

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE
NOVEMBER 18, 2015

MINUTES OF MEETING

PRESENT: Board members Fred McGarry, Kate Hartnett, Peter Schibbelhute. Alternate member David Doran. Planning Consultant Gerald Coogan. Secretary Jane Boucher.

Chair Fred McGarry called the meeting to order at 7PM and appointed David Doran a voting member.

APPROVAL OF MINUTES

Peter Schibbelhute moved and Kate Hartnett seconded to approve the minutes of October 14, 2015 shown as corrected on November 4, 2015. Voted in favor.

David Doran moved and Kate Hartnett seconded to approve the minutes of October 28, 2015 shown as corrected on November 4, 2015. Voted in favor with Peter Schibbelhute abstaining.

Peter Schibbelhute moved and David Doran seconded to approve the minutes of November 4, 2015. The following corrections were made to the minutes:

Page 1 Paragraph 5: correct to read "No vote was taken as there was not a quorum present who attended the 10/14/15 meeting."

Page 2 Paragraph 2: Correct to read "No vote was taken as there was not a quorum present who attending the 10/28/15 meeting."

Page 2 Paragraph 3: Correct to read: "...area adjacent to Routes 107/43. He added that more detail should be shown on the drawings for additional screening."

Page 3 Paragraph 5: Correct to read "...asked abutters..."

Page 3 Paragraph 11 Correct to read "...revisited at that time."

Page 4 Paragraph 4 Correct to read "...if the operation was moving from one location in Town to another."

Chair McGarry called for a vote on the motion. Voted in favor with Kate Hartnett abstaining.

APPROVAL OF MANIFEST

Peter Schibbelhute moved and David Doran seconded to approve the manifest in the amount of \$409.50 and a time sheet for Jane Boucher. (Upton & Hatfield \$409.50). Voted in favor.

REQUEST FOR RELEASE OF BOND/FOREST GLEN

Peter Schibbelhute moved and David Doran seconded to approve the release of \$67,175.76 from a bond held for Forest Glen Subdivision. (\$11,386.65/Phase II Bloomfield Road and Phase III Hartford Brook Road and \$56,489.11/Phase IV Cobbler Trail Road). Voted in favor.

7:25PM INFORMAL CONSULTATION; OPEN SPACE SUBDIVISION BROWNS MILL
George Chadwick and Attorney Pat Panciocco were present.

Mr. Chadwick noted that they are proposing a six lot Open Space Subdivision with frontage off existing Corey Road. He said they are looking for guidance to move forward. Mr. Chadwick said the two main items that he addressed were a common driveway to access lots 3 and 4. Lot 4 has an existing dwelling that currently uses the driveway. Lot three would use that existing driveway.

Mr. Chadwick said the second item had to do with the buffer to existing Corey Road. He noted that , currently on the plan, he shows 40 feet, with is the required front setback for this district. Mr. Chadwick continued saying that since the last meeting it was brought to his attention that the intent of the 100 foot buffer and the 50 foot perimeter buffer was to include that land in the Open Space. He added that this would put a "strain" on the development if required.

Chair McGarry advised that, at a recent hearing for an Open Space Development, the Board did allow a waiver for the 100 foot buffer. However, they did require no cutting. The Board did, however, deny a waiver for the 50 foot buffer.

Chair McGarry questioned if land specifically set aside for the previous subdivision.

Mr. Chadwick replied that there was land set aside as a Conservation Easement, not open space. The easement was shown and recorded on the plan, but the land was never transferred. He noted that 19.7 acres of land was set aside on the previous plan as a Conservation Easement. This land was scattered around the project. Current, in the proposed Open Space Development, there is 26.4 acres of open space.

Mr. Chadwick provided copies of the recorded plan showing the Conservation Easement.

Chair McGarry felt that 9 acres of additional Open Space should be added not 7 as proposed.

Kate Hartnett referred to the Town's Open Space Plan showing Map 4 showing green infrastructure and stressed it's importance.

Fred McGarry questioned how they would address the two acre difference previously discussed and also requesting a variance for the 100 foot buffer.

Mr. Chadwick said they are proposing a 40 foot setback with a

tree line running up Corey Road and ends up following the existing trail.

