

TOWN OF CHESTERFIELD, NH  
PLANNING BOARD  
MINUTES

MONDAY, SEPTEMBER 22, 2008

Present: Steven Pro (Vice-Chair, and acting Chair), Elaine Levlocke (Secretary), Jon McKeon (Selectmen's Representative), Bob Del Sesto, Brad Chesley (Alternate), and Padi Blum (Clerical Secretary)

Absent: Susan Lawson-Kelleher (Chair), Tom North, Val Starbuck, and Helga Frohn (Alternate)

### **Call to Order**

Pro called the meeting to order at 7:30 p.m.

### **Seating of Alternates**

Chesley was seated in the place of Tom North

### **Minutes**

Review of the minutes of September 8, 2008 was tabled due to a lack of a voting quorum of members who were in attendance for that meeting.

### **Appointments**

Welcome Center – The Board was informed that Graham has requested the public hearing tentatively scheduled to take place this evening be cancelled. They are unprepared to move forward at this time and issues have arisen that may have made the project as a whole unviable.

Heidi Bushway & Gregory Lorsbach – (Continued from September 22, 2008) This is a public hearing on an application for a Boundary Line Adjustment of properties located at 40 Meadow View Rd and Asgard Rd in West Chesterfield (Map 14 - Lots A12.6 & A3), approximately 11.07 acres in the Residential zone.

Pro re-opened the public hearing. Bushway, along with attorney, Sam Bradley, presented revised plans and information regarding the history of the parcel of land she had recently purchased from Ana D'Onofrio. Recorded deeds and conveyances showed that the parcels had been sold as separate lots long before zoning. Blum relayed to the Planning Board that Lawson-Kelleher had stated that was satisfied that the parcel was a non-conforming lot of record, and that the Town had no record of any landowner joining parcels together. The multiple tracts of land were all separate lots of record and taxed individually.

The revised plans indicated the area that was restricted from building by a deed restriction required by Elaine Johnson when she conveyed the parcel to D'Onofrio. Bushway stated the area was too wet to be built upon in any event. A revision block was included on the revised plans.

Levlocke expressed concerns that the Board may still not have the authority to change a non-conforming lot of record. The Board once again reviewed the zoning ordinance. Bradley told the Planning Board that the general rule is that you must only refrain from making a lot less conforming. Bushway stated that the only reason the lot is not conforming to current standards is because there is no road frontage. Everything else conforms. After the BLA there will still be no road frontage; that does not make it less conforming.

Del Sesto read aloud a statement from Russell Huntley and requested clarification of where the 100 year flood plain at elevation 236 +/- was on the plans. Bushway pointed out the area.

Levlocke stated she still had concerns about changing a lot that is non-conforming without legal counsel.

The Board questioned a previously indicated ROW from Cersosimo's through Bushway's property. Bradley said that he could not find deeded ROW access fro Cersosimo or even a chain of ownership showing Levi Bradley. Each of the 4 separate lots' deeds had one ROW each. The original ROW reserved for Johnson was changed when she purchased her lot. Bushway clarified that this was a recorded ROW that had a recorded change. An altered ROW is not a second ROW. McKeon noted that he could only see one common ROW/access. D'Onofrio reserved the ROW to continue through the Johnson property to access the D'Onofrio lot. Pro stated that ROW or common access was not described and it was his opinion this would supercede. Bushway wants to retain the ROW. Bradley stated you can't have a "Right of Way" across your own property. The intent is to reserve the ROW as it was conveyed in case it is needed in the future.

Chesley asked if RSA 674:41 had any application in this matter. The Board reviewed the RSA and after deliberation, decided it did not.

Del Sesto expressed concern over the access that is intended to be a reserved ROW being shown on the plan being confused as an approved second access. He would like confirmation that approving the application and signing off on the plans as presented will not allow for an approved subdivision of the lot in the future based on identifying this area as an approved access.

McKeon asked if the road was part of the DES action. Bushway stated that her lot (Map 14, Lot A12.6) at that time was, but D'Onofrio's (Map 14, Lot A3) was not.

McKeon stated that a former owner acknowledges in the recorded documents that there may be issues with a relocated Row, and if there is it would revert to the original ROW location. Bushway stated that that applied to a previous sale that had gone through and been recorded. That statement no longer applied.

Pro felt that the intent of selling individually sold parcels was for buildable lots. If they meet the criteria for State, permits, wells, area, setback, frontage, etc. they should be allowed; otherwise it was "taking". His only concern was that Levlocke may have a point about changing a non-conforming lot. Bushway restated that the lot would not be made any less conforming.

Bradley stated that it is a general rule in New Hampshire that a landowner is entitled to subdivide property unless there is a rule against it and cited the 1979 case of Seabrook vs. Tra-Sea Corp. 119NH937 as having application. He stated that our Non-Conforming Lots of Record ordinance is in fact a grandfather clause.

