

PLANNING BOARD
Town of Peterborough, New Hampshire

Minutes of October 21, 2019

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

Also Present: Pete Throop, Laura Norton and Kristin Bixby, Office of Community Development

Mr. Carrara called the meeting to order at 6:30 p.m. He welcomed the audience and introduced the Members and Staff.

Minutes:

A motion was made/seconded (Vann/Ferstenberg) to approve the minutes of October 14, 2019 as written with all in favor but Mr. Ward and Mr. Zeller who abstained.

Continued Public Hearing: Conditional Use Permit, Subdivision, and Site Plan approval with requested waivers, for EAM Peterborough Holdings, LLC. This proposal is for a 16-unit residential condominium subdivision served by a private road, utilizing Traditional Neighborhood Overlay Zone 1, located on two abutting properties at 75 Concord Street (Parcel No. U016-041-000) and 69 Concord Street (Parcel No. U016-042-000)

Chair Carrara confirmed the applicant had submitted a new plan at the last hearing which reduced the residential dwellings from 20 to 16 units. “This is the third meeting for this applicant, we are 15 days into the process with a maximum of 60 days, so we are doing well on time” he said.

Mr. Throop took a moment to qualify that the two members who missed the October 14th meeting (Mr. Zeller and Mr. Ward) had listened to the audiotape of that meeting and had received a copy of the new plan. As the two members each acknowledged they had Mr. Throop asked, “and do you have any issues or concern with proceeding to hear this case going forward?” Mr. Zeller and Mr. Ward replied they did not. Mr. Throop, then asked the applicant if they had any issues with the two members serving on the Board going forward. Mr. Branon responded that they have no issues.

Chad Branon introduced himself for the record and briefly reviewed the new plan. He reiterated the revision of the plan eliminated two tri-plex buildings (3 units

each) noting “this reduces the total from 20 to 16 dwelling units.” Mr. Branon also pointed out the commensurate adjustment to the design of Floral Way “which is now a common driveway, not a road.” He continued by reviewing the exhibit lot size chart and lot coverage by Limited Common Area (LCA) he’d prepared for the Board and reiterated how the plan design meets the spirit and intent of the TNOZ1 Ordinance.

Mr. Branon reviewed the modification of the driveway design resulting in minimal cutting, additional space and an ultimate reduction in waiver requests. He told the Members the original estimate of the removal of 8000 cubic feet of material was now approximately 3000 cubic feet. “That is about 150 trucks” he said adding “trucks will come in loaded (crushed stone for fill) and leave loaded (debris material) which will reduce the impact on the site during construction.”

Noting the CEI report Mr. Branon reiterated the mandated requirements for their Alteration of Terrain (and other) permits from the State would be fulfilled and that they were aware of the concerns noted in the Staff Report and the correspondences by the Police Chief and Conservation Commission. “We look forward to the waiver discussion, working through the details and we hope to get to a point where we can get a conditional approval” he said. Mr. Branon concluded by telling the Board “we have a compliant plan that meets all of the requirements of TNOZ1, thank you.”

Chair Carrara asked the Board if they had any questions. Ms. Heller asked about the garages for the units in the back (they will be drive-under style and will still require a waiver reported Mr. Branon. Ms. Vann asked if the garages in the back would also be stepped back from the façade of the units (they will). A brief discussion about the waivers, street and geometrical standards, lot sizes and setbacks followed with some of the technicalities of the lots reviewed and explained by Mr. Branon.

Chair Carrara then opened the hearing to the public. In doing so he asked those wishing to speak please identify themselves for the record, be brief and concise and focus their concerns on the new plan.

Hope Taylor introduced herself and asked about the waivers. It was noted there were originally 7 requests, but the new plan has reduced that number to two for the TNOZ1 and one for the Road Standards. Ms. Vann told the audience the Board would go through each one individually when the time came.

