



Meeting Minutes
North Hampton Planning Board
Tuesday, February 7, 2023 at 6:30pm
Town Hall, 231 Atlantic Avenue

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

In attendance: Tim Harned, Chair; Nancy Monaghan, Vice Chair; Members Phil Wilson, Shep Kroner, Valerie Gamache and Jim Maggiore, Select Board Representative; Alternate Members Rob Omberg and John Sillay; Jennifer Rowden, RPC Circuit Rider (electronic connection); and Rick Milner, Recording Secretary.

Chair Harned called the meeting to order at 6:35pm.
Mr. Omberg seated for Mr. Etela.

I. Old Business

1. Case #22:24 – Applicant: Route One Convenience Store, LLC, 39 Freetown Road, Unit 1, Raymond, NH 03077. The Applicant requests a Site Plan Review for proposed demolition of two existing buildings and construction of a 4,350 square foot convenience store building, motor vehicle refueling service facility, and other site improvements within 62,200 square foot area at front of 180 Lafayette Road multi-use commercial property. The Applicant also requests a Conditional Use Permit to allow convenience store and motor vehicle refueling facility uses within the Aquifer Protection District. The Applicant also requests a Conditional Use Permit to allow some lighting fixtures to exceed the maximum height allowed by the zoning ordinance. Property Owners: Arlene A. Jewett, Trustee, The Arlene A. Jewett Revocable Trust of 2002; Edward Jewett, Trustee, The Edward Jewett Revocable Trust of 2002; Kellie A. Jewett, Trustee, The Kellie A. Jewett Living Trust; Timothy J. Wallace, Trustee, The Timothy J. Wallace Living Trust; Twilight Years, LLC; All owners above c/o 39 Freetown Road, Unit 1, Raymond, NH 03077. David E. Howard, Trustee, The David E. Howard Revocable Trust, c/o P.O. Box 3385, Concord, NH 03302; Property Location: 180 Lafayette Road, North Hampton, NH 03862; M/L: 017-086-000; Zoning District: I-B/R, Industrial – Business/Residential District.

In attendance for this application:

Curt Neufeld, engineer.

Mr. Neufeld addressed the Board. Mr. Neufeld requested that the case be continued to the March 7, 2023 Planning Board meeting date to allow the applicant time to complete data collection and responses in order to address comments and concerns expressed by Planning Board members at previous meetings. Mr. Neufeld stated that the applicant was also willing to waive the 65 day time frame for the Planning Board to act upon the application.

Mr. Kroner moved that the Planning Board continue Case #22:24 to the March 7, 2023 meeting date with the understanding that the Planning Board and the applicant agree to waive the NH RSA 676:4 requirement that the Planning Board act on the site plan review application within 65 days of determination that the application is complete. Second by Mr. Wilson. The vote was unanimous in favor of the motion (7-0).

2. Case #22:10 – Applicant: Glenn A. Martin, P.O. Box 281, North Hampton, NH 03862. The Applicant requests a four (4) lot subdivision with associated roadway and utility improvements through the implementation of Town of North Hampton Zoning Ordinance Section 603 – Conservation Subdivision Design. Property Owner: Glenn A. Martin, P.O. Box 281, North Hampton, NH 03862; Property Location: Lot 007-168-000 off of Atlantic Avenue east of the school property; M/L: 007-168-000; Zoning District: R-1, High Density District.

In attendance for this application:

Glenn Martin, property owner; Tim Phoenix, attorney.

Mr. Phoenix addressed the Board. Mr. Phoenix presented draft conservation easement language for the open space area within the proposed conservation subdivision on M/L 007-168-000. The easement language outlined the conservation purposes, use limitations, reserved rights, covenants, and other legal details associated with the open space area. Mr. Phoenix stated that the easement document will be amended to include details associated with an agreement recently completed between Mr. Martin and the Hampton Rod and Gun Club (owner of the abutting property at the rear of the M/L 007-168-000 property). The agreement includes the following items:

- a. revised access rights for the gun club through the M/L 007-168-000 property,
- b. establishment of a 300 foot safety perimeter buffer from the rifle range on the gun club property which extends approximately 180 feet onto the 007-168-000 property and limits access to this area, and
- c. installation of fencing and signage to deter access to the gun club property from the M/L 007-168-000 property.

Mr. Phoenix also noted the following:

- a. The Town of North Hampton Conservation Commission and the Rockingham County Conservation District have declined to manage the conservation open space area. The applicant is proposing that the homeowners association for the subdivision manage the conservation open space area.
- b. A forestry management report is being prepared.
- c. The conservation subdivision plans have not significantly changed due to recently made agreements.

