

Board Members Present: Chair Paul Powers, Vice Chair Andy Kohlhofer, Roger Barham, Jack Karcz, Mike Wason, and Alternate/Land Use Administrative Assistant Leanne Miner

Also present: Jennifer Rowden, Rockingham Planning Commission (RPC); Joe Nichols (Beals and Associates); Gregg Arvanitis, Fremont Building Inspector

Public Attendees:

Mr. Powers opened the meeting at 7:00 pm.

I. MINUTES

Meeting minutes for October 16th

Mr. Karcz made a motion to approve meeting minutes from October 16, 2019. Mr. Kohlhofer seconded the motion. The motion passed 6-0-0.

Mr. Powers appointed Ms. Miner to take the voting place of Tim Lavelle.

II. NEW BUSINESS

Map 2, Lot 020 Public Hearing for Age-Restricted Development on South Road. Applicant DECM Builders has submitted a Site Plan Review Application for a 12 unit age-restricted development with a proposed 800 foot private roadway on South Road at Map 2, Lot 20. The applicant has also submitted an application to adjust the lot line between Map 2 Lot 20 and Map 1 Lot 62 in Fremont NH. The lots are owned by DECM, LLC and Carsten E. H. Springer.

On behalf of DECM Builders and Carsten Springer, Joseph Nichols of Beals and Associates presented the project which has two parts, a Lot Line Adjustment and Site Plan Review.

South part of parcel 28.1 acres is being awarded to Map 1, Lot 062 and 28.8 acres which the age-restricted development will be situated on.

KNA recommended that the Lot Line Adjustment be addressed before taking any action on the development.

Application completion – Jenn noted complete. With LLA that doesn't create a new lot, a public hearing is not required, but if someone wishes to speak to the subdivision application. Doesn't create a non conformity. The abutting property owner will need to provide his permission for Beals Associates.

Mr. Nichols requested that the board provide any comments at this time so that the LLA and Site Plan Review be acted on at the next meeting.

Mr. Springer spoke to allow the applicant to speak on his behalf and will provide documentation for the record. He noted that the south portion of the property that will go to Map 1 Lot 62 will continue as part of the existing registered tree farm.

Mr. Powers asked if any of the public present wished to comment on the Lot Line Adjustment. There were no comments from the public.

Mr. Karcz made a motion to continue the review of the Lot Line Adjustment application to the next meeting on November 20, 2019. Mr. Kohlhofer seconded the motion. The motion passed 6-0-0.

Mr. Nichols continued discussion on the Site Plan Application summarizing the proposed plan as follows:

- 12 units, 700 foot long private roadway with hammerhead turnaround that has been reviewed and approved by the Town's Fire Chief.
- Utilities will include septic and two wells
- There are no wetland impacts
- Mr. Nichols reviewed the population density calculations in accordance with Zoning Ordinance 1301.2 (General Standards) The site area totals 22.8 acres with usable upland of 14.41 acres. Subtracting 10% for roads (1.44 acres) = 12.97 acres.
- 12.97 acres * maximum of 3 bedrooms allowed per acre = 39 available bedrooms. The applicant is proposing 24 bedrooms.

Mr. Nichols then summarized the 3 waivers requested by the applicant as follows:

- Waiver Request 1 – Site Plan Review Regulations Section 1.13.T.6 (Requirement to conduct a traffic analysis) – The Applicant feels the waiver to this section is justified as the amount of traffic created by the proposed development of 12 Age-Restricted units will not adversely affect the existing traffic volumes. This is based largely on the fact that the age-restricted units will produce approximately 5.6 vehicle trip ends per unit per day (50% exiting and 50% entering the development) or 67 additional vehicle trip ends per day on South Road. This is significantly less than the 11-12 trip ends expected for single family residences.
- Waiver Request 2 – Subdivision Regulations Section 10.02.E.3 – (Roadway Design Standards requiring cul de sac) – The Applicant has designed a turnaround in a hammer head configuration that works better for the site allowing enough area for emergency vehicle and trash truck turn around. They have reviewed the turnaround with the Fire Department who has found the design acceptable. It was noted that this configuration was similar to two non cul de sac turnarounds approved in Black Rocks Village.
- Waiver Request 3 – Site Plan Review Regulations Chapter 1, Section 1.13, Item G (provision of wetlands and soils delineation) – The Applicant is seeking relief from the requirement that the entire parcel be shown on the plans. The waiver is requested to relieve the requirement for detailed topography, soils and wetland delineation over the rear portion of the parcel that is outside the development area. They feel a waiver to this section is justified as no physical changes or development will take place in that area. Data used for the plans included USGS topographic mapping, NWI data, aerial photography, and other GIS-based data available. Full detailed

surveyed topographic and soils/wetland features are provided for all areas contemplated for use as residential lots.