Francie Von Mertens introduced herself and noted the waivers as well. She cited Mr. Throop’s Staff Report on October 7, 2019 listed six waivers. She then asked if

philosophically because the waiver was intended for 11 of 14 units “does that mean you will need 11 waivers?” After a brief discussion about condominium developments and how their LCAs were not considered true lots, (i.e. the 5 units on the west side of the loop road) Chair Carrara replied “no, we will consider the request as *one request for one waiver*.” Ms. Von Mertens asked if that would also apply to the other waiver requests with Chair Carrara replying “yes.” Citing the lot size chart exercise the Board had performed with Mr. Branon earlier Ms. Von Mertens asked, “so if it is so easy to make the lots conform, why *not* just make them conform?” she went on to say “it would be in your interest to be *that* particular while allowing greater density. You should be real sticklers about it and avoid waivers as much as possible.”

Ms. Vann noted the project has almost 7 acres and was using the front of the lot as much as possible to avoid the topographical challenges in the back. “You add up the lot sizes of the units and you actually exceed the minimum lot size required” she said. She also went on to refer to the lot exercise they’d completed at the last meeting and how that showed the total coverage meets the standards. “That is my observation” she said.

Mr. Ward asked about a deed and property pins for a single-family lot and how that residence differed from a condominium development. Again it was noted the LCAs of a condo development are not delineated on a deed like they are on a private lot.

Libby Reinhardt introduced herself and cited the subdivision regulations for condominiums. “With condos you have to treat them as one lot, isn’t that right?” she asked. Mr. Throop replied “yes” and went to quote the regulation as saying “for the purposes of site planning, the parcel on which the building(s) are located shall be treated as a single lot, but shall contain sufficient land area required for all proposed units in the districts in which the development is located.” He went on to quote “the frontage from which the parcel is accessed need not be more than 50 feet to accommodate the right of way for the access road and internal roadways, however, must contain the total amount of frontage required for all proposed units in the zoning district(s) in which the development is located *unless* developed under the Open Space Residential Development ordinance.” Mr. Throop looked up and said, “that frontage would be Concord Street and it is not an issue as we see it.”

Lock Row introduced himself and questioned the term “hardship.” He went on to say, “it seems to me like hardship is beyond someone’s control” adding “purchasing land at too high a price is not hardship, it is a bad decision.”

Carl Brezovec introduced himself and noted that since Floral Way no longer functioned as a road, “that eliminates any guest parking as well.” Mr. Branon reiterated the parking plan and how it meets the parking requirements of the ordinance. He also reiterated and reviewed the decrease in impervious cover and the minimization of the cut into the hill.

Allison Cabana introduced herself. She also noted the elimination of guest parking and voiced her concern for people parking on Concord Street. She told the Members it was her understanding that if a parked car’s tire extended over the white line on the street, the car may be towed.

Ms. Reinhardt asked about parking on Woodman’s Lane. Again pointing out that the project met all the parking requirements, Mr. Branon reviewed the allocation of two parking spaces per unit. He pointed out ample space for tandem parking for two vehicles outside the unit as well as one covered space inside the garage. “We actually exceed the standards” he said.

A brief discussion about the Woodman’s Lane (14 feet hard surface width with 2-foot gravel shoulders on each side) followed with a member of the audience asking if the road could be made wider to accommodate guest parking. Mr. Branon replied, “the Board has requested we keep the road narrow which results in less impervious surface on the site.” Mr. Throop noted the receipt of correspondences by both the Police Chief and the Conservation Commission.

Mr. Throop summarized the Police Chief’s statements regarding the differentiating width of the shoulder along Concord street (up to 4 feet in width) depended on *where* it was measured. The letter noted parking in the area of 69-75 Concord Street may be able to accommodate compact and average sized vehicles, but larger pickup trucks, SUVs, busses and commercial vehicles end up partially parked in the travel lane of the street. It was noted that if a Police Officer felt the vehicle(s) were a menace every reasonable effort would be made to locate the owner and have them move that vehicle. “If the owner cannot be contacted the vehicle may be towed pursuant to NH RSA 262:32” he said.

Chair Carrara read the Conservation Commission’s letter for the record. That correspondence noted concern about the raising of the building on the plan to accommodate the 100-year flood plan and the potential need for a new flood plan delineation or a Letter of Map Adjustment (LOMA). The letter also specifically noted that FEMA was conducting a flood study of 65 miles of the Contoocook River to revise the floodplain maps. It was noted “the area is from Jaffrey to Boscowen and includes several sites along the mainstem of the Contoocook and the lower reaches of the Nubanusit River.” Chair Carrara continued to read the

letter noting their concerns with the Groundwater Protection Overlay Zone, excavation impacts to the site, locations of the test pit data, total impervious cover calculations and steep slopes. The letter ended with the statement “the Conservation Commission, having formally taken on the purview of the disbanded Water Resources Advisory Committee, expresses deep concern for groundwater protection. We question whether this project as currently proposed adequately protects our drinking water resources.”

