

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD JUNE 28, 2018

Present: Jon Morse, Anne Whitten, Scott Strynar, Annette Hume, Matthew Qualls, David Ballard, Roger Frechette, CEO

Absent: Chairman Geoffrey Aleva

Also Present: Lee Jay Feldman from SMPDC, Abbie Sherwin from SMPDC, Dana A. Libby, Chris Stone, Park Patterson

1. Call To Order:

Vice Chairman Jon Morse will be the Acting Chairman tonight.

Acting Chairman Morse called the meeting to order at 6:30 pm.

Acting Chairman Morse moved Annette Hume up to full voting status.

2. Review Previous Minutes:

David Ballard stated that on the last paragraph on Page 2, the sentence that reads, “Scott Strynar stated that if it is determined to be a vernal pool of significance, what are the restrictions? Mr. Stone said that they would be able to disturb 25% of the area in the 250 foot setback which should not be an issue for either lot.”. Mr. Ballard stated that it is confusing because in the few sentences before these they had been talking about the cemeteries. It almost makes it look like the 250 feet is in relation to the cemetery and not the vernal pool. It was decided to make it a separate paragraph.

Matthew Qualls motioned to approve the minutes of June 14, 2018 as amended. Annette Hume seconded the motion. VOTE: 5-0 Abstain: 1

3. Current Business:

3.1 Continued review of an 8 lot subdivision located on the corner of Valley Rd. and Oak Woods Rd. (Tax Map 004 Lot 006)

Dana Libby from Corner Post Land Surveying stepped forward to discuss the project. He stated that since they did the site walk, they have made a few changes to the plan. They have moved a few driveways and have reflected this on the new plan. They have also added the site distances for them. He said that there is one site distance that is going to require a lot of clearing. He stated that Lee Jay Feldman had made a note of that on his comments. Mr. Libby said that they will add a note to the plan that says Lot 5 will not be issued a building permit until they can

verify the site distance after it has been cleared. Lee Jay Feldman said that he was recommending in his memo that they somehow determine what that site distance was going to be for the final plan. Mr. Libby said that he didn't think they would be able to do that because all of the clearing equipment is gone. When they do the clearing for the lots, then they can do it then. The note on the plan should be sufficient.

Acting Chairman Morse stated that the Board had a few issues that they wanted to discuss. One of them is with Lots 6A-7 and 6A-6. The Board feels that the driveway should be 50% for one lot and 50% for the other one. They feel that it would be better just in case the neighbors don't get along. Mr. Libby said that it didn't matter because it is a common easement. Acting Chairman Morse stated that another issue is that on Lot 6A-3, they would like the driveway moved down as far as they can to Lot 6A-4. The last issue is that the 9th lot needs to be put on the plan.

Mr. Libby said that he spoke with Lee Jay earlier regarding the 9th lot. They are just going to add another plan. Acting Chairman Morse said that this is a 9 lot subdivision and the land was divided into 2 lots. Then 1 lot was divided into 8 lots. Because it was done within 5 years, it has to be included on the plan as a 9th lot.

Anne Whitten asked about the driveway that they took out of the Resource Protection zone. Acting Chairman Morse said that the driveway going all the way back on Valley Road is a very long driveway. He stated that it will not really damage any Resource Protection by keeping it as close to the corner as they can. He said that it would be an undue financial burden to bring the driveway back. They did look at this during the site walk and everyone seemed to be in agreement. Ms. Whitten asked if they could go in a different direction. Lee Jay Feldman said that the way she was talking about would still not solve the issue of being in the Resource Protection. It would actually directly impact a wetland area.