Chair McGarry noted that they may want to bring in a Landscape Architect. Mr. Chadwick said they do have a Landscape Architect on staff.

Chair McGarry suggested that Mr. Chadwick speak with Fire Chief Mark Tibbetts to discuss the existing cistern and adequacy.

Kate Hartnett said she felt this was headed in the right direction.

Kate Hartnett questioned the access to NH Fish & Games Lot and how it would be managed.

Attorney Panciocco replied that they would like to leave the existing access as gravel. She added that, as far as it be left open to the public, they would like to limit it to on foot only. She added that it could be open to NH Fish and Game and emergency vehicles. Attorney Panciocco will reach out to NH Fish and Game to see if they can limit access.

Chair McGarry asked what the condition of the exiting gravel was currently. Mr. Chadwick replied it was in good condition.

Attorney Pat Panciocco said she is here representing Deborah Gadd. She referred to Mr. McGarry's previous comment that the Board had rejected the waiver for a 50 foot set back and questioned if it was for a new subdivision. Mr. McGarry replied "yes". Attorney Panciocco said that this back land was always intended to be developed as a conventional subdivision. Phase I was adopted in 2006 before Open Space Ordinance, adopted in 2008, was required. She asked that, in view of this, the Board consider granting some waivers.

Fred McGarry said that he had no problem with re-configuring the Conservation areas but would like to see the area of open space associated with the proposed new development to be included.

Mr. Chadwick said that he will add the 50 feet to the Open Space and come back with a plan.

8:20PM APPLICATION FOR PUBLIC HEARING; LOT LINE ADJUSTMENT; MICHAEL AND JUDITH ANNIS; SUMMER PASTURE ROAD
Michael and Judith Annis, James Franklin and abutters Richard Davis and Kevin Knowlton were present.

Chair Fred McGarry read the notice of public hearing by which Michael and Judith Annis, 19 B Summer Pasture Road, Deerfield,

NH are applying for a Lot Line Adjustment. The properties are identified as Tax Map 409 Lot 18 and Tax Map 409 Lot 38 consisting of 50+- acres and owned by the applicants. The intent of the application is to create a new division line between the lots. Lot 18 would then consist of 3.175+- acres and Lot 38 would then consist of 43.519 acres.

Peter Schibbelhute moved and David Doran to accept the application . Voted in favor.

James Franklin provided plans noting that Lot 38 was the result of a survey by True Chesley in 1974. He said that Summer Pasture Road created in 1978 by Charles Knowles. Parcel A was created in 2000 and notes regarding the variance granted are on the plan. Mr. Franklin noted that Lot 38 and 28 are using Summer Pasture as access. He added that Lot 29 is also using a deeded access.

Chair McGarry questioned a recorded easement being shown for the two lots. Mr. Franklin said that he felt that approval of the plan is contingent upon granting of the easement or the recording of the plan is the granting of the easement.

Kate Hartnett questioned if Lot 29 have a written easement for access. James Franklin replied there is a written recorded easement for Lot 29. He referred to the recorded plan of 2000 where an easement is noted for Lot 29.

Mr. Knowlton and Mr. Davis reviewed the plans. Mr. Knowlton questioned the location of the driveway accessing his Lot 29 and noted it was not shown on the plan.

Mr. Knowlton gave some history for Summer Pasture Road .

Peter Schibbelhute moved to grant a waiver request for a full perimeter survey of Lots 28 and 38. David Doran seconded. Voted in favor.

Peter Schibbelhute moved to grant conditional approval to Michael and Judith Annis for a Lot Line Adjustment with the following conditions:

- .Showing driveway access to Lot 29
 - .Reference easement for Lot 29
 - .Setting pins
 - .Maintenance Easement for Lots 28 and 38
- Conditional Approval to lapse on January 1, 2016.

Voted in favor.

PROPOSED ZONING AMENDMENTS/2016
James Franklin was present.

Gerald Coogan referred to a memo from Attorney James Raymond regarding Section 207.1 Smith Ordinance. A copy is attached to these minutes. Mr. Coogan referred to a statement "For clarity, the Board might therefore consider adding a separate sentence or perhaps an introductory clause to section 207.1 B stating that this section is subject to the additional restrictions in RSA 674.:41"

Mr. Coogan also provided a memo suggesting , based on Attorney Raymond's letter, proposed changes to 207.1. A copy is attached to these minutes.

