

**CITY OF KEENE
NEW HAMPSHIRE**

SPECIAL PLANNING BOARD
MEETING MINUTES

Tuesday, August 1, 2017

6:30 PM

Council Chambers

Members Present

Nathaniel Stout, Acting Chairman
Martha Landry
Pamela Russell Slack
David Webb
Tammy Adams

Staff:

Rhett Lamb, Asst. City Manager/Planning
Director
Tara Kessler, Planner
Michele Chalice, Planner

Members Not Present

Gary Spykman
Douglas Barrett
Chris Cusack
Councilor George Hansel
Mayor Kendall Lane
Andrew Bohannon

I. Call to order – Roll Call

A motion was made by Pamela Russell Slack to nominate Nathaniel Stout to act as Chairman for today's meeting. The motion was seconded by Martha Landry and was unanimously approved.

Chair Stout called the meeting to order at 6:30 PM and a roll call was taken.

II. Public Hearing

1. **S-04-17 – 62 Nims Road – Subdivision** – Applicant Wendy Pelletier of Cardinal Surveying & Land Planning, on behalf of owners John & Frances Bolles, proposes to subdivide property located 62 Nims Road into three lots. A waiver is requested from Section III.B.6 Hillside Protection of the Planning Board Site Plan and Subdivision Regulations. The existing site is 19.48 acres in size and located in the Rural Zoning District (TMP# 903-19-015).

A. Board Determination of Completeness.

Planner Tara Kessler stated the applicant is requesting exemptions to provide the following technical reports: grading, landscaping, lighting, drainage, and traffic. As this is a subdivision that has no proposed development at this time, staff is agreeable to granting the requested exemption and recommend to the Board that Application S-04-17 was complete.

A motion was made by Pamela Russell Slack that the Board accept this application as complete. The motion was seconded by Martha Landry and was unanimously approved.

B. Public Hearing

Ms. Wendy Pelletier addressed the Board and referred to this three-lot subdivision and to Nims Road and Concord Road on the plan. Ms. Pelletier stated this is a 19 acre lot encumbered by wetlands and steep slopes. The middle lot has the existing home with the well and septic, the southern lot will have the barn and the northern lot has no structures on it.

Ms. Pelletier stated the Hillside Protection Ordinance prohibits development on steep slopes. She noted the standard dictates that you can only use 50% of the precautionary slope – the northern lot is 5.45 acres but only 2.6 acres are usable, which makes it an unbuildable lot. The applicant is asking for a waiver as they feel they have enough building area (1.13 acres). If the applicant had gone with a CRD Subdivision they would have been permitted to go with one-acre lots and would not have had to account for the steep slopes and could have accounted for 20,000 square feet of buildable area, which the applicant does have.

Ms. Pelletier then went over the waiver criteria:

a) That granting the waiver will not be contrary to the spirit and intent of these Regulations;
All the development being proposed is in the existing open area. There are no trees being proposed to be cut down in the steep slopes.

b) That granting the waiver will not increase the potential for creating adverse impacts to abutters, the community or the environment;

The first abutter is 25 feet from the property line and the next house is about 500 feet away. She did not feel the proposal would have any impact on the abutters. Otter Brook Dam is to the east and they would not be impacted by any of the building.

c) That granting the waiver has not been shown to diminish the property values of abutting properties.

Any building being proposed would be residential and in keeping with the look of the neighborhood.

d) Consideration will also be given to whether strict conformity with the regulations or Development Standards would pose an unnecessary hardship to the applicant.

There is no way to get a five-acre lot out of what exists here.

Ms. Landry asked for explanation of what is being proposed versus a CRD. Ms. Pelletier explained a CRD is an alternative subdivision where part of the lot would have been placed in conservation and the applicant would have been permitted to go with smaller lot size. The applicant did not want to pursue this option.

Ms. Russell-Slack clarified the waiver is only for the five acre lot. Ms. Pelletier agreed.

Mr. Webb asked what happens if someone purchased this parcel; what would prevent them from clear cutting this parcel. Ms. Kessler stated any future owner would also need to abide with the Hillside Protection Ordinance. That applicant would have to prove they are not impacting 20,000 square feet of precautionary slope as well as changing the vegetative cover.

Chair Stout asked if all three lots were built out, under the five-acre zoning or the CRD how they would look different. Ms. Pelletier stated the building area would be in the same place, the new buyer would be purchasing an acre or so of land and the rest would go into conservation.