Acting Chairman Morse asked Lee Jay Feldman if he had any other issues that he wanted to discuss. Mr. Feldman wanted to discuss the water line going across Lots 7 and 8. He said that there currently is no easement and he was wondering if there was going to be one. He said that on Plan Sheet C1.1, it shows 2 water lines going across but there is a 10 foot separation. He feels that this was probably mislabeled by the CAD operator when it was drawn up. He thinks it should actually be a 10 foot easement. Mr. Libby said that he is not sure what those 2 lines are on the plan. He stated that the engineer stuck it on the plan and he is not sure why. Mr. Feldman is questioning if there is a need for an easement there so that if somebody has to go in and maintain or fix something, they will be able to do so. Mr. Libby stated that on the first page in the original boundary survey, he highlighted the water line. On the second page, there is a reference to see Note 8 which shows a deed reference from the 1880's that gives the right to the water line. It is a blanket right, easement engrossed and undefined location that gives the right to draw water from a well and to lay and maintain pipes. Mr. Feldman asked Mr. Libby to carry this note on to the final plan so there is a record of it and Mr. Libby agreed. Mr. Libby said that

Mr. Patterson, the developer, has the right to relocate the line if he needs to as long as he doesn't interrupt the service. Mr. Libby said that trying to narrow it down into a footprint is not a good idea because it is already an engrossed easement. That person can do whatever he needs to do to maintain his water line.

Dana Libby started to discuss the issue of putting the 9th lot on the plan. He said that the lot was cut in half and both lots are legal size for the time of their creation and neither one created a subdivision. He said that they are 2 separate entities. Lot 9 is not part of this application. He said that he has no problem creating a plan that shows all of this but they don't want to number the lot because it doesn't become part of the jurisdiction of the Planning Board. He understands that they need to know that the lot is there for the subdivision but they don't want to number it. Anne Whitten asked him when the lots were sold. Mr. Libby said that it was about a year ago and it shouldn't matter because they were cut in half and are 2 legal stand-alone lots. Lee Jay Feldman read what the State Subdivision Law states:

The dividing of a tract or parcel of land in the lot or lots so made which divide the lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of the tract or parcel of land or any portion of the tract or parcel.

Mr. Feldman stated that what this is saying is that the lot is not part of that lot. It then goes on to read:

The municipal review and authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent divide.

Mr. Feldman said that this suggests that you need to at least understand and acknowledge the existence of it. His concern with the 9th lot was more about it being shown as the whole as part of the subdivision so that everyone knows that the subdivision came out of something bigger.

Anne Whitten read the definition of a subdivision from our Ordinance:

Subdivision means the division of a tract or parcel of land into 3 or more lots within any 5-year period.

Lee Jay Feldman said that this is correct but there are exemptions and other things that need to be considered. He said that the State is saying that they need to acknowledge it but don't have to number it. Dana Libby said that what they would like to do is prepare another plan that will show the subdivision and show this other piece as well.

Acting Chairman Morse went on to discuss moving the driveway line on Lots 6 and 7. Mr. Libby said that there has been some discussion about moving the driveway so that it runs down the middle of the property line. The problem he has with this is that you will never know where the property line or corner is because it will never be there. He would rather run an easement

along a boundary line so that they know where the line is. Lee Jay asked if they could pin it under the driveway and locate it at a later date if they need to. They would have to use a metal detector to locate it under the pavement. Mr. Libby said that they could do that but as a landowner, you are never going to know it without a metal detector. Mark Patterson said that the most important thing is that they need to have an agreement between the 2 parties about how the maintenance is going to happen. They will have to agree because they are not going to put 2 parallel driveways up 400 feet. Matthew Qualls asked Lee Jay what the advantage of moving it down the middle was. Mr. Feldman said that the advantage is, that even if you carry the easement over and put the actual physical driveway down the middle, at least you know that if it is a 20 foot wide driveway, you can pass on 10 feet of it. He said that if he had an argument with his abutter, they are not going to block his access. He said that both of them are going to have to pay maintenance fees to each other for plowing or snow blowing. He stated that it is just a good idea because it let you to continue to have open access.

Scott Strynar asked why there was a shared driveway in the first place. Mr. Patterson said that it is a situation where you have a 400 foot driveway. It is a lot for 1 person to maintain. They are already doing a long driveway on Lot 4 and he feels that this will be a struggle. From a marketing standpoint, most people are not really excited in maintaining a long driveway so they don't mind sharing it. He said that it is done in many communities. As long as you have an agreement stating how it will be maintained. It is usually as simple as hiring 1 person to plow it and they submit 2 separate bills. It also makes it more affordable because they are building 1 gravel driveway with crushed gravel. Mr. Strynar said that when someone buys the lot, they know about the shared driveway. He said that he agrees with Mr. Libby about not having the pin in the center line of the driveway. He feels that if people don't want to share a driveway then they shouldn't buy the house. Mr. Feldman agrees but said that their job was to protect the homeowners.

