

**DOVER PLANNING BOARD
MINUTES OF MEETING
SEPTEMBER 28, 2004**

MEMBERS PRESENT: Dean Trefethen, Tony McManus, Donald Andolina, John Swartzendruber, Dennis Ciotti, Mindy Anderson, Frank Torr, Beth Thompson and Ron Cole (late)

MEMBERS ABSENT: Eric Tooke, Pete Lavoie, Bryan Cahoon

STAFF PRESENT: Steven Stancel, Planning Director; Bruce Woodruff, City Planner and Jacqueline Freeman, Recording Secretary

Tony McManus took the Chair in Ron Cole's absence and brought the meeting to order at 7:05 PM.

ITEM #1: Citizen's Forum

There were no speakers.

ITEM #2: Approval of minutes.

Frank Torr made the motion to approve.
Dennis Ciotti seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of a minor lot line adjustment of land for Patricia Keefe, Assessor's Map G, Lots 24-H & 24-E, zoned R-40, located on Tolend Rd. *(P04-48)

Kevin McEnneaney explained the project as a simple lot line adjustment to extinguish an encroachment problem. He explained how this plan is making a non-conformity less non-conforming.

Beth Thompson made the motion to accept the application.
Dennis Ciotti seconded.

VOTE U/A

The public hearing was opened.
There were no comments.
The public hearing was closed.

Dennis Ciotti asked why they did not need a Variance since they were still not conforming to the 20 foot setback.

Steve Stancel explained that in the past, as long as they were decreasing the non-conformity, it does not require a Variance. While this does not meet the side setback it is more conforming and, historically, we've only required that it be less non-conforming.

Beth Thompson made the motion to approve with the following conditions:

1. Add the owner's signature to the plat.
2. Provide the Planning Department with a digital version of the plat.

Dennis Ciotti seconded.

VOTE U/A

ITEM #4: Consideration and acceptance of a minor lot line adjustment of land for 192 Washington Square, LLC and the City of Dover, Assessor's Map 10, Lots 40, 41, 42, zoned RM-6, located on Washington St.*

Tony McManus stated that these two items could be addressed at the same time but will be voted on separately.

Attorney Jim Schulte, represented the applicant, and introduced John Berry of the engineering firm that did all the plans and submissions. He said that following this presentation and a public hearing, there will be a motion to table to the next meeting. The reason that this matter has been delayed is that the City has been waiting to physically receive the executed deed from the State of NH for the land. The deed has been drafted and approved by the City Attorney and the City has paid the money to the State. They can not proceed until the City is actually the owner. The drainage studies and revised plans were submitted to the engineering office last week and are under review. The first application is for a lot line adjustment. The City is in the process of acquiring land from the State of NH that was formerly the railroad bed that extends from Washington St. to the river. It is an area of a couple of acres. The parcel ranges for 20 to 40 feet wide in places and then slopes deeply down on either side. This property is almost shaped like a figure eight. He said that at one time this land was probably an island and it was filled in to create the rail road. The proposal is that the City transfers to the applicant a small portion of the rail road bed and the slope on the easterly side. It is more land than this project needs but that land is of no use to anyone. Most of it is steeply graded and what isn't steep is just mud and cat-O-nine tales. On the westerly side there is a steep slope down but when you get into the larger area on the upstream side there is a very nice wooded area with trees that would be a nice picnic area. He said that because the drainage is going to run off the back of the property toward the river, it's useful for them to own some of the land back there so that a drainage easement is not needed. They will technically increase the water frontage for this property which will increase the tax assessment and will put the land back on the tax roll. They don't need all of that land to qualify for the density because this zone requires 1000 sq. ft. per unit and they are asking for seven units. The extra land allows them to deal with the parking and the setbacks. The applicant will be deeding back to the City an easement for access purposes because the top of the railroad bed will be used for the walking and biking trail.

The City will have all of the use of that land. They did obtain a Variance to allow the unit that is closest to the street to be located 6 feet back from the street as opposed to the ordinance requirement of 15 feet. This lot line adjustment will result in the total property owned by the applicant to be just under an acre between what he owns and what he is going to acquire. Most of that land is conservation land.