James Franklin said that he felt that it was important for the Board to consider that the Smith Ordinance was based on a citizens petition in order to avoid the expense of building a road. He felt that by turning around and circumventing a citizens petition by slipping in a subdivision reference, in his opinion, goes against the spirit and intent of the Smith Ordinance.

Chair McGarry suggested adding a fourth column saying 30 to 40 trips per day.

Gerald Coogan also provided a memo regarding Section 212 Deerfield Business Overlay amendments. A copy is attached to these minutes.

Kate Hartnett urged Board members to review the information prior to the public hearing. Gerald Coogan will revise and submit to the Board.

A Public Hearing will be held on December 16 to further discuss proposed zoning amendments.

The meeting was adjourned at 9:45PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Planning Board

To: Deerfield Planning Board

From: James Raymond

Upton & Hatfield, LLP

Re: Austin and Tetreault Subdivision Application and Private Roads

Date: November 17, 2015

Jerry:

You have asked for our comments on the application of the so-called Smith Ordinance, in section 207.1 of the Deerfield Zoning Ordinance, to the subdivision proposed by Mary Austin and Shelley Tetreault on Griffin Road. There are several pieces to the puzzle.

The first, and overriding the zoning ordinance, is RSA 674:41. This section, with some exceptions and additions, requires that the street "giving access to the a lot" be (a) a class V or better highway, (b) a street shown on a plan approved by the planning board, or (c) a class VI or private road if the Board of Selectmen has voted to authorize the issuance of building permits on the road and the town obtains and records a waiver of municipal liability, RSA 674:41 I. The requirements of RSA 674:41 I take priority over less stringent local ordinances, RSA 674:41 III, so this section controls over the zoning ordinance.

The Smith Ordinance allows up to four single family houses to be built on lots that front on a private way. That section specifies certain road standards, such as right of way width. The Deerfield Subdivision Regulations create additional standards for road and driveway construction, in Section IV-4.

The Tetreault application proposes to subdivide Map 205, Lot 6, into two lots, labelled as lot 6 and 6-1. Lot 6 currently has a front portion, with approximately 200' on Griffin Road, extending back approximately 770 feet, and a large roughly triangular rear portion, where the existing house is and proposed additional house will belocated. The applicant submitted two

road proposals. One shows an approximately 700 foot private road built to town standards, ending in a cul-de-sac where individual driveways branch to the house locations. The second provides only a roughly 200 foot private road built to town standards, with a shared driveway running over lot 6-1 along the existing driveway for most of its length to a turn-around areas, and then individual driveways branching to the house locations. In each proposal, both lots have frontage on Griffin Road, but less than the 200 feet of frontage required by section 204.

The first question is whether the proposed private road can be used to satisfy frontage requirement in RSA 674:41. Private roads are expressly referred to in RSA 674:41 I (d), for which board of selectmen approval and a waiver of municipal liability are required. RSA 674:41 (b)(2), though, also allows lots on “a street on a subdivision plat approved by the planning board.” That clause has been interpreted as including new private roads shown on an approved subdivision plan. Therefore, if the Board approves this plan showing the private road, lots with frontage on that road may be created. See *Crowley v. Loudon*, 162 N.H. 768 (2011).

The next question is whether the private road may only extend 200 feet to provide the required frontage, or whether it must extend to the back portion of the lot where the existing house on proposed lot 6 and the future house on lot 6-1 are located. This question turns in part on the phrase, in RSA 674:41 I, the “street giving access to the lot.” Does that phrase (a) require that the access to the lot, via a driveway, must occur where the frontage is located, or (b) may actual access lie in a different location from the frontage? The statute is capable of different interpretations. If a planning goal were to restrict driveways on land of another or shared driveways, it might be reasonable to require actual access from the frontage directly onto the road. That restrictive interpretation, however, is not required. Section III defines the phrase

"the street giving access to the lot" in section I as "a street or way abutting the lot and upon which the lot has frontage." With that definition, the actual physical access, by way of a driveway, does not have to lie in the same location as the frontage, as long as the lot abuts and has frontage on the street. Accordingly, actual physical access can lie elsewhere, such as over an abutting lot, under the statute.