Mr. Harned asked if access easement documents allowing access to the gun club property and Mr. Martin's back lot property through M/L 007-168-000 will also be prepared.

Mr. Phoenix confirmed that the access documents will be prepared.

Ms. Rowden suggested that the applicant take into consideration that the access ways to the abutting properties, the conservation open space areas, and the gun club safety buffer area overlap when creating the different easement documents and the rights associated with each easement. Ms. Rowden also suggested that details regarding who will monitor compliance with the conservation goals of the project be established.

Mr. Phoenix explained that exceptions allowing access to the abutting properties will be added to the easement language.

Mr. Harned asked who the eventual owners of the M/L 007-168-000 property will be.

Mr. Phoenix stated that the homeowners association will eventually own the property. References in the property deeds will tie the property owners to the requirements of the conservation easement.

Mr. Maggiore asked if the conservation subdivision homeowners could refuse management of the conservation open space area.

Mr. Phoenix stated that the homeowners will not be able to refuse management of the conservation open space area. Language in the property deeds will hold them responsible for management of the conservation open space area.

Mr. Omberg asked for confirmation of the locations for the proposed fencing and the gun club safety buffer area on the M/L 007-168-000 property.

Mr. Phoenix stated that the fencing would be located along the property line shared by the M/L 007-168-000 property and the gun club property. Mr. Phoenix indicated on the proposed site plan how the proposed safety buffer area extends 150 to 180 feet onto the rear northerly portion of the M/L 007-168-000 property.

Ms. Gamache suggested that trails could be established outside of the proposed gun club safety buffer area and plantings could be installed along the safety area boundary to incentivize walking within the conservation open space area and disincentivize crossing into the gun club safety buffer area.

Mr. Harned noted the zoning ordinance requirement that the Town of North Hampton hold an executory interest in the conservation easements. This means that the Town is responsible for ensuring that the primary easement holder complies with the terms of the easement. The Town can take enforcement action to restore the property if the primary easement holder fails in its duty to ensure that the terms of the conservation easement are followed.

Mr. Wilson stated his opinion that there is a conflict of interest if the same group owns the property and is responsible for monitoring compliance with the terms of the conservation easement. A third party monitor, independent of the property owner and the Town, is needed. Three separate entities should be established – fee owner, easement holder, and monitoring agent.

Mr. Phoenix explained that the homeowners association documents will have covenants approved by the Town that address the conservation open space area requirements. The covenant language will be perpetual and run with the land. Future property owners will be bound to the terms and provisions of the deeds, easements, and covenants.

Mr. Harned suggested that annual inspections of the conservation open space area, paid by the homeowners association, be conducted by an independent party to ensure that the conditions of the land are in compliance with the provisions of the conservation easement.

Mr. Wilson suggested that the applicant may find an organization willing to be a monitoring agent if the scope of responsibility was limited to a yearly inspection, rather than a more involved easement holder/management role.

The Board and Mr. Phoenix discussed several suggested revisions to the conservation easement language. The suggested revisions focused on the following concepts:

- a. the significant relief from Town ordinances and regulations to allow the denser development is the consideration offered by the Town for the conservation easement given by the property owner,
- b. remove open-ended language and replace with language that provides more details and stronger restrictions regarding what is and is not allowed within the conservation open space area,
- c. remove the Town of North Hampton as the monitoring agent,
- d. any proposed disturbances of the soil surface, subsurface water systems, wetlands, or natural habitat must receive Town approval prior to commencement of the activity,
- e. any proposed forestry activities must receive Town approval prior to commencement of the activity, and
- f. amend timelines for notification of property transfer, termination of non-compliant activities, and restoration of damaged land.

Mr. Wilson suggested that a forestry management and restoration plan be submitted as part of the application information prior to the Board's consideration of final approval for the conservation subdivision project.

Mr. Harned opened the public hearing at 7:52pm.

Abutter Richard Dumont addressed the Board. Mr. Dumont expressed his concerns with the adverse environmental impact that the project has already created and may create in the future. Mr. Dumont stated that he installed a sump pump to remove water from his basement several years ago. The pump had eliminated the water level problem for ten years prior to the tree clear cutting of the M/L 007-168-000 property. The adverse impact of the clear cutting is becoming evident in that water run-off from the M/L 007-168-000 property is causing his basement sump pump to start operating earlier and more often than in past years. Mr. Dumont asked the Board to look into the water run-off issue.

Resident Michael Kotzen addressed the Board. Mr. Kotzen stated that the Town of North Hampton promotes the unique rural New England character of the Town in its documents. In his opinion, the premature tree cutting that has been completed is in violation of the Subdivision Regulations. The timber cut was excessive. The Town should wait to see if the tree line will grow back before considering approval of the proposed conservation subdivision. Preservation of existing tree lines has been accomplished in other recent similar subdivisions.

