



UNAPPROVED

PLANNING BOARD TOWN OF EAST KINGSTON NEW HAMPSHIRE

2007-2008
James Roby Day, Jr., Chairman
Catherine Ellen Belcher, Vice Chairman

MINUTES

(Regular Meeting of 20 September 2007)

AGENDA:

7:00PM - **Board Business**

7:10PM –**Public Hearing** for a Design Review regarding a proposed subdivision for Julie Turner, 87 Haverhill Road (MBL 10-4-4)

7:30PM – **Discussion** with Joann Brandt regarding revision of the conditions of approval for her subdivision at 41 Burnt Swamp Road (10-05-01).

8:00PM – **Continued Board Business**

8:01PM - **Adjournment**

CALL TO ORDER: Vice Chairman Belcher called the regular meeting of the East Kingston Planning Board to order at 7:05PM.

ROLL CALL: Mrs. White called the roll.

Members present –Mrs. CE Belcher, Vice Chairman; Mr. R Caron, ex-officio, Dr. RA Marston.

Alternate members present –Mr. EA Lloyd, Mr. RF Morales, Mr. D Sullivan.

Advisors present –Mr. LK Smith, Conservation Commission Chairman; Deputy Building Inspector Robert Steward; Eric Steltzer, Rockingham Planning Commission (RPC)

Mrs. Belcher noted that the following members and advisors were absent from tonight's meeting:

- Mr. RA Smith
- Fire Captain Andy Conti, who was on a fire call.
- Mr. JR Day, Chairman, who was on vacation.
- Mr. RR Donald, Building Inspector, who was on vacation.

Mrs. Belcher welcomed the Deputy Building Inspector, Robert Steward, to the meeting.

Voting members –Mrs. Belcher appointed Alternate Members Messers Lloyd, Morales and Sullivan as voting members for this meeting in the absence of regular members. She stated that should one of the regular members appear, Mr. Morales would not be a voting member for this meeting.

BOARD BUSINESS

Minutes. Mrs. Belcher entertained a motion to approve the 16 Aug 07 minutes. There were no changes submitted.

MOTION: Mr. Caron **MOVED** the Planning Board approve the 16 Aug 07 minutes as presented. Mr. Lloyd seconded, and the motion passed unanimously.

Mrs. Belcher reviewed the handouts to the Board.

OEP Conference. If you are interested in attending the OEP conference on 13 Oct 07, please contact the Selectmen's Assistant. Mr. Day will not be attending.

Law Lecture Series. Mr. Day indicated he would be attending all three lectures. Mrs. Belcher asked the rest of the Board to get back to Mrs. White tonight and let her know if they will be attending so she can inform the Selectmen's Assistant.

CIP Update. The CIP is lacking input from Emergency Management, the Historical Commission, and the Recreation Committee. When this information is received, the CIP will be completed and submitted to the Selectmen in October.

Master Plan Agricultural Chapter Review. Mr. Day had expressed the need for a work session to discuss the Master Plan and perhaps have a public hearing in October. The Board will discuss this later in the meeting.

Septic Design Boundary Question. This subject has been brought up previously, and Mrs. Belcher suggested placing this item on the October meeting agenda when the Building Inspector would be present for the discussion.

Subdivision and Lot Line Adjustment fee proposal. Mrs. Belcher stated that this item would be placed on the October meeting agenda for discussion and/or possible public hearing.

October Agenda. Chairman Day had requested the Board schedule a work session in October to work on the Master Plan Agriculture Chapter and to complete the CIP. The Board was polled and Tuesday, 9 October 2007 at 7:00 pm in the Town Hall was decided upon. Mrs. White will schedule the Town Hall and post the necessary notice. Mrs. White will also give a reminder call to Board members since the meeting is on a non-regular meeting night.