Turning to the Smith Ordinance and your regulations, the driveway standards in the Zoning Ordinance and Subdivision Regulations do not preclude shared driveways. Accordingly, if the lots have at least 200 feet of frontage on and abuts a road that is built to the zoning ordinance's standards and is shown on an approved plan, the Board may reasonably conclude that the minimum standards of both your ordinance and RSA 674:41 are met, even if actual access to the lot is by a shared driveway constructed over another lot.

→ Reasonable people may perhaps disagree with this interpretation. We also are not commenting on whether this outcome is consistent with the Town's planning goals for driveways and road access, as that determination is made by the Planning Board. In short, though, we ← conclude that either of the two road proposals meets the requirements of your zoning ordinance and RSA 674:41.

You have also requested our recommendations for amendments to the Smith Ordinance. We understand that the voters have recently resisted prior amendments that would restrict lots on private roads, and the Board is not currently proposing any major revisions. As worded, though, the ordinance does not restrict the categories of private roads on which lots may be created, unlike RSA 674:41, which allows building permits only on certain private roads, as described earlier in this memo. Although the Smith Ordinance is automatically subject to the limitations of

RSA 674:41, an applicant may not know to look at the statute, and may rely on the ordinance to define what is permitted. For clarity, the Board might therefore consider adding a separate ← sentence or perhaps an introductory clause to section 207.1 B. stating that this section is subject to the additional restrictions in RSA 674:41.

MEMORANDUM

November 18, 2015

TO: Deerfield Planning Board
FR: Gerald Coogan
RE: Proposed change to DZO Section 207.1 B

The following is based on Atty. Raymond's letter of November 18, 2015.

Proposed change to DZO Section 207.1 B (aka "Smith Ordinance):

207.1 Minimum Frontage

- A. Frontage - Every building lot shall have a minimum frontage as specified in Section 204 provided that where lots are located on the exterior of a curving street, a shorter front dimension may be permitted provided that the width of the lot measured along the front setback line shall be the minimum specified in Section 204.
- B. In the alternative, provided all requirements for lot dimensions of this Ordinance can be met, up to four (4) single family dwellings may be constructed on lots which front on a private ~~way~~. Add road.

If, in the opinion of the Planning Board, considering the topography and land ownership in the vicinity, it is likely that the ~~way~~ (add road) could be extended to serve additional dwelling units in the future, the layout of said ~~way~~ (add road) shall be done in such a fashion that all of the geometric layout specifications of the subdivision regulations for a public street could be met.

If the ~~way~~ (add road) is unlikely to serve more than four (4) dwelling units, it shall be constructed in a manner consistent with the following: ~~minimum specifications:~~

1. The ~~right-of-way~~ (add road) shall be designed in a manner consistent with RSA 674:41 I and III, Section IV - 4 and Table IV-1 in the Town of Deerfield's Subdivision Regulations. For good reason the Planning Board may consider a waiver request(s) for road construction to a lesser standard provided the resulting standard does not represent a departure from applicable State Building Code or State Fire Code requirement; ~~at least 50 feet in width to accommodate upgrading of the road should future owners choose to dedicate it to the Town;~~
2. ~~The roadway specifications shall be graduated based upon standard traffic calculations (e.g. a private way for one dwelling unit generates 10.1 vehicles per day and thus would require a 12-foot wide gravel way);~~
3. The ~~way~~ (add road) shall provide adequate access to each lot served by the same in a manner consistent with State Building Code and State Fire Code Requirements;

4. Both the ~~way~~ (add road) and the arrangements for paying the costs of maintenance and repair of said ~~way~~ (add road), as well as provisions for turning over said ~~way~~ (add road) to the Town as a public street should the Town so request, shall be described in instruments referred to in said deeds.

