

PLANNING BOARD
Town of Peterborough, New Hampshire

Minutes of February 10, 2020

Members Present: Dario Carrara, Rich Clark, Sarah Steinberg Heller, Judy Wilson Ferstenberg, Tyler Ward, Alan Zeller and Lindsay Dreyer

Also Present: Peter Throop and Laura Norton, Office of Community Development

Chair Carrara called the Meeting to order welcomed the audience and introduced the Members and Staff. Chair Carrara then appointed Ms. Dreyer to sit for a full Board.

Minutes:

A motion was made/seconded (Zeller/Ward) to approve the Minutes of January 22, 2020 and January 27, 2020 as written with all in favor.

Subdivision Approval of a 11.39-acre parcel owned by James Walsh located at 560 Old Greenfield Road, Parcel Number R007-034-000 in the Rural District. The intent of the proposal is to create three residential building lots, each with driveway access from Old Greenfield Road, and one open space lot in accordance with Zoning Ordinance Section 245-26 “Open Space Residential Development (OSRD)”.

A motion was made/seconded (Zeller/Ferstenberg) to accept the application as substantially complete with all in favor. Chair Carrara then invited the applicant to present their request.

Chris Giada, Wetland and Soil Scientist from Fieldstone Land Consultants, PLLC introduced himself and noted was the representative for the applicant. He began his presentation by noting the lot was quite oddly shaped. “It is not *ideal*, but we do meet the acreage and frontage requirements to subdivide in the conventional way” he said adding “but we feel it would create awkward-shaped lots that are not appealing.” He went on to say the Open Space Residential Development (OSRD) ordinance (*a form of residential subdivision that encourages and facilitates maximum protection of open space by allowing housing units to be grouped or clustered on a site with reduced conventional dimensional requirements*) allowed them to create more conventional lots with homes closer to the road while providing greater conservation land.

Mr. Guida noted the development would be managed by a Homeowners Association and the conservation land would abut existing conservation land along Gulf Road (a Class VI Road).

Mr. Guida pointed out a graphic with color-coded areas noting the red indicated the house lots, the orange indicated the boundary setbacks and the green pointed out the wetlands. He noted a culvert, the existing roadway and the location of a (now) demolished structure (“with a fair amount of debris and trash remaining”) and reiterated their intent to make the best use of the land and most conforming lots possible.

Mr. Guida concluded by noting Mr. Throop had done a good job with his Staff Report and told the Members “we have no problem with the requirements of the ordinance and the recommendations noted.”

For the record, Mr. Throop briefly reviewed the OSRD ordinance. He pointed out the three streams that flow southeast to northwest on the lot, and while subject to the Shoreland Conservation Protection Zone, no part of their 100-foot buffer is within the building tracts. He also noted the four wetland areas with the Wetland Protection Overlay Zone and its associated buffers shown. With regards to the required 75-foot vegetative buffer Mr. Throop noted the tract was mostly forested and pointed out cultural features such as stone walls, steep slopes, existing wood roads and the (already) conserved lands abutting the east and west boundaries. He noted the development design criteria (*proposed development is consistent with the purpose and goals of the Master Plan; the individual lots, buildings and parking areas be designed to minimize alteration to the natural and cultural surroundings and the common open space be accessible to all home owners*) deserved particular attention and a brief discussion about potential common space access, access routes and cross access easements followed. The applicant agreed to a cross access easement across Lots 2 and 3 for access to the protected open space.

Mr. Throop also noted the internal dimensions of the ordinance state that the individual lots be accessed only by interior roads. “It is a requirement of the ordinance and that is why I raise it” he said adding the need for a discussion for a waiver or some sort of relief.

With no other questions from the Board Chair Carrara noted they had held a Preliminary Consultation regarding this project a few weeks ago “and in general, we had no issues with it then” he said. He then opened the hearing to the public.

Francie Von Mertens introduced herself and while a member of the Conservation Commission, “I am not speaking for them as we have not met yet” she said. Ms. Von Mertens told the Board the use of the OSRD had been sporadic at best “and here we have two applications for it in the last month.” Ms. Von Mertens advocated the Board look to the future noting “the purpose of this ordinance is to conserve land by placing the residential lots together and conserving the natural resources.” She told the Members involving the Conservation Commission was not required by the ordinance, but they were equipped and willing to provide natural resources inventories. “We hope in your wisdom you will invite the Conservation Commission to the table” she said.