Great Bay Estuary Tour. Mrs. Belcher reminded everyone that there was a tour of the Great Bay Estuary scheduled to leave Portsmouth on Saturday, September 29th at 2pm. If anyone was interested, they should reserve a spot soon. Mr. LK Smith noted he thought the trip might be full by now.

Notice of Change of Tenancy. Mrs. Belcher related to the Board that they had received written notification for a proposed change of tenant from Mr. Mulvey, 17 Haverhill Road. Mr. Mulvey's present business location accommodates Mulvey and Sons, and Wrecks-R-Us Used Car Sales. Mr. Mulvey has a new tenant interested in taking the place of Wrecks-R-Us. According to Site Plan Regulation Procedures A.1. *"All changes and expansions of use, including change of tenants, require written notification to the Planning Board...who will determine whether the proposal shall be required to undergo the full Site Plan Review and public hearing process."*

As per the site plan regulation procedures, the Board will need to obtain more information from Mr. Mulvey and his prospective tenants to determine whether or not a full site plan review will be required. After Board discussion, it was decided to invite Mr. Mulvey and his prospective tenants to the work session on October 9th at 7:00pm. Mrs. White will call Mr. Mulvey and inform him. Mrs. White will also look up the stipulations for Mr. Mulvey's business and distribute to the Board members before the October 9th meeting.

PUBLIC HEARING FOR A DESIGN REVIEW REGARDING A PROPOSED SUBDIVISION FOR JULIE TURNER, 87 HAVERHILL ROAD (MBL #10-04-04)

Mrs. Belcher opened the Design Review for Julie Turner.

Mrs. Belcher reviewed the Design Review phase with the applicant. As per Land Use Regulation 676.4 II.(b) – DESIGN REVIEW PHASE. *"The Board or its designee may engage in nonbonding discussion with the applicant beyond conceptual and general discussions which involve more specific design and engineering details; provided, however, that the design review phase may proceed only after identified of and notice to abutters..."* Mrs. White assured the Board that proper abutter notification had taken place, and Mrs. Belcher restated to the applicant that tonight's discussion would be non-binding.

Mr. Lloyd questioned why the discussion was non-binding since it was a public hearing. Mrs. Belcher explained that during a conceptual discussion that was non-binding, discussion could be in concept but not specific. In a design review, because the Board would be speaking about specifics, the law requires that abutters be notified. The discussion would not be binding, but deeper specifics could be investigated.

Mr. Dennis Quintal, Civil Consultants, representing Ms. Julie Turner. Mr. Quintal reviewed that this proposal for the subdivision of Ms. Turner's land had been before the Board a couple of years ago, presented by Jim Lavelle, who did the survey, the topography, and identified the driveway locations for both properties. Subdivision approval and the driveway permits for both properties were received from the state at that time, and there were no waivers requested. The Town had had concerns on how the second lot would be created from the existing parcel, and had requested more detail on how the

lot was to be developed. When Mr. Lavelle did not comply with the Town's request, the request was denied and the application was deemed incomplete.

Since the original hearing before the Board, the Town has created a steep slope requirement. Ms. Turner has asked Mr. Quintal to present the subdivision plan to the Town again, with an engineered plan for development of the second lot. There being no need to duplicate Mr. Lavelle's original plan design, Mr. Quintal obtained his permission to present that same plan to the Board again, with Mr. Quintal's engineering design for the lot. Mr. Quintal has provided a drainage analysis, a soils and wetlands report, and a plan indicating slopes greater than 10% and 15% requested by Chairman Day.

Mr. Turner then explained how the property was acquired for his daughter. Ms. Turner had wanted to build a home closer to her family, who live in Maine. Her father was concerned since she could not afford to buy land and a home on her own. She found the property in East Kingston where she presently lives, and was assured that there would be no reason it could not be subdivided. Since her family would need to lend her the money for the property, her plans were to subdivide the lot and pay the money back when the second lot was sold. Mr. Lavelle was hired to put together a plan for the subdivision. Mr. Turner was disappointed when Mr. Lavelle did not reply in a timely manner to the Town's request for more information, resulting in the request being denied. Mr. Turner had thought the property would be grandfathered, since the property had been purchased before the steep slope regulation came into effect. Mr. Turner stated he could not afford to continue to supplement his daughter's loan for the property.