Mr. Branon addressed the many of the statements and concerns from the correspondences and reiterated the plan met all the local, state and federal requirements; that FEMA is always updating their data; there are no negative impacts to the groundwater and water quality on the site; and additional test pit data (3 to 4 test pits in the footprint of the chamber system) will be secured through the fulfillment of all other state and federal permits associated with the site.

From the audience Mr. Row asked, “any insight with FEMA’s latest data if the flood plain is going up or down?” Mr. Throop replied he did not know the answer to the question.

Ms. Vann recounted long conversations about the street with the Town Administrator, DPW Director and Bill Cass of NH DOT and told the Members that with regards to the striping, travel lanes and posted parking signs “there will be changes” adding “the goal for us with DOT (and Concord Street) is to provide parking where possible all year round just like anywhere else.” Mr. Ward interjected “paint wears out, the next time they stripe, maybe they will fix it.” “Yes, that is the goal” replied Ms. Vann.

From the Audience Ms. Taylor mentioned the town-wide winter parking ban in effect from November 1st to April 1st each year. Ms. Vann reiterated Mr. Branon’s repeated sentiment that the project meets the parking requirements of the ordinance and parking on Concord Street would be supplemental only.

Mr. Throop told the Members that following their meeting last week a member of the public had researched the current town code as it relates to parking on Concord Street and submitted excerpts from the Code. He noted that in summary “in the vicinity of the project, parking is prohibited in the west side of Concord Street except for Sundays and Holidays.” Further, *Section 262:32* of the Town Code states that “reasons for *removal and impoundment*” includes a vehicle that is obstructing the way (or) would be a menace to traffic if allowed to remain. Mr. Throop noted the interpretation of this section of the code in the same manner as addressed in the Police Chief’s statement.

Suggesting they move on Chair Carrara noted the Staff Report included a summary of the comments raised during the Public Hearing on October 14th. He noted many of the comments were repetitive in nature and had been summarized into generalized categories. He also said he had been told that some members of the public had expressed concern that the Board did not address their questions fully at that meeting “so I think we need to review them.”

Chair Carrara read the list:

- The TNOZ1 ordinance is part of a pending lawsuit and a question was raised about whether this application can proceed. *This question was addressed by Staff during the hearing with Mr. Throop noting the Board does have the authority to hear this and other applications.*
- Too many waivers are needed. *Chair Carrara reminded the audience that several of the waivers pertaining to the project were no longer valid as the plan has changed.*
- The ordinance should be enforced as written and waivers should not be granted *The waiver deliberation is pending.*
- The neighborhood is not typical given its location on a state road and this should be taken into account when considering the intent of the ordinance.
- What are the criteria for granting road waivers? *This was addressed by Mr. Throop when he read the criteria to the Board Members (Chapter 237, Article VIII C. Administration and Enforcement: “Waivers: the requirement of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulation.” It was also noted the waiver deliberation is pending.*
- The project doesn’t reflect the master plan.
- The proposed units will not be affordable.
- The proposed development is not consistent with the historic character of the neighborhood.
- An existing 1900’s habitable and affordable duplex home (traditional New Englander) is proposed to be taken down. It serves as a gateway structure. *It was noted the Master Plan has dual goals of infill and historic preservation and the Board should work with the applicant to seek a balance of these goals.*
- Has the applicant provided an assessment of the building to be removed? *It was noted this building is in disrepair and cannot be successfully rehabilitated.*

