards, if such requests are properly justified under Section 7.6 of those regulations. The plans shall address, at a minimum, the following issues:

(a) A sidewalk shall be constructed along the new street to allow for safe pedestrian access between the new apartment complex and the town’s sidewalk system along NH Route 3A.

(b) If the plans call for the right-of-way to remain narrower than required by the regulations, the Applicant shall submit a snow-removal plan that effectively prevents snow storage from further narrowing the traveled way or sidewalk during the winter, and eliminates

from the new road all snow that might inhibit visibility for drivers attempting to exit the road into traffic along NH Route 3A.

(c) The plan shall contain proposed improvements to the intersection of the street with Route 3A, so as to eliminate the line-of-sight concerns expressed by the Fire Chief (with which the Board agrees, based on visits and familiarity with the site), in such a manner that drivers and pedestrians have clear visibility to safely enter or exit the subdivision in either direction, based upon an on-site inspection of the intersection in question.

The intent of the Board is that this condition shall be treated as a condition precedent which is *not* “administrative” in nature as set forth in RSA 676:4, I(i), hence compliance with the condition shall require a public hearing with notice as set forth in RSA 676:4, I(d).

Voted in Favor: All

Voted Against: None