

HAMPSTEAD PLANNING BOARD

11 Main Street, Hampstead, New Hampshire 03841-2033

Minutes February 16, 2021

A meeting of the Planning Board was held on Tuesday, February 16, 2021 at the Hampstead Town Hall, 11 Main Street, Hampstead, NH. This meeting was broadcast live over HCTV 17.

PRESENT: Steve Wentworth, (Chairman), Randy Clark, Paul Carideo, Sean Murphy, Chuck Ashford, Jr., Bob Villella, Mike Hanides, Tom Riha (alternate), Susan Hastings (alternate) and DJ Howard (alternate).

CHAIRMAN'S REMARKS

Next Public Hearing Date March 1, 2021

Filing Deadline for the March 1, 2021 meeting is February 1, 2021

Old Business

1. Map 8 Lot 243 – Camp Tel Noar – Yurt Village Expansion

Chairman Wentworth made the announcement that Camp Tel Noar had requested a one-year continuance on the conditional approval to 2/1/2022. P. Carideo asked why would they request a one-year continuance since the board has never approved a year long request. R. Clark commented that the board has never experienced a pandemic before either. M. Hanides asked about the variance the ZBA granted and if that would affect the PB ability to act on the extension request. The board discussed revisiting the conditional approval in another six months.

MOTION: C. Ashford made a motion to continue the conditional approval for Camp Tel Noar for property located at Map 8 Lot 243 an additional six months to 8/2/2021

SECOND: B. Villella

VOTE: 7-0

D. Soucy was asked to check the file for the date the variance was granted (11/6/2019).

2. Map 12 Lot 130 – 2 Starwood Drive – Change of Use/Occupancy

Chairman Wentworth announced that the application had been withdrawn.

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New Business

1. Map 9 Lot 163 – 272 Kent Farm Road – Accessory Dwelling Unit (ADU)

Chairman Wentworth announced that the property owner requested a continuance to the 3/1/2021 public hearing.

MOTION: C. Ashford made a motion to continue the public hearing for a proposed ADU at Map 9 Lot 163, 272 Kent Farm Road to the 3/1/2021 public hearing.

SECOND: P. Carideo

VOTE: 7-0

2. Map 13 Lots 26 & 35 – 62 East Road – Lot Line Adjustment (LLA)

Property owner Jeff Duford was present to answer questions about the proposed LLA. J. Duford stated this is an existing lot of record that needs a LLA to gain access for a new home.

MOTION: R. Clark made a motion to accept jurisdiction of the LLA for property located at Map 13 Lots 26 & 35, 62 East Road.

SECOND: B Villella

VOTE: 7-0

J. Duford stated that K. Camm has spoken with S. Keach regarding some of the details mentioned in the 1/29/2021 engineering comment letter. P. Carideo asked about the driveway permit and J. Duford stated he has not yet applied for a permit. R. Clark asked about comments #1-7 in Keach's 1/29/2021 comment letter and J. Duford stated that K. Camm just returned from vacation and will be working on resolving those items.

P. Carideo again asked about the driveway application and stated that there is no driveway plan and/or profile provided with this application. P. Carideo had questions regarding access and slopes. P. Carideo asked if the HFD had comment. It was noted that a Department Head Review meeting is not typically scheduled for a simple Lot Line Adjustment. J. Duford asked if the driveway permit could be a condition of approval. C. Ashford asked for another plan sheet showing the driveway details.

Chairman Wentworth asked for public comment.

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Eric Selecky – 10 Cherub's Way – had a concern regarding safety and talked about an experience he had with fire when he lived in Salem, MA. He stated his concern with this current application is the safety of his family, he felt there would be restrictions to access the property in an emergency situation.

Member Carideo talked about driveway lengths and indicated that the HFD had particular requirements before an approval would be granted.

Colleen King – Cherub's Way – read the following statement into the record:

In July 2010, there was a Public Hearing for a subdivision for these same lots. At that time the Town Engineer stated that he had issues with the driveway steepness.

The location of the driveway in today's plan is in the same place.

The road height is at 294'.

The driveway entrance is at 290' and is not only steep but it is also slanted sideways.

The driveway then drops to 276', down 14'.

Even on the assessing card it states the topography is steep.

In addition, the Zoning Ordinance has not changed since 2010 regarding the shape of lots.

The Chairman in 2010 had issues with the shape of the lot. He is also on the PB now in 2021.

The 2010 plan tried to create road frontage on a landlocked parcel by adding a new tiny triangular shaped piece of land from the house lot which fronts East Road and sides on Cherubs Way. This was done to circumvent the frontage requirements in the Zoning Ordinance.

The Planning Board in 2010 DENIED this plan for several reasons:

1. The odd shape of the lot.
2. Driveway steepness
3. No reasonable demonstration of a rectangular shaped lot.
4. Pushes the Town ordinance beyond what the town wants
5. Does not meet the spirit and intent of the Hampstead Zoning Ordinance.

