

Minutes

Planning Board Meeting

September 6, 2012

Members of the Planning Board in attendance were Charles Moreno, Chairman, Paul Eaton, Terry Hyland, Lynn Sweet, Mark Whitcher, and Donald Coker, Alternate member. The Chairman called the public meeting to order at 7:30 PM and announced the members present. The closing date for applications to appear on the agenda for the October 2012 regular meeting is 5 p.m., Tuesday, September 18, 2012. The Chairman reminded the audience that the Board has a policy setting time limits for meetings and that the Board will not consider any new business after 10:30 PM. It was agreed to postpone consideration of the minutes until after the formal business. It was noted for the record that the August meeting had been cancelled due to the lack of a quorum.

The first item of continuing business was the application of JANET CHASSE PREVATT AND TERRY PREVATT for 3-lot, revised to 2-lot, subdivision of their property located at 79 Ridge Farm Road (Tax Map 15, Lot 22). There was nobody present for this item. Daniel O'Lone of Berry Surveying and Engineering indicated that he was unaware of any new information and requested that the discussion be continued forward.

The first item of new business was the application of KENNETH and MARY COOK for the 2-lot Conservation Subdivision of their property located at 700 Second Crown Point Road (Tax Map 19, Lot 27). Kenneth and Mary Cook were present accompanied by Neal Hastings. Daniel O'Lone of Berry Surveying and Engineering presented the application. Michael Labreque, an abutter, was also present. The Cooks hope to divide one 5.03 acre lot off their 46.51 acre property for the Hastings family. The lot would include 1.24 acres of uplands, meeting acreage/frontage requirements for conservation development. The Cooks will retain the existing farmhouse and outbuildings and would put 38.92 acres to the rear of the property into conservation, including the hill and far shoreline of the pond visible behind the Crown Point Grange. The driveway to the new lot will cross the existing hayfield, which includes areas of wetlands soils, so a dredge and fill permit from NH DES will be required. They have requested a waiver to the requirement in the subdivision regulations for full topography and wetlands delineations for the rear of the property. The proposed conservation area is largely uplands woods, and includes wetlands area along the beaver pond at the far rear. The hayfield to the front is mostly Paxton soils.

Board members then reviewed the plans with the checklist. The following items were missing and/or need clarifications: soils map; correct typographical errors note 12 and the legend on page 2; add an easement across the proposed new lot to allow uplands access to the back land from the farmhouse; add a note restricting further subdivision/development of the conservation area per NH RSA 674:21-a and NH RSA 477:45-47; and seals of the surveyor and wetlands scientist. After discussion, Board members agreed that a conservation deed restriction may make more sense than a conservation easement in this case, because it might be difficult to find somebody to hold an easement on this property. The statutes provide that the Town would be able to enforce deeded conservation restrictions if they are tied to the subdivision approval. Board members asked about the open space and whether the Cooks hoped to place any restrictions on use of the area, such as restrictions on motorized vehicles. Board members noted the provisions in the conservation development ordinance for use of the conservation area. Noting that the checklist was mostly complete, Lynn Sweet then made a motion, seconded by Paul Eaton, to accept the plans as complete for consideration, conditional upon the submission of the soils map. There was no further discussion and the vote was unanimous in the affirmative. The Chairman noted that the discussion would return to the question of the permitted uses of the open space and the waiver request, and then opened the public hearing on the application. Michael Labreque had no comments. The Chairman then closed the public hearing.

The Board then turned to the request for a waiver to the requirement for full topography and wetlands on proposed conservation area of the property. Noting that the plans show enough detail to meet zoning requirements and also noting Board precedent, Lynn Sweet then made a motion, seconded by Paul Eaton and Mark Whitcher, to grant the waiver for full topography and wetlands of the remainder of the large parcel. Board members then reviewed the reasons for approval of the waiver: the waiver makes sense because development is compressed to the front and the plans provide all the information required for the areas affected; granting the waiver fits the spirit and intent of waivers; based on local knowledge, the Board knows enough about this land to know that the back land meets the minimums required for conservation subdivision; the conservation subdivision is a big benefit to the First Crown Point side and the proposal puts double the required land area into conservation. There being no further discussion, the Chairman called the vote on the motion to approve the waiver request. The vote was unanimous in the affirmative. Discussion then turned to the question of whether the proposed deed

restriction would meet the requirements of conservation development. Board members agreed that they were comfortable with the Town attorney's note regarding the statutes governing subdivision restrictions, and agreed that the statutes make the conservation restrictions binding, while it could be difficult to find somebody to hold an easement here. Dan O'Lone noted that the donation is on the plan and is a willful act. Discussion turned to possible restrictions that the Cooks might want to put on the land proposed for conservation beyond 'no further subdivision'. It was suggested that these items should appear as notes on the plan and be listed in the deed. Restricting wheeled vehicles was discussed, as well as traditional conservation restrictions such as no mining, stripping of soils, etc. Lynn Sweet suggested a "mineral rights stay intact" clause. Donald Coker expressed his concern that the public might feel that they are entitled to use the Cooks' property because of the conservation restriction, and suggested that the public might feel that they are entitled to use the property in any of the ways allowed under the ordinance unless the intent of the Board and the property owners to restrict some uses (e.g. OHRVs, etc.) is stated outright. Board members advised the Cooks that one of the benefits of using a deed restriction to conserve the property is that the Cooks remain in control as the owners of the land and can decide what they would like to do. It was noted that the final deed wording must be approved by the Town attorney, who can advise the applicants and Board as to whether the language of the conservation development ordinance needs to be incorporated into the deed or whether the deed simply needs to reference the ordinance. Donald Coker noted his concern with the fact that in legal terms, what is not specifically prohibited is allowed, and urged the Cooks and the Board to incorporate any necessary terms into the final documents. Mr. O'Lone will work with the Cooks on an initial draft of the documents.

Board members then discussed whether it would be appropriate to consider a conditional approval so that the Cooks could begin to work on finalizing required permits and documents. After a lengthy discussion, Lynn Sweet then make a motion to approve the plans for 2-lot conservation subdivision, conditional upon the completion of the following items: soils map, seals of surveyor and wetlands scientist, correction of typographical errors, add an easement for access to the rear of the property; NH DES wetlands permit for the driveway; draft a list of proposed open space usages—both wants and proposed prohibited uses—and draft deed language for the conservation restriction referencing the statutes, subject to review by the Town attorney and review by the Board to make sure that the final proposal meets the intent of conservation development. Mark Whitcher seconded the motion. After brief discussion, the Chairman called the vote. The vote was unanimous in the affirmative. Paul Eaton thanked the Cooks for taking this approach to development and said that this is a win-win for the Town. Mr. Moreno said that it will be a great legacy. Board members agreed. The Cooks were advised to return to the Board once final documents have been drafted.

Board members then briefly reviewed a mylar submitted to the Board regarding the Colwell/Hodges application approved in August 2008. It was agreed to ask Don Rhodes and Corey Colwell to attend a meeting to go over the final plans with the Board. There was a lengthy discussion of conditional approvals and the question of vesting and deadlines. It was agreed to schedule a work session on Wednesday, September 19th at 7PM for review of the draft stormwater regulations. There being no further business before the Board, a motion to adjourn was made and seconded. There was no further discussion and the vote was unanimous in the affirmative. The meeting adjourned at 9: 20 PM.