

Planning Board Meeting Minutes

Location: Strafford Town Hall Conference Room

Date & Time: September 7, 2023 6:30PM

Voting Members Present:

Phi Auger – Chairman
Tim Reed – Vice Chairman
Charlie Moreno
Terry Hyland

Non-Voting Members Present:

Don Clifford – Alternate
Donald Coker – Alternate

Others Present:

Blair Haney, Strafford Regional Planning Commission, Regional Planner
Keri Roman, Planning Board Legal Counsel
Scott Whitehouse, Strafford Fire Chief
Robert Fletcher, Minutes Recorder

The Chairman, Phil Auger, called the meeting to order at 6:30PM, recognized Board members Charlie Moreno, Terry Hyland, Tim Reed, Donald Coker, and Don Clifford as present. He also recognized as present Blair Haney, Keri Roman, and Robert Fletcher.

Continuing Business

Site Plan Review - Navigator Properties LLC (Mariner Tower), Telecommunications Facility: Proposed 160-foot lattice telecommunications tower on the property of Gail J. & Michael A. Barry Jr., 15 Strafford Road (Tax Map 11, Lot 83)

Charlie Moreno recused himself as a voting Board member, and the Chairman appointed Don Clifford as a voting Board member. He also appointed Donald Coker as a voting Board member in place of Lynn Sweet.

Attorney John Springer of Springer Law, Portsmouth, NH, indicated the need to address the legal aspects of the application and the engineering issues referenced in the CMA report (Town of Strafford) and the TEP report (applicant), both to be discussed at the next meeting. He confirmed the “shot clock” expiration date of November 5, 2023, with Attorney Roman. Attorney Springer provided the following information:

- Proposed East cell tower to be located within the Strafford wireless overlay district.
- Verizon slated to occupy the highest permitted location at 155 feet on the cell tower.
- Redacted copy of carrier lease agreement provided to Attorney Roman.
- Cell tower containing maximum of four carriers will meet FCC regulation and radio frequency exposure requirements.
- The State Historic Preservation Office determined that no adverse historical effect would result from a cell tower at this location.

- Visual study using a balloon float on June 20, 2023, indicated seven locations within a one-mile radius where the balloon was visible.
- Verizon would not provide proprietary data, but they concur with the predictive coverage indicated in the applicant's C² report as reasonable. It is difficult to determine the accuracy of coverage indicated in the town's IDK report due to unknown input parameters.

Attorney Roman referenced Town Ordinance Section 6B.3, Special Use Permit, that requires a carrier to provide predictive coverage maps. In lieu of receiving this data, she asked the applicant to obtain in writing Verizon's concurrence with the C² predictive coverage.

The Chairman opened the meeting for public comments at 7:01PM. Mike Thivierge, 681 First Crown Point Road, asked what finish was planned for the tower. Attorney Springer indicated that it would be a plain tower in galvanized gray finish with only communication equipment mounted on it. Scott Whitehouse, Strafford Fire Chief, emphasized the importance of improving communication capabilities in Strafford for emergency services, and this cell tower location would significantly enhance their communications. There being no further public comment, the Chairman closed the meeting to public comments at 7:05PM.

The Chairman expressed concern about the engineering of the access road to the site from Route 202A, which will be a difficult entry from a state highway with excessive driveway grades to reach the site. He also asked for an update on the state driveway permit to be provided at the next Planning Board meeting. Tim Reed indicated that comments from CMA Engineers regarding the drainage design were reasonable, and all the comments would likely need to be addressed.

The Board reviewed and voted to approve several invoices for payment as follows:

- IDK Communications, August 8, 2023. Tim Reed made a motion to approve payment, which was seconded by Donald Coker and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- CMA Engineers, July 14, 2023. Donald Coker made a motion to approve payment, which was seconded by Tim Reed and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- Drumond & Woodson, July 19, 2023. Don Clifford made a motion to approve payment, which was seconded by Tim Reed and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- Isotrope LLC, July 31, 2023. Tim Reed made a motion to approve payment, which was seconded by Donald Coker and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- Isotrope LLC, July 1, 2023. Tim Reed made a motion to approve payment, which was seconded by Don Clifford and voted upon verbally in the affirmative by all voting Board members. The motion passed.

The Chairman asked for a motion for a continuance to the October 5, 2023, 6:30PM Planning Board meeting, which was so moved Don Clifford, seconded by Tim Reed, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

The Chairman recognized Charlie Moreno as a voting Board member, and reinstated Don Clifford as an alternate Board member.