- The esthetics of the development are not consistent with the diversity of other houses in the area. The buildings on the hillside are too tall. *The Triplex units have been removed from the plan.*
- The houses along Route 202 are too crowded.
- There are too many units. *The new plan now consists of 16 units*
- The houses are too close to the road.
The setbacks are inadequate. *The waiver deliberation is pending. Mr. Branon explained “the Existing setbacks along Concord Street are 25-35 feet. The waiver asks to move houses closer to the street, which actually does maintain the existing streetscape. (It should be noted that the proposed houses along Concord Street will be located between 20 and 30 feet from the street). This concern segued back to the status of the existing 1900’s traditional New Englander two-family building located on the site. Many believed the structure served as gateway structure and pointed out the dual goals of infill and historic preservation of the Master Plan which states the in the reuse of existing buildings “the demolition of existing habitable dwellings in order to subdivide a lot or create additional dwelling units on an existing lot is strongly discouraged.”*
- There is too much traffic on Route 202 (one commenter stated that there are 12,000 trips per day.) *It was a noted the amount of curb cuts for this property has been decreased from four to two. Ms. Vann also noted the average number of trips per unit per day was 10. “So 16 units with 10 trips per day is 160 total and if you do the math with the estimated 12,000 vehicles per day, it results in a .013% increase in traffic.”*
- Too much traffic will be introduced by the proposal. *Mr. Ward asked if a Site Visit with a representative for NH DOT was in order.*
- A traffic study should be required. *See above*
- Can a traffic light be required? *See above*
- A turning lane should be considered on Rt. 202 to increase safety. *See above*
- There is not enough visitor parking on the site.
- Route 202 is not wide enough to accommodate on-street parking. *Title XXI Motor Vehicles, Chapter 262:32 was reviewed “whereby a vehicle obstructing any way or access to a public building or is or will be a menace to traffic may be removed and impounded.”*
- Where will visitors park when a resident is having a party or family members are visiting during the holidays? *See above*
- How will snow removal be managed? At other condominium developments, owners need to move their cars to available visitor parking spaces while driveway plowing is completed.

- Comments made about the ability to stabilize the sandy soils and the extent of grading.
- Concern were also raised about ground water seeping out at the base of the slopes, drainage challenges at other properties along the same hillside further down Concord Street.
- Concerns about trees being removed along the northern boundary with the One Sand Hill Condominium development.
- There is no playground for children and limited yards in which children can play. *(This is not a requirement of the TNOZ1 Ordinance).*
- There are safety concerns with children playing on the sidewalk along Concord Street and the project will generate increased noise pollution at night. *Mr. Ward also inquired about light pollution. Mr. Throop noted the Lighting Plan presented last week complies with the zoning ordinance.*

As a general respond to the concerns Mr. Throop referred to the *Purpose and Intent* of the TNOZ1 Ordinance. He noted it stated it allows for “the infilling of lots and additional residential housing in close proximity to the Downtown area (sections of town where there are established subdivided neighborhoods). This approach to development is in furtherance of the Vision Statement and the Goals and Objectives of the Master Plan.” He went on to note “the advantages of infill as described in the Master Plan includes creating housing opportunities that reflect the changing demographics of today; discouraging extensive development in the Rural District; locating infill for a more efficient use of the existing infrastructure including town water and sewer services; infill within close proximity to police, fire and emergency services; allowing the opportunity for less automobile dependency and creating the opportunity for smaller, more energy efficient and affordable housing.” He told the Members “the key is, in your opinion, what are specific circumstances that are relative to the waiver that carry out the purpose and intent of the ordinance.”

Referring to the status of the apartment house on the site Mr. Zeller noted “two years ago the significance of the architecture was not mentioned, but now it is a thing” adding “I am not going down that rabbit hole. It has no significant architectural style. It is *old* but that is it” he said. Mr. Ward replied, “I would have to say the exact opposite.” Mr. Ward briefly reviewed the changes in architecture over the centuries and suggested the building was the last big house, little house, back house, barn model (*how buildings were built by farmers tracing the historical development of connected farm buildings, an architectural form common in rural New England*) on the street and at the gateway.

He went on to note “the massing, scale and proportions all speak to the streetscape as this (project) does not.” He commented on the structure’s historical value and (the fact) that it was a missed opportunity for affordable housing. “It was built in a different time than now “and that is why it complements the streetscape; it is a shame to lose that piece” he said.

Chair Carrara once again told the Members, “It is a nice building but if you wanted to give it to me, I would not take it.”