Loretta Laurenitis introduced herself and noted she’d asked about the involvement and/or role of the Conservation Commission in this project at the Preliminary. Mr. Throop replied, “there is no impact to the Wetland Protection Overlay Zone (WPOZ) and the applicant is in compliance with the regulation.” He also noted an anticipated condition was that *prior* to initiating any work on the site the applicant will survey and locate on the site the boundary of the WPOZ on Lot 2 and Lot 3 and install highly visible silt fencing and monumentation markers in accordance with the wetland monumentation requirements set forth in 233-52.C.2 of the Planning Board Site Plan Review Regulations. Citing the wetlands, streams and steep slope he told the audience “there are not a lot of options for where to put the dwelling on these lots.” He further noted the plan maintained a good, unfragmented block of terrain and reiterated the value of what is being protected per the calculation for density as stated in the ordinance. He concluded by noting another anticipated condition of approval was the removal of “the fair amount of debris” (old appliances, farm equipment, random metal pieces and pipes, etc.) that remained on the site.

Norman Judge introduced himself as an abutter and asked for clarification on the proposed easement. “I am not crazy about an easement behind my property” he said. When his home was located on the graphic, it was determined he was not affected by the proposed easement. “And that an easement would only happen with your permission” interjected Mr. Throop.

Cheryl Orcutt introduced herself as an abutter and asked about the driveway access (right from) Old Greenfield Road. “Does that defeat the purpose of the ordinance?” she asked. Mr. Guida replied “no” and explained the environmentally friendly use of the existing road would allow the homes to be closer to the front of the lots while allowing the open space to accumulate to the right of the boot shaped lot. He also reiterated the *very* unusual lot configurations that would be created if the lot was subdivided by the conventional subdivision process in the Rural District.

With no other questions from the public Chair Carrara closed the public hearing and reviewed the Deliberation Statement.

Deliberation:

Chair Carrara began by noting he thought they should follow the recommendation of the Staff Report and move on to the review of the General Requirements for an OSRD project. These requirements included *Location, Permitted Uses, Tract Area, Allowable Density, Allowable Lot and Yard Requirements, Frontage and Setback Requirements, Landscape Buffers, Water and Septic Systems and Streets and Walkways.*

The Members briefly discussed these general requirements including the internal dimensions of the Frontage and Setback Requirements and the requirement for access of the lots within the development be only through internal roads. Mr. Clark noted if that were the case, the use of internal roads for dwelling access would include the crossing of a wetland. The Members agreed separate driveway access from Old Greenfield Road was preferred “and there is nothing opposed to what the applicant is proposing” said Chair Carrara. The Members also discussed the landscape buffer of at least 75 feet from the perimeter to be maintained as a permanent natural vegetative buffer. When it came to review of the design and placement of walkways and sidewalk the Board agreed “they don’t make much sense here.”

Mr. Throop reviewed the options for open space ownership and management (via a Homeowner’s Association, a certified Conservation Organization or adoption by the Town of Peterborough). Mr. Throop interjected there was not a lot of interest by the town in this and quite frankly, it is not likely that conservation trusts would be interested. “Almost always it ends up as an HOA with deed restrictions” he said. He then reviewed the need for consideration of **three modifications.**

Given the configuration and development constraints of the tract the applicant is requesting a modification to the ordinance (245-26.I.3) to permit individual house and driveway access from or the existing frontage along Old Greenfield Road.

A motion was made/seconded (Zeller/Clark) to modify the ordinance (245-26.I.3) to permit individual house and driveway access from or the existing frontage along Old Greenfield Road with all in favor.

The applicant is also requesting a modification to the ordinance to allow driveway crossings of the buffer and potential siting of septic systems and yards within the buffer along the frontage of Old Greenfield Road.

A motion was made/seconded (Zeller/Clark) to modify the ordinance to allow driveway crossings of the buffer and potential siting of septic systems and yards within the buffer along the frontage of Old Greenfield Road with all in favor.