In 1980, the NH Supreme Court ruled in Fisher V. Town of Dover, that a "subsequent application should not be considered unless a material change of circumstances affecting the merits of the application has occurred or the application is for a use that materially differs in nature or degree, from the previous application."

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This is referred to as the “Subsequent Application Doctrine”, sometimes called the ‘Finality Doctrine’.

Then in 2016, in the case CBDA Development v. Town of Thornton, the NH Supreme Court ruled again that a ‘developer’s minimally amended plan did NOT have to be considered by the Planning Board, which previously rejected a similar plan that was not in compliance with Town Zoning.’ This case is referred to as “Once and Done’.

This proposal tonight is almost exactly to what was previously denied by this Planning Board in 2010, in her opinion.

She is asking the Board to deny this plan again on the grounds that it has been not materially changed since 2010 and the same issues still apply. The NHSC has ruled that the PB should not consider a case like this.

R. Clark asked for clarification and stated that the 2010 application was for a two or three lot subdivision. He recalls the prior application asked for more lots.

E. Von Horsun (unsure of spelling) – Cherub’s Way - stated he was the adjacent property owner and the driveway access being proposed is too close to his property. He asked if his property value would be decreased.

Chairman Wentworth stated that the board needs to follow the town’s Zoning and Regulations and that is what decisions are based upon.

Elizabeth Selecky – 10 Cherub’s Way – feels the addition of a triangle to the landlocked piece of land is a manipulation of the zoning to meet the frontage requirements.

Chairman Wentworth ended the public comment session.

P. Carideo feels the PB needs to forward the application to town counsel for an opinion based on the comments made by abutter; Colleen King. R. Clark feels there could be a technical difference that town counsel will not see. R. Clark feels the applicant’s engineer could speak to the matter. J. Duford stated he is working with the same consultant on this Lot Line Adjustment that submitted the 2010 Subdivision application.

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MOTION: R. Clark made a motion to continue the public hearing for the LLA for property located at Map 13 Lots 26 & 35, 62 East Road to 3/1/2021.

SECOND: P. Carideo

VOTE: 7-0

The board directed D. Soucy to reach out to town counsel for an opinion on the matter.

3. Map 6 Lot 045 – 264 Stage Road – Subdivision of Land

T. Lavelle was present to represent the applicants for a two-lot subdivision. T. Lavelle stated that Hampstead Area Water Company (HAWC) provided a letter stating they are ready and able to supply water for the subdivision. T. Lavelle stated he would answer questions regarding the soil's calculation.

Chairman Wentworth asked if the 1.05 acre-lot with the house was sized based on soils. T. Lavelle stated that page 29 of the Zoning talks about the relationship between State and Local rules. "If the State regulations address an issue not included in the local regulations, or if the local regulation addresses an issue not included in the State regulation, that regulation shall automatically apply". T. Lavelle stated this rule allows his client to enjoy the 50% Rule for minimum lot size requirements for soils Table 1A.

P. Carideo asked about the approval granted to the Williams property, Map 7 Lot 70. P. Carideo stated he recalls Attorney Gorrow providing an opinion on the matter. D. Soucy could not recall the opinion and was asked to review the file. T. Lavelle stated he felt the zoning was clear on the matter. P. Carideo was unable to recall the particular term Attorney Gorrow referred to in her opinion.

R. Clark asked P. Carideo if the board should accept jurisdiction. P. Carideo felt the board should not accept jurisdiction based on a question about a zoning interpretation. Chairman Wentworth asked the opinion of the other board members, all agreed with member Carideo.

Chairman Wentworth asked for public comment.

Suzanne Zakian – 257 Stage Road – stated she was surprised at the plan. S. Zakian referenced the location of the septic system and stated there is a seasonal swale of

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water in that location. S. Zakian stated she was also concerned with the shape of the lots.

Chairman Wentworth closed the public comment session.

MOTION: R. Clark made a motion to continue the public hearing for the subdivision of land for property located at Map 6 Lot 045, 264 Stage Road to 3/1/2021.

SECOND: P. Carideo

VOTE: 7-0

S. Wentworth and B. Villella stepped down from the board. R. Clark, Vice Chairman would be running the discussion on this hearing and announced that S. Hastings and T. Riha would be voting members.

4. Map 14 Lot 102 – 339 East Road – Waiver Request – cul de sac size

T. Lavelle was present to represent the applicant. T. Lavelle explained that this was a waiver request from Subdivision Regulation section VII part 1-H:3 and part 1-H:5, to allow construction of a cul-de-sac with a radius of 45' of pavement with a ROW that meets present requirements with a radius of 60'. This configuration still provides safe turning radius for fire apparatus. T. Lavelle stated the hardship is the large piece of land the town has no use for and will need to maintain and plow.

