

**PLANNING BOARD
27 School Street
HILLSBOROUGH, NH
December 07, 2022**

TIME: 7:00 p.m. – 8:30 p.m.

DATE APPROVED: 12/21/22

MEMBERS: Susanne White- Chairperson, Melinda Gehris -Vice Chair, Adam Charrette, Ed Sauer, Steve Livingston, Nancy Egner

EX-OFFICIO: James Bailey III

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Kim Opperman, Dana Clow

Excused: Jim Bailey, Susanne White, Kim Opperman

Public: Leigh Bosse, Richard Head, Tia and Zach Whitney, Peter Mellen LLS., Heather Ellis

Call to Order:

2nd Vice Chairperson Nancy Egner called the meeting to order at 7:00 PM.

Nancy Egner called the roll and appointed Dana Clow to sit in place of Susanne White. Melinda Gehris attended the meeting by phone due to illness.

Minutes

11/16/22 Steve Livingston made a motion to approve the minutes with the correction that Adam Charrette was not at that meeting. Dana Clow seconded the motion.

Roll Call Vote: Steve Livingston -Yes, Adam Charrette-Abstain, Dana Clow-Yes, Ed Sauer-Abstain, Nancy Egner-Yes, Melinda Gehris-Yes.

11/30/22 Steve Livingston made a motion to approve the minutes. Ed Sauer seconded the motion.

Roll Call Vote: Steve Livingston -Yes, Adam Charrette-Yes, Dana Clow-Yes, Ed Sauer-Yes, Nancy Egner-Yes Melinda Gehris-Yes.

Public Hearing

Subdivision

Dascomb Road and Myrtle Street (Map 11P Lots 191 & 400, Map 23 Lot 113)
Dascomb Associates

Nancy Egner said that there was a Site Walk but due to lack of a quorum it was not an official meeting.

Peter Mellen submitted updated plans to the Board. Changes to the plan include the re-naming the subdivision road from Fogg Circle to Cardinal Circle, the location of a fire hydrant at the

north end of Cardinal Circle. There was a question from the previous meeting about the turn radius of the cul-de-sac being able to accommodate a ladder truck. The center line radius is 62 ft and the area of pavement is 52 ft so there is sufficient area. Another change to the plans is the addition of notes 6-8. These notes address run-off and post development run-off. Stone bounds are to be set on the edge of the right-of-way, and they removed the “non-building” lot designation on lot 7.

Nancy Egner read the public hearing rules and opened the public hearing.

Nancy Egner recognized Richard Head, Chairman of the Conservation Commission.

Richard Head said, of the concerns expressed by the Commission in their letter two of them stood out. The first was the wetland to the north-east which because of what was shown in the storm water analysis, the road results in a small increase in flow into that wetland essentially going off site. He said the layout of the subdivision will result in an additional flow off the property through a wetland.

He said they also know through the topographic maps the flow off two of the lots will result in additional flow into the wetland. He said without knowing more, he is assuming that the development of those two lots will result in additional flow into that wetland absent some kind of treatment that would occur between the development and the wetland.

He referred to the statement from the engineer in response to the request that was made at the last meeting that he did not want to move forward and do a stormwater analysis with some assumptions on build out of the subdivision. So, they don't have any more information on stormwater flow impact on that wetland.

He laid out three conditions he was proposing to the Board. These are related to the fact the purchasers of these lots are not going to realize that they are going to have to do a stormwater flow analysis on this property because there hasn't been one done and there is a potential impact on those properties. That is an additional cost to the buyer of that lot. He said as the former Bureau Chief of the Consumer Protection Bureau at the Attorney General's Office, he would say you want disclosure to those individual buyers. He said in the Consumer Protection world we look at it as not making decisions for the consumer, but that the consumer should make decisions based on information. We want to make sure that a buyer of those lots has information to know that in addition to designing a house they might have to get an engineer to address the drainage into the wetland.

Mr. Head said there is a rule from the Department of Environmental Services that says the project cannot use wetlands or surface waters to serve as stormwater or water quality treatment. To avoid violating the wetland rules, whoever purchases these lots is going to have to realize they are going to need treatment swales between the development and the wetland. It is also important that you don't have an abutter with additional water flow on to their property. He said the engineer suggested this be part of the building permit process. He said his concern on that is that you want to give notice to a property owner as soon as possible, he suggested at the purchase and sale provide information to that individual that these conditions exist. He said this is

something that should be provided up front before they have committed to buying the property.

Another comment is about the proposed stormwater pond. He said it is designed for this development pre-construction not as the lots are built out. He said he does not know if any of the build out of the lots is going to use that stormwater basin for stormwater control. If it is, there is going to be additional stormwater flow into that stormwater basin. He said he has a greater concern about emergency overflow use, and a greater risk of potential downstream impacts. He said if that basin is not going to be used for development storm water or drainage there is probably less of a risk, but if it is going to be tagged into by any of the lot developers then you don't know if the capacity of that stormwater basin is sufficient.

Ed Sauer asked if virtually every lot was going to be affected by this.

Richard Head said most of lots 1 and 2 are impacted by the drainage basin in the northeast and there is a similar issue with stormwater flow at the southern portion of the property.

Ed Sauer said that should be on the Purchase and Sale agreement to go with every lot.

Mr. Head agreed that it should.

Dana Clow said the notes that have been added to the plan address the Conservation Commission's concerns. He said the Board has a decision to make. He said there are two ways to go. One is that the engineer addresses the build out of these lots through a modified design and analysis.

He said you can accept what has been submitted and condition the approval in such a way that each individual buyer be required to prepare a full site plan that addresses stormwater and all of the elements. There is going to be a site plan that addresses wastewater disposal and water supply, so it isn't that far of a reach to go a little further.