ITEM #5: Consideration and acceptance of a site plan of land for 192 Washington Square, LLC, Assessor's Map 10, Lots 41 & 42, zoned RM-6, located at 201 & 205 Washington St.*(P04-31) (7 units)

Atty. Schulte stated that the site plan, is approval of 7 condominium units which will be virtually the same as the condos that were built by the same developer across the street. There will be ample parking for all units. They will be tearing down the two existing buildings that are in poor condition. One of those buildings is located about two feet from the property that is owned by Mr. Liatsis. They would be putting in parking spaces to form a significant separation between the condos and the next building downhill. They are requesting several waivers:

1. Waiver of the 5 foot requirement of the sideline and the 10 foot requirement in the front.
2. A Conditional Use Permit – The Conservation Commission has approved their request for the retaining wall in the portion of the parking that is located close to the river.
3. Waiver of the requirement that this project have on-site recreation facilities.

Discussion ensued with regard the easement that will be given back to the City. Atty. Schulte said that the easement would be for walking and biking purposes and there will be an allowance for City maintenance vehicles. They are only taking ownership for the setback. The reason for giving the easement is so that the City will have all of the use of land. Mr. Schulte stated that there are two parking spaces per unit outside and there will be some underground parking.

Frank Torr made the motion to accept both **ITEM #4 and ITEM #5.**

Beth Thompson seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Steve Stancel stated that the Planning Department recommends that the public hearing be opened and the application be tabled pending the transfer of title to the City on both items.

Beth Thompson made the motion to table.

Dennis Ciotti seconded.

VOTE U/A

ITEM #6: Old Business

a. Discussion and possible vote on driveway waiver for Paula Reid, Lexington St. (P04-43)

Frank Torr made the motion to remove this item from the table.

Beth Thompson seconded.

VOTE U/A

Samuel Reid, stated he was representing his wife Paula. He said that he would like this item back on the table. He said that he is very optimistic that he will be at the next meeting with an agreement from Mr. Gillis, his neighbor, addressing his concerns.

Steve Stancel stated that the Engineering Department and Planning staff took a look at the situation. It is difficult because the land naturally slopes into the abutter's property and to simply put curbing there to try to stop the water would result in ponding and freezing on the driveway. Because of the clay soils it is very difficult to even have some type of a dry well drainage basin. He said that there is no simple engineering design.

Frank Torr made the motion to table.

Beth Thompson seconded.

VOTE U/A

b. School Impact Fee Waiver request for Robert Tessier, Assessor's Map A, Lot 36-1, located at 15 Cordeiro Drive.

Steve Stancel explained the history of the lot and stated that the Planning Department recommends that the waiver be granted due to the fact that this lot was approved prior to the adoption of the school impact fee and is protected from zoning charges under the previous version of RSA 674:39.

Beth Thompson made the motion to approve the waiver of the School Impact Fee.

Frank Torr seconded.

VOTE 5 – 1

Opposed – Dean Trefethen

c. School Impact Fee Waiver request for Rocco & Tarah Wood, Assessor's Map I, Lot 80-1, located at 157 Garrison Road.

Rocco Wood stated that he had nothing to add other than what he submitted with the application.

Steve Stancel stated that since this lot was not created until seven months after the School Impact Fee was in place and does not meet the criteria for a waiver outlined in Chapter 170-28.7G, the Planning Department recommends that the waiver request be denied.

Beth Thompson made the motion to deny the Impact Fee Waiver.
Dean Trefethen seconded.

VOTE 4 – 2 Opposed – John Swartzendruber, Mindy Anderson

**d. School Impact Fee Waiver request for Mark & Deborah Gagnon, Assessor's
Map M, Lot 76-8, located at 48 Waterloo Circle.**

Steve Stancel stated that due to the fact that this lot was approved prior to the adoption of the school impact fee and is protected from zoning changes under the previous version of RSA 674:39, the Department recommends that the waiver be granted.