Mr. Morales explained that steep slopes were not a regulation at the time, but are addressed in the Master Plan Natural Resources Chapter, Section 7, and that the Building Inspector had mistakenly issued Ms. Turner a building permit.

Mr. Quintal stated that it was obvious that the property had steep slopes. Ms. Turner's original plan had been to locate the house much further down on the lot, which would not have required the steep winding driveway that is there at the present time. The builder had talked Ms. Turner into locating her house higher on the property. The proposed location for the house on the second lot has been placed at a much lower level, and the slope of the proposed driveway is at 10%. The current vegetation in the front of the property would be maintained.

Mr. Quintal explained that most erosion problems occur on slopes when the fill is not compacted properly. In this case, they would be dealing with stable ground at the proposed house location due to a minimum of cuts and fills. The Turners had originally thought they might prepare the site and then go to the Town, but decided against it in the end.

The proposed area is 31,000 sf, which is a little less than the required $\frac{3}{4}$ of an acre, but would allow the balance of the land to stay in its natural state. The proposed driveway is approximately 300' long, and due to the configuration would be a few hundred feet from the road. Mr. Quintal had indicated on the plan that the nearest water source was the Tricklin' Falls Dam. The well would be located next to the driveway; the test pits had been dug and the soils are gravel and sandy loam. A Soils and Wetlands report has been submitted to the town.

Mr. Quintal quoted from his Soils and Wetlands report: *"The important physical feature about this site is the steep slope surface grade. Although steep slopes are considered poorly suited for urban development, single houses are commonly found constructed on steep slopes throughout the state. Special considerations must be taken during design and construction of the site. Erosion occurs when storm water runoff is channelized, increases in volume and velocity, which will then have the energy to move soil particles down the slope.*

The proposed development of the single-family home, driveway and associated appurtenances are located in a cut situation. Surface swales and subsurface interceptor drainage is proposed at the toe of the cuts. This runoff is collected and split by way of multiple culverts in infiltration trenches under the driveway to rip rap level spreaders. These devices will collect runoff and recharge the groundwater. The intent is to minimize runoff and control erosion from the site. The Site Plan and Details show the location and type of materials that will be used to fulfill this objective. It is important to note that as with the development of any lot, appropriate construction procedures shall be employed in order to obtain the design intent.

If followed, this development will have little impact to the character and function of wetlands and properties downstream."

The drainage report with calculations for surface runoff has been submitted to the Board to review. At the present time, surface runoff is mostly straight down the slope, along a drainage swale at the edge of Haverhill Road, and across the road through a culvert. Terracing the steeper slope behind the driveway would slow down the flow of the water somewhat and minimize the impact of the runoff.

The Master Plan states that any development should be harmonious to the welfare of the community. This is a single lot, with less than $\frac{3}{4}$ of an acre proposed to be developed, which is harmonious and promotes the welfare of the community.

The development of this lot is no different than the development of several other lots in East Kingston with steep slopes, and some work quite well.

The proposed slope is 2:1, which would be protected with green fabric that allows vegetation will grow through it. The area around the house is approximately 15', can be easily maintained, there is adequate area for parking and turnaround, and there are no wetlands on the site.

Mrs. Belcher asked if the Board members had any questions for Mr. Quintal.

Mr. LK Smith noted that he had walked the old logging road in the past and asked what the grade was in the upper area. Mr. Quintal answered that it was less than a 10% grade at that location. Mrs. Belcher asked how large the upper flat area was, and Mr. Quintal stated that the area was approximately 80x80. Mr. LK Smith noted that the flat area was an old log landing area.