Matthew Qualls said that the way it is currently set up, it can prevent one person from not using the driveway if the other blocks it. Mr. Feldman said that they could even though there is an easement. Mr. Libby said that when you own a piece of property and someone has an easement across your land, his right is senior to your ownership of that land. You can't block it. Anne Whitten said that you can block it. Mr. Libby said that somebody could but it could be taken care of legally.

David Ballard said that his only issue is that they have the ability to give a driveway to a lot, but they are not doing it because of monetary reasons and not knowing if that client would want it or not. Matthew Qualls asked if they could just have the option in the plan for both the shared driveway and the separate ones. Mr. Libby pointed out that if one of the landowners wants to put a driveway in a different location and he can prove to the town that it meets all of the site distances, then he can put the driveway elsewhere. He stated that one of the reasons they are looking at doing it this way because there is a parent and child that are looking into purchasing these lots and utilizing the same driveway. Mr. Libby stated that all of the driveways and

building locations are all conceptual and subject to change. They just have to propose it to the Road Commissioner to make sure that it meets the criteria.

Mark Patterson said that they could put a curb cut side by side and if the people that buy the lot agree to share it, they will put in an easement and won't have to come back to the Planning Board. Lee Jay said that, in this case, they would have to come back before the Planning Board because it is an approved subdivision and they will need to amend the subdivision by adding the easement. Mr. Patterson said that they could approve 2 curb cuts and an easement so they would be covered. Acting Chairperson Morse feels that putting the driveway down the center line of those 2 lots is the best way to do the driveways. Roger Frechette said that if they put it down the middle and the owners decide they don't want to share it anymore, they each have a half and can add to the halves to make their own driveway. Matthew Qualls said that if other subdivisions come in and they want to do shared driveways, is this going to set a precedent that we want people to go down the middle when doing shared driveways. Roger said that they would all depend on the circumstances. For instance, they may have to put it on 1 lot because there are wetlands on the other one.

Lee Jay Feldman said that he has learned something new. In North Berwick, we issue a foundation permit only and then issue the building permit after. His concern is that with Lots 4, 5 and 6. There should be some control put on land during the foundation placement because it is such a tight sight and they don't want to encroach on the setbacks. Acting Chairman Morse said that they should go out and pin the ground before they dig. Then somebody should come back and pin the holes where the footing is going and come back again and pin where the walls are going.

Matthew Qualls referred to Lee Jay's 6/27/18 memo regarding Preliminary Application-Oak Woods Estates. On Page 3, it has the Roads and Driveways from our Ordinance which he found helpful. Under the Section (3), it reads, "New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland."

Matthew Qualls said that even if they are pushing it all the way over to the edge of the property, it still goes through the Resource Protection. Dana Libby showed the location of the Resource Protection and the road location on the plan. At the site walk, they moved the driveway over. One of the distances was 26 feet and the other is about 40 feet. This uses 740 square feet out of the whole Resource Protection zone. The other option was to go around the Resource but then they would have to fill wetlands to do this. Scott Strynar asked why they couldn't come off of Valley Road. Mr. Libby said that it is a 500 foot driveway and it is on slope. Matthew Quall stated that they have skinny lots. By dividing it into so many lots, they are making it difficult to

put roads in.