Beth Thompson made the motion to approve the impact Fee Waiver.
John Swartzendruber seconded.

VOTE 5 - 1 Opposed – Dean Trefethen

Tony McManus stated that he will move to **ITEM #7 a. & b.** ahead of **ITEM #6 e.** because the Emerald Woods item would take much longer. The Board agreed.

ITEM #7: New Business

**a. Discussion regarding request to revise the sidewalk plan for Evergreen Valley
Drive by Michael Blanchette, 23 Evergreen Valley Drive.(94-42)**

Michael Blanchette, 23 Evergreen Valley Drive. He said that he has spoken to Steve Stancel several times. Mr. Blachette stated that he feels that it is a safety issue and issue of aesthetics. He stated that the existing sidewalk is an eyesore. He read his arguments from the letter that he submitted.

Discussion ensued with regard to the acceptance of the street and the discussion with regard to the letter of credit and the problems with the developer.

Steve Stancel stated that the sidewalk currently exists and there will be a one inch finish coat of paving that will go over the existing sidewalk.

Beth Thompson made the motion to deny the request.
Dean Trefethen seconded.

VOTE 4 – 1 Opposed – Frank Torr

**b. Discussion regarding request to revise the sidewalk plan for The Woodlands,
Woodland road. (P03-20)**

Bob Stowell stated that they designed the roadway to go around the trees and they put a curve in the road. They had the sidewalk on one side of the road then it jumped to the other side of the road to miss these trees. The project was approved and construction was started and it is at a stage where they are giving CO's. Public Service came in to upgrade

the power and the trees that everyone went to so much trouble to keep, got cut down. The applicant has agreed to replace those trees to compensate for those that were cut. Now that the trees are gone they think that there is a more appropriate area for the sidewalk. He said that they are asking for a section of about 200 feet where they would like to continue the sidewalk to the southerly side.

Discussion ensued with regard to straightening the curve in the road.

Beth Thompson made the motion to accept the request.

Frank Torr seconded.

VOTE U/A

Steve Stancel stated that the Planning Department has spoken with the property owner at 9 Woodland Road and they are not opposed to the sidewalk being located on the south side of the street. Based on the support from the direct abutter, the Planning Department recommends approval of the revised sidewalk plan.

Beth Thompson made the motion to approve the request to move the sidewalk.

Dennis Ciotti seconded.

VOTE 3 – 2 Opposed – Frank Torr and Dean Trefethen

ITEM #6: Old Business

Chairman Cole took over his seat.

Tony McManus went back to his seat.

e. Rehearing and discussion on Emerald Woods Subdivision, located on Littleworth Road.* (P02-01)

Attorney Jim Schulte represented the applicant and added that Bob Stowell and Doug LaRosa from Tritech Engineering were also present. He stated that this subdivision was first submitted in 2002. This is a narrow lot that doesn't lend itself to an OSS, as Ezra Green did. He said that this subdivision is 25 large lots, the smallest being $\frac{3}{4}$ of an acre and the largest one is 2 or 3 acres. He said that there are four wetlands crossings for the roads. He said that the people who went on the sitewalk made it one third of the way back into the property and saw the conditions. The neighbors have brought up drainage as an issue. He said that last April, City Engineer Paul Vlasich came and gave his extensive review of the drainage on the property and stated that the drainage satisfied all the requirements and recommended approval. Following that, this Board decided that they wanted an independent review. On August 10, 2004, Dennis Moulton, of the consulting engineering firm that was hired by the City, came and indicated that he had reviewed the plan, made some minor suggestions that were incorporated into the plan and with those recommendations, recommended that the plan be approved. He stated that the project met all of the requirements that there would be no increase flow from this property as a result of the development of this project.