Major Subdivision (cumulative impact) and Lot Line Adjustment – Bertha L. Huckins Revocable Trust, 2-lot subdivision, 22 Hillside Drive (Tax Map 11, Lot 4) & lot line adjustment with Tax Map 11, Lot 4-3 (Donna Huckins) and Lot 4-2 (Sharon L. Huckins)

Corey Colwell of TF Moran, representative for the Bertha L. Huckins Revocable Trust, recognized as present several members of the Huckins family. He indicated the proposal to create an additional five-acre lot by extending an existing right-of-way with a lot line adjustment for Lot 4-3 resulted in a non-conformity regarding setback for an existing structure on Lot 4-3. The Zoning Board of Adjustment granted a setback variance on July 20, 2023, with the following stipulations: 1) no future expansion on the right-of-way, and 2) no further Lot 4-3 setback variance. The proposal requires a lot line adjustment to Lot 4-3, and the driveway on the right-of-way will be widened to 20 feet, brought up to town standards, and provide access to a maximum of three lots. The applicant is requesting four waivers to the major subdivision regulations regarding roadways, including 1) minimum roadway width, 2) minimum roadway shoulders, 3) pavement, and 4) guardrail.

Blair Haney confirmed with the applicant that there have been no changes to the original plan submitted other than reference to the granted variances and minor changes to plan notes. The Board discussed the need for a recorded owner's roadway and drainage system maintenance agreement in addition to the current storm water inspection and maintenance manual. Tim Reed emphasized the need for riprap or other lining for swales over five percent grade, and questioned the availability of 21-inch diameter corrugated plastic pipe (CPP) culvert.

The Board addressed each of the waiver requests as follows:

- Waive required 22-foot paved roadway width to allow twenty-foot paved width. Charlie Moreno made a motion to approve the waiver, which was seconded by Terry Hyland and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- Waive required three-foot roadway shoulder width to allow two-foot-wide shoulders. Tim Reed made a motion to approve the waiver, which was seconded by Charlie Moreno and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- Waive roadway pavement to allow three inches of processed gravel in lieu of pavement. Charlie Moreno made a motion to approve the waiver, which was seconded by Terry Hyland and voted upon verbally in the affirmative by all voting Board members. The motion passed.
- Waive roadway guardrail requirement to allow no guardrail with 3:1 side-slopes, Tim Reed made a motion to approve the waiver, which was seconded by Donald Coker and voted upon verbally in the affirmative by all voting Board members. The motion passed.

The Chairman opened the meeting for public comments at 7:46PM. Mike Thivierge, 681 First Crown Point Road, indicated his support for the subdivision proposal. There being no further public comment, the Chairman closed the meeting to public comments at 7:47PM.

The Chairman asked for a motion to approve the lot line adjustment, which was so moved by Donald Coker, seconded by Terry Hyland, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

The Board discussed following conditions of approval for the plan:

1. Drainage swales greater than five percent will be lined with riprap or similar material to help prevent erosion.
2. If 21-inch CPP culvert is not available, the culvert size will be increased to 24-inch, and appropriate cover shall be provided.
3. Recorded owner's roadway maintenance agreement and storm water inspection and maintenance manual.
4. State Department of Environmental Services determination of minimal wetlands impact.

The Chairman asked for a motion to approve the plan with the above conditions, which was so moved by Charlie Moreno who stated the conditions, seconded by Tim Reed, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

Minor Subdivision (3 lots or fewer) - Michael R. Thivierge & Dawn S. Thivierge Revocable Trusts, 2-lot subdivision, 681 First Crown Point Road (Tax Map 19, Lot 72)

Joe Berry of Berry Surveying and Engineering presented the application, which proposes the subdivision of a 14.45-acre lot (Lot 72) to create two lots:

1. Lot 72, a 2.00-acre lot with an existing structure accessed by an existing driveway from First Crown Point Road, which will require state Department of Environmental Services approval. An easement off First Crown Point Road on proposed Lot 72-2 is required for a portion of the existing Lot 72 driveway that crosses Lot 72-2.
2. Lot 72-2, a 12.45-acre lot accessed via an existing driveway on a 30-foot-wide easement from First Crown Point Road. The easement is recorded on deeds for Lot 72 and 72-1, which describes a shared driveway for access to both lots.

The proposed plan depicts a structure, test pit, well and wetland locations. The driveway planned to access the buildable area on Lot 72-2 will extend from the shared driveway on the deeded easement, be 15 feet wide, have 2-foot-wide shoulders, and include a vehicle turn-around. The existing shared driveway is 12-feet-wide and cannot be widened due to several wetland crossings.