If the Board elects to go in that direction it needs to be done in a way that is associated with the conditions of approval. It should be a matter of title, so it shows up upon title examination for the sale of every lot. Dana Clow proposed language for a condition:

"Prior to the issuance of any building permit on any of the residential building lots to be developed adjacent to Cardinal Circle, the applicant for such building permit shall submit to the Hillsborough Planning Board an application for Site Plan Review and plan in full compliance with chapter 185 Site Plan Regulations. No building permit shall be issued until a Site Plan Review has been completed and approval by the Planning Board granted."

He said that way it is on record that the purchaser has to come to the Planning Board with a site plan. This protects the Town and the immediate abutters.

Ed Sauer said that the second way would be more accurate. If you did the whole thing in general, you could run in to problems when a buyer buys it. He said you don't know where the house is going to go. You would know when they come in with their site plan.

Ed Sauer asked Mr. Bosse which alternative he would prefer.

Mr. Bosse said he has no problem with full disclosure. He says he has a problem with the Conservation Commissions first comment with states there will be no increase in runoff because in his prior testimony he stated the development will have minimal runoff which falls below any ordinances. He said we know there is going to be some runoff.

Richard Head said the state wetland rules say that wetlands shall not be used for stormwater control.

There was discussion about the statement.

Mr. Head said the statement could be amended to state the increased runoff would not result in an increase in stormwater that would “adversely affect” the wetlands.

There was discussion about the plan notes.

Nancy Egner opened the public hearing.

Zach Whitney of 84 Myrtle Street made a statement (See attached)

There was discussion about the location of the Whitney’s driveway.

Mr. Bosse said the only thing that has been said is that they have provided an alternate location along the right of way for the location of the driveway. And as far as that goes, he doesn’t care. They have the strip where they can put the road and it is entirely up to the Town if they want to let his driveway stay in its current location.

Mr. Whitney said the comments from Mr. Bosse were “it’s my property and you’re not going to drive over it”. He said they were trying to have an amicable conversation, they were not trying to stop the project, they just want to keep their driveway where it is. They are not looking to make a new driveway that is going to take up the majority of their lot.

There was further discussion about the location of the Whitney’s driveway and its position relative to the subdivision road.

Dana Clow said this was a geometric condition that is subject to the Planning Board’s discussion because it is coming into an intersecting road at a place that defies intersecting geometry. He said the Board is obligated to deal with the geometry.

Mr. Whitney said they have no interest in a solution that will cost them money. He said they bought the property as is and the existing driveway is fine with them.

Nancy Egner said there was an opportunity for negotiation between the two of them.

Mr. Bosse said there is no negotiation because he doesn't care. He said once it is turned over to the town it isn't his responsibility. While it remains in his ownership, he will not interfere with Mr. Whitney's right of way.

Dana Clow said the location of the Whitney's driveway at the angle it is at is a Planning Board issue. It is all traffic access. The Board needs to take a position on how the geometry is going to be laid out.

Following discussion, the Planning Board moved on from that subject.

Nancy Egner recognized Heather Ellis and asked her if she had any comments.

Ms. Ellis said she had no comments and said that she came to the meeting so she would know what was going on.

Robyn Payson said this road is under consideration for becoming a Town road and the Board needs to consider whether or not there should be third party review on the road design. She said there is going to be further review when the Town considers making this a Town road. In a lot of ways, it is better for the applicant to find out if there are problems with the road design now rather than later after its built.

Mr. Bosse said third party review is a rip-off. He said he has been doing this since 1975 either as a developer or as representing this Planning Board. He said he has never seen a third-party review come back and say "what a great plan". He said he has never seen a third-party review come back and say "this is a terrible plan". He said they come back and say "this is pretty good, but we prefer..." Its useless. He said the Highway Department has looked and approved this already. You don't need third party review for this short road.

Ed Sauer asked if the Highway Department saw the plans.

Mr. Bosse said they got a .pdf of the whole thing.

Robyn Payson said she wished she received those comments from the Highway Department because she said she never received anything saying that the road was acceptable.

Dana Clow said this is a straightforward small subdivision. He suggested construction oversite rather than third party review on the design. He said there would be nothing gained by a third-party review on the design.

Steve Livingston asked if you hired a reputable firm, wouldn't they have someone on site to verify the road is built to the plans?

Dana Clow said there needs to be someone who represents the Town's interest. You need to engage somebody from an outside firm to go out in the field and make the observations at critical points that can say the road is built according to the plans.

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Robyn Payson said that her understanding of the process is for a road under consideration to be accepted by the Town is that they have an engineer come in and check the conditions of the road.

Mr. Bosse said he thought that was a great idea.

There was discussion about the next steps.

Robyn Payson said the Findings of Fact and Conditions of approval needed to be developed and that could be done at the next meeting. There was discussion about additional engineering being required to address the drainage issues. Following discussion by the Board the consensus was that the issues would be addressed through notes on the plan and conditions of approval.

Ed Sauer made a motion to continue the public hearing to December 21st at 7:00 pm. Dana Clow seconded the motion.

Roll Call Vote: Steve Livingston -Yes, Adam Charrette-Yes, Dana Clow-Yes, Ed Sauer-Yes, Nancy Egner-Yes. Melinda Gehris-Yes

Town Meeting Timeline

Robyn Payson reviewed the timeline for the public hearings on the proposed zoning amendments. The Board will vote to move the amendments forward for public hearings on December 21st. The first public hearing on the zoning amendments will be on January 4, 2023.

Nancy Egner closed the public hearing.

There being no other business:

Ed Sauer made a motion to adjourn. Steve Livingston seconded the motion.

Meeting Adjourned 8:30 pm

Respectfully Submitted,
Robyn L. Payson, Planning Director