

**Present:** Vice Chair Jack Karcz, Jack Downing, Paul Powers, Roger Barham, Tim Lavelle, alternate member Mike Wason, alternate member Leanne Miner, Senior Planner Jenn Rowden, and Land Use Administrative Assistant Casey Wolfe

**Also Present:** Sue Theori, Steve Theori, Colton Gove, Gail O'Connell, John Kribs, Scott Cole, Albert Alix, Carsten Springer, Tom Nisbet, Mike Rislove, and Peter Eliopoulos

Mr. Karcz opened the meeting at 7:01 pm. He appointed Ms. Miner to vote on behalf of Mr. Hunter and Mr. Wason to vote on behalf of Mr. Kohlhofer.

## **I. MINUTES**

**Mr. Powers made a motion to approve the minutes of February 6, 2019. Mr. Downing seconded the motion. The motion passed 6-0-1. Mr. Barham made a motion to approve the minutes of February 20, 2019. Mr. Lavelle seconded the motion. The motion passed 6-0-1.**

## **II. NEW BUSINESS**

**Public Hearing for an applicant Harbor Street Ltd. Partnership seeking to subdivide a 39-acre parcel on South Road at Map 2 Lot 19 into four lots. These lots are intended for single family homes.**

Mr. Cole of Beals Associates introduced himself and reminded the Board that they were here back in January for a design review meeting. Since then, the proposal has gone from five lots to four lots. Each proposed lot is over five acres and will not need a State subdivision approval. There will be three driveways total, so two of the homes will share a driveway for site distance purposes. After receiving some comments from Senior Planner Jenn Rowden, he was able to move the driveway on Lot 1 out of the wetland buffer. He has spoken with the Road Agent and sent the plans to him for review. The Road Agent would like to reserve the right to have final say where the driveways go when it's time to pull driveway permits. He might also request a few trees to be taken down. Mr. Cole has also sent plans over to the Fire Chief. The driveway on Lot 4 is over 300 feet and the Fire Chief has requested a truck pull-out on that lot. The Fire Chief would also like the home on Lot 4 to be sprinkled if it becomes a duplex. He went through the comments that he received from Ms. Rowden at the Rockingham Planning Commission which were written as follows:

1. Special Exception: The proposed driveways for Lots 1 and 4 are both located in part in the Watershed Protection Area in the wetland 100-foot buffer area (ZO 1201.3.B.3 for protection area definition). A Special Exception from the ZBA under ZO 1201.8 will be required to allow the construction of an access way (driveway) to be constructed within the Watershed Protection Area. It is recommended that any approval by the Planning Board included a condition that a Special Exemption is received from the ZBA prior to the construction of any driveway or structure requiring relief under ZO 1201.8.

2. Driveways: The applicant has proposed a shared driveway for Lots 1 and 2. It is recommended that a condition of any approval be that an easement be established and reviewed by town counsel. A note should also be added to the plan.

All driveways will require a local driveway permit. The Fremont Road Agent did provide verbal comment regarding the need for some tree removal to ensure proper sight distances for some of the driveways.

3. Drainage: A drainage study is not required for subdivisions but may be requested under Subdivision Regulation 4.S. In this case, it does not appear necessary given the type of proposed development and the general topography of the parcel. It should be noted that the design specification for any subdivision in Fremont are still require to not adversely affect neighboring properties and post-development run-off cannot exceed pre -development run-off (SR 10.3.A.). Any site-specific drainage concerns associated with a driveway installation can be required by the Fremont Highway Department when a driveway permit is applied for. The Fremont Road Agent provided verbal comment that there was no concern with drainage as it relates to South Road.

4. Waiver Request: The applicant has requested a waiver from Subdivision Regulation 3.3 to not delineate wetlands, soils and topography for the rear portion of the property. Given the size of the parcel and the lack of development proposed in this area the waiver request appears reasonable. If this waiver request is not granted, the Planning Board should refrain from taking jurisdiction of the application until the required information is provided.

5. Wells: While private wells can be located within wetland buffer areas under Fremont's zoning, ideally, wells should be located as far from wetlands and the buffer area as possible to minimize disturbance. I recommend the Planning Board request the proposed wells on Lots 1 and 4 be moved as far away from the wetland buffer are as feasible.

Mr. Cole responded to comment number one by explaining that where the driveway ends up will have a lot to do with which building envelope the house ends up getting built on in Lot 4. The applicant will apply for a Special Exception if it becomes necessary. Mr. Cole also stated that he is asking for a waiver from Regulation 3.3 to not delineate wetlands, soils, and topography for the rear portion of the property. This area is very far away from any of the proposed development and will stay in its natural course. Mr. Cole also stated that he will do his best to pull the wells further away from wetland areas.