Findings: that the proposed project is consistent with the OSRD Development's *Design Criteria:* to be consistent with and comply with the general purpose, goals and objectives and standards and provisions of the Master Plan; individual lots, buildings and parking areas be situated as to minimize any alteration of the natural, cultural and historic features of the land and suitability of common open space be accessible to all intended users.

General Requirements: including location; permitted uses; tract area; allowable density; allowable lot and yard requirements; frontage and setback requirements; landscape buffers and water and septic systems.

Mr. Throop noted that in preparing the deed and open space documents a cross access easement along Lots 2 and 3 give all parties access subject to town approval. Mr. Ward interjected that he would like the Conservation Commission to be involved with that process.

A motion was made/seconded (Ward/Zeller) to create a cross access easement along Lots 2 and 3 give all parties access with all in favor.

Finally,

A motion was made seconded (Zeller/Clark) to approve the subdivision as shown on the plan entitled: "Subdivision Plan, Open Space Residential Development, Tax Map Lot R006-034-000, (560 Old Greenfield Road) Peterborough, NH, prepared for Brookwood Capital LLC, Land of James P. Walsh", Prepared by Fieldstone Land Consultants PLLC, at a scale of 1"=60' dated November 12, 2019, last revised February 6, 2020, subject to the following conditions to be met prior to signature of the plan:

- The applicant shall obtain driveway permits for each lot as required by the Peterborough DPW.
- The applicant shall demonstrate receipt of State Septic System approval for each building lot.
- The Applicant shall submit a Homeowner Association Agreement to the Town for review and approval by the Town Attorney prior to plan signature.
- The Community Development Director in consultation with the Board Chair or Vice Chair, and with the review and approval of the

Town Attorney, shall approve the mechanism and language for permanently protecting the Designated Open Space parcel.

- The following notes shall be added to the plan:
 - No building permits will be issued until the plat and all OSRD documents have been recorded in the Hillsborough County Registry of Deeds.
 - Persons or entities identified as having the rights of ownership over the common open space shall be responsible for its continued upkeep and proper maintenance.
 - All boundary monuments shall be set in the field in accordance with the subdivision regulations prior to signature of the plan.
 - Street Addresses for each residential parcel shall be obtained from the Fire Department and added to the plan.
 - Prior to initiating any work on the site, the applicant shall survey and locate on the site the boundary of the Wetland Protection Overlay Zone on Lot 2 and Lot 3 and install highly visible silt fencing or construction fencing and monumentation markers in accordance with the Wetland Monumentation requirements set for in Section 233-52.C.2. of the Site Plan Review Regulations.
 - The applicant shall close out the demolition permit to the satisfaction of the Peterborough Code Officer , including removal of all structure and miscellaneous debris from the site including but not limited to miscellaneous metals, household trash, appliances, old farm equipment and tires, paint cans, etc. with all in favor.

Public Workshop with the Citizens for Responsible Zoning:

Chair Carrara read the notice: The Planning Board will consider a citizen request that asks the Planning Board to amend the following: Zoning Ordinance Section 245-15.3 “Traditional Neighborhood Overlay Zone 1 (TNOZ 1)” to modify Dimension Standards, Conditional Use Permit criteria and Waiver criteria; Section 245-24.1 “Accessory Dwelling Units (ADU)” to increase the permitted size of an ADU; and Section 245-6 “Family District” to allow by special exception, the conversion of a single family home to up to a three unit multi-family dwelling. The purpose of the workshop will be to discuss the scope of the proposed amendment and potentially identify draft language for consideration at a Public Hearing in February 2020.

Chair Carrara then read a statement from Vice Chairman Ivy Vann, who was unable to be present. Ms. Vann shared her observations as to why she thought the Board cannot undertake their zoning request at this time. Specifically Ms. Vann noted the timeframe and the inability to do significant public outreach. Her statement went on to note the work accomplished and commitment of the newly formed Housing Task Force addressing zoning, code amendments and subsequent Master Plan updates and noted the proposed changes were not insignificant. “We need time to understand the build-out implication of increasing the frontages and lot sizes” she wrote. She concluded by noting that in short, she thought the it was in the best interest of the future of the Town of Peterborough to not undertake any changes until the Housing Task Force has completed their work, the Master Plan was updated and the new Director of Community Development was well-embedded into his or her new position.

