
PLANNING BOARD MEETING

May 15, 2017

Municipal Center, Burleigh H. Loveitt Council Chambers
75 South Street, Gorham, Maine

Members Present

EDWARD ZELMANOW, Chairman
SCOTT HERRICK, Vice Chairman
JAMES ANDERSON
SCOTT FIRMIN
GEORGE FOX
LEE PRATT
MICHAEL RICHMAN

Staff Present

THOMAS M. POIRIER, Town Planner
BARBARA C. SKINNER, Clerk of the Board

Edward Zelmanow, Chairman, called the meeting to order at 7:00 p.m. The Clerk called the roll, noting that all members were present.

APPROVAL OF THE MAY 1, 2017 MINUTES

George Fox MOVED and Scott Herrick SECONDED a motion to approve the minutes of May 1, 2017 as written and distributed. Motion CARRIED, 5 ayes (James Anderson and Scott Firmin abstaining as not having been present at the May 1, 2017 meeting). (7:05 p.m.)

In reply to Mr. Zelmanow, Mr. Herrick said that the meeting which preceded this one was a full Board workshop to consider proposed language for agricultural events centers. Mr. Herrick said that the Ordinance Committee has not met since the last Board meeting.

ITEM 1 PRIVATE WAY REVIEW – (Continued from May 1, 2017 meeting) – Steve Rich – request for approval of a private way to serve two principal residences on a single lot, on property located at 57 Hurricane Road, Map 93, Lot 15.003, Rural and Manufactured Housing zoning districts.

Mr. Poirier explained that the applicant is proposing a 2 to 6 lot private way to serve two lots. The applicant currently has his residence on the lot, and while no lot split is proposed at this time, they are looking to have a second building with a residential use. The Land Use Code requires that if there are two principal structures on a lot, twice the road frontage and twice the lot area are required. The private way will meet the provision regarding the need for 400 feet of road frontage in the event that the lot is split in the future.

Dustin Roma, DM Roma Consulting Engineers, introduced the applicants Steve and Pam Rich. Mr. Roma said the site is 8 and a half acres, which is sufficient to support two lots. Road frontage is necessary to be created with the private way, approximately 224 feet in length, which will follow the right-of-way going over the existing paved driveway entering the property and will stop just short of the culvert. The gravel shoulders will be expanded so that the total gravel width measures 22 feet, and a gravel surfaced hammerhead will be constructed in accordance with Town standards. Overhead power has already been installed to the back lot. Mr. Roma said some test pits have been excavated along the shoulder of the road where the hammerhead will be constructed near the edge of the road; the first test pit had about 14 inches of gravel with some 3 inch stones, and the second test pit showed mostly sand with stone under the pavement. Mr. Roma said that gravel depths will be verified during construction to show that the requirements are being met for the road. There are two inches of pavement on the paved section and there will be a minimum of 3 inches of pavement across the entire roadway, with the first 20 feet having the 4 inches required by Code. The roadway will be the required 22

inches wide. They are in the process of getting a street name for the private way. There are two septic systems on the lot with separate wastewater disposal fields.

Mr. Anderson asked about wetland delineation in the Town Engineer's comments and if that has been done yet. Mr. Roma said that the area where the hammerhead is to be built is all lawn area, and there are no wetlands to be disturbed. Regarding staff's comment about construction within 50 feet of the stream on site, Mr. Roma said that the hammerhead is outside that area, but some potential road widening is shown beyond the hammerhead and if it is seen that they are encroaching into that setback area, they can apply for a permit by rule.

In reply to Mr. Zelmanow, Mr. Poirier said that most of staff's comments have been addressed, with the test pits being the outstanding item, and that information has been forwarded to the Town's Engineer for review and comment. Mr. Poirier said that putting the item on for Consent Agenda is the more practical way of dealing with any outstanding issues.

Mr. Richman asked whether a private maintenance agreement has been drafted. Mr. Poirier said one had been received today as part of revised information submitted.

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

Mr. Roma said that the Conditions of Approval have been shared with the applicant.

George Fox MOVED and Scott Herrick SECONDED a motion to postpone the request of Steve Rich for private way approval to the first available Consent Agenda pending responses to remaining issues and finalizing revisions to the plan. Motion CARRIED, 7 ayes.

ITEM 2 SUBDIVISION REVIEW – (Continued from May 1, 2017 meeting) – Diversified Properties – request for approval of a Third Amendment to Gordon Farms Subdivision to modify the alignment of the approved 50-foot right-of-way (Madison Way), on property located at 79 Gordon Farms Road, Map 45, Lot 23.422, Rural zoning district.

