

TOWN OF GILMANTON PLANNING BOARD
THURSDAY, AUGUST 9, 2007
ACADEMY – 7 p.m.
APPROVED MINUTES

Present: Chairperson Nancy Girard, Vice-Chair John Funk, Selectmen’s Representative David Clairmont, Felix Barlik, Doug Isleib, David Russell, Alternate Member Monica Jerkins, Alternate Selectmen’s Rep Don Guarino; and Planning Administrator Lynne Brunelle.

Absent: Dan Hudson, Alternate Members Pam Fecteau & Marty Martindale

Chairperson N. Girard opened the meeting at 7:03 p.m. and explained public hearing procedures.

ACCEPTANCE OF MINUTES: The Board members reviewed the minutes from the July 12, 2007 meeting. **Motion:** J. Funk moved to accept the minutes of 7/12/07 as amended, seconded by D. Russell. Motion carried 6-0.

CONTINUED PUBLIC HEARING – Paul M. & Carol G. Darbyshire: Request to Subdivide Town Tax Map/Lot #414-74, of 24.4 acres, into three lots of 3.04, 9.48 & 11.90 acres each. Property located on NH Route 140 in the Rural Zone; PB#0807.

As with the previous hearing, J. Funk recused himself from the discussion and the vote regarding this application.

Paul Darbyshire, Licensed Land Surveyor and applicant, was in attendance to present the updated plan to subdivide his property on NH Route 140, located opposite Sawtooth Road. The plan depicts topos, soils, wetlands delineation, test pit information, and driveway profiles. There is a discontinued road that abuts the property on the western boundary. With the exception of the front lot line, the property lines are bounded by stonewalls. In accordance with Section VI.C.2. of the Subdivision Regulations, the plan depicts the minimum building site of 30,000 contiguous square feet. Proposed Lot 1, of 3.069 acres, 215’ of frontage and 43,170 s.f. of contiguous area and an existing driveway, which is a shared access with Lot 2, of 9.571 acres, 200’ of frontage and 50,596 s.f. of contiguous area. Lot 3, of 11.796 acres and 380’ of frontage will achieve 28,285 s.f. of contiguous area for the front site and 75,839 s.f. for the back building site.

Mr. Darbyshire stated that the new plan shows the driveway profiles, as requested by the Board from the last meeting. Portions of the existing driveway accessing Lots 1 & 2 had a grade of 16%. The profile for the new driveway shows that it can meet 10% in some areas, while other sections will be at 15%. The driveway for Lot 3 will meet the 10% grade for the entire length if accessing the front building site.

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Mr. Darbyshire spoke with the Fire Chief regarding the length of a fire truck, which is 35' long and 10' wide. He calculated a 40' turning radius and incorporated several turnouts in the driveway plan to accommodate a 40' vehicle so that other vehicles could get around a fire truck, if necessary. The other items that the Fire Chief recommended in his report were that the driveways be a minimum of 12' wide, and the driveways are 15' wide on the plan. The Fire Chief also recommended that driveways should not exceed 10% slope.

Mr. Darbyshire stated that he was not aware whether the Fire Chief was on site to actually view the slopes; however, he did point out that Alton and Gilford allow 15% driveway grades and thinks that 10% is too restrictive.

Mr. Darbyshire referenced the report from the Gilmanton Conservation Commission (GCC), which states that the subdivision is not in the best interest of the town. He felt that this was pretty negative, considering he has 24 acres and he is only asking for three lots. He conveyed that he does not plan to construct the driveways. His intention is to sell the lots and have the owners construct the driveways. It will then be up to the Code Enforcement Officer to ensure that the driveways are in conformance.

D. Isleib referenced the request to waive the four-to-one ratio requirement as noted in the staff report, and asked if this was the only waiver request? At this time, Mr. Darbyshire submitted an additional request to waive Section VI.B.12. of the Subdivision Regulations requiring that the maximum driveway grade at any distance shall not exceed 10%.

M. Jerkins asked if approved, will the driveway easements be in place, and if so, will they become an enforcement issue? Mr. Darbyshire wants the new owners to have the option of a building site; therefore, they would then have to construct the appropriate driveway. M. Jerkins stated that her point is that if the new owner chooses a new building site, then the driveway location would change; therefore, the Board needs to take this into consideration when requiring that the driveway locations be depicted on the plan. N. Girard agreed that this is a good point that may need to be a condition of approval as well as an enforcement issue.