Joann Carr introduced herself as a spokesperson for Citizen’s group. She began by thanking the Board for their time and attention. She noted they group would like to address three items: **First:** Retain the Traditional Neighborhood Overlay Zone 1 (TNOZ 1) but amend the dimensional requirements to those described in the Citizen’s Petition (Amendment 15) at the 2019 Peterborough Town Meeting (*Amendment 15 was a Citizen’s Petition to repeal Section 245-15.4 Traditional Neighborhood Overlay Zone II in its entirety and amend 245-15.3 Traditional Neighborhood Overlay I to increase minimum standards for frontage, lots size and setback requirements*). **Second:** Amend the Accessory Dwelling Unit (ADU) Ordinance for greater flexibility in the permitting process of ADUs and **Third:** Review of a list of criteria for inclusion in the zoning code for granting Conditional Use Permits (CUPs) in the TNOZ 1 Ordinance noting it would bring the ordinance into consistency with the state guidelines for innovative land use, including affordable housing, protection of historic buildings and cultural resources; providing adequate sidewalks and parking that does not detract from the streetscape and be in keeping with the massing and architecture of the neighborhood. Requests *for* and granting *of* waivers should be very specific and should not be contrary to the public interest; observe the spirit of the ordinance, not diminish the value of surrounding properties with substantial justice done. Ms. Carr likened the criteria to that of the Zoning Board of Adjustment’s Variance and Special Exception Criteria and concluded that CUPs be clear as an innovative land use mechanism in need of standards (by which) the Board may administer the ordinance. “The nexus is that there is a public benefit provided (like the protection of historic buildings) and if a tear down is indicated that building be replicated as best as possible to keep with the neighborhood streetscape.

Holding up a bound manual Ms. Carr said, “we have a book of recommended guidelines by the State” adding “these are standards for CUPs and criteria for waiving the standards.” She concluded by reiterating that the language resembles that of the legal verbiage of Special Exceptions and Variances that one would encounter if going before the Zoning Board of Adjustment, “and CUPs should be held to that high of a standard.”

Mr. Clark asked if the guidelines from the State were mandated with Ms. Carr replying “no, they are guidelines.” Concerned, Mr. Clark noted “I am not sure if I like the feds or state telling what is best for us. I am not sure they *know* what is best for us and I hesitate to farm it out.” He concluded by citing historic buildings as an example. “Is the building historical or is it just old?” he asked adding “it can be questionable.” Reiterating the standards are guidelines Ms. Carr suggested they review them and apply them appropriately. Mr. Clark told the Members he had been in favor of hearing what the Citizens’ Group had to say and voted for the workshop they were currently involved in “but there is a *lot* more to this” he said adding “some of it seems reasonable to me but that is just me, we need tremendous outreach from the public on this.”

As Ms. Carr cited the outreach prior to the vote on Amendment 15 at the last Town Meeting Chair Carrara interjected “and it did not pass” with Ms. Carr replying, “yes, it did.” At this point Mr. Throop briefly redirected the discussion by noting Amendment 15 has *two* parts to it. “There were two things going on” he said adding “so the voter’s intent could really not be clear.”

Chair Carrara suggested a straw poll in an effort to move forward. He began with Ms. Heller .

Ms. Heller noted she was (wholeheartedly) open to the discussion but not the timeline. She went on to say, “I am on board with the process, but I feel it is a big ask considering the deadline to bring this before the Board was in October. I feel we can get there if we are patient, slow down and not rush it.” Ms. Heller went on to say, “I am not resistant at all to talking but I am resistant to be rushed into it.” She concluded by noting “I am speaking for myself but there has to be some faith given here.”

Mr. Clark agreed that the process needed a great deal more of public input but noted one large, contemptuous item was the looming “threat” of the potential of a 16-unit dwelling complex being able to be built in the interim. “Other things are not so black and white, but can we do something about that? he asked.