Mrs. Belcher noted that the area to be developed was less than $\frac{3}{4}$ of an acre, and wanted to know what measures were proposed to restrict development to that area only. Mr. Quintal answered that they had thought there were restrictions that could be put on by the Board that would not allow any further development of the lot above a certain elevation or grade.

Mrs. Belcher asked how far back from the road the proposed house location was in a straight line from the road. Mr. Quintal answered that it was about 80' from the edge of the pavement to the proposed house lot.

Mrs. Belcher asked Mr. Quintal to identify the slopes involved on the driveway and where the house location would be. Mr. Quintal stated there were a few areas with a 10% grade near the bottom of the driveway, the slotted areas shown on the plan are between 10%-15%, and the rest are more than 15%. The upper portion of the property was about a 25% slope.

Mrs. Belcher asked Mr. LK Smith for verification on the slope on the upper portion. He ascertained it was approximately a 25% grade, and thought it to be not quite as steep as the DeBross property on the other side of the hill, which was a 30% slope. He reminded the Board they had denied building on that 30% slope area of Mr. DeBross property.

Mr. Turner stated should the subdivision be granted, they would have no problem having the stipulations for a limited building envelope recorded with the deed to the land. Mrs. Belcher stated she understood that Mr. Turner was willing to go the extra mile to assure there would be no more construction on the property outside the building envelope.

Mrs. Belcher opened the floor for abutter comment.

Barsha Cooke, 109 Haverhill Road, East Kingston. Mrs. Cooke stated that she lived beyond the slope and that the old logging road is between her house and the proposed house location. She explained that when the logging road was cut, they experienced a lot of run off; there was a lot of silt and sand that went into the culvert. She would like the Turners to make sure they would do everything possible to make sure that a runoff situation like that would not happen again.

Mrs. Cooke also wanted to make the Turner's and the community aware that there were Native American stones above the Turner's property, right at the property line, and wanted to make sure necessary measures would be taken to preserve those stones. She was relieved that the proposed construction was at the lower elevation and not at the same elevation as Ms. Turner's house.

Mrs. Belcher recapped that Mr. Turner had referred to Maine state laws, and stated that the Planning Board is bound by *New Hampshire* statutes, which includes the regulations for subdivisions, and that financial hardship cannot have any bearing on the Board's decision. The Board is bound by the statutes and regulations, and that is what they need to base their decision on. There is leeway to grant waivers based on the Board's determination whether or not they meet the waiver criteria.

There being no further abutter comment, Mrs. Belcher closed the floor to abutters.

Mr. Turner did not understand why the plan was dropped rather than being tabled. Mrs. Belcher explained that it seemed it was due to a lack of correspondence from the previous Engineer. Not having the file in front of her, she was not sure if the reason the application had been denied had been due to lack of information.

Mrs. Belcher addressed Mr. Turner's question that the property might be grand fathered, since the proposal came before the Board previously. She explained that there is an active and substantial development statute that states "unless active

and substantial development occurs, you will be bound by new regulations if the application is not complete.” Just submitting the plan does not make it “active and substantial development”.

Mr. Turner asked about the state’s approval of the subdivision and wondered why that would not be enough, and Mrs. Belcher stated that they had appealed the state, but still need to appease the Town and meet the Town’s requirements.

Mr. Quintal reiterated that he had submitted a waiver request with the application, and also referred to the drainage analysis to be reviewed by Jay Stephens, the Town Engineer. He suggested the Board wait until they had Mr. Stephens’ comments before making a decision.

Mrs. Belcher reminded the Turners that anything the Board stated at this meeting was not binding, and that the Board was only expressing their concerns about the project. It would give the Turners an idea of what would be required of them, and also what can and cannot be considered.

Mr. Steltzer reviewed that the application was submitted to the Town for review. During the Design Review process, the application has been withdrawn and this discussion is taking place. When the actual hearing takes place, the application will be resubmitted if the applicant is interested in pursuing more binding agreement by the Planning Board.