The Board reviewed the application for completeness and determined that it met all application checklist conditions. Charlie Moreno made a motion to accept the plan for consideration, which was seconded by Tim Reed, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

Tim Reed noted the receipt of two letters regarding this application and questioned the need to seek counsel with the town attorney. The letter from abutter Todd Scruton of 673 First Crown Point Road and owner of Lot 72-1 sited objection to the use of the shared driveway to access proposed Lot 72-2, due to primarily:

- Overburdening the easement – The original easement for Map 10, Lot 72, was intended solely for lots 72 and 72-1 rather than for any future subdivided lots.
- Cessation of purpose – The purpose for the easement ended when a separate driveway was created to access Lot 72.
- Easement abandonment – The deeded easement states that construction and maintenance of shared driveway be evenly distributed between the two parties. The owner of Lot 72-1 has shouldered the full burden of the shared driveway construction and ongoing maintenance.
- Creation of a back lot – The back lot ordinance is only allowed for properties in existence prior to January 1, 2015. Subdivision of Lot 72 creates a back lot, Lot 72-2.

The other letter from Attorney Kevin Baum, representing Dawn and Michael Thivierge, in response to the Scruton letter, indicating primarily that:

- The easement is not overburdened because it still serves only two lots as originally deeded.
- The easement was expressly granted in the deed to Alicia Scruton and cannot be extinguished by lack of necessity.
- Lack of use of an easement is not sufficient for claim of abandonment.
- The Thivierge’s predecessor in title, Alice Scruton, paid \$15,000 towards construction of the shared driveway. Owner of Lot 72-1 has not asked current owner of Lot 72 to contribute to shared driveway maintenance.
- The proposed Lot 72-2 meets the 200-foot frontage requirement, and therefore is not a back lot.

The Board recognized Attorney Baum and asked him to comment on the letter. Attorney Baum suggested to the Board that, based on interpretation of general land use planning and zoning, it is not within the Board’s purview to consider civil matters in determining whether the application meets the requirements of the subdivision regulation. He also expressed the opinion that the Board did not need to seek town counsel on this matter.

The Chairman confirmed with the Board and the applicant that everyone agreed that the easement exists. Tim Reed expressed concern about town liability regarding a Board decision without town counsel. The Board also questioned placing the proposed turnaround at the end of the 12-foot-wide shared driveway, which was 410 feet from the driveway entry off First Crown Point Road and exceeds the 400-foot maximum distance for a turnout. Don Clifford suggested locating a turnout at approximately 150 feet between wetland areas.

The Chairman opened the meeting for public comment at 8:23PM. Todd Scruton of 672 First Crown Point Road requested a continuance to seek counsel and respond in writing to Attorney Baum’s letter. He also stated his objection to Attorney Baum’s rebuttal to easement overburdening and assertions that the Board’s mandate does not include consideration of private disputes. Mr. Scruton believes the Board’s role is to judiciously evaluate how development of communal land impacts the involved parties and ensure Board decisions are made in the interest of the town and its constituents. Mr. Haney suggested that Mr. Scruton submit his objections in writing to the Board.

The Board concluded that they would need to consult with the town attorney. They also expressed the need for a shared driveway agreement between the two parties as a condition of approval. Attorney

Baum objected to this, because with the parties possibly unable to reach an agreement, it may put the applicant in an impossible position. Michael Thivierge indicated he had no dispute with his neighbor, and when purchasing the property, knew about the deeded easement and shared driveway.

The Chairman closed the meeting for public comments at 8:37PM and asked for a motion for continuance to the October 5, 2023, 6:30PM meeting, which was so moved by Donald Coker, seconded by Tim Reed, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

New Business

Design Review (Conservation Subdivision) – Riley Family Trust of 2013, Dal Ray Riley and Joanne D. Riley, Trustees, 2-lot conservation subdivision, 845 Second Crown Point Road (Tax Map 19, Lot 17-1)

Ray Bisson of Stonewall Surveying, representing the Riley Family Trust, indicated that the applicant had previously appeared before the Board for a Preliminary Conceptual Consultation. Rather than propose a six-lot subdivision utilizing a dead-end street and cul-de-sac, they are proposing a two-lot conservation subdivision of the 44.33-acre parcel with limited frontage on Second Crown Point Road. The first lot (Lot 17-1C) is 5.01 acres with 105 feet of frontage on Second Crown Point Road and includes a 0.82-acre right-of-way, an existing structure, and a driveway off Second Crown Point Road. The second lot (Lot 17-1) would encompass 39.32 acres with 50 feet of frontage on Second Crown Point Road. 33.81 acres of the lot will be in conservation with a 5.51-acre exclusion area for residential use, which will be accessed by a shared driveway through Lot 17-1C. The conservation area has vernal pools, and the New Hampshire Natural Heritage Bureau identified the presence of two turtle species within the endangered species range. The applicant submitted a proposed conservation deed restriction.

The Chairman opened the meeting for public comment at 8:59PM, and there being none, closed the meeting to public comment at 8:59PM.

The Board scheduled a site walk for September 14, 2023 at 4:30PM.