Ms. Wolfe read the department comment sheets that she got back. The Road Agent wrote, "*After subdivision approval property owners will need driveway permits for all four lots. My concerns will be to address proper drainage and site distance abutting the South Road ROW.*" The Town Administrator wrote, "*Please consider removal of large pines along South Road for safety, visibility reasons.*" The Conservation Commission wrote, "*Driveways shown on Lots 1 and 4 are located within the 100' wetland buffer. It appears that the driveway in Lot 1 could be adjusted to avoid the buffer entirely. A significant portion of the driveway on Lot 4 occupies the wetland buffer (~3/4 of its length as shown) and is at one location within 10-15' of the actual wetlands as shown. Applicant will need to design the drive such that wetlands are not adversely impacted. The Conservation Commission requests a site visit to view wetlands affected by proposed driveway locations prior to Subdivision approval.*"

Ms. Miner had a question about which sheets in the plan set get recorded at the registry. She requested for a note about the waiver to be transferred to sheet three on the plans. There was a discussion about the waiver request from the Regulation 3.3. **Mr. Lavelle made a motion to open the discussion to the public. Ms. Miner seconded the motion. The motion passed 7-0-0.**

Ms. Rowden stated that the note about the waiver should be added to the plans if the waiver is granted. An abutter wanted to know if the lots will be sold before or after the homes are built. Mr. Kribs explained that the plan is to sell all four lots to one builder. He also stated that it is unlikely a duplex will be built on Lot 4. **Mr. Lavelle made a motion to close the public hearing. Mr. Powers seconded the motion. The motion passed 7-0-0. Mr. Lavelle made a motion to grant the waiver request. Mr. Miner seconded the motion. The motion passed 7-0-0.**

Ms. Rowden stated that the application is now complete. Ms. Miner, alluding to the Conservation Commission's comment sheet, stated that because there is snow on the ground, it wouldn't necessarily be helpful for the Planning Board to do a site walk. If the applicant ends up going to the Zoning Board to seek a Special Exception, then the Zoning Board can do a site walk at that time. Mr. Kribs explained that they will apply for a Special Exception depending on which building envelope gets used for Lot 4. Ms. Rowden suggested that the Board place a condition on this subdivision approval stating that the applicant will need to go to the Zoning Board for a Special Exception if the driveway is in the wetland buffer. **Mr. Powers made a motion to accept jurisdiction of the application. Ms. Miner seconded the motion. The motion passed 7-0-0.**

There was some discussion about a driveway easement that would need to be executed. The language of this easement will need to be reviewed by Town Counsel. Ms. Rowden noted that in the Fremont subdivision regulations, subdivision applications need to meet their conditions of approval within 90 days. The applicant did not think they would need more than 90 days. After some discussion, the Board decided there will not be a site walk at this time. **Mr. Powers made a motion to open the discussion to the public. Mr. Lavelle seconded the motion. The motion passed 7-0-0.** There were no comments. **Mr. Powers made a motion to close the public hearing. Mr. Lavelle seconded the motion. The motion passed 7-0-0. Mr. Lavelle made a motion to approve the subdivision with the following conditions:**

1. A note of the waiver from Section 3.3 of the Subdivision Regulations shall be on the plans.
2. If a driveway is placed within the Watershed Protection Area, it will require a Special Exception from the Zoning Board of Adjustment.
3. Any driveway over 300 feet shall meet NFPA 1.
4. Town Counsel shall review the language of the driveway easement.

**Mr. Powers seconded the motion. The motion passed 7-0-0.** The applicant and abutters left at 7:26 pm.

**Public Hearing for Tom Nisbet who seeks to increase the height of a previously approved 76' x 100' steel building from 18' 6" to 25' 2". This building was originally approved by the Planning Board in a 2005 site plan. This site is located at 326 Main Street, Unit 12 (Map 3 Lot 37-2).**

**After some discussion, Mr. Lavelle made a motion that this proposal qualifies as a minor site plan. Mr. Powers seconded the motion. The motion passed 7-0-0.** Ms. Rowden stated that

she believes this is a complete application. She briefly explained that when this subdivision was originally approved in 2005 there were no zoning districts in Fremont. Since then, this particular lot has become a residential lot and enough time has passed that the owner has lost his vesting rights. For Mr. Nisbet to expand his legal non-conforming use, he needs a variance from the Zoning Board. There was some discussion about the checklist in the application. The application needs to be revised to better match the regulations. Mr. Nisbet explained that he is expanding his business but he is not expanding the hours. He needs the added height for the mezzanine. **Mr. Lavelle made a motion to accept jurisdiction of the application. Mr. Barham seconded the motion. The motion passed 7-0-0.**