Mrs. Belcher asked for Board comment. It was the consensus of the Board that they needed the input from the Town Engineer before they went any further in their discussions. It was ascertained that the plan and supporting documentation had not been sent to the Town Engineer yet, as the Chairman had wanted to make sure the Turner’s wanted to bear that expense and proceed. Mrs. White will send the information to the Town Engineer tomorrow.

Mrs. Belcher suggested that any Board member not familiar with the property should take a look at it. Like Mrs. Cooke, one of her concerns was the runoff. She appreciated the applicants’ measures to address those issues, as there is quite a slope to the property. Mr. Turner stated that the new location for the house being lower than originally planned would mitigate a lot of the runoff concerns of Mrs. Cooke, as less land would be disturbed.

Mr. Lloyd stated he also was concerned with the slope of the land, and would like to hear the pros and cons of mitigation methods to be used during and after construction.

Mr. Sullivan asked how long it would be before the Town Engineer would be back to them. Since the plan had not been sent yet, that was not known. He also stated that the plan submitted was an excellent plan for dealing with water runoff.

Mr. Steltzer commented that the regulation requires the driveway to have a negative 2% slope from the existing road to ensure that any runoff stays in the swale. Mr. Quintal acknowledged that that was a state requirement.

Mr. LK Smith wanted to remind the Board of the concerns they had had with the development on the other side of the same hill and the steep slopes. Also of the effort the Board had made to keep development off the steep slopes. The subdivision regulations reinforce what is already in the Master Plan. He stated that the water bars originally on the old logging road have been worn down and were not working correctly.

Mr. Quintal stated that he remembered reviewing the subdivision regulation on steep slopes and as he recalled, the major cuts and fills they were concerned with were winding driveways that were substantially more than what was being proposed here. At that time, they were worried about the entire ridge being cut down. Mr. LK Smith interjected that none of the slopes actually being built on were greater than 15% in that instance. He also reminded the Board that a housing development was no different than a single lot.

Mrs. Belcher reminded the Board of the subdivision regulation associated with granting waivers.

Subdivision Regulation XV.A – Granting of Waivers states:

A. General. Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations would still be served, it may approve waivers to these regulations. The purpose of the granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. Such waivers will be entertained and acted upon by the Board only at a properly noticed public hearing, or for a lot line adjustment, at a duly noticed public meeting. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

- 1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.*

2. *The waiver will not, in any manner, vary the provisions of the East Kingston Zoning Ordinance, Master Plan or Official Maps.*
3. *Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.*
4. *A particular and identifiable security exists or a specific circumstance warrants the granting of a waiver.*

Mrs. Belcher noted that regulations referred to expenses and explained that it was not referring to the hardships the Turners were currently experiencing, but the hardship of the cost of having those things done.

Mr. Quintal requested that the Design Review be continued until the information can be sent to the Town Engineer and the Town Engineer provides his comments back to the Board for review.

Mrs. Belcher entertained a motion for continuance of the Design Review.

MOTION: Mr. Lloyd **MOVED** the Planning Board continue the public hearing for the Design Review for Ms. Julie Turner until 7:15pm on 18 October 2007. Mr. Caron seconded, and the motion carried unanimously.

Mr. Quintal and the Turners thanked the Board for their time.

Mrs. Belcher closed the Design Review.

DISCUSSION WITH JOANN BRANDT REGARDING REVISION OF THE CONDITIONS OF APPROVAL FOR HER SUBDIVISION AT 41 BURNT SWAMP ROAD (MBL #10-05-01).

Mrs. Belcher opened the discussion with Joanne Brandt.

Mrs. Belcher explained that this was discussion of the Board to give Mrs. Brant direction on how the regulations had changed since the decision was rendered for her subdivision.

One of the requirements in her Notice of Decision dated 19 February 2004 was to get Fire Department approval and acceptance of a fire suppression system in the form of a dry hydrant to reach Green Brook on the property of John F. Melanson, 44 Burnt Swamp Road for her subdivision. The system was to be completed and accepted by the Fire Department prior to the issuance of a building permit by the East Kingston Building Inspector.

