

# NORTH BERWICK PLANNING BOARD

## MINUTES OF PLANNING BOARD JULY 26, 2018

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

**Absent:** Chairman Geoffrey Aleva

**Also Present:** Lee Jay Feldman from SMPDC, Scott Dombrowski, Calvin Akers, Chris Piecuch, Karyn Fisette, Alan Shepard, Laura Shaw, Dan Shaw, Kenneth Wood, Ian Wood, Dana Libby, Chris Mende, Nancy Graham, Alexis Stix-Lepore, Luke Lepore, Heidi Jorden, Patrick McLaughlin, Mark Patterson

1. Call To Order:

Vice Chairman Jon Morse will be the Acting Chairperson for tonight's meeting.

Acting Chairman Morse called the meeting to order at 6:36 pm.

2. Review Previous Minutes:

Acting Chairman Morse stated that they needed to review the minutes from July 12, 2018.

Acting Chairman Morse asked for clarification of what the first sentence on Page 2, paragraph 2 that states, "Mr. Danforth said that Dwayne had also mentioned that they were going to be opening up a lot of street location." was actually saying. Scott Strynar said that it was referring to the opening in the street for water connections. They originally had 9 and they cut it down to 4. The sentence will now read, "Mr. Danforth said that Dwayne had also mentioned that they were going to be opening up alot of street locations."

David Ballard motioned to approve the minutes of July 12, 2018 as amended. Anne Whitten seconded the motion. VOTE: 5-0 Abstain: 1

Acting Chairman Morse moved Annette Hume up to full voting status for tonight's meeting.

3. Current Business:

3.1 Public Hearing on 8 lot subdivision on land owned by Adam Blaikie & Associates located on the corner of Valley Rd. and Oak Woods Rd. (Map 004 Lot 006)

Dana Libby from Corner Post Land Surveying stepped forward to discuss the project. He introduced Mark Patterson from Adam Blaikie & Associates. They are proposing an 8 lot subdivision at the corner of Valley Road and Oak Woods Road on 25.5 acres. This used to be part of a larger piece of property. Mr. Libby stated that another one of Mr. Patterson's companies bought the other piece. The wetlands were mapped by Mark Hampton and Associates. The property was viewed for vernal pools and it was determined that there were no vernal pools on the property. Mr. Hampton also did the soils for the septic areas and they are all indicated on the plan. The topography on it is from LIDAR with 2 foot contours. They have placed all of the driveways and measured out the site distances. Along the road, there are 2 areas of clearing that have to be maintained to maintain the site distances. These areas were cleared and they verified the site distances and they are on the plan now.

Acting Chairman Morse asked Roger Frechette if he had anything he would like to add. Mr. Frechette stated that Dwayne Morin had made some recommendations. Mr. Frechette stated that there were a few notes that will need to be changed on the plan. Lee Jay Feldman stated that Note 12 is one that needs to be changed. He said that the current last sentence needs to be eliminated and replaced with, "Driveway entrance permits are required to be obtained from the Road Commissioner prior to the construction of the driveways on all lots."

Lee Jay Feldman stated that Dwayne also discusses his concern with access to Lot 3 regarding going through the Resource Protection District. Dwayne would like to have the following: If the driveway for Lot 3 in the Resource Protect District is approved by the Planning Board, I recommend eliminating Note 21 and replace with a note stating that the "Planning Board has approved driveway access through the Resource Protection District pursuant to 5.2.17.f.3." In addition, eliminate the section of Note 21 that states the ability to have temporary access to Lot 3 from Valley Road. Replace with "Any requested access from Valley Road will require a driveway entrance permit from the Road Commissioner and can only be utilized as a temporary access."

Mr. Feldman stated that Dwayne also had a recommendation for Note 24. The recommendation is "Eliminate this note as the plan indicates that the required sight distance of 350' can be met and all driveway entrance permits require Road Commissioner approval and must meet all requirement to be issued as stated in the revised Note 12.". Dana Libby said that he has already eliminated Note 24.

Lee Jay Feldman stated that the setback for the lots are tight and they will need to be careful about locations for the foundation.

Acting Chairman Morse opened the Public Hearing at 6:47 pm.