Discussion occurred regarding whether the Board should consider requiring the locations of the building sites, and therefore the driveway locations, on the final plan. The new owner would then need to come before the Board if a new driveway location were considered. L. Brunelle explained that this would require a public hearing where abutters would be notified, and if the proposed driveway does not meet the regulations, then a waiver request would need to be submitted as part of the amended plan. Discussion continued regarding how the Board would require this to be shown on the final plan.

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D. Russell stated that if the applicant or the builder does not construct the driveway, how would the new owner know what the driveway requirements are? L. Brunelle referenced the Plummer Boundary Line Adjustment where the Planning Board required that a driveway profile be submitted as part of the final plan, to include drainage, erosion control and stabilization plan, the installation of guardrails, as well as a Driveway Maintenance Agreement. This would ensure that the new owner(s) would be aware of the driveway grade issues and both the plan and the deeds would cross reference the maintenance agreement.

N. Girard asked what was the grade on the Plummer parcel? Lynne stated it was 10% to 15% slope, but the Board required 12% to include culverting, erosion control, guardrails, and the restriction that if the property owner return to the Board for approval if it were ever asphalted.

F. Barlik referenced the Fire Chief's recommendation to incorporate a cul-de-sac or a hammerhead so emergency equipment can turn around rather than back out. Mr. Darbyshire stated that this sounds more like a road requirement than a driveway regulation; however, he would be happy to provide a note on the plan that an adequate turnaround of a certain size will be provided.

Carol Darbyshire was in attendance and stated that in New Hampshire, she feels that people should be free to choose where they want to build their house. However, she understands the reason why the Board may determine the locations of the driveways and require that they be shown on the plan. She referenced the Fire Chief's recommendation that "all driveway surfaces must be treated as required for year-round access" and asked if seasonal residences in town have their driveways plowed, sanded and salted year round? She also referenced the Conservation Commission's comments regarding "the average slope on Lot 3 from the beginning of the driveway to the "view" house location is 17.2% would exceed the maximum 10% grade and would be difficult to plow" is not an accurate statement. Mrs. Darbyshire conveyed that she has lived in Gilmanton for 30 years and there is a hill on Sawtooth Road that is as steep, if not steeper, than this and they have never had a problem plowing up or down it. She referenced the statement that the proposed subdivision is not in the best interest of the town and asked whether the Conservation Commission would be interested in buying the land? It is for these reasons that she thinks that the Board should consider approving the subdivision.

With no further input from the public, the Chair entertained a motion to close the public hearing. **Motion:** D. Isleib moved to close the public hearing, seconded by D. Russell. Motion carried unanimously.

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INFORMAL DISCUSSION – David Noyes, L.L.S.: Possible Subdivision of Town Tax Map/Lot #415-69, of 24 acres, property of Parker Albee, Jr. located on Stone Road in the Rural Zone.

David Noyes, Licensed Land Surveyor, was in attendance representing Parker Albee, Jr. He presented a preliminary plan showing Lot #415-69 consisting of 24 acres and 1265' of frontage on Stone Road. The front, rear and westerly lot lines are bounded by existing stone walls. The preliminary proposal includes five lots as follows: Lot 1 - 2.1 acres and 265' of frontage, Lot 2 – 5.6 acres and 250' of frontage, Lot 3 – 11.4 acres and 250' of frontage, Lot 4 – 2.1 acres and 250' of frontage, Lot 5 – 2.4 acres and 250' of frontage. Mr. Noyes explained that abutters, Mike and Stephanie Fogg, are considering purchasing Lots 4 and 5. Therefore, this may change the lot line configurations.

D. Clairmont asked what the methodology was for Lots 2 and 3, and why aren't all the lot lines going to the rear boundary line? Mr. Noyes explained that he was trying to avoid "bowling alley lots" as per the Town Subdivision Regulations 4:1 ratio requirement.