Major Subdivision (cumulative impact) – Alex, Lucas & Noah Chantasiri, 3-lot subdivision, 840 First Crown Point Road (Tax Map 18, Lot 29-1)

Daniel O’Lone of Berry Surveying and Engineering, representing the Chantasiri family, provided an overview of the proposal to subdivide a 30-acre parcel into three lots, each more than five acres in area. An existing residence on the parcel is accessed by an approximately 12-foot-wide driveway, which will provide access for all three lots. Two easements are required for lot and utility access and a 75-foot protective well radius. The applicant is requesting waivers for the following:

- Delineation of natural features (water courses and exposed ledge) and wetland setbacks for the entire parcel.
- Shared driveway shoulder width.
- Driveway turnout every 400 feet.
- Two Planning Board meeting requirement for major subdivision approval.

The Board reviewed the application for completeness and determined that it met all application checklist conditions. Charlie Moreno made a motion to accept the plan for consideration, which was seconded by Donald Coker, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

The Chairman opened the meeting for public comment at 9:29PM. Abutter Eric Speed, 910 First Crown Point Road, expressed concern regarding a 12 to 13-foot-wide portion of the driveway, which could not be widened to 15 feet due to a wetland crossing. Mr. O'Lone indicated that the driveway width waiver did not include this area. Abutter Chip Craven, 912 First Crown Point Road, questioned if the minimum lot size at elevations over 800 feet included or excluded wetlands or 25 percent or greater slopes. Mr. O'Lone indicated that a minimum five-acre lot must contain two acres excluding wetlands and excessive slopes with at least sixty percent contiguous buildable area within the two acres.

The Board addressed each waiver separately with discussion as indicated:

1. Tim Reed made a motion to waive delineation of natural features and wetland setbacks for the back portion of the parcel. Terry Hyland seconded the motion, and all Board members voted verbally in the affirmative. The motion passed.
2. The Board determined that the proposed driveway off-shoots to access lots along the current driveway provided adequate turnaround areas. Terry Hyland made a motion to waive required turnouts every 400 feet, which was seconded by Tim Reed, and voted upon verbally in the affirmative by all voting Board members. The motion passed.
3. The Board discussed the proposed driveway shoulder width of one and one-half feet verses the required two-foot minimum width. Tim Reed previously asked Mr. O'Lone what the reason was for the requesting a reduced shoulder width. Mr. O'Lone indicated cost as the reason and indicated that the Strafford Fire Chief did not object to the reduced width. Some Board members did not believe this to be adequate justification to approve a waiver. Donald Coker made a motion to waive the requirement for two-foot shoulders in order to allow one and one-half foot shoulders. Terry Hyland seconded the motion, and two Board members voted verbally in the affirmative, and three Board members voted verbally in the negative. The motion did not pass.
4. The Board discussed the waiver for the two-meeting requirement for major subdivision approval. Mr. O'Lone previously stated that the lot definition per Section 2.2.3 indicates "the number of lots in a subdivision will be considered to be the total number on adjacent land with the same subdivider whether the subdivision is made at one time or serially." He indicated that Lot 29-1 had changed ownership since the prior subdivision created Lot 29-1; therefore, the application for a three-lot subdivision should be considered a minor subdivision, not a major subdivision. Minor subdivision approval does not require two meetings for approval. Mr. Haney pointed out to the Board that the application had been noticed as a major subdivision. Donald Coker made a motion to consider the application as a minor subdivision, which was seconded by Terry Hyland, and voted upon verbally in the affirmative by all voting Board members except Charlie Moreno, who abstained. The motion passed.

The Chairman closed the meeting for public comment at 9:56PM and asked for a motion to approve the plan with the condition to modify the plan driveway note to reflect proper shoulder width and

driveway upgrade to occur when home construction begins. Tim Reed made the motion, which was seconded by Terry Hyland, and voted upon verbally in the affirmative by all voting Board members. The motion passed.

Other Business

The Board reviewed the minutes of the July 27, 2023, Planning Board Work Session. Donald Coker made a motion to accept the minutes as written, which was seconded by Tim Reed and voted upon verbally in the affirmative by all voting Board members present who attended the July 27th Work Session.

The Board reviewed the minutes of the August 3, 2023, Planning Board Meeting. Charlie Moreno made a motion to accept the minutes as written, which was seconded by Tim Reed and voted upon verbally in the affirmative by all voting Board members present who attended the August 3rd meeting.

The Chairman expressed the need to address several ordinance modifications and suggested changes to be provided by the Zoning Board. Work Sessions will be scheduled to facilitate discussion.

There being no further business before the Board, Donald Coker made a motion to adjourn the meeting, which was seconded by Tim Reed. The Board voted unanimously in favor, and the meeting adjourned at 10:23PM.