Ms. Von Mertens raised her hand and noted the porches had not been mentioned as a concern. After a brief discussion on which way the porches should face (the interconnectivity of the development with its residents versus the street) Ms. Von Mertens noted “I am not against porches, I just think they should face Woodman’s Place.” Ms. Ferstenberg interjected “really? are porches really required by the regulation?” A brief review of the design guidelines (which focus on the building and site relationship that are intended to foster pedestrian-oriented streetscapes and harmony between the new and existing homes) as well as the architectural features (which state new homes should incorporate prevalent neighborhood architectural features such as porches, gable roofs and dormers) followed.

Mr. Branon noted the drainage and chamber systems he’d reviewed and reiterated they had reduced the size of the development and hence the infrastructure. “We had not reviewed the final CEI report but as I have assured you in the past, we will meet or exceed the local, state and federal standards. We look forward to reviewing it.”

Mr. Branon concluded by reiterating the applicant looking forward to addressing the waivers. “It is imperative to get direction on the waiver requests so we can redesign the plan in a timely fashion” he said.

Mr. Throop cautioned the Board about conditional approval of the plan. “You have not seen the all the details and you have yet to address the waivers” he said. Chair Carrara agreed noting “we need to keep things in order here.” He noted the recently received correspondences by the Conservation Commission and the Police Department regarding the parking issue on Concord Street as well as the pending review of the final stormwater management report.

Chair Carrara asked if the Members had any additional comments, questions or issues (and) with none, he side “let’s review the waivers.”

Waivers:

Transitional Neighborhood Overlay Zone 1 (TNOZ1):

The Members addressed the first of the TNOZ1 waivers: a waiver request from *Section 15.3.E.b.i. Lot and Yard Standards* in the General Residence District to permit limited common lot areas (LCAs) that are less than the 5000-square feet in size.

Chair Carrara addressed the Board noting “we will discuss this request and approve it or not. If we do not approve it, we must explain why.” Mr. Throop reminded the Members that Section 245-15.3.B. *Authority and Administration* section authorizes the Board to attach reasonable conditions or modify any requirements of the ordinance if specific circumstances relative to the project indicate that the waivers will properly carry out the spirit and intent of the ordinance. He continued referencing that the purpose of the ordinance was to allow for the infill of lots for additional housing in close proximity to the Downtown area where established neighborhoods and infrastructure exist. He noted the goals and objectives described in the Master Plan including the “discouragement of development in the rural areas; locating the density within close proximity to police, fire and emergency services; creating the opportunity for residents to become less auto dependent as well as the opportunity for smaller, more efficient and affordable housing.”

Mr. Clark interjected “this meets all of those things” adding “and the average sizes meet the criteria as they are not *really* lots as we discussed. I am in favor of this waiver.” Noting the exhibit plan and lot size chart exercise the Board had gone through earlier Mr. Zeller agreed, noting “that proved the point, I am in favor of the waiver.” Ms. Heller stated she agreed with Mr. Clark adding “we have already discussed this, and I am happy with it.” Ms. Vann added “I would agree and say the purpose and intent of the TNOZ1 is met, along with the goals of the Master Plan. It supports the golden objectives of both of them.” “I agree” said Chair Carrara. Ms. Ferstenberg replied, “I oppose it.” She went on to say “5000 square feet is a very small lot and it would be nice if all the lots were the minimum size.” She did acknowledge understanding why the other Members were in favor. Mr. Ward said “well I don’t want to beat a dead horse” as he went on to explain why he thought the spirit and intent of the ordinance were *not* honored. He cited the language of the ordinance advocated the reuse of existing buildings and the demolition of habitable dwellings is *strongly discouraged*. “I think this has fallen on deaf ears” he said. He pointed out the architecture and vernacular of the apartment building on the site and advocated the *big house, little house, back house, barn* model for the building, and how (potentially) there could be up to three rental or affordable units located in that space. “I struggle with the technicality of the ordinance” he said. Mr. Clark reminded him that condominium

developments were a bit different in that they are not really lots, rather an average of the whole parcel.

A motion was made/seconded (Vann/Clark) to approve the request for a waiver to *Section 15.3.E.b.i. Lot and Yard Standards* in the General Residence District to permit Limited Common Areas (LCAs) that are less than the 5000-square feet in size with all in favor but Ms. Ferstenberg and Mr. Ward who were opposed.