J. Funk inquired if the two-acre lots were compatible to the character of the neighborhood? Mr. Noyes stated that the Fogg's lot is 2.6 acres and there is a 2-acre lot across the street, otherwise, the abutting lots are 8 acres, 100 acres, 59 acres, 66 acres and 19 acres accordingly.

D. Clairmont suggested that the applicant consider common driveways and have the houses set back from the road so they are not cluttering the frontage with houses. Mr. Noyes responded that he would consider a cluster design but does not like common driveways; however, it is a good idea for retaining the rural character of the area. N. Girard suggested that he review the Open Space Subdivision Ordinance and consider that type of development for this area. Discussion continued regarding that this option would allow for possibly reduced lot sizes and/or road frontage, as well as one access road instead of several separate driveways, with the condition that 50% of the land is placed in a conservation easement.

Mr. Noyes will take this information back to the family, reconfigure the plan and return for a preliminary consultation. He thanked the Board for their input.

DELIBERATION – Darbyshire Subdivision: J. Funk again recused himself from the deliberation and vote. The sitting Board members addressed the steep slopes located on the property, particularly the slope of the existing driveway, which, in some sections, exceeds 15%, and the issue of access of emergency vehicles. The question arose whether the Board should require that driveway locations and profiles be shown on the final plan.

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F. Barlik stated that he agrees with the driveways as proposed but thinks that they should be shown on the final plan as designated. However, he feels that the Conservation Commission's recommendations suggesting that the subdivision is not in the best interest of the town was excessive.

The discussion returned to the driveway profiles and whether paved driveways would exacerbate the erosion of slopes. N. Girard explained that if the banks aren't stabilized it will continue to erode. D. Clairmont conveyed that it depends on the compaction of the surface because asphalt doesn't increase the volume, it would only increase the velocity. The Board will take this into consideration and require that an erosion and sedimentation plan be submitted with the final plan.

Discussion occurred regarding concern whether the Board would be setting precedent if this subdivision were approved allowing the steep slopes. D. Clairmont suggested that the Board consider changing the driveway requirements if they are considering allowing the steep driveways. He continued that he was concerned about this and discussed the proposal with the Selectmen. It was their opinion that, considering the steep driveways being proposed, that it should be approved as a two-lot subdivision.

N. Girard stated that the Board of Selectmen has no jurisdiction over subdivisions and the Selectmen should not have gone into non-public session to discuss the application. D. Clairmont stated that he felt it was his duty as Selectmen's Representative to bring it to their attention so that he could accurately represent the Board of Selectmen.

The Board addressed the request to waive the 10% driveway slope requirement, due to sections of the existing road exceeding this slope, as much as 16% in some areas. Discussion occurred regarding the fact that if a new driveway were to be constructed to meet the 10% grade, there would be a significant amount of site disturbance in order to achieve the grade. D. Russell stated that he would agree with using the existing driveway, as long as the required information is included on the plan, such as driveway profiles, locations, etc. He would therefore be comfortable with granting a waiver for the 10% slope, not to exceed 16%.

Alternate Selectmen's Representative D. Guarino stated that he is disappointed that the Board is considering a waiver of the required 10% driveway grade and is concerned that the Board is not abiding by the Subdivision Regulations. He expressed concern that the Board would be setting a precedent by doing so. D. Isleib explained that each subdivision is different and the Board considers waiver requests on a case-by-case basis, in addition to placing conditions on the plan.

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The Board then discussed that in this case; using the existing driveway would minimize the alteration of the terrain. Conforming to the 10% grade would involve extensive site work. Members of the Board stated that they believed, based on the facts of this case, the driveway could be constructed safely, even though portions might exceed a 10% grade.

D. Guarino stated that if other Boards didn't abide by their regulations then they would open themselves up for litigation. In addition to the driveway regulation, the Board would also need to waive the 30,000 s.f. requirement on Lot 3 because it does not meet that regulation either; however, there was no waiver request submitted for this. Discussion occurred regarding whether this meets the minimum 30,000 s.f. requirement because it is shown on the plan as 28,285 s.f. and it is unclear whether the calculation includes building and/or wetland setbacks.

It was noted that in the Hamel subdivision application, the Board granted four waivers based on what was observed on the Site Walk. The waivers granted were for the 4:1 length to width ratio requirement, the front and side setbacks for the minimum 30,000 s.f. requirement, the regulation pertaining to irregularly shaped lots and the 10% minimum grade for the driveway because it was an existing woods road.