Bob Stowell, Tritech Engineering, stated that this project predates the Open Space Subdivision requirements. He said that 23% of the 44 acres is wetlands. In the Ezra Green project 42%, of the land is wetlands. He said it is not the best piece of land in town or the prettiest because it was logged very heavily for two years. He said that they have had the Site Specific Permit approval for over a year. He explained how they go by a model for the drainage and that is all that they have to go by. He said that 4.1 inches of rain fell last weekend and five days after the rain, there was water still sitting on surface. He said that this is a very flat site which decreases drainage. He explained how, because of the elevations, the drainage of Emerald Woods would not have any impact on the Pitman property. He explained the path of Kelly Brook. He said that they have received the State Driveway Permit, the NH Dredge Permit is pending and they have received their State Site Specific Permit.

Dean Trefethen asked that Bob Stowell address the drainage from adjacent properties onto this parcel.

Bob Stowell had a map showing the path of the water once it enters their property. He explained how the characteristics are put in the software and how it runs for different rainfalls. He said that Paul Vlasich had a model that was a bit different but the end results were very similar.

Beth Thompson made the motion to accept the application.
Frank Torr seconded.

VOTE 6 – 1

Opposed – Tony McManus

The public hearing was opened.

Purnell Ross stated that his house is in the path of the floodwater. He said that he has heard about the models but water still flows downhill. He spoke about how, over the years, Kelly Brook has changed with the accumulation of sand, rocks, beaver dams, stumps, etc., now spreads out and covers their property. He said that one solution is to clean out Kelly Brook.

Clara Ross, 82 Littleworth Road, stated that they pay City and State taxes and their home is their largest investment. They have lived there for over 20 years and planned to stay until they decided when they wanted to leave. She explained that there will be snow, rain, car washes, drainage from paved streets that will be coming from 30 plus homes across the street onto their land.

Larry Pitman, 82 ½ Littleworth Road, stated that developers have lawyers; he has friends. He stated that it seems that he can't do anything about his situation. The answer is always that "the developer did that."

Bob Hines, 9 Westwood Circle, lived there for 39 years. He said that there is an outlet prepared to the rear of this development and asked about the plan to develop the Walsh property. He said that this will be further development that will impact on the drainage

and on the Ross's property. His kids used to skate out there but it was off limits in the summer because you could drown out there. He stated that they currently have problems with their septic system and all he can see is more water. He feels that with another development coming right after this one that it will mean further impact on their land.

Mike Mosley, 84 Littleworth Rd., next door to the Pitmans. He stated that when he bought the property he was told that the property across the road was basically swamp land. He said that he thought that he would be safe since he was higher than his neighbors. He said that he can hardly walk to the Pitmans without sinking in the mud. He asked the Board to vote this project down.

Brian Spargo, 7 Westwood Circle, stated that he cannot walk very far behind his property without sinking in the mud. He said that at the Council meetings there has been talk about the other phases to this property and the other phases should be considered. He said that he wondered why there hasn't been any actual plans submitted and put into the folder for that area.

The public hearing was closed.

Steve Stancel stated that when a project comes before the Planning Board, they take a look at abutting parcels in anticipation that those parcels will be developed at some time in the future. They do look to make sure that the roads and utilities are sized properly to handle future growth. They also require future access easements so that easements are actually shown to go into the abutting parcels. By no means does it mean that the parcels are designed or engineered at this point. There may be some rough sketch plans but that doesn't mean anything. That land may or may not ever be developed in actuality. He said that they make sure that they plan for the future but obviously, the developer is not at the engineering stage yet. He explained that is why you see future access ways. He said that they now require that all subdivisions be cluster subdivisions. In the future, on those abutting parcels, when the projects do come in, the lots will be clustered and will take into account the environmental protection issues involved. He said that the regulations have the lots clustered in the upland areas and kept away from the wetlands. He said that roughly 50% of the area is required to be uplands in a cluster subdivision.