P. Carideo commented that when the road specs were rewritten the board missed the changes in the cul-de-sac radius, stated that the board has granted waivers previously. D. Soucy confirmed that the waiver request was noticed as a proper public hearing with a legal ad and abutter notification.

MOTION: P. Carideo made a motion to grant a waiver request from Subdivision Regulation section VII part 1-H:3 and part 1-H:5, to allow construction of a cul-de-sac with a radius of 45' of pavement with a ROW that meets present requirements with a radius of 60'. The approval was conditioned that the applicant provides Keach with a plan that reflects the current ROW radius.

SECOND: C. Ashford

VOTE: 7-0

Chairman Wentworth and B. Villella returned to their spots on the board.

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Other Matters

1. Map 1 Lots 91-1 and 91-2 – 70 and 90 Depot Road – Conceptual Discussion

T. Lavelle was present to represent the applicant. T. Lavelle stated the land in question would be 15 acres total when combined. The landowner wishes to develop the property in a cluster manner. T. Lavelle stated they are referencing the Multi Unit Dwelling section of the Zoning which states the PB can allow single-family homes at their discretion. T. Lavelle stated they are looking to propose ten 3-bedroom single family homes on the 15-acre lot. T. Lavelle stated he is in attendance this evening to see if the board would allow single family homes.

P. Carideo had a question on the number of minimum units allowed per the zoning. S. Wentworth commented that they have the acreage for the project but not the number of units. P. Carideo stated he has a problem with the fact that the lot was clear cut of all trees so that no buffer remains for any proposed development. P. Carideo suggested that when an application is received for this land a site walk would be highly recommended. T. Lavelle commented that the property was logged.

D. Howard asked about water and T. Lavelle stated the water would be supplied on site. S. Wentworth again commented that there are not the number of allowed units shown on the plan. R. Clark noted there is a lot of water on the site.

Planning Board Matters

1. Town Engineer Comments – not present

1. Correspondence

a. Boat Storage at 2 Starwood Drive

T. Lavelle was present to represent the property owner. T. Lavelle provided a copy of a site plan for property located at 2 Starwood Drive. T. Lavelle stated that the parking lot was increased in size at the request of the HFD and unfortunately, without a site plan. The second issue to be addressed is the boat storage on the lawn.

P. Carideo stating they are adding more impervious surface and the board needs to consider how this is being treated. P. Carideo stated there needs to be a clear plan delineating the boat storage area along with a number of boats that can be stored within the area. This will enable Code Enforcement a document to reference if a violation occurs. P. Carideo stated he feels something more permanent is needed for the record.

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Chairman Wentworth agreed that there was a need for a formal site plan application to be submitted to the PB office.

D. Soucy was asked to send a letter to the property owner regarding the need for a formal amended site plan at the board's request.

b. Boat Storage at 26 Owens Court

Chairman Wentworth read the 1/27/2021 letter from MSA Properties concerning the boat storage at 26 Owens Court. S. Wentworth reminded the board members that the temporary boat storage approval had expired November 2020. P. Carideo commented that the board had been lenient in the past with regard to allowing temporary boat storage. P. Carideo stated he felt this means of approval is no longer appropriate as it is evident that boats continue to appear on multiple sites without approval. If boats are to be stored on the site than a new site plan is needed. S. Wentworth asked the board for their opinion, all agreed a new formal site plan application is needed.

D. Soucy was asked to send a letter to the property owner regarding the need for a formal amended site plan at the board's request.

- c. Town of Hudson, Cell Tower
- d. January 6, 2021 DRAFT ZBA minutes

2. Member Comments

P. Carideo stated he came across a Facebook post regarding a food stand coming Spring of 2021 on the property located at 546 Route 111. D. Soucy was asked to reach out to the property owner and ask them if they have any upcoming plans.

S. Murphy and R. Clark informed the other board members that they met with the School Board regarding the Capital Improvement Program (CIP). S. Murphy stated that he had reached out to the Recreation Commission regarding the future plans for the Memorial Gym. R. Clark asked the HFD for their plans and indicated they would touch base after the March 2021 election/town meeting.

S. Murphy informed the board that he reached out to the Cable Committee liaison regarding live streaming.

P. Carideo had a question about the boards and committee's response to inquiries about future plans and the CIP, P. Carideo stated all boards and committees will have needs. S. Murphy and P. Carideo talked about future planning.

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3. Review of Minutes (1/4/2021 Public Hearing)

MOTION: P. Carideo made a motion to approve the 1/4/2021 minutes as presented.

SECOND: R. Clark

VOTE: 7-0

4. Adjourn

MOTION: B. Villella made a motion to adjourn at 9:10 P.M.

SECOND: R. Clark

VOTE: 7-0

Minutes prepared by Debbie Soucy, Secretary