N. Girard stated that the Board may, on its own prerogative, suggest a waiver for these requirements. Mr. Darbyshire indicated that there is over 74,000 s.f. located on the upper site, which meets the requirement, and he could get an approved septic design for the lower site if need be. Alternate member M. Jerkins stated that she does not have a problem with granting the waiver because the regulations aren't specific enough to state that's where the house must be located. Discussion continued that if the Board were to require that the location of the driveways are to appear on the final plan, then obviously, that would also determine the building sites.

At this time Chair N. Girard entertained a motion for action on the proposed application.

Motion: D. Russell moved in accordance with Section III.A. of the Gilmanton Subdivision Regulations the Board determined the following findings that the subdivision would have no adverse impact on:

1. The adequacy of water supply, drainage, sewage disposal and streets;
2. The ability of the town to provide street maintenance and snow removal, schools, fire protection and other services without excessive expenditure funds.
3. The provision for the harmonious development of the town and its environs;

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4. The preservation of wildlife habitat, natural and man-made features and open space;
5. The character and use of land and buildings in the general vicinity of the proposed subdivision in evaluating the suitability of the subdivision; and
6. The impact of the proposed subdivision on the character of the town as a small rural community and on the town's well-being, prosperity and sound financial condition.

D. Isleib seconded the motion, vote passed 4-0-1, J. Funk abstained.

Motion: D. Russell moved that the request to waive Section VI.C.1.j. of the Subdivision Regulations regarding the 4:1 length to width ratio be granted. D. Isleib seconded the motion, vote passed 4-0-1, J. Funk abstained.

Motion: D. Russell moved that the request to waive Section VI.B.12. of the Subdivision Regulations requiring a maximum driveway grade of 10% be granted; driveways shall not to exceed 17%. D. Isleib seconded the motion, vote passed 3-0-2, D. Clairmont and J. Funk abstained.

Motion: D. Russell moved that the Board waive Section VI.C.2. of the Subdivision Regulations requiring a minimum building site of 30,000 contiguous square feet by applying only the wetland setbacks to the calculation. D. Isleib seconded the motion, vote passed 4-0-1, J. Funk abstained.

Motion: D. Russell moved to accept the application as complete and grant conditional approval as it appears to meet all the technical requirements of the Ordinances and Regulations of the Town of Gilmanton with the following conditions:

Conditions to be complied with or secured (as appropriate) prior to the plan being signed and recorded. No site improvements shall commence and no building permits shall be issued until the plan is signed and recorded.

1. All required Town, State or other agency permits shall be filed with the Town prior to the recording of the plat or issuance of a Building Permit.
2. Submission of final plans in accordance with Town Ordinances and Regulations:
 - (a) Final plan shall depict the following Tax Map/Lot Numbers: Lot 1 of 3.069 acres shall be shown as Map/Lot #414-74; Lot 2 of 9.571 acres shall be shown as Map/Lot #414-74.1; Lot 3 of 11.796 acres shall be shown as Map/Lot #414-74.2;

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(b) Final plan shall reflect appropriate language stating that driveway locations and/or designs, as depicted on the plan, shall not be changed without further approval from the Planning Board.

3. Final plan shall not be signed and/or recorded until submission of the language, acceptable to the Board, for the Driveway Maintenance Agreement for the shared access to Lots 1 & 2 (New Map/Lots #414-74 & #414-74.1).
4. A compliance hearing shall be held by the Board prior to signing the plans, and prior to the approval becoming final, to determine if any conditions of approval are beyond administrative in nature or would require discretion on the part of the Board or staff to confirm that all conditions have been complied with.
5. The applicant is responsible for the payment of any fees required by the Belknap County Registry of Deeds for recording the plan and/or any conditions of approval.