Ron Cole stated that everyone has to understand that if the Is are dotted and the Ts are crossed and everything is done the way that the City of Dover requires and the way the State of NH wants and requires – we just can't say no. Rezoning is one way to change things and the open space requirements is another. The Planning Board and Planning Department have attempted to rezone certain areas of the community from residential to a commercial or some sort of non-residential use. These recommendations were approved then sent on to the City Council and the City Council would not pass them. Those areas have now turned into residential houses. There is not much that we can do as a Planning Board in a situation like that. These are the best of times and these are the worst of times in the City of Dover. It is a great place to live and we are doing the best that we can to keep it a great place to live. If people want to move in we have to work with the developers in one way or another to mitigate the impact on the community. He said that

they cannot just say "no" because someone doesn't like the idea, and without any concrete reasons to turn an application down, because it then goes to court. He explained how, as the court date gets closer, and after the City has spent multiple thousands of dollars defending the City's unclear position on something, the City Attorney contacts him and decides that it should be settled because we are going to lose. In the meantime, we have spent multiple thousands of your tax dollars defending something that we are going to lose, this has happened more times than he can count on his fingers.

Steve Stancel stated that he empathizes with the abutters and their concerns regarding drainage, however, the applicant's engineer, the City's own engineer, as well as an independent drainage consultant have reviewed the drainage plans and all have approved the plan. He added that he has no other choice but to believe in those recommendations from the experts. He said that the Planning staff recommends approval and gave the recommended conditions of approval along with the Conditional Use Permit with the following conditions:

1. Add the owners' signatures to the plat.
2. Add the Surveyor's stamp and signature and the engineer's stamp and signature to the appropriate sheets.
3. Provide the Planning Department with a digital version of the final plat.
4. Provide the Planning Department with a copy of the NH Wetlands permit and add the permit number to the plat.
5. Provide the Planning Department with proof that the Environmental Protection Agency Notice of Intent permit application has been filed.
6. The applicant shall pay the Community Services Vehicle Capital Improvement Program fee, in the amount of \$10,772, prior to the issuance of the first building permit.
7. In lieu of providing on-site recreation facilities, in the amount of \$5,000, prior to the issuance of the first building permit.
8. Prior to recording the final plat, the applicant shall provide proof that an agreement has been reached with Ezra Green's Farm LLC to permit access to their sewer line in Littleworth Road and to permit the construction of the extension of Susannah's Lane. Neither the sewer line nor the road has been accepted yet by the City.
9. The applicant shall pay any outstanding invoices related to the peer review of the plan by Millette, Sprague & Colwell, prior to the signing of the plat.

Ron Cole asked who was responsible for the maintenance of Kelly Brook.

Steve Stancel thought that it was the State of NH that would be responsible.

Bob Stowell thought that the brook was not big enough to be a waterway of the State. In the case of the Ross' it is a common boundary between them and their neighbor. He believes that it would be the City or the landowners' responsibility if the brook was causing them a specific issue. It is on private property. There is not much that you can do because it is a brook and there are wetlands associated with it. Bob Stowell said that clearing vegetation and removing old trees can be done without permits from the State of

NH. It would take significant wetlands permits to do a whole repair and probably would not be approved because it is part of the natural process to have that debris as part of the natural cleansing process.

Steve Stancel stated that Paul Vlasich indicated that the culvert is the responsibility of the State because it is a State Road.

Ron Cole stated that he would take it upon himself to see if there is a way that the brook issue can be taken care of.

Dennis Ciotti suggested diverting the \$5,000 for recreation into cleaning up the brook.

Steve Stancel thought that we should check to see if remediation would do any good. He said that he isn't convinced that there is a remediation requirement there. He said that it could be researched.

Tony McManus asked if one of the requirements could be that the developer add to every deed language that no structure may be built within 50 feet of the wetland boundary.

Steve Stancel stated that it might be an impossibility on a few of these lots. He said that this project was proposed before the new wetland regulations. He said that there are some of these lots that are approvable today because they were in before the changes.

Don Andolina stated that it is worth noting that all the engineers noted that the drainage would work and would take care of itself without harming any of the surrounding properties. He said that he believes that the problem is the 30 inch culvert. If we don't plan for some corrective action we will have a lot of angry people and we could avoid that by making some upfront amendment to be sure that it gets done.

Steve Stancel stated that he doesn't believe that the 30 inch culvert is the problem.