Mr. Poirier said that the applicant is proposing to adjust the right-of-way located on lot 22 to serve a potential future subdivision in the back. He advised the Board that the applicant was last before it on March 6, 2017, and a site walk was held on April 26, 2017. Mr. Poirier said that since May 1, 2017 there has been correspondence from the applicant's legal consultant, Terry Snow, followed by an email from the Town Attorney Mark Bower, and then another email from the applicant regarding HOA documents.

At the request of Mr. Zelmanow, Town Attorney Mark Bower said that one of the over-arching questions is does the Planning Board have the authority to enforce private covenants. Mr. Bower said that neither the Board nor the Town in general has the right or authority to enforce private covenants, whether it is a Code Enforcement Officer reviewing a building permit application or the Planning Board enforcing the private covenants of a homeowners' or a condominium's association. The issue here is whether the applicant has administrative standing to pursue the application, which is another way of saying right, title or interest. Under Maine law that is a very low threshold to meet, as is shown in *Southridge Corp. v. Board of Environmental Protection*, 655 A.2d 345 (Me. 1995), where the applicant had only a claim of adverse possession over a piece of property, which the court found was enough to show right, title or interest, but with the caveat that because litigation was still pending, should the applicant not prevail, the Board would have to revoke the permit. Mr. Bower said that courts have cautioned boards, such as the Planning Board, not to get involved in disputes between property owners, as evidenced by *Willis v. Town of York*, 2006 Me. Super. LEXIS 203 (Sept. 22, 2016), wherein the court said that it is not for the Code Enforcement Officer or the Board of Appeals to give a title opinion or examine whether there are potential problems with the language in the deed or with complex title questions, that the deeds and other evidence that was presented was sufficient. In the matter of *Rockland Plaza Realty Corp. v. La*

Veriere's Enterprises, Inc., 531 A.2d 1272 (Me. 1987), involving a question of whether there was right, title or interest, the court on appeal said the Planning Board did not need to get into the title dispute. There is no dispute here as to who owns the property, the claim is that there is a private covenant in the documents which, according to the opposition, prevents this use from being performed, but that is a private use between the parties and does not involve the Town. The case that was submitted is distinguishable both procedurally and factually because in that case the Town of Scarborough was not involved, it was between two private property owners and the Town did not need to get involved, nor does the Town need to get involved here.

Mr. Zelmanow said that the Board will look at this as any other application, and not look at any potential disputes. If that happens and the Board has to revoke its approval, then so be it. Mr. Bower said that ultimately the Board's decision will be subject to any appeals that anyone wants to take, and it is up to the landowners if they want to pursue a private action against one another.

Doug Reynolds, Gorrill-Palmer, came to the podium and introduced Jim Wolfe, representing the applicant Diversified Properties, and reminded the Board that in July of 2013 Diversified Properties received approval for a private right-of-way on lot 22 of Gordon Farms subdivision. At that time the right-of-way went straight back into the property and included the hammerhead into lot 22. The road that was proposed to be built at that time was to access lot 21 and lot 22, with the intent that the property to the rear was to be purchased. After that property was purchased, wetland surveys were performed and based upon the information gathered, it was determined that in order to reduce impact to natural resources, it would be better to curve the roadway and access that rear property as shown on the current plan. At this time, the applicant is only proposing the reconfiguration of the approved private residential right-of-way on lot 22.

Mr. Herrick confirmed that the only thing the Board is considering this evening is the reconfiguration of a straight easement into a slightly curved easement, which was originally approved in 2013.

Mr. Reynolds said that at the site walk there was discussion that if they were to develop the back lot, Board members expressed concerns about headlights of those residents leaving their development and shining on the Skolfields' property. To deal with that issue, the plans show two rows of ten arborvitae trees, one row on Diversified's property and one row on the Skolfields' property, which are proposed to block that impact. Mr. Richman asked when the tree buffer would be installed, now or in the future when the rest is developed. Mr. Reynolds replied that if the reconfiguration is approved and they go forward with the development to the back, the trees would be installed at that time. The row on the Skolfields' property can be adjusted if they don't want them. Mr. Herrick said he believes that the screening should be reviewed as part of the Board's review of the future development as it merits greater consideration than being discussed as part of the reconfiguration, and that it should not be a part of any plan for the reconfiguration. Mr. Reynolds agreed that it will not be shown on this plan but will be considered as part of the other proposal.