Construction conditions to be complied with subsequent to the plan being signed and recorded:

6. All utility and road construction shall be carried out under the provisions of the Town Ordinances and Regulations unless otherwise agreed to by the Town, and in accordance with the Fire Chief's recommendations (with the exception of the 10% grade) as follows:
 - (a) All driveways must be constructed to allow for year-round access and have adequate load capacity suitable to handle the weight of responding emergency equipment.
 - (b) All driveway surfaces must be treated as required for year-round access.
 - (c) All driveways must be constructed to a minimum of 12 feet wide with a minimum 1-foot shoulder on each side.
 - (d) All corners in driveways need to be constructed to allow for easy cornering of responding emergency apparatus or equipment.
 - (e) The driveway leading to Lot 2 (New Map/Lot #414-74.1) needs to have a 10' x 20' turnout added after the final R-bend to allow equipment to pull off the traveled way if needed.
 - (f) The end of each driveway shall have a cul-de-sac or turn-around added so that equipment is able to drive out rather than back down.
7. Submission and implementation of Erosion Control and Sedimentation plan for steep slopes and/or any disturbed areas to reduce run-off into the wetland areas in accordance with the Gilmanton Conservation Commission's recommendations.

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8. Property owner shall install all required traffic control, fire, life safety and health facilities and systems required by the Board and/or by other applicable Codes and Regulations.
9. All temporary erosion control facilities to be removed upon attaining permanent stabilization.

General conditions to be complied with subsequent to the plan being signed and recorded:

10. No changes shall be made to the approved plans unless application is made in writing to the Town. Minor changes may be allowed following review by the Planning Board. Major changes may be allowed after review by the Planning Board at a public hearing and abutters shall be notified. No changes shall be made to the driveway designs without retuning to the Planning Board for consideration and/or approval.
11. Approval is subject to expiration, revocation and changes in the Ordinances under Town Regulations and the State RSA's.

F. Barlik seconded the motion, vote passed 3-1-1, D. Clairmont opposed, J. Funk recused.

RECESS: The Board took a 15-minute recess.

ADMINISTRATOR'S REPORT

Cell Tower Discussion: Planning Administrator Lynne Brunelle informed the Board that Jim George from Industrial Tower Communications cancelled his Informal Discussion for tonight's meeting because the company is still working on engineering and access issues regarding this site. The Board members reviewed Article III.K. of the Zoning Ordinance regulating Personal Wireless Communications Facilities to determine the procedures the applicant would be required to follow in order to submit an application.

Levesque Plan: Lynne informed the Board that the final plan for the Levesque Subdivision has been submitted and will be signed by the Chair this evening.

OTHER BUSINESS

Board of Selectmen/Planning Board Issue: Chairperson N. Girard referenced the Board of Selectmen's minutes of July 16, 2007 when a non-public session was held to discuss a Planning Board issue under RSA 91-A:3 II(c). D. Clairmont explained that as Selectmen's Rep he felt that it was his duty to bring an issue to the Board of Selectmen that concerns him, which was the Darbyshire subdivision application, specifically the driveway issue.

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D. Clairmont believes that he had the right to go into non-public session because if it were discussed in public, it may sway the outcome of the decision. J. Funk advised him that it's one thing to enter into non-public session to discuss the policy issue, but not to discuss the application specifically. N. Girard noted the fact that D. Clairmont had indicated that the Selectmen determined that the Planning Board should approve the plan as a two-lot subdivision. She stated that the Selectmen can make a recommendation, but not give direction to the Planning Board.

Waiver Policy: Vice-Chairman J. Funk noted that the Board granted several waivers this evening and recommended that the Board revisit some of the regulatory requirements with regard to driveway grades and achieve a consistent policy. D. Clairmont offered to show the Board members what a 10%, 12% & 15% grade is. The Board agreed to hold a demonstration before their next work session.

Work Session: L. Brunelle reminded the Board that we need to incorporate language into the Subdivision and Site Plan Regulations in conjunction with the Floodplain Management Ordinance. It was noted that the Board should consider language to clarify the 30,000 s.f. policy now that the Doyle appeal has been decided. Both amendments require only one work session and one public hearing. A Work Session was scheduled for Tuesday, August 21st at 6:45 p.m. The Board members will meet in the parking lot at 6:45 for the demonstration on driveway grades.

ADJOURNMENT

On a motion made by F. Barlik and seconded by D. Russell, vote passed unanimously. Meeting adjourned at 9:40 p.m.

Respectfully submitted,

Lynne R. Brunelle