Staff comments were next. Ms. Kessler stated the applicant is proposing to create three lots from a 19.4 acre lot. The northern lot would be 5.54 acres (waiver being requested) the middle lot would be 7.41 acres (existing house) and the southern lot would be 6.5 acres. Since there is no

new development is being proposed, the Board's development standards are not applicable, except for Hillside Protection and Surface Water.

Ms. Kessler stated with respect to Hillside Protection, the site is covered by steep slopes; 8.5% of prohibitive slopes (slopes are greater than 25%) and 20% are precautionary slopes (15% - 20%). Subdivision Regulations not the Zoning Ordinance require an applicant to exclude all prohibitive slopes and 50% of precautionary slopes from the calculation of minimum lot size. In a rural zone the minimum lot size is five acres and if the prohibitive slopes were taken out of this lot it would not meet the minimum lot size. This is what the applicant is seeking a waiver from. As there is no development being proposed this time, it is not a waiver from the Hillside Protection Ordinance and even if they were to receive a waiver it still does not discount them from having to meet the requirements of the Hillside Protection Ordinance.

The manner in which to make sure they will abide by the rules of the Hillside Protection Ordinance is to make this part of the Building Permit Application process.

Chair Stout asked if this waiver was approved whether it will go into effect when they want to build on this site. Ms. Kessler stated the waiver is only for the subdivision to occur. She also noted if this site was to be developed it would happen on the southern lot unless a conditional use permit was obtained to build into the steep slopes.

Sewer and Water – No city water and sewer service on Nims Road, applicant has shown these houses would be suitable for a well, septic system and leach field.

Surface Water and Wetlands – There are wetlands present on this property and the applicant has excluded this area from the calculation of minimum lot size. There is approximately 1.7 acres of wetland on the southeast portion of the site and two smaller areas that encroach the northern lot.

Ms. Landry referred to the August 1 letter from Cardinal Surveying and asked if the applicant was to go the CRD route whether they will be able to use up to 20,000 square feet of precautionary slopes. Ms. Kessler stated CRD is an alternative to the conventional subdivision where it takes into consideration natural features of an area (steep slopes, wetlands etc.) and allows a property owner to build around those features. A CRD is required for proposals of three new lots and a road; in this case only three lots are being proposed and not a road and this is why it is not a requirement. Mr. Lamb added a CRD will create a permanent restriction on land that is set aside for conservation purpose either through a covenant or an easement. Mr. Lamb noted this may be a difficult piece of property to put a CRD in place as there is already a house located on it.

Chair Stout asked how many CRD's the City has approved. Mr. Lamb stated it is about two or three (Daniels Hill Road and Darling Road) and there is development on both these properties. Ms. Landry asked whether a CRD could have a negative financial impact on the value of a property. Mr. Lamb stated that was hard to predict.

The Chair asked for public comment next.

Ms. Eileen Sarson who lives north of this property asked how this will affect the use of her property if it is in one designation versus a CRD; could something be posted on her property say no trespassing or is she obligated to have property use her land.

Mr. Lamb stated typically the designated open space is owned by an association; the conservation value is protected by an easement and is monitored by an entity such as the Monadnock Conservancy. It is privately owned land so there is no requirement for public access but the owners could choose to permit access to the public.

Ms. Adams asked whether there was any exploration of alternate lot size or alternate boundaries. Ms. Pelletier stated she has proposed about four iterations of layouts, in order to get another lot, but it would have to be a back lot with minimum frontage and a very long driveway. The further back you move there are other issues that arise.

With no further comments, the Chair closed the public hearing.

Ms. Landry stated she believes in property owners being able to develop their property but felt it was important to honor the hillside and protect the steep slopes. She felt this can both be done with a CRD.

Ms. Russell Slack stated she was on the Council when this Ordinance was approved and stated she had also visited this property. She added she has difficulty approving this proposal the way it is but agreed the applicant has done more work with it since she visited the site. Mr. Webb stated he too is leaning towards a CRD.

Chair Stout felt the shape of these lots were not unreasonable and did not feel the difference between the buildable areas is that stark to be denied. He felt the building codes and zoning standards should be used to ensure development meet city standards. He expressed the burden the denial would put on the applicant.