Ms. Ferstenberg also agreed noting there was a lot to do in quite a compressed amount of time. “It is going to take more time” she said adding “and the historical aspect of thing is incredibly important.” 2

Mr. Throop noted “This is an overlay ordinance” he said adding that by meeting the design and the criteria of the ordinance it is considered the public benefits from it. “That is the nature of the innovative ordinance, it allows for flexibility” he said.

Andrew Bell introduced himself and asked, “can you supply me a practical implication of what is being proposed here?” Mr. Throop used the example of the proposed changes in lot sizes (5000 to 7500 square feet as the minimum lot size) and spoke briefly on how the change may affect any number of properties. “We do not have an analysis, so nothing is for sure” he said.

Chair Carrara interjected they had other topics to discuss and suggested they move on to them. Ms. Heller agreed adding “the problem is we don’t all agree, so I implore us to tap the brakes.” She reiterated she was committed to the discussion, but the timeline and scope was much larger than one or two discussions. “This just illustrates the problem” she said.

Libby Reinhardt introduced herself and reminded the Members the Housing Task Force was literally looking at three or so years to get anything on the ballot at Town Meeting. She reiterated the threat of the ordinance allowing a 16-unit per acre development. As an example, Ms. Reinhardt noted “Governor Square if less than 6 units per acre and the Cheney Avenue Garden Apartments are 3 units per acre, and those are all on big parcels of land.” It was also noted the new approval for 16 units on Concord Street averaged 2.5 units per acre and the development on Vine Street was an 8-unit development on just about 1 acre. “To allow 16 units on an acre, that is just nuts” she said and noted the timing of coming out of a recession with building on an up-rise, “we are really asking for small changes in the dimensions of TNOZ 1 and waiver regulations so that public benefit can be created, which is not what it does right now.” She concluded by saying “the existing potential in the current TNOZ 1 is too dense and with waivers, could be denser. At three years out we feel an urgency to put some guard rails up around this ordinance while the Housing Task Force does its job.”

Ray Cote introduced himself and urged the Board not consider the groups’ request for May. “I don’t see it working and it needs to be talked about” he said adding “I urge the Board not to bring this forth in May.” Mr. Cote noted the word “historical” was a strong word with impacts as to *what is* and *what is not* and noted his concern about rushing in without analysis on what is considered historical and what is not. “We do not have enough time to make it happen, it is too late” he said.

Chair Carrara concluded by reviewing several points, the first being the TNOZ 1 offers a benefit of higher density using existing infrastructure, spreading out fixed costs. A look at density and numbers of units is a concern. “Whatever the units per acre, the intent is to back that down to a lower number and then add incentives (such as work force housing or preservation of a historical building) for increased units and long term, affordable housing being addressed” he said. A brief discussion about the value of single-family homes, local inventory and *affordability* equating to *renting* followed.

Stephanie Hurley introduced herself and agreed the process was too fast to act on but reiterated that recommendations from the state and how the state shapes development should be considered and that the proposed amended recommendations for the dimensional requirements were in fact, trying to make things easier to understand. “Those dimensions were calculated by the Citizen’s Group to be used as the new guidelines” she said.

Mr. Zeller asked about the Citizen’s Group and who present may be involved with it. When several audience members raised their hands Mr. Zeller asked, “Is the Housing Task Force not working fast enough for you? Are updates to the Master Plan and suggestions for zoning changes not timely enough? And if not, why?” Ms. Reinhardt replied “the Housing Task Force is being driven by about 30 people. It is great but it is moving slowly, it is designed to be a three-year process and we are worried about the development of 16-unit per acre development. It is as simple as that.”