Alan Shepard was here to represent David and Karen Fisette, who are abutters to subdivision. He stated that he reviewed the preliminary plans that Roger had sent him and did not see the final plan until today. Mr. Shepard said that he noticed that there are a fair amount of wetlands on a

couple of the lots. On the preliminary plan it stated that the wetlands were mapped via the Maine GIS and from some information from the Fish and Wildlife Association. Mr. Shepard said that there was a note stating that there was going to be an on-site flagging of the wetlands by Mark Hampton which has now happened. He noticed that there is no change in the wetland depiction at all between the preliminary plan and the final one. Dana Libby stated that the sketch plan was submitted using general mapping. After they submitted the sketch plan and before they went on the site walk, the Planning Board wanted to see the wetlands mapped so they had Mr. Hampton go out to map them. They then located them and provided a copy of a new plan to the Planning Board before the site walk. Mr. Libby thinks that Mr. Shepard saw the original sketch plan that did not have the wetlands mapped out yet.

Mr. Shepard stated that this property used to be part of the Morrell Farm and his clients, the Fisettes bought a piece of that from the woman that owned it at the time. The water source for them is across the street. There is a well there and it is specific in their deed that they can draw water from that well. The Fisettes are concerned about the water. Mr. Shepard said that it looks like there is a 100 foot radius around where the proposed septic is going to be. The well is right on the edge of that zone. They are asking for a little bit more consideration than it being right on the corner. They would like to have a little bit more of a buffer and they are wondering what kind of disturbance there will be with a septic system in that location. They are concerned that it will affect the ground water. They will also need to have access to the well. They will need to go in to do maintenance on it and make repairs if necessary. They want to have it notated that the Fisettes will be allowed access to it. Mr. Libby stated that it was already part of their deeded easement. Mr. Shepard feels that anybody that is buying these lots should know about it. Mr. Libby stated that they can add a note to the plan that reflects that these people have the right to go in there and maintain the well house and water line. Lee Jay Feldman said that they already have it on the plan under Note 23. Mr. Shepard said that it is language that is pulled out of an old deed and does not reflect the current owners. He also feels that it needs to be explained better than just having a notation.

Mr. Shepard stated that they would also like to have them move the septic a little further away. Mr. Feldman said that it does meet the setback requirements and State standards. Acting Chairman Morse asked how the well was constructed. Karyn Fisettes said that it is spring fed. There is a concrete wall tower around the hole with a water line running through it. Acting Chairman Morse said that he feels that the septic is fine where it is. He said that the well is somewhat sealed and the septic system is far enough away to meet the code. Mr. Libby said that when the septic designer designs the system, he will have to confirm this information and make sure it meets State requirements.

David Ballard asked about Note 2 on Lot 7 and if it was the same as Note 23. Mr. Libby said that Note 2 is the boundary survey and lists the person that located the well. He stated that Note 2 is the Plan Reference that references the survey plan. Mr. Ballard would like it to be more specific as to the location. Mr. Libby said they will make a change.

Anne Whitten asked Mr. Shepard what his issue was with Note 23. Mr. Shepard said that it was accurate as far as a historical statement. He said it should probably say that the owners have a right to enter on the lot to maintain the well and to enter on the lots that the water line exists. Mark Patterson said that they can just put it as a note that whatever the Fissette's rights are will be put on the deeds that they give to the owners of Lots 7 and 8. Lee Jay Feldman said that they can add a condition stating that wording be placed on the deed for Lot 6A-7 that clearly identifies the rights for the property owners to have access to it. He also suggests that they add to the note that they have that states See Note 2 to also say See Note 23 for easement rights.

Pat McLaughlin stated that he has some general concerns. He is wondering how the Board feels about the compliance with the Comprehensive Plan for this subdivision. In referencing the section of the Comprehensive Plan under Housing, he is questioning the nature of development under the restrictions of the type of houses that are going to be built. His concern is with the reference made about the goal of the State and the plan of the Town to follow it. Lee Jay Feldman said that it is one thing for the Comprehensive Plan to have a goal for the town. Then there will be a set of policies that may include things like adding additional protections to the zoning for environmental issues. Then there will be a strategy that could be something like changing the zoning. If the zoning hasn't been changed and the zoning that is in place now allows that development to occur, then it is in compliance with the Comprehensive Plan. Mr. McLaughlin said that he didn't have the specifics as to the type of housing that is going in but he wants to make sure it is meeting our standards. Anne Whitten asked him if he was referring to the affordability of the housing. He stated that this was part of it. Mr. Feldman said that if the subdivision ordinance for these zones does not require anything set aside for low income housing or any type of affordable type housing then it is not a requirement for the applicant to provide us with that information. The Ordinance would be the dictating instrument to do that.