The Applicant and the Board received comments from the reviewing Town Engineer, Keach Nordstrom Associates (KNA), which was distributed late in the day. Mr. Nichols responded to a few comments as follows:

- General Comment 4 – Boundary monumentation requirement on the Lot Line Adjustment. Mr. Nichols asked that condition of approval include certification of monumentation. Mr. Nichols did not feel it was acceptable to request money be expended to install a monument before plans were final and approved by the Board. Ms. Rowden informed the Board that a certificate of monumentation as a condition of approval is typical.
- Zoning Matters – Comment Item 1j. Pertaining to road design requirements - The road is designed with granite curbing to facilitate drainage to avoid drainage at the front of the property which may create a potential hazard for residents. KNA endorsed the curbing on the roadway in lieu of gravel shoulder as part of the drainage system and noted that the Board has the authority to endorse this change. Mr. Powers noted that they would probably consider this as an improvement. Ms. Rowden suggested that a note be added to the plan noting this change and endorsement.

Mr. Nichols asked the Board to Act on the waivers. Ms. Rowden noted that the board cannot accept waivers until they take jurisdiction.

Ms. Rowden providing her comments and recommendations as follows:

- No landscaping design was indicated on the plans. Under the zoning ordinance, natural vegetation can be used for landscaping, but if natural then this should be specified on the plans.
- Access to natural features must be provided and will need to be noted on the plans.
- Location of snow storage will be need to be noted.
- No lighting is shown, however if there is any lighting, the applicant should provide a lighting plan. If not, then a note should be added regarding no lighting.
- The remaining drainage report review to be completed by KNA may impact the site plan review, but Ms. Rowden felt this is unlikely.

Ms. Miner mentioned a sound buffer that was discussed previously on this project. Ms. Rowden said the applicant may want to include a no-cut buffer to protect the view from the rail trail and impact of sound on the property

Mr. Kohlhofer also noted that the applicant may want to protect the property from riders that may disobey trail rules and enter the development.

Ms. Rowden reviewed the status of total number of elderly housing units allowed in Town. As of 2008 when the last elderly housing units were approved in Black Rocks Village the Town allowed up to 10%. At that time there was allowance for an additional 40 units. Since 2008 the Town's ordinance was updated to allow 15% elderly housing units so this proposal is well within the Town's allowance.

Documentation of restrictions required for elderly housing including deed restrictions should be noted on the plans. KNA also noted this recommendation in their comments.

Mr. Powers inquired total disturbed area. Mr. Nichols didn't have that, but noted that they did not trigger AoT requirements.

Mr. Barham provided comments on waivers as follows:

- Traffic Study – Historically the Board has allowed this waiver on developments larger than this one.
- Cul De Sac Requirements. The Board typically takes guidance from the Fire Chief.
- Wetlands – The same waiver was granted on the parcels nearby.

Mr. Springer noted with regard to wetland disturbance that the builder's designers have been very good about staying away from the wetlands in their design. Regarding the monumentation, Mr. Springer noted the property has well established interior rock walls that mark the property line.

Mr. Knee, Vice Chair of the Conservation Commission commented on behalf of the Conservation Commission. The Conservation Commission encourages the Planning Board to require the developer, as a condition of approval, to place a conservation easement on the "open space" indicated on the site plan for the following reasons:

- Requiring a conservation easement would be consistent with the Town's Land Conservation goal of "integrating ecological integrity and wildlife habitat into all aspects of town planning, including zoning and land use regulations and site plan review". This becomes especially important as this development abuts a prime wetland. Conserving the designated "open space" would act to help protect this high functioning wetland.
- Precedence for having a conservation easement can be found with the Tuck Woods development, Dakota Reality development, Scribner Road development, Seacoast United Soccer Club development, and in the Fremont Pizzeria development.
- Even though the lots as they now stand would not permit further development of this space, future changes in abutting land use could allow this open space to be developed in a manner inconsistent with the goals of the Town to preserve the quality of its wetlands and wildlife habitats.

