

**DOVER PLANNING BOARD
MINUTES OF MEETING
AUGUST 10, 1999**

MEMBERS PRESENT: Pete Lavoie, Reuben Hull, Jerry Reese, Ronald Cole, Frank Torr

MEMBERS ABSENT: Paul Beecher, Anthony McManus, Margaret Stevenson, Charles Maglaras, Karin Crittenden, Jeff Mason, Jeff Peasley

STAFF PRESENT: Bruce Woodruff, City Planner and Jacqueline Freeman, Recording Secretary

Chairman Cole brought the meeting to order at 7:15 PM.

ITEM #1: Approval of minutes.

Jerry Reese made the motion to approve the minutes.
Reuben Hull seconded.

VOTE U/A

ITEM #2: Consideration and acceptance of an application for a lot line adjustment of land for Gerald & Cathy Avery, Assessor's Map I, Lot 2C and 2F, zoned RM-12, located on Shaws Lane.

Gerry Avery stated that he is asking for a lot line adjustment to create the proper frontage to create a building lot.

Jerry Reese made the motion to accept.
Pete Lavoie seconded.

VOTE U/A

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

Bruce Woodruff gave the staff recommendations. He said that he wanted to clarify that the staff contacted the applicant's engineer and the NHDES and they received some conflicting information as to whether a State Subdivision Permit is required or not. He said they are asking that the applicant's engineer send a copy of the plans to DES so they can make a determination as to whether this needs a State permit or not. He said that he is pretty sure that no permit will be required, but that DES just wants to take a look at it.

Frank Torr made the motion to approve with the following conditions:

1. Add signature of owner to the plat.
2. Add surveyor's signature to the plat.

3. Revise the plat to correct the dimensional requirements for the RM-12 District in note #3.
4. Revise the plat to correct the building setback lines.
5. Revise the plat to correct the Utility and Maintenance Easement notation to indicate that it is in favor of Lot 1-2F.
6. Revise plat to add the abutters across the Bellamy River.
7. Provide the Planning Department with either a NH WSPCC Subdivision permit or a letter from NH DES station that no permit is required.

Pete Lavoie seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of a revision to a site plan of land for Seafarer Development Group (owner Hampstead Hospital Group) Assessor's Map L, Lot 50, zoned RM-12, located on Spur Road.* (28 units)

Steve Town, Engineer for Oak Point Associates, said that he has been involved in this project and the Cricklewood project since the beginning. He said that it was approved in 1995 and the expiration date is September 14, 1999. He said that they have all the State permits in hand, the sewer discharge permit and site specific permit. He said they could build the project as it is. There are 28 two bedroom units, about 800 sq. ft. per unit. He said that there is a road connection to Spur Road and there is a road connection to Clearwater Drive within Cricklewood. He said that they are proposing an amendment to this project to enlarge the units by 200 sq. ft, and adding 4 feet to each side of the units. The developer did not feel that the smaller units would be very marketable. There are three other improvements they are making. He said because the State added an off-ramp coming off the turnpike, the previous drive would have been dangerous so they have shifted the driveway. The second revision is to preserve a buffer strip along Spur Road. When the State widened Spur Road it also encroached on this property and cleared quite a few trees along the road, exposing half of the project to Spur Road. They are proposing to relocate the driveway further back on the Spur Road entrance and preserving the natural buffer. He explained the relocation of the sewer connection. He added that the amendments are a benefit to everyone. They are asking for no change in the developable area, no change in roadway and the traffic circulation, no change in the number of units, no change in the parking and no change in the general grading of the site. He said that they redid the drawings as a result of the TRC review. He said they are still waiting to hear from DOT on their review for the entrance to Spur Road on page C-2 of the plan.