Mr. McLaughlin asked what type of housing was going into this development. Acting Chairman Morse said that they are single family homes with garages. Lee Jay Feldman said that, as part of the subdivision requirements, one of the things that Mr. Patterson had to do was a calculation of what the increase in assessed value to the town would be. Mr. Patterson sent Craig Skelton, the Town Assessor, an email that said that the lots would go for \$60,000 to \$75,000 and the home and lots together would sell for \$320,000 to \$425,000. This is just a prediction and no appraisals have been done yet. He said that if we take the 8 lots at an average of \$350,000, the projected increase in assessed value would be \$2.8 million to the community.

Mr. McLaughlin asked if the Planning Board considers the Town Plan when they are making a decision. Mr. Feldman said that it is one of the Findings of Fact. If anyone wanted to challenge that they could file an appeal to Superior Court.

Ken Wood said that he is one of the abutters on Valley Road. When he bought his property, he understood that there was a 4 acre limit to build houses in this area so he is wondering why they are deciding to populate this area. His concern is that these houses are too close together and the area will be populated too much. He also wants to know what is going on with his property line

with a driveway next to it. Dana Libby pointed out to Mr. Wood that there are 3 zones in this area. One is Farm and Forest which requires 4 acres. The other zones are 2 acres or 80,000 square feet and out back is a 30,000 square foot zone. Mr. Wood said that one of the lots looked much bigger than the others. Mr. Libby said that the larger one is because they have to take out the wetlands to get to the 4 acres. Mr. Wood feels that they are overpopulating and changing too fast. Acting Chairman Morse said that we cannot stop them from building on this property if they meet the town requirements. They have to meet the lot sizes and setbacks for the homes. They have met all of the town requirements.

Mr. Wood said that they have chopped down all the trees between his house and their property. Mr. Wood asked if there were any roads that were going to be close to his property. Mr. Libby said that there was nothing at this time but he can't predict the future. Right now they are not proposing anything out back. There is 100 feet of frontage and the driveway is at least 200 feet from the boundary line. Roger stated that they have to maintain 75 foot setbacks from their property line before they start building anything.

Heidi Jordan thought that Farm and Forest could only be subdivided once every 3-5 years. Roger said that they had to go to a subdivision in order to be able to split it in the first 5 years. If they bought the lot and they wanted to sell a lot, they would have to wait 5 years unless they do a subdivision.

Luke Lepore asked if there was a buffer zone in terms of tree clearing up to the wetlands. Roger said it depended on what type of wetland. If it was a forested wetland than there is not really a buffer zone. If it was a lake or something than they would have to keep 100 feet away. This project is a forested wetland.

Acting Chairman Morse closed the Public Hearing at 7:29 pm.

Lee Jay Feldman went over some of the conditions that will be needed. For the preliminary level, the conditions that he heard are:

1. To include the clarification of Note 2 to identify the well location for Lot 6A-7.
2. To include clarification of the notes as recommend by the Town Manager in his memo dated July 26, 2018.
3. To include Lot 6A-7 deed description of access rights to the well. Mr. Feldman said that we will probably want to see a draft deed for this particular lot.

David Ballard stated that they still need to have the discussion regarding the driveway for Lot 3 and if it will come off of Valley Road or if access will come off the small area of Resource Protection. Chairman Morse said that if you come off of Valley Road to Lot 3, they have to put in about 500 feet of road and it is not flat. He said that if they go on Oak Woods, they are taking out a little bit in the Resource Protection, it will not do damage. David Ballard said that he has

read it a few times and it says if there are “reasonable means”. If they do go by using Oak Woods, he would like to have a stipulation that states they will keep it close to the corner. Lee Jay said that if that entrance is shown on the plan than that is where it has to go because there was representation to the Board that this is where the access is. They also have to do so for the site distances.

Anne Whitten said that it is the developer’s plan that has made it this way. There are other ways that they could have put less houses in and would probably not need to go over the Resource Protection. It would be more costly for the developer to put the driveway in. Annette Hume asked how much of the Resource Protection would be involved. David Ballard said that it would be about 25 feet into the Resource Protection. Matthew Qualls said that the goal of Resource Protection is to protect the nature in that area. If you put a big road that goes 600 feet, you are not really protecting the environment there. The runoff will have to go somewhere and you are creating a lot of pollution by cutting all the trees to be able to make the driveway.

Anne Whitten said that she has no issues to put it in the Resource Protection. She doesn’t feel that there will be a major impact. She asked if there was a big difference between if the road was gravel or if it was paved. Mark Patterson said that gravel and paved driveways are treated the same in terms of phosphorus. Lee Jay said that if it is compacted gravel, DEP recognizes it as impervious.