Mr. Powers inquired about a letter from the Fire Chief. Mr. Nichols noted that the Chief of the Fire Department previously commented during initial design consultation. The Board asked that the Chief of the Fire Department provide written comments for the record.

Mr. Thomas noted that the Historical Society likes to perpetuate historical names within the Town and inquired about naming the development. Mr. Nichols noted that he's be happy to work with the Town Historian on this matter and Mr. Thomas promised to provide suggestions.

Mr. Karcz made a motion to continue the review of the Site Plan Application to the next meeting on November 20, 2019. Mr. Kohlhofer seconded the motion. The motion passed 6-0-0.

Mr. Powers noted to the public present that the public hearing is being continued to November 20, but they won't be receiving another notice.

Map 003, Lot 203 Mr. Barry Arnofsky is seeking the Board's input on re-opening the Liberty Market on Main Street and seeking clarification on Continuance of his Land Use (Section 5 of

the Zoning Ordinance). The property is located at 281 Main Street, Map 003-203 and is located in the Village District.

The Board was provided with a copy of a letter from Mr. Arnofsky and summary of documents provided to substantiate his continued use.

Mr. Arnofsky summarized his history of ownership (since 1998) and health reasons for changing operations. He read his letter to the Board as follows:

As the owner of the Liberty Square Market located at 281 Main Street, I am requesting that the zoning status of this property remain continuously as commercial/retail zoned property as it has been for over the last 100+ years.

I have maintained the building making all necessary repairs including: Fremont Glass replacement, plumbing repairs and attorney fees. I have kept my business licenses active and current, including: the Cintas Exhaust Hood Fire Suppression System, the New Hampshire Food Service license, the Liquor Commission license, the State of NH Meals license, and the State of NH Trade Name license. I have been operating in the Liberty Square Market selling a variety of products.

I pay monthly expenses including: electricity, gas, phone, dumpster, security and alarm system, pest inspection report, water test, insurance and property taxes.

I have been operating in my store and keep contact with all vendors, and still operate my gmail account: libertysquaremkt@gmail.com. When not in the store I can be contacted at this email address and often while in the store I do have customer activity for products I sell and have attached copies of sale invoices.

It is my intention to sell this property as a retail store and I need verification from the town of Fremont that this use will be allowed in the future.

Mr. Arnofsky read a definition of retailing and expressed his belief that he has been operating as a retail store. He mentioned that although his storefront was closed, he did his best to maintain his business, but just did not have the resources to stay open. He also noted that his Email addressed was posted on the store door and product (non-perishable) was kept on his shelves

Ms. Rowden noted that retail is allowed, but the need for review relates to Section 505.2 (Continuance of Use) which reads "All new uses, changes of uses, expansion of uses or resumption of uses previously discontinued shall not be permitted until the property owner or authorized lessee has first made application to the Town of Fremont Code Enforcement Officer for an administrative decision seeking a determination whether a permit is require for such new, change, expansion or resumption of the non-conforming use or non-conforming structure under the terms of this ordinance. If a permit or other application is required, such use may not proceed until such application has been made a processed as required by town regulations and ordinances."

Ms. Rowden pointed out that the lot and structure are non-conforming. The use is a permitted use currently. The question before the board is whether or not the use has continued. If not, then it would

only be an allowed use after receiving site plan approval from the Board. If the Board determines that the existing use has not been discontinued, additional approval from the Planning Board would not be required.

Mr. Barham commented that whether or not the door was open to the public, he has continued licenses and other permits and has been available to be open. Mr. Powers and Mr. Wason noted their agreement with this conclusion.

Mr. Arvanitis (Building Inspector) spoke to the interpretation of the ordinance prior to receiving supporting documentation noting that it was not evident enough to him that the store met his interpretation of the zoning ordinance defining continuance of use, therefore he deferred to the Board to make an interpretation of the continuance of this previously existing non-conforming use. Mr. Arvanitis has no problem with continuance of use based on the new evidence before him.