Pro feels there are currently only two issues with the application: does the Planning Board have the authority to act on this matter thereby changing the configuration of a grandfathered, non-conforming lot of record, and maintaining the ROW as a second access to the lot. It was noted that when the ROW was relocated they start referring to it as a driveway vs. a ROW. Bushway stated that it is a driveway for the lot in front. It becomes a ROW at their lot. They want to reserve this ROW, intending to use it to access the recreational lot for now; and once it is conveyed, it then becomes a ROW when sold.

Pro queried the Board as to whether they felt they needed to consult with legal counsel regarding the Board's authority to approve changing the configuration of a non-conforming lot of record.

The Board voted as follows:

*Levlocke – Yes, Del Sesto – No, McKeon – No, Chesley – No, Pro – No.*

*Levlocke moved to refer the matter to legal counsel and continue the hearing to October 6, 2008 at 7:30 in the new Town Office building. Initially there was no second. The results of the Board vote on the previous discussion were reviewed. DelSesto stated that while he was comfortable voting on this matter, he would concede to a fellow Board member's desire and change his vote to a yes and second this motion to refer the matter to legal counsel. The Board vote on referring the matter to legal counsel follows:*

*Levlocke – Yes, Del Sesto – Yes, McKeon – Yes, Chesley – Yes, Pro – No.*

*The motion passed by a majority vote.*

Del Sesto felt that since the matter was being referred to legal counsel, they should also solicit counsel's opinion on the ROW issue – how to define the area of road/drive across the property.

*Del Sesto moved to include discussion of the Right of Way area as well as whether or not the Board is authorized to approve changing the configuration of the grandfathered/non-conforming lot of record when seeking legal counsel. Levlocke seconded, and the motion carried by majority vote (Levlocke – Yes, Del Sesto – Yes, McKeon – Yes, Chesley – No, Pro – No).*

Pro will follow up on the matter with Lawson-Kelleher and will contact the Town's attorney. He would like a response by email and will forward the (client-attorney privileged and confidential) response to Board members before the next meeting. This matter is to be addressed as the first appointment on the October 6<sup>th</sup> agenda.

Don Emery & Kevin Beal – Application for a Revised Subdivision Plan of properties located on Pontiac Drive in Spofford (Map 11B, Lots A12.2 & 12.3) consisting of 2 parcels of approximately 6 acres each. Applicants seek approval to modify the plans approved by the Planning Board in 2007. This is a Public Meeting for accepting the submission of the application. It may be followed by a Public Hearing for approval of the application.

There was confusion regarding whether or not this application would be reviewed this evening. Emery and Beal were not in attendance and the full application was not available at this time. The matter will be re-noticed and will be reviewed at the meeting of October 6, 2008.

Donald & Rosemarie San Souci – Notice of Voluntary Merger: 80 Sugar Maple Lane, Map 5E, Lots C1 & C2. The document was signed by Pro as acting Chair.

#### **Items for Discussion:**

- Master Plan – Discussion and distribution of materials. Discussion was tabled to the meeting of October 6, 2008.
- Regulations to be reviewed for possible amendments – tabled.
- Town Ordinances to be reviewed for possible amendments – tabled.

#### **Items for Information:**

- **NH Association of Regional Planning Commissions (NHARPC) – Fall Planning and Zoning Conference** – Members were reminded that registration and reservations for the event must be coordinated with Ross as soon as possible.
- **NH LGC** – NH Town & City – September 2008 edition: “2008 Final Legislative Bulletin”
- **NH LGC** – 67<sup>th</sup> Annual Conference: November 12-14 in Manchester
- **APA Planning** – Educational publications and media
- **Flow Chart** – McKeon provided the Planning Board Secretary with a copy of the final Select Board-approved flow chart that is to be followed for Planning Board applications. A copy

was distributed to each Planning Board member and will be included in all applications. The matter will be added to the list of ordinances/regulations (and checklists) to be amended.

### **Other Business**

- **CIP** – The CIP discussion was tabled at the September 8 meeting to the October 6 meeting. McKeon has handed out materials for the Board to review and be prepared for a final discussion so that a public hearing may be set to finalize the Capital Improvement Program. It was noted that some amendments will need to be made to the documents that have been distributed.

### **Items for Signature**

- San Souci Voluntary Merger

### **Adjournment**

*Levlocke moved to adjourn at 9:19 p.m. Chesley seconded, and the motion carried unanimously.*

Respectfully Submitted by:

*Patricia L. Blum, Clerical Secretary*

Approved October 6, 2008:

//s// Susan Lawson-Kelleher  
Susan Lawson-Kelleher, Chairman

October 20, 2008  
Date