5. ~~The applicant shall provide the Planning Board with a nonbinding conceptual plan of the parcel. This plan would show the parcel as it would appear if built out to the maximum number of lots allowed by current zoning and would show how such growth could be accommodated.~~

Cc: Steve Keach, P.E.
Atty. James Raymond

Notes by Kate 18 Nov 15 9 am; Delete the existing Section 212 and replace it with:

New Deerfield Zoning Ordinance (DZO) (4.2) DPB - 11/18/15

Section 212 Deerfield Business Overlay District – Work in Progress

1. Purpose and Intent: The purposes of the Deerfield Business Overlay District are (1) to encourage flexibility and creativity for compatible commercial, industrial development or other business uses to occur throughout the Town of Deerfield and (2) to attract uses to the town that meet a set of standards that maintain Deerfield's rural character which includes a mix of residential, agricultural and businesses land uses set within a network of open space lands.
2. Permitted Uses: The flexible Business Overlay District is a ? townwide? district that has performance standards to insure the proposed developments will minimize adverse impacts or fit into Deerfield's desired rural community character. Compatible nonresidential land uses include, but are not limited to:
 - a. Commercial and retail sales;
 - b. Convenience store;
 - c. Office building;
 - d. Mixed use development;
 - e. Light manufacturing;
 - f. Veterinary hospital;
 - g. Assisted living facility;
 - h. Café / restaurant;
 - i. Mixed use development
 - j. Other similar low OR intensity? development.
3. Authority: The Town of Deerfield enacts this provision pursuant to NH RSA 674:21, I (h) and (I), innovative land use controls and as such, the Planning Board has discretion and flexibility with its administration. This innovative land use control ordinance allows a particular land use upon the granting of conditional use permit by the Planning Board. In addition, the Board can grant waivers from specific requirements of this Section.
4. Review and Approval Process: The applicant shall prepare a Site Plan Review application and a Conditional Use Permit (CUP) application. The applicant shall provide a succinct and complete narrative that addresses the items in the Conditional Use Permit (CUP). Not sure this is the entire process. Don't they start w this section?
5. Standards:
 - a) Community Character – The applicant's statement shall specifically address consistency with the Master Plan and all its chapters, including Energy and Open Space, and how the

proposed development is compatible with the site?, and the Town's historic preservation and rural character. The following design principles provide guidance:

- 1) Buildings and grounds should be compatible with their surroundings and traditional New England architecture and land use.
- 2) Site design and buildings should be integrated into a coherent design.
- 3) Site design should encourage pedestrian and bicycle access and use.
- 4) The reuse of existing buildings with special historical value is encouraged.
- 5) The proposed building(s), structure(s) and site design should be consistent with practices in the Deerfield Design Guide.

OR Specific examples of design practices are provided in the Deerfield Design Guide.

✓ b) Resource protection standards

- i. Open Space: A proposed development that contains land identified in the Master Plan or Open Space Plan as important conservation/recreation lands shall develop a design that protects those lands.
- ii. Scenic Roads: The proposed development shall maintain stone walls, trees, vegetation and other amenities consistent with scenic road designation or other roads with potential scenic road designation to the extent possible.
- iii. Topography: Site design should incorporate stone walls and woods roads whenever possible. Proposed developments with steep slopes (in excess of 15%) must incorporate design and construction practices that preserve significant existing vegetation and landforms.
- iv. Geology (or Natural Features): A proposed development with known areas of natural or geological hazard (e.g. slopes over 15%, rock falls, flood hazard areas) or soil conditions unfavorable to development (for example, wetlands and/or poorly and very poorly drained soil(s) must? should set aside these areas from development Permanent protection through an easement, deed restrictions, or other protective covenants is encouraged.
- v. Flora and Fauna (or Plants and Wildlife): A site that contains an area which serves as a habitat for wildlife and/or plant species identified by NH Fish and Game Wildlife Action Plan or NH Natural Heritage Inventory as significant, and in particular need of attention, should take special

precautions in site planning, construction, and operation to preserve these areas.