Mr. Kohlhofer noted that he felt Section 504 does not apply and therefore no application would be required. Ms. Rowden clarified that if the use was previously residential then an application for retail store would be required.

Ms. Arnofsky requested a letter from the Planning Board stating their consensus. Ms. Miner offered to provide a summary of the Board's consensus in a letter.

There was some discussion on limitations within the ordinance that may require the new owner to come before the Board. Mr. Arnofsky asked about the use of the upstairs as office space. Office and retail are part of the same permitted use category. Residential use would require application. Ms. Rowden further noted that any expansion or change in use would require applications before the Board. Mr. Kohlhofer also noted that no outward alterations can be made on site unless they come before the Board for Site Plan Review.

Mr. Yokela joined the meeting at 735PM.

Zoning Ordinance Proposed Changes - Josh Yokela

Mr. Yokela came before the Board with proposed changes to the Zoning Ordinance. Discussion is summarized below (Mr. Yokela's questions and items for discussion are in regular text with Board and RPC comments in italics). The Board did not make any motions to move to Public Hearing at this meeting and will continue discussion and consideration of the proposed changes at their next meeting on November 20.

1. "Red Roads" = Flexible Use District? Discussed Red Road reference and district naming in current ordinance. *Ms. Rowden noted that items in 702 and 704.2 are typos that can easily be revised. There is no 'red road' district, but rather is the Flexible use District. These changes may be made administratively and are pretty straight forward. Other sections appear to be correctly indicate the district names correctly.*

a. Section 702 - in italics mentions a red road

b. Section 704.2 - Roads are no longer identified it is Flexible use district *Ms. Rowden noted that this can be clarified and will need to go to Warrant Article*

2. Add “Residential District” to 701

- a. Lists all the other districts

3. Sections 705.3, 706.3, 805 all have the same standards except one change in condition “B” naming the different districts. Can these be simplified/shortened. *Lettering will need to be revised which will require an administrative change. Ms. Rowden noted that standards for approval were repeated for each district last year to be clearer.*

- a. They could all just point to 805 and have a generic phrase for “B” like “in the district the lot resides”. 805B specifically uses Flex Use District guidelines. *The general consensus was to keep most of the language to keep clear. Ms. Rowden suggested moving conditions that are in 805 to relevant sections (704.3 and 707.2) and some other minor adjustments to smooth the language and clarify conditions of approval in all districts. A Warrant Article will be required to implement any change here.*

4. Section 503 and Section 901 seems to have a similar or same use?

- a. Not sure of the difference in practice between an extension of an existing structure and an expansion of an existing structure
- b. Section 901 seems to conflict with 908 - which would be applied in non-conforming lots? *There was discussion about expansion in 503 and extension in Section 901. Which applies depends on the current status of the subject property before the Zoning Board of Appeals.*

5. A lot and structure came before the planning board because of 902 and 903 in spite of section 908

6. 501 - reconstruction for any reason – *There was discussion about intent of demolition and purposeful reconstruction vs reconstruction due to catastrophic event, timeliness of reconstruction, and reconstruction provided same continued use. It was suggested that specification of reconstruction due to casualty loss be removed and timeline be stated. The Board may also want to clarify reconstruction of primary structures vs accessory structures. Rebuilding in the same footprint doesn’t resolve the town’s desire to bring structures into conformity.*

- a. Seems like rebuilding in the same footprint would be in line with section 908...

The ZBA had a reconstruction application without growing the size of the building so expansion and extension didn’t seem to qualify. Having all these different rules for existing footprint and lots is confusing, Can we eliminate or combine some to make it clearer?

Further discussion focused on Section 903 and how it related to items 4, 5, and 6. Clarifications RE: new lots and existing lots were discussed. Ms Rowden suggested breaking out single family and multi family dwelling units to detail requirements.