The Members then addressed the second of the TNOZ1 waivers: waiver request from *Section 15.3.E.4 Setback Requirements* to permit front setbacks less than the minimum of 15 feet to accommodate porches within the setback for 13 of the 14 single-family units and to permit side setbacks to be less than the minimum of 10 feet to accommodate porches in the setback for 4 of the 14 single-family units.

Ms. Vann told the Members “the reason for this waiver is because we requested the porches be deeper to be more functional.” Mr. Zeller added “this deserves to pass because *we* asked them to increase the porch depth to 8 feet which pushes them further into the setback objective.”

A motion was made/seconded (Vann/Zeller) to approve the request for a waiver to *Section 15.3.E.4 Setback Requirements* to permit front setbacks less than the minimum of 15 feet to accommodate porches within the setback for 13 of the 14 single-family units and to permit side setbacks to be less than the minimum of 10 feet to accommodate porches in the setback for 4 of the 14 single-family units with all in favor.

Road Standards:

The Members went on to consider a waiver requests from *Section 237 Appendix A: Street Standards Paragraph D. Private Roads:*

The Members first addressed the first of the Road Standard Waivers: a waiver request from the maximum number of lots allowed (except for Open Space Residential Development) in a subdivision served by a private road is ten.

Mr. Throop told the Members “this is really intended for the Rural District” adding “other condominium developments located on private roads or access have more than 10 units and there is enough precedence by virtue of that fact that it is formality to grant this.” Mr. Clark agreed adding “we’ve done these many times” with Mr. Throop adding “right, and if you deny the waiver it could be subject to an appeal because of the many examples that exist in town.” Ms. Vann noted “what it is really intended to do is to prevent dead-end roads from being *too* long and *too*

crowded” and qualified “this is not a dead-end road. It is a street that runs parallel to Concord Street.”

A motion was made/seconded (Vann/Zeller) to approve the request for a waiver to *Section 237 Appendix A: Street Standards Paragraph D. Private Roads* to exceed the maximum number of lots allowed (except for Open Space Residential Development) in a subdivision served by a private road to be more than ten with all in favor.

Mr. Throop noted the next waiver was in reference to all private roads being constructed according to the standards. Cited *Table #1 Roadway Geometric Design Standards* and pointed out the *Right-of-Way Width* (50 feet minimum) and the *Traveled Way Width* (18-20 feet minimum) were being challenged to be 20 feet and 14-foot way and 2-foot engineered shoulder on each side, (totaling 18 feet collectively.)

Mr. Throop noted the “the road sits on common land and will be maintained by the Home Association (and) the DPW, Police and Fire Departments had reviewed and approved the proposal.”

A motion was made/seconded (Vann/Zeller) to approve the request for a waiver to *Table #1 Roadway Geometric Design Standards* for the *Right-of-Way Width* to be 20 feet and the *Traveled Way Width* to be 18 feet with a 14-foot width and 2-foot engineered shoulders on each side with all in favor.

Mr. Branon noted one additional waiver which was a request to have a 4% incline within 100 feet of intersections. “Primarily because of the raising of the elevation due to the 100-year flood plain” he said adding “it meets the DOT suggested guidelines, is under a 5% grade (a 4.25 to 5.0% grade) which is supported by the DPW, Police and Fire Departments.”

A motion was made/seconded (Vann/Zeller) to approve the request for a waiver for a 4% incline within 100 feet of intersections which meets the DOT suggested guidelines and has approval from our DPW, Police and Fire Departments with all in favor.

“OK” said Chair Carrara with that behind us I would suggest we continue this public hearing to a date and time certain to wrap up this burrito.” He went on to tell the Members they still had the final plan from the independent stormwater consultant (stormwater management and grading plans) to review as well as a potential vote on the Site Plan with its final updates.” Ms. Vann reminded Mr. Branon about the need for the two units on the hill meeting the architectural

standards with Mr. Branon noting they would be the same as the units on Woodman's Lane.

A motion was made/seconded (Carrara/Clark) to continue Public Hearing to a date and time certain of Tuesday, November 12, 2019 at 6:30 p.m. in the Board of Selectmen's Meeting Room with all in favor.

The meeting adjourned at 8:20 p.m.

Respectfully submitted:

Laura Norton

Administrative Assistant