- vi. Historic areas: A proposed development located within an existing village or historic area that may include a locally designated historic structure, shall maintain the integrity of the historic resources to the extent possible.
- vii. Mineral Deposits: *A proposed development which includes an area known to contain a commercial mineral deposit for which extraction could be commercially feasible, should design the project to preclude extraction.???*
- viii. Fragile Areas: A proposed development that contains lands identified in the Deerfield Open Space Plan or other relevant study as ecologically sensitive and/or important (e.g. aquifers, lakeshores, agricultural soils of prime and/or statewide importance, important forest soils), should avoid development of these areas Permanentprotection. Is encouraged

χ c) Energy Performance standards

- i. Energy efficiency: Any proposed new construction or major renovation is encouraged to incorporate recognized energy demand reduction practices such as specified by Architecture 2030 Challenge. Architecture 2030 and US Green Building Council LEED or other similar high performance practices are encouraged. All buildings should incorporate energy performance goalssuch as those found in USEPA EnergyStar Target Finder(btu/sq ft/year), and report performance in relation to those goals annually.. (see <http://www.energystar.gov/buildings/service-providers/design/step-step-process/evaluate-target/epa's-target-finder-calculator?s=mega> for more information). Passive solar orientation and floors plan and active solar or other renewable energy are encouraged.
 - ii. Resiliency: The applicant should be aware of Town's Hazard Mitigation Plan, and past extreme weather events in Deerfield. Incorporating site plan and construction practices thatmaximize the capacity of any development to remain habitable in extreme weather and/or in the absence of grid power are encouraged..
6. Conditional Use Permit (CUP). The planning board shall review the submission and make a finding of fact relative to granting of a conditional use permit based on the following.
- a) If completed as proposed, the development in its proposed location will comply with the Sections 1-5 of this Section.

- b) The use will not materially endanger the public health, safety, or welfare.
- c) The use will be adequately serviced by community facilities and services of a sufficient capacity to ensure the proper operation of the proposed use and will not necessitate excessive public expenditures to provide facilities and services with sufficient additional capacity.

Approach to the Update

- Eliminate the rating and evaluation scoring system;
- Use the same Resource Standards --- scenic roads, topography, geology, flora and Fauna, et cetera.
- Applicant meets the standards, receives a waiver or the DPB deems the standard is NA.
- If the applicant cannot meet the standard and the DPB deems a standard critical, the applicant can propose mitigation techniques, which may require a 3rd party engineering review.
- Deerfield Site Plan Review Regulations (DSPRRs) cover items in existing Section 212 such as:
 - a. Requirements for site access and circulation
 - b. Parking requirements --- design, density, dimensional, construction
 - c. Landscaping and visual buffering
 - d. Drainage and stormwater management --- construction
 - e. Utilities --- subsurface sewage disposal, water supply,
 - f. General design standards --- exterior lighting, solid waste, snow storage, signage, erosion / sedimentation control, prohibition / mitigation of offensive uses listed as: visual characteristics, excessive noise, odor, or other potential nuisance. Must demonstrate to the satisfaction of the PB that the proposed use or uses will not be offensive. If there is the potential to be offensive PB MAY require appropriate mitigation. [KH: I am curious if members are comfortable with the criterion as written??], From: **Section IV-6 General Site Design Standards** (page 28) includes F. Prohibition and Mitigation of Offensive Uses.
 - g. Flood area
-
- Avoid duplication

Add new definition to Section VI Section 602 Terms:

Compatible means being capable of existing or performing in a harmonious, agreeable, or congenial manner within a village area, neighborhood, rural area and be harmonious with

abutting land uses. The abutting and nearby land uses do not need to be similar to the proposed development; however, the proposed development should be capable of existing in harmony with the abutting land uses. [KH: How do we do this??]

[FROM Dave Doran draft] Where does this go?

- i. Noise: Sustained noise lasting more than 30 minutes at the proposed development shall not exceed the maximum noise dB sound pressure level specified as measured at the boundary line and as follows: Primarily residential areas is 55 [DD1]dB[DGD2](A) from 7 AM to 10 PM and 45 [DD3]dB(A) from 10 PM to 7 AM; Primarily commercial with no residential uses should be 65 [DD4]dB(A) from 7 AM to 10 PM. and 55 [DD5]dB(A) from 10 PM to 7 AM; Industrial uses should be 75 dB (A) from 7 AM to 10 PM and 65 dB(A) from 10 PM to 7 AM. Source: "American Standard Specification for General Purpose Sound Level Meters"