7. Propose to increase 1101.8 *The Town allows up to 100 square feet. The state building code allows for up to 200 square feet without permit for ordinary repairs. The Board agreed there needs to be something in here so that people aren’t building large expensive structures/foundations without meeting setbacks. There also needs to be a way to identify addition of new buildings to adjust taxes. The cost for small building permit is minimal ~\$45. Mr. Powers noted that the square footage under 1101.8 does not only apply to sheds. In general the Board feels this should remain as is.*

- a. Sheds come in common sizes

- i. Small (10’x12’ or 8’x12’)
- ii. Medium (10’x16’ or 8’x16’)
- iii. Large (12’x20’ or 12’x24’)

- b. 120sf would allow both small sizes (assuming a roof overhang didn’t affect the size)

- c. 160sf would allow a small and medium without a permit and only require the large to have a permit

- d. Does Fremont require a permanent foundation at a particular size?

“In the state of Virginia, a “building permit” is typically required for any building over 256 square feet (a 12X20 building is just under that benchmark). 256 square feet is also the size where a “permanent foundation” is typically required.” source: bylerbarns.com out of VA

8. Repealing 1101.2 was talked about last year Minimum square foot for a dwelling.

a. Interested in if the board has more thoughts on the topic and would be open to the repeal

There were mixed feelings about this change and the possible solution to more affordable housing for young people to encourage them to stay in the state. Ultimately whatever is built will need to meet the state building code. Updating this Section would require some research. Ms. Rowden referenced Appendix Q of International Building Code which speaks to tiny homes with foundations. Further discussion was tabled until the next meeting.

Ms. Rowden reviewed the state guidelines for Warrant Article changes. The Citizen Petition timing is November 11 to December 11. The Board would have to move anything with signatures to a Public Hearing by December 11. No changes can be made to a Citizen Petition by the Board. Changes need to be noticed by January 1. The last date to have a Public Hearing is January 13th.

III. CONTINUED BUSINESS

Map 001, Lot 012 Update on Cell Tower Site – Violations of Approval. Ms. Miner distributed a letter to the Applicant regarding a violation of approval. The contractor started work without escrow, surety or kickoff meeting. The Applicant was not aware of this and stopped work. Some drainage work and the new electrical conduit was installed without Town Engineer observation.

Ms. Miner and the Town Engineer met today to kick-off the offsite mitigation work. The Applicant is conducting offsite mitigation activities including paving of a portion of Nathaniel Brown Drive.

On site operations (earthwork) are at a standstill until escrow is established and a construction kick off meeting is scheduled. The Applicant has been asked to go ahead with fencing around the pole and accessory structures for safety.

IV. SUBCOMMITTEE REPORTS

Sign Ordinance Subcommittee -

The subcommittee hasn't met since the last meeting. Ms. Rowden provided some examples. Mr. Karcz noted that Seabrook's signing ordinance had some restrictions that he would like to see in our ordinance. The Kingston ordinance had exceptions for government signing. The Subcommittee discussed getting together again soon.

Master Plan Subcommittee Report - Ms. Rowden distributed an updated scope of work for signing. Will need to meet in next couple of weeks to review survey content.

V. ADMINISTRATION

1. **Circuit Rider Business** - No additional updates at this time.
2. **Budget** – No updates today.
3. **Incoming Correspondence**
4. **Project Updates**
5. **ROI Work** is ongoing construction report was circulated for the Board's information. Construction is going well.

6. **Building Inspector Position Opening** - Ms. Miner announced that the Building Inspector position is open and there are interim hours for the time being.
7. **Governors Forest** – Mr. Barham informed the Board that the Town received a summons to appear in court for this site relative to a complaint by an Applicant, Mr. Ferwerda who disagrees with the Cease and Desist and the Town will need to defend its position. Ms. Miner stated that the hearing is scheduled for November 22, but that the Town is filing a motion to continue so that the Town's Engineer, Stantec, can attend the hearing. She continued to inform the Board that the Town recommended that Keach and Nordstrom Associates (KNA) provide a second opinion on the project. Mr. Ferwerda agreed to this, but noted that KNAs review would be at the Town's expense. The Town informed Mr. Ferwerda that he would still need to pay the Town Engineer, Stantec, to review the latest submittal. The Board did not object to this course of action and offered their suggestions and support to respond to the complaint.

VI. ADJOURNMENT

Mr. Karcz made a motion to adjourn the meeting at 9:20 PM. Mr. Wason seconded the motion. The motion passed 6-0-0.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'L. Miner', written in dark ink.

Leanne Miner, Land Use Administrative Assistant