Ms. Russell Slack asked what the burden to the applicant would be should this application not be approved.

The Chairman reopened the public hearing to hear from the applicant.

John Bolles applicant stated his mother is currently in a nursing home. He stated his mother needs as much finances out of this project as possible. He noted they already have 20,000 square feet to be able to accommodate the third lot. He clarified that he does need the waiver for the steep slopes even though he is not going to build on it. Ms. Kessler explained the Zoning Ordinance needs five acres to meet the minimum lot size and the subdivision regulations indicate you have to exclude all the prohibitive slopes and 50% of the precautionary slopes, which is close to three acres which will leave the applicant with a little over two acres. The reason Ms. Pelletier is asking for a waiver is because it does not meet the minimum of five acres. Ms. Kessler went on to say what Mr. Bolles is saying is that Ms. Pelletier has proved that there is adequate land area to construct a house, well and a septic system without impacting the steep slopes.

Mr. Bolles stated his mother did not want “post-it” size house lots and hence the reason they constructed on the center lot.

The Chairman closed the public hearing.

Mr. Webb asked for clarification as to what the CRD would do to the three lots. Chair Stout stated a CRD would open up all three lots as a single conservation residential district and then

gets redeveloped as smaller lot and the larger lot gets put into a covenant disallowing any further development to occur. Mr. Lamb stated with a CRD you would start the process over again; the primary values of land for conservation will be identified. After which the appropriate locations will be identified to situate building sites. Chair Stout asked whether there could be denser development on this lot under a CRD. Mr. Lamb stated the maximum number would be three and this is done through a zoning calculation.

Ms. Landry clarified with a CRD the applicant is assured all three lots are buildable and stated she saw value in that option. Mr. Lamb added Ms. Pelletier has identified a little over two acres which is buildable and which area is not affected by hillsides.

Ms. Adams stated after listening to the testimony she is inclined to grant the waiver, having confidence in the standards with respect to construction on prohibitive slopes. Chair Stout added if the Board did not approve this proposal they would continue this application, giving the applicant time to reconsider their approach. Chair Stout asked staff if this matter was continued whether the applicant would come back with a CRD or a subdivision application. Mr. Lamb stated it would be up to the applicant and asked that the Board not deny the application but rather continue the matter giving the applicant the opportunity to come back with an alternative. Mr. Lamb added staff could work with the applicant and bring some ideas back as well.

C. Board Discussion and Action

A motion was made by Martha Landry that the Planning Board continue the Public hearing for Application S-04-17 to the August 28 Planning Board meeting. The motion was seconded by Pamela Russell Slack and was unanimously approved.

2. **S-03-17 – 72 Old Walpole Road – Subdivision** – Applicant Wendy Pelletier of Cardinal Surveying & Land Planning, on behalf owner, Rick Willson proposes to subdivide property located 72 Old Walpole Road. The site is 1.03 acres in size and located in the Low Density Zoning District (TMP# 152-04-003).

A. Board Determination of Completeness.

Planner Michele Chalice stated the applicant has requested site specific exemptions which are not present on this site and recommended to the Board that Application S-03-17 was complete. A motion was made by David Webb that the Board accept this application as complete. The motion was seconded by Martha Landry and was unanimously approved.

B. Public Hearing

Ms. Pelletier referred to Old Walpole Road on a Plan and referred to the proposed lot which has two dwellings on it. There are two driveway entrances, one to the house and the other services both dwellings. The proposal is for a back lot, 24,000 square feet in size with both residences on the front lot. The existing driveway will be used as a shared driveway. The lot is serviced by city water and sewer. No waivers are being requested.

The Chairman asked whether the second driveway will be shared with the back lot and the second house. Ms. Pelletier agreed it would be shared from the property line.

Staff comments were next. Ms. Chalice stated this property is part of the Maple Acres neighborhood. There are no wetlands, no steep slopes or surface waters to take into consideration. She noted the two driveways on the property have been in existence prior to 1989 before the driveway regulations were put in place. The two dwelling structures have been on this

site as well since that time. The site meets the 10,000 square foot lot requirement, no development is being proposed at this time so the rest of the Board Regulations are not applicable.