Mr. Kotzen also stated his concern with the adverse impact that the hammering of rock ledge will have due to the site's close proximity to the school and other neighbors. Even if blasting is chosen as the preferred method for removing the rock ledge, hammering activities will still occur to some extent and create a significant problem for neighbors.

Mr. Harned closed the public hearing at 8:00pm.

Mr. Wilson stated that the tree clearing operation was an independent activity completed before submittal of the subdivision application and not associated with the subdivision project. The Subdivision Regulations prohibiting land clearing prior to approval of the application do not apply to the tree cutting activity that occurred on the site.

Mr. Maggiore stated that the timber cut on the M/L 007-168-000 property complied with the requirements of State of NH law.

Mr. Harned stated that, per State of NH law, the Planning Board had no jurisdiction over the timber cut that occurred on the M/L 007-168-000 property and no ability to enforce Town ordinances or regulations associated with tree cutting activities in this case.

Mr. Harned re-opened the public hearing at 8:05pm.

Resident Jennifer Kotzen addressed the Board. Ms. Kotzen asked if the area that has already been cut will be part of the proposed conservation area.

Mr. Harned confirmed that a portion of the area that has already been cut will be part of the proposed conservation area. However, most of the proposed conservation area has trees and other vegetative growth. The clear cutting of trees occurred mostly near the front of the property where the proposed homes will be located.

Ms. Kotzen stated that she was disappointed with the results of the proposed project. In her opinion, the area which has been clear cut is not worth conserving. The current condition of the land is antithetical to the goals and objectives of the community.

Mr. Wilson stated that it may seem that the current condition of the land is not worth conserving in the short term span of five to ten years. However, the land may be worth conserving when you consider the long term community goals of maintaining open space. Due to the lack of available space for development, any open space is currently under great pressure to development. The Planning Board's goal is to plan for the preservation of open space and combat the creation of undesirable development for 25 years into the future and further. As stated in the report submitted to the Board by a Rockingham County Conservation District professional, the land provides a corridor for wildlife and will be re-forested within 25 years. In this way, the land conserved by the proposed conservation subdivision application is very valuable and enhances the prudent management of the Town's land resources. The alternative to the proposed conservation subdivision may be a traditional subdivision which does not preserve as much open space and creates more impervious surface. The Board must consider whether the value of the preserved land is equal to or greater than the relief which may be granted for the proposed development.

Mr. Harned closed the public hearing at 8:16pm.

Ms. Monaghan stated her opinion that the Planning Board did not resolve the issue of the timing of the timber cut on the M/L 007-168-000 property as it relates to the submittal of the conservation subdivision proposal to the Board and the application of the regulation prohibiting land clearing prior to the approval of a subdivision project.

Mr. Kroner stated his opinion that the issue of the timing of the timber cut as it relates to the subdivision regulations and this case should have been discussed when the Board was considering completeness of the application and taking jurisdiction of the case, not after taking jurisdiction of the case.

Mr. Kroner stated his concern that the use of the innovative land use provision that allows a conservation subdivision on the M/L 007-168-000 property creates a greater adverse impact on a group of abutters at the southerly end of the site to the benefit of creating less impact on the abutter to the northerly end of the site. In his opinion, one abutter has been given more consideration than other abutters. The impact of the project is not fairly balanced for all abutters. Mr. Kroner suggested that the location of the proposed homes be moved more to the north to create a more balanced impact for all abutters.

Mr. Phoenix requested that the case be continued to the April 4, 2023 meeting date. The applicant agrees to waive the 65 day time frame for the Planning Board to act upon the application until the end of the April 4 meeting.

Ms. Monaghan moved that the Planning Board continue Case #22:10 to the April 4, 2023 meeting date as requested by the applicant with the understanding that the Planning Board and the applicant agree to waive, until the end of the April 4 meeting, the NH RSA 676:4 requirement that the Planning Board act on the conservation subdivision application within 65 days of determination that the application is complete. Second by Mr. Maggiore. The vote was unanimous in favor of the motion (7-0).

II. Other Business.

1. Minutes.

Mr. Harned presented the minutes of the January 17, 2023 meeting.

Ms. Monaghan moved that the Planning Board accept the minutes of the January 17, 2023 meeting as written. Second by Maggiore. The vote was 6-0-1 in favor of the motion with Mr. Wilson abstaining.

The meeting was adjourned at 8:26pm without objection.

Respectfully submitted,

Rick Milner
Recording Secretary