Scott Strynar said that if they allow the driveway to be in the Resource Protection, is there a restriction that they can put on the lot to not allow another driveway in the future off of Valley Road. Dana Libby said that it will be Dwayne’s decision. They would need to go to him first.

Matthew Qualls asked if they had discussed the situation of run off on the longer road. Lee Jay said that the concern was that any water there could run off and go into the wetland. The applicant had proposed to double up the silt fence on that side of the driveway.

David Ballard asked if they had cut down any more trees since they did the site walk. Mr. Patterson said that they did because Dwayne wanted them to do it for the site distance on Oak Woods Road. Anne Whitten said that they could require them to not cut any more along the line and let it return to growth for a buffer. They could add it as a condition to the plan. Lee Jay recommends that they condition it on a note on the plan that would not allow cutting on Lot 6A-1 between the property line and the first 20 feet. Dana Libby said that they will add it to the lot as a 20 foot no cut buffer and it will remain on the plan as part of the approval.

Anne Whitten motioned to accept the preliminary plan for an 8 lot subdivision on land owned by Adam Blaikie & Associates located on the corner of Valley Rd. and Oak Woods Rd. (Map 004 Lot 006) with the following conditions:

1. To include the clarification of Note 2 to identify the well location for Lot 6A-7.
2. To include the reference of Note 2 in Note 23 regarding the well.

3. To include clarification of the notes as recommend by the Town Manager in his memo dated July 26, 2018.
4. To include Lot 6A-7 deed description of access rights to the well.
5. No cutting any trees within 20 feet along the western property line without approval of the Code Enforcement Officer.
6. To allow the driveway for Lot 3 to go through the Resource Protection.

Matthew Qualls seconded the motion. VOTE: 5-0

3.2 Continued review of a 3 Lot Subdivision on land owned by Adam Blaikie & Associates located on Oak Woods Rd. (Map 004 Lot 007)

Lee Jay Feldman stated that they are looking to accept the sketch plan and set a Public Hearing. It is a minor subdivision so only one meeting is required.

Annette Hume asked why Lot 1 is so much bigger than the other 2 and why it goes behind the other properties. Mark Patterson said that there are limits as to how thin they can be. They have a great deal more road frontage on Lot 1. Chairman Morse said that more than half of it is in Resource Protection.

Anne Whitten asked about the issue with the blue heron. Lee Jay said that the State has identified that there have been blue heron that have lived in that location so they identified a buffer area because of the type of bird that they are. Mark Patterson stated that there are rules as to when you can do cutting in the area. Most of these lots are in Resource Protection anyway so they will not be bothered.

David Ballard stated that the well crosses the road. He wondered if it came close to the area of this lot. Mr. Patterson said that it does not go into the property.

Matthew Qualls motioned to accept the sketch plan for a 3 lot subdivision on land owned by Adam Blaikie & Associates located on Oak Woods Rd. (Map 004 Lot 007). Anne Whitten seconded the motion. VOTE: 5-0

The Board set the Public Hearing for the August 23, 2018 meeting.

3.3 Public Hearing on a 2 lot subdivision on land owned by Harold D. Shaw located on Ford Quint Rd. (Map 006 Lot 035)

Chris Mende stated that they are proposing a 2 lot subdivision. One lot was divided off last year. Each lot is approximately 5 acres. There are some wetlands on the property which they have mapped and made deductions for the suitable soils. There is a vernal pool on the property which is of some concern. Because they are not able to be there in the spring to determine if it is a significant vernal pool, they are going to treat it like it was a significant one. Future owners

could go to a wetland scientist next spring and make a determination. The configuration that they have come up with fulfill all of the requirements such as the lot area, road frontage and site distances. There is an Aquifer Protection District in one corner of the lot. There is nothing specific in the Ordinance regarding the Aquifer Protection District and what they can do on the property.

Acting Chairman Morse asked if they had done any test pits yet. Mr. Mende said that they have done 2 test pits on each of the lots and they are suitable. Mr. Mende stated that, at the last meeting, because of the vernal pool situation the Board asked to see a potential build out that would demonstrate that we could actually put a driveway in, septic system, reasonable clearing, a house, a driveway and so forth and still fall under the 25% rule that DEP imposes for the buffer disturbances for vernal pools that are significant.