Steve Towne said that one of the comments from the City Engineer was to take a look at the truck circulation around the project. He said that in talking to Division 6, Spur Road is a City road not a State Road, so they were not willing to review it. He spoke to Mike O'Malley at the Division of Turnpikes and submitted for review, a drawing showing that a WB50 truck will make the turning movements into the project. The pump station maintenance company for Cricklewood did some calculations for the buildout of

Cricklewood and the additional 28 units, and the only thing that has to be done is to change the motors in the pumps. The motors could be changed without shutting down the pump station. The developer said that he would be willing to pay for those improvements. The flow from the condos would not be affected by the changeover. Public Service of NH reviewed the project to be sure that there weren't any conflicts with utilities. He went over the landscaping plans.

Reuben Hull made the motion to accept the application.

Frank Torr seconded.

VOTE U/A

The public hearing was opened.

Robert Wunder, board member of the Cricklewood Condo Assn., 16 Blue Heron Drive, handed out a list of his concerns. He said that Unit #39 and its driveway is directly impacted by the easement and they are concerned that the impact will affect not only that unit but the other units also. He said the traffic will go across Unit #39's driveway and have a negative impact on that unit. He said that the unit was not built according to the plan so they are asking that the easement be moved. He added that it was the developer who built the driveway in a different location than the original plans and it is the same developer that granted the easement to this new development. He said they are willing to work with the new developer to find a solution to this problem. He said that another concerns involve the easements, the cost sharing of the roadways, as well as, the hook up costs and the change to the sewer pump station. He said that they think that it would be in the interest of the developer, Cricklewood Condo Association, and the City if they could reach an agreement as to how these costs are going to be allocated. He said that he has looked through the different easements that have been filed and there are discrepancies. He said they would like to have an opportunity to sit down with the developer and reach an agreement with respect to the cost sharing relative to this easement. He said they would like to ask that this easement be moved to a location that will have far less impact on unit 39, as well as the other units.

Richard Warwick, 2 Blue Heron Drive, director of the association, spoke about things being changed as to not impact wetlands. He said that they were told that if they want the road changed, they should have the wetlands marked because the developer would not because of the cost. He said that they feel that by changing the road, the whole area should be remapped, and the developer should reapply to the State, to see where the wetlands really are. He submitted a fax that he received from Paul Chamberlain to become part of the record.

Erik Orkin, 35 Clearwater Road, asked if everyone has gone out to walk the property and if not, he suggested that they do. He said that it is an absurd place to put a road and will greatly devalue all the units. He said that when he bought the property the realtor told him there were no easements on the property.

Linda Fillios, 3 Clearwater Road, stated that she is a certified appraiser and there are approximately 20 cars per hour going into Cricklewood after 5:00 PM. With the new development, it will be 40 cars per hour. She said that the road placement will devalue Unit 39.

Attorney Denise Pouleos stated that she is here on behalf of the developers. She said that she has done the title on the easement and the title on this project. The easement that comes in through Cricklewood into this project is an easement that was originally granted to the owner of this property by the development of Cricklewood. It was granted by meets and bounds. It was reserved by the person who owned Cricklewood when Cricklewood was developed. It was described in the declaration of condominium that was registered. It was specifically described that it was a utility easement, an access easement and a pump house easement. The plans were recorded at the Registry of Deeds. It's deeded by title. Subsequent to that time there were various conveyances. There was a foreclosure on the property that is currently proposed to be developed and a question as to whether the foreclosure wiped out those easements, and whether the developer of this property had the right to use the easement. That was resolved by Superior Court. The settlement agreement was dated in 1995, and recorded quite a while after that. The Superior Court determined that those easements are deeded easements. They are on the property by meets and bounds the way they are. At this time Cricklewood, on its own, couldn't change them. She said that she understands the concern about unit 39, but that is a concern because it was not built the way it was planned. She said when Cricklewood was developed there was going to be 64 units on this property. There is never going to be a design that doesn't require access through Cricklewood and that is why those easements were retained. The developer does not have a problem with working with Cricklewood, but, up until this point, he didn't have any authority to do that. The wetlands permits and all the other permits have been updated and are current. She said that they are not in a position to go back and make subsequent changes that are going to require new State permits, because if this project doesn't get started getting built by September, it will be built under the original approved proposal. She said that while they are prepared to make modifications that could work with the approvals, they are clearly not prepared to move the road because of what is developed there. They would have to get a deed to do that and the deed would have to not only come from Cricklewood, but would have to be released by every mortgage holder out there because they have leans on the property. She said that she can understand the concern with who is going to pay for this. There is a settlement agreement that requires every unit that is built on the new proposed land to pay in \$7,000 to hook up. There is a lawsuit between the people of Cricklewood and the former developer of that property as to where that money goes. These other issues are personal issues, they are title issues.

Robert Wunder stated that he would like to respond to the comment on the wetlands. He said that he would like to correct a number of points that were stated by the attorney. There is no suit to put these moneys into a civil case. He passed out a copy of the settlement agreement. They are saying this matter of the \$7,000 that is being paid is being paid by the developer to the Hawthorne Trust. The Hawthorne Trust was the developer of Cricklewood and they are saying that unit 39 was built incorrectly according

to the plans and it was that developer that made the easement. Although we have not received any benefit of the bargain, it was originally the developer's fault because he did not built the driveway and that unit according to the plan. As a result, he said they believe that there is not enough room for this easement to go between the pump house and that unit. It is unfair because of the way that unit was built. The developer receives the benefit of that bargain, not Cricklewood. He said that that matter is not in litigation and whether that easement is wiped out, we are saying that it can be moved and it should be moved, and they are willing to work with the developer to have that done.

Erik Orkin stated that the easement was granted based on one set of plans and they were built a different way and the people who own those units should not have to pay the price for what the developer did. To put an easement across that driveway is going to greatly decrease the value of those units. He said they are innocent of that matter, they just bought the units.

The public hearing is closed.

Steve Towne stated that the Wetlands Permit expired in 1997. He said they are not proposing to fill any wetlands. The project is going to be completely built in uplands so they did not renew the wetlands permit. He said they had the wetlands delineation verified two weeks ago by John Noel, a licensed soil scientist and it's noted on the drawings where the delineation is.

Bruce Woodruff said he did take a couple of site visits out there to look at the location of the driveway and it is a tight fit but it does seem to work. He said that it is highly doubtful that the DES would look at placing the road in a wetlands favorably knowing that the road could be placed in a location that would not affect the wetlands at all. He said that many of the other things that you have heard tonight are civil issues. There is in your packets a letter from Steve Towne outlining the status of all the different permit requirements and there is a copy of the settlement agreement that enables this to go forward. He pointed out that the issues of who pays for what utilities, easements, construction easements, snow plowing, lighting, road maintenance and other expenses is addressed in the agreement. He said that the agreement is a civil document and what the Planning Board has, is a plan before it that is an approved plan with a revision request. It's the recommendation of the Planning staff that you approve the revision to the approved site plan with eight conditions. Bruce added that the developer could go forward with the original plan as long as it begins before the September deadline. The only thing that they couldn't do that is on the original plan is bring the sewer line through the wetlands.

Frank Torr was concerned that the project was not built to the plans, even though it had a Building Permit and yet it was not picked up.

Bruce Woodruff clarified that by saying that Unit 39 was built substantially in the location that it was supposed to be built. It is the driveway location and how the driveway is laid out that is just a little different. He said there was supposed to be one

common driveway for two units, but two separate driveways were constructed. He said that it is a tough one when it's a private development. There is a driveway permit process for curb cuts on a city approved street, but this was not the case in this development. The onus is really on the owner and builder to place those in the approximate position, knowing that there were easements already in place.

Jerry Reese made the motion to table to a site walk.
Frank Torr seconded.

VOTE U/A

Chairman Cole scheduled a site walk for next Tuesday, August 17, 1999, at 6:00 PM meeting near Unit 39.

ITEM #4: Public hearing to consider an amendment to the first paragraph of Chapter 170-28.6, Telecommunication Facilities, to permit the replacement of existing antenna media on an existing tower on Garrison Hill without obtaining a Conditional Use Permit.

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

Ron Cole stated that we will not be taking any further action on this item this evening.

ITEM #5: Consideration and acceptance of an application for an Alternative Design Subdivision (ADS) Concept, for Katz Development Corp., (Owner Free Trade, Inc.) Assessor's Map K, Lot 18, zoned R-40, located on Middle Road and Hawthorne Road.

Malcolm McNeill stated that they have improved on the ADS plan and they feel that this is the best effort for this property. He went over the previous concept plans. He said that there was a recommendation by the Planning Director that 45 lots were appropriate, although in their opinion there was not a basis for that based on land use considerations or traffic considerations. He said that also in their opinion the maximum number of units permitted under the ADS was 54 and they requested 53. He said that comparing this to the 53 unit plan, there has been a reduction of roadway, a reduction of lots by 4, there has been an increase in the open space by 3% for a total of 58% of highly desirable land. He said that the development is further from the wetlands and the open space remains open for perpetuity. He said that they propose that the Hubbard Road residents be out of the homeowners association. He said that the number of children will be reduced by one, the number of occupants will be reduced by 9. There will still be a positive fiscal impact approaching \$3,000 per unit. He said that he delivered a commitment letter with regard to the project indicating that if this project in this present form is approved then they will proceed with it and will not utilize the 35 unit plan. He said they feel it is the best plan for the neighborhood, the City and the Planning Board.

Bruce Woodruff reviewed the letter received from Attorney Mitchell with his opinion on multiple preliminary plans. The City's attorney feels strongly that an applicant can come before the Board as often as they wish, with as many viable concepts as they wish to get your acquiescence as to when that particular concept is good to go as an ADS.

Frank Torr made the motion to accept the application.

Ron Cole seconded.

VOTE U/A

The public hearing was opened.

Mrs. Becky, 51 Applevale Drive, wanted to know what is going to happen to the catch basin. She said that is an issue that was not addressed. She said that Mr. Lavoie has been up to look at her property and agrees that something should be done.

Malcolm McNeill stated that it will be considered during the approval process.

Dick Koch, 17, Hubbard Road, stated that they have come to an understanding between the abutters and the developer in terms of the open space issues. He said he wanted a commitment that what they have agreed to with the developer is fine with the Planning Board and the City.

John Miskus, 28 Hawthorn Road, of the three plans he and his wife like this one the best. He asked if there was a possibility that access might be needed. He asked what is to prevent the private road to become public.

Malcolm McNeill stated that a condition of approval will be that the roads remain private. He said that they would also request that it be noted on the plans so anyone doing a title examination would see it.

The public hearing was closed.

Bruce Woodruff stated that there are some positives to this plan. He said that he has been instructed to continue to recommend the 45 unit concept, but the Board should vote as individual members of the Planning Board. With regard to the recommendation for 45 units, the Planning staff thought about this long and hard. We look at traffic, groundwater usage, utility usage, the number of legal residents increasing, and it is with that in mind, the 45 unit plan was recommended, but there are positives to the 49 units.

Reuben Hull stated that he would feel better having a 50 ft. wide right-of-way from a planning perspective, and having the opportunity to reduce it as opposed to coming back and enlarging it. From a planning perspective we should be looking at the concept for 20 years from now. It is possible that the neighborhood may change to where a road would go through there.

Malcolm McNeill stated that they intend this to be a private road. We recognize that conceptual approval is just that, but we feel that this plan with private roads, given the character of the neighborhood, is desirable and they feel bound by that.

Pete Lavoie said that he is thinking of the Fire Dept. having access from that direction. Watson St., at the light with Central Avenue and Stark Avenue cannot accommodate Truck One because it drags going up that hill. That might be a concern of still having a crash gate.

Frank Torr felt that that is the area where we have to leave some flexibility.

Jerry Reese made the motion to approve the 49 lot plan with the Planning staff's conditions.

Frank asked if Jerry would amend that to change condition B. to say: Access shall be from Middle Road and strike out the rest of that sentence. Also strike out F.

Jerry Reese amended his motion to change condition B to say: Access shall be from Middle Road, with the understanding that B. will be addressed at TRC. And to strike out condition F., as follows:

1. Protective covenants and homeowners documents shall be in place and approved by the Planning Board to include:
 - A. That the roadway servicing the subdivision shall be a private road and shall remain a private road.
 - ~~B. Access shall be from Middle Road with an agreed upon emergency accessway from Hawthorne Road.~~
 - C. That the common space and roadway shall be maintained and controlled by a Homeowners Association and all maintenance of the exterior of the lots, including snow plowing and lawn maintenance will be conducted by the Homeowners Association.
 - D. That no playground equipment, swingsets, sandboxes, basketball back boards, slides or climbing towers shall be place, installed or erected on any lot or on the common land or any portion of the development.
 - E. That all residences in the subdivision shall have their master bedroom on the first floor of the structure.
 - ~~F. That the existing lots having frontage on Hubbard Road which have previously been conveyed as part of the Adams Estate alternative design subdivision be included in the Homeowners Association and Protective Covenants. Details on any financial contributions or covenants to be agreed upon by the Hubbard Road homeowners and the applicant.~~
 - G. Any detention ponds shall be maintained by the Homeowners Association.
 - H. That the open space shall forever remain open space and protected in Perpetuity.
2. Off site improvements shall be determined prior to final approvals.
3. Applicant and City shall address the potential existing public accessway through the proposed project.

Frank Torr seconded.
VOTE U/A

ITEM #6: Old Business.

a. Discussion and possible vote on Mathes Hill Phase III subdivision on Danielle Lane and Spruce Lane. (21 lots.)

Jerry Reese made the motion to remove this item from the table.
Reuben Hull seconded.
VOTE U/A

Paul Connolly went over the changes that were made. He said that the tot lot was changed to lot 52 which is several acres in size and they added a sidewalk from Back River Road to Harland's Way. He said that they have no exceptions or reservations to the recommended conditions of approval.

Bruce Woodruff stated that they are proposing suitable vegetation such as abbreviates rather than a fence to delineate that back property line in the area of lot 52. He said that that would be our 13th condition.

Paul Connolly stated that Paul Martel will be conveying lot 52 to the City, so it will own the tot lot, the sidewalk and the abbreviates.

Pete Lavoie stated that it will be hard to mow the side slope away from that sidewalk.

Jerry Reese stated that Steve should talk to the School Department about the effect the sidewalk would have on the kids on Mast Road. He said that they are presently bussed, but should they have to walk with the new sidewalk, would they need a crossing guard?

Bruce Woodruff stated that he is not aware of whether Steve called the School Department but he is aware that it is their policy that everyone outside of the mile radius is bussed unless it is an area that may be hazardous this that may be an area that is. There is a possibility that some of the children within the mile radius, that are bussed now because of the road being hazardous, may be allowed to walk.

Bruce Woodruff stated that they could make an additional condition of the approval of the plan that either a crossing guard situation be investigated and determined based on need.

Jerry Reese stated that he isn't sure if it's the applicant's problem or the City's problem.

Frank Torr made the motion to approve with the following conditions:

1. Add signature of owner to the plan.

2. Provide the Planning Department with a copy of the NHDES Site Specific permit and add permit number to the plan.
3. Revise the plat to amend note #6 on sheet #2 to require that lot #52 (tot lot) be loamed and seeded in its entirety.
4. Submission of a contribution of \$2,100 for recreation equipment on the tot lot, due at the time of bonding.
5. Revise plat to show the 20% slope conservation areas.
6. Revise plat to add the Engineer's stamp and signature and the surveyor's signature.
7. Submission of a contribution of \$2,500 for Community Services capital improvements, due at the time of bonding.
8. Revise plat to adjust location of sidewalk to Back River Road to line up with the sidewalk from Harlan's Way.
9. Revise plan to change the six foot fence to a four foot fence and relocate the fence to the toe of the slope.
10. Revise plat to show location of gas lines.
11. Revise plat to show the removal of vegetation at the intersection of Danielle Lane and Spruce Lane and near the reconstructed culvert on Spruce Lane.
12. Address the 9 conditions listed on the City Engineer's memo of August 10, 1999, to the satisfaction of the City Engineer.
13. The property line between lot 52 and the residential lots be delineated by a row of suitable shrubs such as abbreviates.
14. The City and School authorities be notified of the installation of the sidewalk and what impact that has on students walking to Garrison School and the potential need for a crossing guard on Back River Road.

Ron Cole seconded.

VOTE U/A

ITEM #6: b. Discussion and possible vote on site plan for City of Dover athletic fields, located on Alumni Drive.

Jerry Reese made the motion to remove this item from the table.

Ron Cole seconded.

VOTE U/A

Ron Cole stated that the Board received a letter from Paul & Penny Seaver.

Thom Forbes stated that he feels it is a straightforward application.

Jerry Reese asked if a fence is an appropriate request to the School Department.

Thom Forbes stated that to be effective the fence would have to be 8 feet high and it would cost over \$100,000. They feel that once that area is cleared that there will be less chance of having students out in those back yards.

Bruce Woodruff gave the staff comments.

Reuben Hull stated that he tends to agree with the applicant's engineer on condition #8 recommending that rip rap be placed in the swale area. He said that it should be look at from an engineering aspect and not be a condition of approval. He said that maybe it should be more of an agreement

Bruce recommended that the condition be change to say that it be determined between the applicant and the City Engineer whether that is required or not.

Ron Cole asked the Seaver's to contact the School Department to see if they can work out something that can be mutually satisfactory with respect to separating their property as much as possible. He added that it is not like a football field where there would be a lot of people watching a game.

Frank Torr asked if in utilizing the fencing on two sides, if it could be reverse and put in next to the abutters. He said that he recalls how the parking area flooded and said that he would like that checked out by Engineering to be sure the drainage will be adequate.

Thom Forbes stated that the fencing that they have right now is on the baseball field and that is only a 4 foot high fence that you typically would have between the backstop and the dugouts. He said the Seavers are looking for an 8 foot high fence. Thom said that if there were to be any drainage problems it would have to do with maintenance of that headwall.

Reuben Hull made a motion to approve with the staff conditions to read as follows:

1. Provide the Planning Department with copies of the State Site Specific permit and the Wetlands Board permit.
2. Provide wheel stops or guard-rail for the perimeter of the parking lot to prevent vehicles from parking on grass areas.
3. Granting of a Conditional Use Permit for development in a wetland, with the Conservation Commission's recommendation that a conservation easement be placed along the shoreline of the Bellamy River.
4. Recommend screening of parking areas with Arborvitaes, adjacent to abutters.
5. Revise plan to show spot grades on the parking area.
6. Revise plan to provide a plan view of drainage of the field, including the location of underdrains to the satisfaction of the Engineering Department.
7. Revise plan to show irrigation system waterlines and sprinkler heads.
8. Recommend that rip rap be placed in the swale area if deemed necessary by the City Engineering and the design engineer.

Jerry Reese seconded.

VOTE U/A

ITEM #7: New Business

Bruce Woodruff stated that the Planning Director directed him to ask the Board to begin reading the text of the ADS and Subdivision Regulations over the next two weeks. He said that we will begin discussions to make changes to those ADS regulations. He said that they would like to focus in on the portion of the ADS regulations where it talks about the definition of the ADS, what it should be, what the purpose and the concept of it is. He said that some applications come before this Board that may meet the minimum letter of those regulations, but maybe not the concept and the purpose.

Ron stated that we also need to look in the Statutes as to what the responsibility of the Planning Board is and the boundaries that the Planning Board has in approving and disapproving something.

Ron Cole stated that we have a letter from Civilworks looking for a one year extension for Pat Craigin's 12 unit apartment site plan, on Knox Marsh Road, that was approved on October 21, 1998.

Reuben Hull made the motion to approve the extension.

Jerry Reese seconded.

VOTE U/A

ITEM #8: Adjournment

Jerry Reese made the motion to adjourn.

Reuben Hull seconded.

VOTE U/A