Mr. Zelmanow confirmed the conveyance of a 1.38 acre piece of property to the W.A. One property out back. Mr. Reynolds answered a query from Mr. Fox that the realignment does not affect the house lot for lot 22, and by going around the wetland it creates a lesser impact on those resources, and it allows for a larger and paved road and larger lots for the future development out back. Mr. Reynolds said that if it remained straight, it would have to remain a private road. Mr. Zelmanow confirmed that the driveway for the house to be built on lot 22 would access Gordon Farms Road.

PUBLIC COMMENT PERIOD OPENED: Andrew Christakis, 110 Gordon Farms Road, commented that what is being discussed is greater in scope than what had been advertised. Mr. Christakis referred to the decision document requiring the formation of a homeowners' association and the covenants filed with the Registry of Deeds which state that property must be used for residential purposes only. He asked how one property owner can have the ability to amend an entire subdivision's plans. Mr. Poirier replied that as long as an applicant owns the lot in the subdivision, he is allowed to make amendments to the subdivision plan as long as it meets the zoning under the Land Use Code and development standards. In reply to Mr. Herrick, Mr. Bower said

that homeowners' documents are required for limited purposes and the review done by the Town attorney is to confirm stormwater, stormwater maintenance, road maintenance, and that there is a homeowners' association created to be responsible for those things to make sure that the Town is not held responsible. Mr. Bower reiterated that it is not the Town's role to enforce private deed restrictions or covenants, and the Town does not have authority to do so, whether it is the Code Enforcement Officer, the Board of Appeals or the Planning Board.

Mr. Christakis asked if there are documents which govern how the Board intends to utilize homeowners' documents. Mr. Poirier replied that the Land Use Code and the subdivision application process will give Mr. Christakis the information he wants. Mr. Christakis asked that this application be stayed this evening to allow the homeowners enough time to proceed with a legal action. Mr. Zelmanow said in view of what Mr. Bower has said, that is not enough justification to prevent the Board from moving forward.

Phil Gagnon, 91 Gordon Farms Road. Mr. Gagnon asked how the small piece of land previously mentioned can be transferred to W.A. One before the subdivision is approved. Mr. Zelmanow said the Town does not enforce deeds and in every application there is always potential for litigation down the road and as the Board does not know what will happen, it cannot hold up applications because there may be an issue. In reply to a comment from Mr. Gagnon, Mr. Bower said that the Board does not approve covenants or deeded restrictions, the Board approves the subdivision and reviews the homeowners' documents to make sure that the protections for the Town are in place. Mr. Herrick noted that there is no difference between a deeded restriction and a separately recorded covenant that affects the real estate, they are one and the same.

Mr. Christakis asked if the Town enforces what is important to it. Mr. Poirier replied that the items such as stormwater maintenance are conditions of approval on the plan, that the homeowners' association is required to perform that maintenance of stormwater. Mr. Zelmanow said that all plans have conditions of approval, and one of them is that a homeowners' association is required to maintain stormwater.

In reply to Mr. Herrick, Mr. Poirier said that the original approval was for a one-lot private way, and the right-of-way was continued to the abutting property, in the event the applicant wanted to build a house before creating the subdivision in the back. He is going from a one-lot private way with a right-of-way extension to a rural access road.

Jenny Skolfield, 73 Gordon Farms Road, asked about the minimum lot frontage required on Gordon Farms Road and if it is now on Madison Way does it still have to meet the Gordon Farms Road minimum, and is that lot still part of Gordon Farms even though it is on Madison Way. Mr. Poirier replied that the 50-foot right-of-way had to be deducted from the lot, so the purpose of the one-lot Madison Way private way is to allow the house to be built before coming in with the subdivision. The 200 foot road frontage for this lot will be from Madison Way and not Gordon Farms Road, which will be accessed with a driveway.

Mr. Christakis again commented that what was described in the agenda notice they received is not the same as what is being discussed this evening. Mr. Poirier said notice to abutters is required to contain date, time and location for the Planning Board hearing. Staff tries to identify to the abutters that something is changing in the subdivision but the notice description does not always contain all the details of an application.

Mr. Herrick replied to a comment from Mr. Gagnon that this lot is still a part of the Gordon Farms Subdivision and the potential 9 new homeowners on the back piece will not be part of the Gordon Farms Association and will have their own association.

PUBLIC COMMENT PERIOD ENDED.

In reply to Mr. Zelmanow, Mr. Poirier said the review engineer has no comments on the proposal and staff has some notes that need to be added to the plan before it is signed by the Board. Mr. Zelmanow confirmed that the Conditions of Approval have been shared with the applicant.