Bob Stowell stated that the water that drains from the large watershed – when it gets to Littleworth Road and goes through the 30 inch culvert it is restricted at that point but he doesn't think that it is a problem. It is not a blockage, it just exceed the amount of water that can go though in a big storm event.

Beth Thompson made the motion to approve with the Conditional Use Permit with the conditions set forth by the Planning staff.

Steve Stancel stated that we can add a caveat to the conditions that they will research the options of the brook.

Steve Stancel explained that the \$5,000 would be utilized for some type of recreation in the area. It is possible that the money would go toward the trail system in the adjacent parcel or if there is a future project that comes in, it could be a playground.

Dean Trefethen seconded.

Dean Trefethen stated that he wasn't sure that we should divert the money from recreation, but if the City Engineer thinks that this is something that should be done, then it should be done whether this project is approved or not. He said if Community Services needed extra money to do the work then they should go to the City Council.

Beth Thompson stated that it could be made a recommendation that the City will look into fixing the culvert and brook, excluding the earmarking of the \$5,000.

Tony McManus stated that he is not in favor of the motion. He said that as a Planning Board the first paragraph in the Zoning Ordinance is to encourage the most appropriate use of land and he doesn't believe that this is the most appropriate use. In order to meet the bare minimum standard there are four pie-shaped lots and there are at least two and probably three lots where the wetlands are more than 50% of the lot. He thinks that the Planning Board has an obligation to people that are going to be buying these lots not to approve a plan that involves this much wetlands. It is asking for trouble. There are drainage problems in spite of the engineers. He said that as Bob Stowell has said these are models and he has seen models go wrong in the past. He said that he is not sure if the models include all of the impervious areas that are going to be created with the houses, driveways, roadways and that is going to divert the existing flow because there will be fill, foundations and we don't know where the water will end up but it won't be able to filter into the ground as it does now. In his belief it will go into the areas that are now wetlands. He said that he thinks that we are setting up the buyers of these lots for flooded yards and wet basements. He thinks that we are creating a problem for the back lots in the Ezra Green parcel. He said that Mr. Heins made a good point that we cannot look at this in isolation but must consider that there will be additional developments that will be connected and the flow will be in the direction of this project and then in the direction of the Littleworth Road. These are minimum standards and the minimum standards are not going to be the most appropriate use of the land and we have an obligation to say "no" to a developer. He suggested that they consider reconfiguring the design of this development in connection with the back land which we know will be developed in the future and they were unwilling to do that. It is now the policy of the City of Dover that that type of subdivision is no longer appropriate for the City and we need to consider that. For those reasons he will vote against it.

Chairman Cole asked for the vote on the motion to approve with the staff recommendations and removing the \$5,000 potential for the brook and putting it back in for recreational purposes.

VOTE 5 – 1

**Opposed – Tony McManus
Abstained – Mindy Anderson**

ITEM #7: New Business

Steve Stancel reminded the Board that there is a public hearing tomorrow night regarding downtown transportation. He recommended that everyone from Planning Board go. He

said that some of the recommendations will be adopted into the transportation master plan.

Steve Stancel stated that the Council is asking for the Planning Board recommendations as to whether Back Road should be a Scenic Road or not. We will be establishing a public hearing at the Planning Board's next meeting for that.

Steve Stancel stated that there will be a site walk this Thursday at the project behind Alden Woods at 5:00PM.

Steve Stancel stated that Strafford Regional Planning is holding a public workshop Saturday, October 2, 2004, at the Roland Roberge Community Center in Rochester, to discuss concerns about development in the region. He suggested that Strafford Regional Planning come to a future Planning Board meeting. He will be scheduling them for a future meeting.

Steve Stancel reminded the Board of the October 30 training for the State. The application has been handed out.

Tony McManus stated that there is a recommendation that we schedule a public hearing on the Martel Gravel Pit. He congratulated the Building Inspector for taking some action.

Steve Stancel stated that this requires a 15 day public notice so it will have to probably be the second meeting in October.

ITEM #8: Adjournment

Frank Torr made the motion to adjourn.

Beth Thompson seconded.

VOTE U/A