Chair Stout asked whether there was no possibility for access to the back lot from anywhere else. Ms. Chalice stated the applicant would need an additional driveway access for that to occur and this would mean three driveways - and that would not be prudent for this area given the traffic on Old Walpole Road. Chair Stout asked why this application did not come before the Board sooner if it was this simple and also added he has heard criticism in the past of lots shaped in this manner, which are referred to as a pork chop lot. Ms. Chalice stated she wasn't sure what the applicant's intention for this design was but noted there are quite a few lots in similar size on Old Walpole Road.

Chair Stout asked about a driveway being located right on the boundary line and clarified the Board doesn't usually ask for a setback. Ms. Chalice stated that they normally do but this is an existing driveway and the Board is likely to hear from an abutter. The Chair asked whether a condition could be added to move the driveway three feet back from the property line. Mr. Lamb stated the Board at this time is not talking about a site plan application; this is a subdivision application but it is unique in that it has two existing driveways and the existing condition is allowed as it pre-existed the City's Driveway Standards. However, the extension of the driveway to the buildable portion would have to comply with all the current standards and this is a three foot minimum from the property line. The Chair asked whether the Board could dictate the length of the driveway. Mr. Lamb stated there is a limit of 300 feet before it needs Planning Board approval. Ms. Pelletier stated the length is 200 feet.

Chair Stout opened the public hearing.

Ms. Cynthia Harrington of 1 Glen Road stated she is concerned about the driveway that goes to the back of the house. She noted in the winter when the snow gets pushed from that driveway it gets pushed to the left corner of Glen Road which causes a visual barrier to exit out of Glen Road. There is also excess water from snow that goes down Old Walpole Road and eats away the road. Ms. Harrington asked whether she can be assured this would be just one building lot. Chair Stout agreed it would be as this property is located in the low density zone.

Mr. Anthony DiTullio of 58 Old Walpole Road stated the new lot being proposed would be in his back yard. He noted what it sounds like it that there is going to be a building where one is not supposed to be located which would eventually cause him to sell his property. He stated he likes the wooded area that exists right now. Mr. DiTullio felt too many houses are possibly going to be located in a small area. He raised concern about the dwellings that will surround the shared driveway.

Mr. DiTullio stated he likes the location they live as it takes away from the congestion of the rest of the city and adding a building to that lot would congest things

Chair Stout asked Mr. DiTullio whether he would consider a vegetative screening. Mr. DiTullio felt it wouldn't be the same as having a wooded lot, one row of vegetation would not be the same as having 200 feet of a wooded lot in his backyard.

Mr. Rick Wilson, owner of the property stated Mr. DiTullio's house was also part of a subdivision and he purchased the house in the same type of situation. He referred on the plan to

where Mr. DiTullio's has occupied a portion of his property. With reference to snow, the only snow left is what the sidewalk plow leaves behind and because of the way the terrain is, makes it difficult to plow up and hence the snow gets pushed downhill.

Chair Stout asked Mr. Wilson whether there was a steep grade on this road. Mr. Wilson stated it was an average slope. The Chair asked whether anything different could be done with the snow, Mr. Wilson stated if there was he would.

With no further comments, the Chair closed the public hearing.

C. Board Discussion and Action

Ms. Landry asked who owned lot behind this lot, which is referred to as "unknown owner". Staff wasn't sure. The Chair stated because the applicant is present today, it is likely the abutters were notified as well. Staff agreed.

The Chair felt this subdivision should be allowed but wasn't sure how the extended driveway was going to be located. He asked how far back this driveway was going to be located from the boundary line. Mr. Lamb stated according to the zoning code there is a three foot minimum setback requirement. He added there will be a transition that would need to take place in a reasonable way and added the City Engineer would approve this unless it exceeded three feet, at which time it will come back before the Board.

A motion was made by Martha Landry that the Planning Board approve S-03-17, 2 lot subdivision with the following conditions: Approve S-03-17, as shown on the plan identified as "2 Lot Subdivision Plan, 152-04-003-0000, 72 Old Walpole Road, Keene NH 03431", prepared by Wendy S. Pelletier. LLS of Cardinal Surveying and Land Planning, at a scale of 1" = 20', dated June 16, 2017 with the following conditions:

1. Owner's signature on plan prior to approval.

The motion was seconded by Pamela Russell Slack and was unanimously approved.

On a unanimous vote, the meeting adjourned at 8:00 pm.

Respectfully submitted,

Krishni Pahl
Minute Taker

Reviewed by: Rhett Lamb, Planning Director
Edits by: Lee Langella