Acting Chairperson Morse stated that the thing they need to focus on is if it is reasonable. He stated that it is not reasonable to put it on Valley Road and the little bit of Resource Protection that it will affect is not significant. Scott Strynar stated that if they go on Valley Road they will have to go through wetlands. He said that he knows that it is a long drive but when he walked the site he saw that a logging truck went through there and there are no trees in the way. There is already a road base to put the driveway in. Acting Chairman Morse said that it is not really road base. Mr. Libby said that there is an area where it is all muck. Mr. Strynar said his other comment is that the house location doesn't have to be where they currently have it. Mr. Libby said that there is really no other option. He stated that the area also slopes downhill so they would have to cut across the grade to get to the house. Mr. Qualls asked what he meant by cutting across the grade. Mr. Patterson said they would have to dig into the hill, stabilize the hill and put the gravel in. Now you have a gravel road that is draining into the wetlands on the right hand side as you go by. They have a 100 foot setback from Valley Road which puts them pretty much into the wetlands. Mr. Patterson stated that part of our Ordinance is that the reason for the Resource Protection is to protect the lakes. In the Ordinance, it talks specifically about not putting a road 50 feet from a lake. He said that it is severe for a brook of this size to have a 250 foot setback and it is unusual.

Matthew Qualls asked the Board if they thought it was a reasonable building practice for roads for them to cut through hills and add all this gravel to do this driveway. Or is it better to go the other way and make a longer road that is cutting through a knoll? Lee Jay Feldman said that he is not in a position to defend or deny. He stated that if they look at where the driveway is currently proposed, they are going through the Resource Protection zone at a minimal amount and are fairly close to a very small impervious area close to the wetland resource. If they build the road coming in from Valley Road, depending on the grades, there will be 400 feet of stormwater that will get into the wetland because the wetland is at the bottom of it. It will also get into the Resource. Mr. Strynar asked if it was going to be asphalt or gravel driveways. Mr. Patterson said it would depend on what the owners wanted to do. Mr. Strynar asked what was happening with the driveway on Lot 4 to prevent any runoff into the wetlands. Lee Jay stated that when he did his review, he considered having a grading plan required or ditch the area to convey any runoff from the driveway down to Oak Woods rather than letting it sheath towards the Resource. Mr. Libby said that they could add something there.

Anne Whitten suggested that they have Dwayne Morin review it and let us know what his recommendations are since he is the Road Commissioner. Lee Jay asked what issue she wants to bring to Dwayne to review. She would like him to look at the driveways. Lee Jay said that he has already had the conversation with Dwayne about them and his memo reflects everything that they discussed. It does specifically state in the memo that all driveway locations are subject to approval by the Road Commissioner.

Lee Jay Feldman said that they still need to go over the waivers that are listed in his memo and decide if they want to grant them. They can then hopefully find the application complete and set

a date for a Public Hearing.

The first waiver is regarding Article 10.5 Requirement to install underground utilities. Mr. Libby said that they will utilize the existing overhead utilities. They are already there and they will just tap into those lines. Lot 4 will probably need an additional pole or two.

The second waiver is regarding Article 10.6 Requirements to install stone monumentation. Mr. Libby said that they are requesting concrete monuments. When monuments get buried you can find concrete ones with a metal detector but you can't find the stone ones. In regards to durability, both the stone and concrete monuments last about the same. The concrete monuments are all precast and have rebar in them and will last 100 years or more.

Matthew Qualls motioned to approve the waiver for Article 10.5 Requirement to install underground utilities. Anne Whitten seconded the motion. VOTE: 5-0

Matthew Qualls motioned to approve the waiver for Article 10.6 Requirement to install stone monumentation.

Anne Whitten stated that under Utilities, it says, "All utilities shall be installed underground except as otherwise approved by the Board.". She said that it doesn't say that under the Stone Monuments so she wondered how they could waive an Ordinance. Mr. Libby said that the Board has the right to waive things in the Standards not the Ordinance. Lee Jay read what it stated under 13.1 Granting of Waivers:

In granting waivers to any of these standards in accordance with Section 13.1 and 13.2, the Board shall require such conditions as will assure that the objectives of the Ordinance are met.

Lee Jay stated that if they are setting concrete rather than stone, is the objective still being met.

Anne Whitten seconded the motion. VOTE: 5-0

Lee Jay Feldman said that from everything he has seen, the application seems to be complete with all the information that is required. If the Board agrees they will need to accept the application as complete and set a time for a Public Hearing.