George Fox MOVED and James Anderson SECONDED a motion to grant Diversified Properties, Inc.'s request for Third Subdivision Amendment approval to Gordon Farms Subdivision Phase II to modify the alignment of the approved 50-foot right-of-way (Madison Way) off Gordon Farms Road, located on Map 45, Lot 23.422, Rural zoning district, with Findings of Fact and Conditions of Approval was written by the Planning Board. Motion CARRIED, 7 ayes. [8:15 p.m.]

ITEM 3 Pre-Application Discussion (Continued from May 1, 2017 meeting) – Marissa Ritz and Meghann Carasco – discussion of a proposed day care on Lot 1 of the South Gorham Crossing, on property located off County Road, Map3, Lot 22.401, Rural and Suburban Residential zoning districts.

Mr. Poirier said that this application is to amend Unit 1 in the Stargazer Subdivision in South Gorham, which had a day care approved that was never built. The applicants are proposing to amend the previously approved day care plan but because this is a contract zone, the applicants must meet the specific contract zone site plan requirements for buildings and design criteria. The plans that have been submitted are as a result of a meeting among staff, the applicants and their engineer.

Thomas Greer, Pinkham & Greer, came to the podium and introduced the applicants, Marissa Ritz and Meghann Carasco. Mr. Greer said the facility will be a 7,200 square foot structure to serve 100 children, some of whom will be full time during the day and others who will come after school. There will be some 20 employees. The building is proposed to be designed by Whipple Callender Architects in traditional New England “big house, little house” style with different elevations having clapboard sidings and asphalt shingled roofs. The building will be sprinkled. There will be teaching aspects as well as child care. Mr. Greer pointed out the location of the proposed site, noting the Mercy Quick Care facility and the Cumberland Farms site. He said there are three wells on site already drilled which supply water to Cumberland Farms and Mercy Quick Care and will provide water to this site as well. Because the wells provide drinking water, they need to be at least 300 feet from septic systems, which is one of the drivers for the location of this site. Mr. Greer pointed out playground areas off the building and the septic system, which originally was for 50 children but now has been doubled for 100. The system will be about 100 feet long and 26 or 27 feet wide and is built up from existing grade to make sure of separations and equal flow. He pointed out where parent dropoffs will occur, and parking will be behind in the back with roughly 46 spaces. The facility will have a fenced-in area and a small teaching greenhouse will be built. Mr. Greer said that Nathan Bateman, administrator of Mercy Quick Care, will allow placement of the playground on an open space area on that unit. Mr. Greer said that due to topography of the site, a fair amount of fill will be required, with the building needing to come up 4 or 5 feet in one corner and 2 to 3 feet in another. Mr. Greer described some of the proposed landscaping. Because there is an existing Site Location of Development Permit, it will need to be modified.

Mr. Anderson asked if there is enough for a bus loop; Mr. Greer pointed out a possible bus dropoff location with a proposed sidewalk. Mr. Greer replied to Mr. Fox that there will be lighting on the island in the parking lot and on the building. Mr. Greer discussed possible snow removal areas and the need for underdrain soil filters for stormwater management, which will have to be up high enough to get a discharge out of the pipes to the detention basin due to the topography of the site. Mr. Zelmanow and Mr. Greer discussed a possible emergency evacuation plan for the children to go into the playground fenced areas. Mr. Poirier said that as there are no specific parking standards in the Code for day care facilities, the ITE manual will provide parking requirements. Mr. Bateman of Mercy Quick Care has indicated that there could be some overflow parking for special events on their property. In reply to Mr. Anderson, Mr. Greer said that the HVAC units may be split units through the walls with radiant heat for the floors. Mr. Greer said that Diane Morabito, who did the original traffic movement study and the one for Cumberland Farms, will provide the Planning Board with an updated traffic movement study. Mr. Richman referred to the signage requirements of the contract zone prohibiting signage that can be seen from Route 114. Mr. Poirier replied that the building sign may not be allowed on the side where it is potentially proposed and may have to go on the front of the building, but they may be able to have a small sign at the entrance and Blue Ledge Road and staff will work with them on it.

PUBLIC COMMENT PERIOD: Hans Hansen came to the podium and said this is a good project and he doesn't see any issues with it.
PUBLIC COMMENT PERIOD ENDED.

OTHER BUSINESS NONE

ANNOUNCEMENTS –The Town Planner thanked the Clerk of the Board, Barbara Skinner, for her service and announced that she had received a 15-year service pin from the Town Manager.


The next Board meeting will be in two weeks, on June 5, 2017.

OTHER BUSINESS NONE

ADJOURNMENT

Scott Herrick MOVED and George Fox SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. (8:45 p.m.)

Respectfully submitted,


Barbara C. Skinner, Clerk of the Board
May 15, 2017