Acting Chairman Morse asked if he had a plan that located the driveways and Mr. Mende said that he did. Mr. Mende pointed out the vernal pool that they don't know if it is significant or not yet on the plan. The blue line is the 250 foot buffer that DEP imposes around a significant vernal pool. They drew a driveway on each of the lots as well as proposed building sites. The septic system is shown in pink and the green is just a disturbance area which would be a yard that would be cleared. The driveways are 20 foot wide with 10 feet of additional clearing. He said that on Lot 1, the maximum allowable disturbance with a permit by rule is 25% which would be 19,887 square feet. The concept disturbance that he showed is 19,327 square feet. On Lot 2, the total allowable disturbance with a permit by rule is 40,403 square feet and the concept disturbance is 39,319 square feet.

Acting Chairman Morse opened the Public Hearing at 8:20 pm.

Laura Shaw stated that she is looking for a vote tonight.

Acting Chairman Morse closed the Public Hearing at 8:20 pm.

David Ballard asked what other levels do we have regarding vernal pools. In Maine, we have 2 classifications of vernal pools. One is significant and one is insignificant.

Lee Jay Feldman stated that he had a couple conditions:

1. Minimal cutting on the parcel shall be allowed based on the vernal pool calculations found on the recorded plan.
2. A plan for each lot will be provided to the Code Enforcement Officer prior to the issuance of a building permit for the development of said lot.
3. Any development on either lot exceeding the 25% rule will require positive affirmation to the Code Enforcement Officer that the vernal pool has been determined to be insignificant. Mr. Mende said that he can add a note on the plan stating that they will need a wetland scientist for determining significance if they want to add to property.

Anne Whitten motioned to accept the final plan for a 2 lot subdivision on land owned by Harold D. Shaw located on Ford Quint Rd. (Map 006 Lot 035 with the following conditions:

1. Minimal cutting on the parcel shall be allowed based on the vernal pool calculations found on the recorded plan.
2. A plan for each lot will be provided to the Code Enforcement Officer prior to the issuance of a building permit for the development of said lot.

David Ballard seconded the motion. VOTE: 5-0

3.4 Conditional Use Application review submitted by Calvin Akers and Chris Piecuch Located at 50 Elm Street (Map 017 Lot 040)

Applicants are requesting to move East Coast Roots from the back of the building to the front of the building (Formerly Home Town Video) and add additional space for selling apparel

Roger said that they need to set a site walk, set up a Public Hearing, need sign design and need more info for what is going to be sold in store.

Chris Piecuch stated that they plan on selling T-shirts, additional CBD medicine which is a fully legal non-high version of marijuana that helps alleviate seizures, pain, anxiety, sleep disorders and depression. Calvin Akers stated that Maine is developing a pretty robust hemp industry. There are a lot of people that currently cultivate it for the purpose of extracting the CBD out and develop products. These are the products that they are looking to sell. Anne Whitten asked if they were going to grow any of it. They stated that they are just going to sell it.

Acting Chairman Morse asked if there was only 1 entrance to both rooms and they said there was. He asked if they were going to store anything overnight. They said that there would not be. They can each service 5 patients.

Matthew Qualls stated that they are here to change the use for this part of the building. It will go from the home video store to selling merchandise. Matthew Qualls asked if was currently classified as retail. Roger said that it is currently classified as caregiver office.

David Ballard said that he was a little confused by what their letter said. The letter states that no adult use/recreational retail sales will take place. He said that the items that they are talking about selling retail items but it does clarify the marijuana use. Mr. Piecuch stated that the term retail was used because at the State level they define adult use as retail marijuana. We are basically saying that we are not selling recreational. The patients will be in the back room for counseling and picking up the meds. The retail part will be in the front.

The Board set up the site walk for 8/9/18 at 5:45 pm and the Public Hearing will be 8/23/18.

4. Other Business:

Roger stated that Country Estates had to dig retention ponds. Once they did that along with some of the roads, they have a mound of dirt. They are asking if they can get rid of it. Anne Whitten asked why they are coming to the Planning Board for this. Roger said that you are not supposed to be mining when you are creating a subdivision. They are not mining it but they are digging up the retention ponds and they have excess sand. They have to get rid of it somewhere. They Board can tell them that they have to spread it around the property or let them remove it. They have about 8,000 to 10,000 yards to get rid of.

Anne Whitten motioned to allow Country Estates to remove the 8,000 to 10,000 yards of sand from their property. David Ballard seconded the motion. VOTE: 5-0

Roger stated that Pratt & Whitney wants to come before the Planning Board to review final plans before they receive their DEP permit. Roger said that we had an issue with the fence and lighting heights. They have figured all of that out. They want to make sure that everything is okay with the town so that when they get DEP's approval, they won't have to come back to the town.

5. Adjournment:

Anne Whitten motioned to adjourn the meeting at 8:55 pm. Annette Hume seconded the motion. 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