Chair Carrara redirected the discussion to ADUs. “We need to talk about these as well, it is on the agenda, and it is getting late.” He reviewed the current regulation and dimensions for ADUs (minimum of 400 square feet, maximum of 750 square feet or 30% of the gross living area of the principal home). A brief discussion about increasing the size of AUDs followed which included increasing the number of square footage to 800-850 square feet (“a much more realistic number”) excluding stairwells in the square footage calculation (“not being penalized for having an ADU on the second floor”) which increases the feasibility of the maximum number of bedrooms, which is three. Mr. Clark asked for clarification on the purpose of ADUs with *infill* and other buzz words such as *downsizing*, *contribution to the diversity of the housing market* and *affordability*” being offered up. It was noted one of the units in the ADU formula must be owner-occupied (a principal place of residence) and that these units have a memorandum of adequate notice, signed and notarized by the Code Enforcement Officer and recorded at the Hillsborough County Registry of Deeds. While the discussion veered to the benefit of an ADU to assist a new home buyer with mortgage payments and well as

flexibility for first time home buyers, it was noted that ADUs were a very powerful tools that the town would want to monitor the scope of as ADUs have attractive rental potential as Air B&Bs which may keep them out of the available housing stock.

Mr. Ward noted he'd been listening and was a bit overwhelmed by what was presented and what needed to be done. He acknowledged the Housing Task Force was moving along at its own pace and failed to see how they could work through everything presented, (even simple changes to dimensional requirements) in the time frame they had. All the Members agreed it had taken a long time to get where they were with the TNOZ 1 and while risking being remiss, all agreed they had underestimated the timeframe in which they may be able to come up with even a temporary solution. "There is just so much more to this than we thought last month" said Ms. Ferstenberg.

The Board engaged in a brief discussion about where they were and where they wanted to go given the time frame (amendment language, scheduling of public outreach, workshops and hearings and finally a draft amendment). Ms. Heller noted the importance of using the interim for further discussion to meet in the middle on the issues to be addressed. "Let's keep the past in the past and agree on changes while allowing those uncomfortable to become more comfortable with the process" she said adding "we have the headlines, let's prioritize them into longer term goals." "I agree, I cannot see this happening this year" interjected Ms. Ferstenberg. Ms. Dreyer also agreed suggesting that cramming such a large amount of information into a short period of time without a diverse subset of citizens for input was unwise. She went on to suggest that instead of rushing things they take time for ongoing conversation and let the Housing Task Force continue its work. "This is a more long-term thing" she said. Mr. Ward questioned whether it was more *long* or *medium* term as he felt they could get a lot accomplished in a year's time. Mr. Clark noted that as a builder "this tends to push things off and I don't like that" adding (again) "this 16-unit per acre potential carries a lot of fear, can we address that?" Mr. Throop took a moment to explain that 16 units per acre did not necessarily mean 16 single-family homes. "It is more likely one building with 16 units of two buildings with 8 units each" he said. He then asked the Members if they felt they could come up with a handful of specific things they could "chew on" for discussion at the next workshop and then schedule a public hearing. "Is the Board willing?" he asked as he noted two *major* factors (specifically) the need for public engagement (and the lack of time to do so) and the existence of a second Citizen's Petition to repeal TONOZ 1 in its entirety. "If that petition passes *anything* you may have done will be moot" he said.

Once again Mr. Bell asked about the process adding “this sounds waffled.” Mr. Throop took a moment to review the process of accepting an assignment, assigning members or creating subcommittees to work with citizens and ad hoc groups, shepherding through the data, committing to a series of workshops and public meetings to give the public the opportunity to share their input and finally preparing the end product of a vote at Town Meeting.

In closing Ms. Reinhardt noted the ongoing litigation had interrupted the plans for some breathing room in the interim “but that is what we are looking for” she said. Ms. Carr interjected she would like to personally thank the Board noting “we appreciate your time and attention” she said.

Other Business:

Mr. Throop introduced the aforementioned Citizen’s Petition received January 2, 2020. He reiterated it called for a complete repeal of Section 245-15.3 Traditional Neighborhood Overlay Zone I. He noted the petition had been reviewed the Supervisor of the Checklist and told the Members “it is valid, and we need to schedule a public hearing for it.”

The Members agreed to a date and time certain of March 9, 2020 at 6:30 p.m. in the Board of Selectmen’s Meeting Room of the Peterborough Town Hall.

Chair Carrara noted he was moving out of town and would be resigning from his position as Planning Board Chairman. Ms. Heller spoke for the Members in thanking him for his service and his guidance and assistance to the Members throughout his tenure.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant