PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Minutes of May 10, 2010

The Peterborough Planning Board held its regular monthly meeting on Monday, May 10, 2010 at 7:00 p.m. in the Selectmen's Meeting Room of the Town House.

Members Present: Chairman Leandra MacDonald, Vice Chair David Enos, Richard Freitas, Michael Henry, and Ivy Vann.

Staff Present: Laura Norton, Administrative Assistant, Office of Community Development.

Chair MacDonald called the meeting to order at 7:00 p.m. She introduced the Board members and staff. Chair MacDonald then appointed Alternate Freitas to sit. She noted the first item on the agenda was an application for subdivision approval on Highland Drive.

MacGarvey Application:
This application by Lillian MacGarvey is to transfer an existing nonconforming lot as a building lot pursuant to §245-31 (B) of the Zoning Ordinance. Mrs. MacGarvey introduced herself as well as her daughter-in-law Joanie MacGarvey.

The Board took a moment to orient the location of the lot on the graphic provided. Ms. Ogilvie pointed out the lot was located on Highland Drive and backed up to the MacGarvey residence on Glen Drive. Ms. Ogilvie noted that the lot was located in the Family District "where the minimum lot size is 40,000 square feet and required frontage of 150 feet." She noted "the lot is nonconforming because it has only 111 (+/-) feet of frontage" adding "in a case like this where a contiguous lot is not developed and nonconforming, the zoning ordinance has a provision that requires the need for Planning Board approval for it to be transferred as a building lot. That is what required Mrs. MacGarvey to come in." Ms. Ogilvie explained "our ordinance (§245-31 (B)) has the provision that calls for the owner to come in and even though it is not technically a subdivision it requires a subdivision approval." Ms. Ogilvie went on to note "there are no surveyed plans involved, as the lot already exists."

Mrs. MacGarvey noted septic designer Carl Hagstrom had made a site visit to the lot on April 9th and had provided a letter of his findings. She noted the lot was found to be relatively flat with no signs of wetlands or drainage problems. She went on to note her husband had bought the lot over 40 years ago and never developed it adding "all these years we paid taxes on it separately."

Mr. McCutcheon introduced himself as an abutter and asked "has a perc test been done?" Ms. Ogilvie replied she did not know whether Mr. Hagstrom did a perc test or relied on soils data for his report. Chair MacDonald interjected "the land can be transferred but not built on without a perc test."

A brief discussion about the lot as a building lot followed with Chair MacDonald reading from the ordinance "the Planning Board shall take into consideration the character and density of the

surrounding area, the size of the surrounding lots, and, if not on the public system, the ability of the available land area on each of the subject lots to support a septic system." She then reiterated the opinion of the septic designer provided for the record.

Mr. McCutcheon asked if the lot met current zoning with Chair MacDonald replying "no, it does not meet the 150 foot frontage but it *is* a lot of record." The members briefly discussed the trapezoid shape of the lot in that it is wider in the back (where it abuts Mrs. MacGarvey's residence) than the front. Ms. Ogilvie noted "it meets the area required lot size for a single family home but lacks the frontage." Chair MacDonald added "the two lots are contiguous to each other so there is no opportunity to add frontage because the lots are back-to-back."

Mr. McCutcheon asked about a letter submitted by Mr. & Mrs. Irwin, Highland Avenue abutters. Chair MacDonald replied that there had been a letter submitted and the Board would review and discuss it after the application had been accepted. She then noted she would entertain a motion to accept the application as complete. A motion was made/seconded (Freitas/Henry) and the application was accepted with all in favor.

"Now let's talk about the waivers" said Chair MacDonald. A brief discussion regarding the constraints of the lot and waiving all the subdivision checklist items followed. It was noted that no building could take place on the lot without an approved septic system design being done. Mr. Enos pointed out his concern about the language used noting the Board would actually be conveying the lot as a "building lot" not a "buildable lot." He added "that is something we need to address, I have a problem making that stipulation when that is something we cannot do (because we don't know if it is buildable)."

The letter from Mr. and Mrs. Irwin was discussed, specifically their concerns about the lot and the septic requirements. Mr. Hagstrom's findings were re-reviewed with the members feeling comfortable that due diligence must be done (including a perc test) prior to any construction. The members also noted the lot was a lot of record with its own tax number and tax card.

There was no further discussion and the public hearing closed at 7:15 p.m.

Ms. Vann in at 7:15 p.m.

Deliberation:
Mr. Henry noted he had no issues with the application with Mr. Freitas interjecting "it certainly conforms with the neighborhood." Ms. Vann noted that she had driven up to take a look at it and is comfortable with the request; also it is accordance with the Master Plan adding "I would rather see it happening here than out at the end of a long driveway."

Chair MacDonald stated she would entertain a motion from the Board. A motion was made/seconded (Henry/Enos) to approve the application with all in favor.

Minutes:
A motion was made/seconded (MacDonald/Henry) to approve the Minutes of April 12, 2010 and April 19, 2010 as written, with all in favor.

Other Business:
The Board entertained a request by Robin Hulbert of Nubi River Partners LLC for a 5 year extension on the convertible land on his property, (Notice of Decision, Case No. SB-2005-09, September 19, 2005). Mr. Hulbert is requesting an extension of an additional 5 years on the convertible property (to September 19, 2015). One member noted that when Mr. Hulbert came to the Planning Board several years ago when he was putting the development together "we made a suggestion they reserve some of their land as economic convertible land (which they did) and were given a 5 year time period on it." The members discussed the number of condominiums built and sold in the development, noting at least six of the twenty-five condos were still on the market. "I really don't have a problem with it" said one member with Mr. Freitas interjecting "I don't either." A motion was made/seconded (Vann/Henry) to grant the request for an additional five year extension with all in favor.

Presentation of Capital Improvements Program:
The members briefly reviewed the CIP for FY11 – FY16, agreeing it was straight forward and in order. Several members expressed concern over the financial hits in FY 2013.

Appointments:
The members discussed the status of Mr. Enos and Mr. Monahon who are both up for a three-year re-election to the Panning Board. The members also noted and acknowledged Ms. Vann was interested in assuming the seat vacated by Mr. Perry late last year. Chair MacDonald asked the members to "put their thinking caps on" about potential alternates for the Board. She noted she was trying to interest Bill Groff adding "it would be nice to get a lawyer back on the Board."

Report Out of Board Members Serving Other Committees:

Minor Site Plan Review Committee: Mr. Enos reported the Minor Site Plan Review Committee had met earlier that day. He described the request by Microspec for an addition to an existing building located on the Jaffrey Road., in the Business/Industrial District. Mr. Enos went onto describe the location of the addition, the parking concerns, a slight increase in impervious surfacing, and the storm water management needs. He noted the property was also located in the Groundwater Protection District. Mr. Enos described the need to make repairs to and remove trees growing in the detention pond prior to issuing an occupancy permit for the addition.

Wetlands Workgroup: Mr. Enos also reported back to the members about the status of the Wetlands Workgroup meetings. He noted they had agreed to meet twice a month and "increased work output is our objective." He went on to review the changes in the proposal, noting the recommendation to go with a single evaluation method (the New Hampshire Method) and how an applicant would go through the process, then get to the table to see their results. He noted Ms. Carr had volunteered to do a comparison of the existing and proposed ordinances "side by side" to see the differences. He also reviewed an exercise Mr. Lundsted had done with five different wetland properties in town and led a brief discussion about what other towns are doing for buffers and how they are implemented (including conditional use permits, special exceptions, special permits, and even authorization from the Board of Selectmen). Mr. Enos added "and in Wakefield, New Hampshire you have a choice of either applying for a special exception or a

conditional use permit – it is your choice, you choose where you want to go." With a chuckle one member interjected "I know where I would go."

Additional discussion about buffer protection, setback mitigation and wetland crossings followed. The flexibility offered by the proposed ordinance was also discussed as well as the Zoning Board of Adjustment's lack of flexibility and planning opportunities under its statutory authority. One Member noted "you get input from the Conservation Commission and go to the ZBA with a proposed wetland crossing, then that Board rules on the crossing. They just say yes or no, they do not have flexibility and they are not planners – that is not their job." The members discussed the realization that many applicants will bring in the narrowest crossing "whether it is the best location or not. There is no negotiation involved to get the best plan." Another member interjected "there is no chance to do any planning *that* is the real problem with the process, they are a judicial board and it is not their job." Mr. Freitas noted "it is like the Building Inspector, he will tell you what is wrong but he will not tell you how to fix it." The Members briefly re-discussed the potential of joint Planning Board/ZBA meetings.

Mr. Enos added the workgroup was going to review and compare the current Shoreland Protection regulations with the proposed ordinance noting "that is our next order of investigation, we felt that would be a worthwhile thing." Mr. Enos went on to assure the members "we are not looking to weaken the shoreline regulations; we are attempting to bring the wetland regulations up to the same level of standard." Mr. Enos concluded by describing the Workgroup as "out the door, going very far, very fast."

Ms. Vann questioned the sole use of the New Hampshire Method and asked about any procedure or petition to use the results of another method. Mr. Enos replied "country-wide there are over 100 methods to assess the function values of wetlands" adding "but in our area the three most common are the Army Corps of Engineers Hydro-geomorphic Method, the Highway Method and the New Hampshire Method." He went on to note that the New Hampshire method is used about 90% of the time adding "it is expedient in this climate." Ms. Vann noted "if the New Hampshire Method is used 90% of the time, that is reasonable."

Chair MacDonald briefly reviewed the New Hampshire OEP State Planning Conference she had attended over the weekend adding "I learned a lot about roads." Ms. Ogilvie also attended the conference and spoke briefly on form-base codes.

The meeting adjourned at 8:50 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant

Approved June 14, 2010