Anne Whitten motioned to accept the preliminary plan for the Oak Woods Estates as complete. Matthew Qualls seconded the motion. VOTE: 5-0

Acting Chairman Morse said that they can set up the Public Hearing for July 26, 2018.

Anne Whitten motioned to set the Public Hearing for July 26, 2018. David Ballard seconded the motion. VOTE: 5-0

3.2 Sketch review for a three lot subdivision located on Oak Woods Road (Tax Map 004 Lot 007)

Dana Libby stepped forward to discuss the project. They are proposing a 3 lot subdivision on Oak Woods Road. There will be 1 lot in the woods and 2 in the field. He stated that Lee Jay had one concern about the setbacks. Mr. Libby said that the tan areas on the plan show the square footage outside the wetlands to meet the town zoning. There will only be 1 building on this property. The property abuts the Great Works River. The wetlands have all been mapped. The property also has a blue heron habitat that is 1500 feet away. He is not sure how that affects the property. Each lot will have their own driveway. They still need to do the soil testing.

David Ballard asked Roger if there were any issues regarding the blue heron habitat. Roger said that the town did not have any regulations about it and the DEP had nothing either.

Acting Chairman Morse asked Lee Jay if he had any comments on the project. Lee Jay said that he had none.

Anne Whitten motioned to approve the preliminary sketch plan for the Oak Woods II Estates, Tax Map 004 Lot 007. Matthew Qualls seconded the motion. VOTE: 4-0 Abstain: 1

Acting Chairman Morse said that they need to set up a site walk. The Board agreed to have it prior to the next meeting. They will do it at 5:30 pm on 7/12.

Acting Chairman Morse said that they have a recommended escrow for the project of \$2,850.

Anne Whitten motioned to set up an escrow for Oak Woods Estates II Subdivision in the amount of \$2,850.00. David Ballard seconded the motion. VOTE: 4-0 Abstain: 1

Roger stated that they still needed to establish the contours. Dana Libby said that they are already on there and are 2 foot contours. He stated that they use Lidar to establish them.

Matthew Qualls motioned to accept the 2 foot Lidar contours. David Ballard seconded the motion. VOTE: 4-0 Abstain: 1

3.3 Continued Sketch review for two lot subdivision located on Ford Quint Road.

Chris Stone is present to discuss the project. A couple of the Board members went on a site walk prior to the meeting. Matthew Qualls had a question about the lot that is the closest to the building. He said that there is a big ravine there. He said that the area looks like it is pretty rough where the contours drop into the wetlands. Mr. Stone said that it does appear that there is sufficient area to build there. Lee Jay recommended that they establish a footprint location. He said that we would not hold him to the location. He said that the lot with the Aquifer Protection is a very environmentally challenged lot. There is a vernal pool that still needs to be determined

if it is significant or not. Mr. Stone said that he discussed the vernal pool with the project surveyor who was on site with the wetlands biologist. It was the wetlands biologist's opinion, that based on the character of the vernal pool and the depth of it at this time, most likely it is not a significant vernal pool. Lee Jay said that because they are showing this buffer and until we determine that it isn't significant we need to be aware of it.

Acting Chairman Morse stated that they needed to set up a date for the Public Hearing. They decided to hold it on 7/26/18.

Anne Whitten motioned to approve the sketch review plan for the two lot subdivision located on Ford Quint Road Tax Map 006 Lot 035. Matthew Qualls seconded the meeting. VOTE: 5-0

Anne Whitten motioned to have the Public Hearing on 7/26/18. Annette Hume seconded the motion. VOTE: 5-0

3.4 Change of Use Permit Review from a Computer Repair Establishment to a proposed Medical Marijuana Patients Office located at 50 Elm Street Map 017 Lot 040

Acting Chairman Morse stated that this was going to be tabled until the July 12, 2018 meeting.

4. Other Business:

There was no other business at this time.

5. Adjournment:

Matthew Qualls motioned to adjourn the meeting at 8:00 pm. Anne Whitten seconded the meeting. VOTE: 5-0

Roger Frechette
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

Matthew Qualls

David Ballard

Annette Hume

Scott Strynar