Ms. Rowden clarified that the existing business is a legal non-conforming use. Mr. Nisbet explained that the developer of the condo units went bankrupt and never finished the utilities, water, septic, lighting or general site work. Mr. Nisbet now owns eight or nine of the units and is slowly finishing the work. He is now finally able to construct this building. Ms. Rowden stated that he lost his vesting rights for that building in 2010 and needs a variance from the Zoning Board. Mr. Nisbet stated that he has always used the land where the footprint of this building will be for his business. He felt that he has not lost his vesting rights. Ms. Rowden stated that it is possible that the Zoning Board will disagree with her opinion and determine that he does not need the variance. **Mr. Powers made a motion to open the public hearing. Ms. Miner seconded the motion. The motion passed 7-0-0.** There were no comments. **Mr. Powers made a motion to close the public hearing. Ms. Miner seconded the motion. The motion passed 7-0-0. Mr. Lavelle made a motion to approve the minor site plan with the following conditions:**

1. The applicant receives a Variance from the Fremont Zoning Board of Adjustment for the expansion of a legal non-conforming use.
2. All required federal, state, and local permits received.

**Mr. Powers seconded the motion. The motion passed 7-0-0.** Mr. Nisbet left at 7:42 pm.

### **III. OTHER BUSINESS**

#### **Engineering escrow account for Altaeros Energies construction review**

Mr. Lavelle recused himself as a representative for the project and Mr. Powers recused himself as an abutter. The Board members took a moment to read an email from Town Engineer Dan Tatem and a letter that was sent out by Mr. Rislove earlier in the day. Ms. Wolfe summarized that there has been nearly \$4,000 worth of work done by Stantec that has yet to be billed to the Town. The engineering escrow account has been just about depleted at this point. Ms. Wolfe further explained that Mr. Tatem has estimated about \$3,000 more worth of work to finish the construction review. One item listed included inspection of a final course of payment. There was a discussion about the final course of pavement. Mr. Rislove stated that this is part of phase two, not phase one. The top coat will happen in phase two. This phasing is on the amended site plan. As such any inspections would take place during phase two. There was a discussion about unbilled work. Mr. Lavelle could not understand how the inspection work could possibly total \$19,000. There was also some discussion about Dan Tatem. Mr. Rislove felt that Mr. Tatem

created problems to create billable hours. He also felt that Mr. Tatem paints a picture of him to make it seem like he is constantly trying to get away with stuff. Mr. Karcz expressed that the applicant was responsible for the back and forth and additional visits and that the applicant is responsible for additional problems. The Board spent some time looking at the \$4,000 worth of work that has not yet been billed to the Town. Ms. Rowden stated that regardless the Town is going to get this bill. She felt the real question is whether or not the Board should ask for \$3,000 to pay for the rest of the review work.

Mr. Eliopoulos stated that there is a cost to the applicant anytime there is a complaint about the Town Engineer or about the invoices they get from Stantec. Mr. Barham explained that Mr. Tatem has had to rebut the applicant's complaints. Mr. Eliopoulos felt about \$6,000 was wasted during that process. Mr. Barham felt that if the developer worked with the Town Engineer they would have come to a solution together. Referring to the winter stabilization issue, Mr. Barham stated that the Board was not condoning the developers' actions, the Board only felt that at this point there was not a lot that can be done. Mr. Lavelle did not think that all of their problems would have gone away if he worked with the Town Engineer. Mr. Barham suggested putting a cap on the amount of money that can be billed to the applicant for the future construction review work. There was a discussion about numbers for the inspection estimate. Mr. Barham suggested accounting for eight hours of work by a Stantec engineer at \$150 per hours. This would be a cap of \$1,200. Mr. Rislove felt that Stantec should eat some of the \$4,000 worth of unbilled labor. **Mr. Barham made a motion to bill the \$4,000 to Altaeros and to cap the remaining project work at \$1,200. Mr. Downing seconded the motion. The motion passed 7-0-0.** Mr. Eliopoulos asked if Altaeros could get a bond reduction since the site is over 90% completed. The "released" funds can be used to pay the \$4,000 bill and remaining project work totaling approximately \$5,200. The Board agreed to this idea, but the applicant should come back to them with something in writing.

There was some discussion about what engineering firm should review the construction of the Ragnar Original Innovations site. After some discussion, Ms. Miner suggested creating a subcommittee to look into ongoing Town projects in general and to identify criteria and potential firms for site review work. They will need to review the Town Regulations for site compliance monitoring requirements and other items that the Town Engineer may need to review. Mr. Rislove and Mr. Eliopoulos left at 8:38 pm.

#### **IV. CIRCUIT RIDER BUSINESS**

Mr. Lavelle and Mr. Powers returned to the Board as voting members. Ms. Rowden handed out her draft question and answer sheet about the proposed changes to the Aquifer Protection Ordinance. She will finish up this document tomorrow.

There was a quick discussion about Board organization. The Board will vote about this at their next meeting.

**Mr. Barham made a motion to adjourn at 8:55 pm. Mr. Powers seconded the motion. The motion passed 7-0-0.**

Respectfully Submitted,

Casey Wolfe  
Land Use Administrative Assistant