Since the date of that Notice of Decision, the subdivision regulations have changed. Prior to the change, all subdivisions were required to have some sort of fire suppression system. As of August 2006, that requirement was changed and now subdivision Regulation VII.S. states:

S. Adequate fire protection shall be provided for all subdivisions, subject to review and approval of the Town Fire Chief or his Deputy. Measures may include, but shall not be limited to cisterns, fire ponds, and dry hydrants.

1. *Any subdivision creating two lots* shall be exempt from the requirement to provide fire protection so long as the following conditions are met:*
 - a. *The new lots are intended for residential development. Commercial and light industrial uses of any newly created lots, as well as lots of record, shall comply with current fire protection requirements...*
 - b. *The final subdivision plan and individual lot deeds shall be recorded with the following not(or substantially similar language...)*

“ANY FURTHER SUBDIVISION OF EITHER OF THE TWO, NEWLY CREATED LOTS SHALL NECESSITATE THE INSTALLATION OF AN APPROVED FIRE PROTECTION SOURCE IN ACCORDANCE WITH THE CURRENT ORDINANCE AND REGULATION REQUIREMENTS.”

Note: A single lot of any size subdivided into two lots constitutes two (2) new lots for purposes of this regulation, regardless of the individual lot acreages resulting there from.

Mrs. Belcher reviewed that Mrs. Brandt’s subdivision was a two-lot subdivision, and falls under the changed Subdivision Regulation VII.S.1. She stated that Mrs. Brandt is before the Board looking for direction on how to resolve this; what would be required of her since there is a notice of decision of record. The regulations have changed since that notice of decision and are now less restrictive. Mrs. Belcher asked the Board how they wished to proceed to allow the new, less restrictive regulations to apply to Mrs. Brandt’s approved, existing subdivision.

Mr. Morales clarified that they were considering the fire suppression portion of the decision only, and Mrs. Belcher agreed that was the only condition they were addressing.

Mr. Morales stated he thought the Board should abide by the new, less restrictive regulation pertaining to fire suppression. They had thought it too restrictive for small subdivisions, and that was why they had changed it. Mr. Lloyd agreed, as did the rest of the Board members.

The question was what did they need to do to reverse their previous decision? What would be the process to make it a fair and binding legal decision to reverse that condition of the existing notice of decision? Mr. Morales asked if they would need to conduct a public hearing with abutter notification. The Board members thought that should be required, but were not sure if an amendment to the previously approved notice of decision was what would be necessary. Mr. Lloyd also agreed any amendment made to the existing Notice of Decision should be made at a public hearing. Mrs. Brandt should not have to go through the entire process, but it would only be to reverse the one condition.

Mrs. Belcher explained that most of the discussion pertaining to the change in the regulation had been based on Mrs. Brandt's hardship situation. Mrs. Brandt stated she wished she had been notified when the change had passed, and Mrs. Belcher stated it was voted on in Town Meeting in March. It would be too immense of a task for the Secretary to mail out changes to each Town resident after the Town Meeting each year, and it was up to each resident to stay informed.

Mrs. Belcher asked Mr. Steltzer to find out the answer for the Board; he stated he would ask Glenn Greenwood at the RPC how to proceed.

Mrs. Belcher informed Mrs. Brandt that they would contact her when they knew just what procedure needed to be followed to change that condition. Then she could decide whether or not she wanted to pursue it and send out the abutter's notices for a public hearing.

Mrs. Belcher closed the discussion with Mrs. Brandt.

Mrs. Brandt thanked the Board for their time.

CONTINUED BOARD BUSINESS

Mr. Sullivan commented on Mr. Ford's storage units and how nice they looked. The Board members agreed. Mr. Sullivan also reported that Mr. Ford had been hit by an automobile last week and was bruised but not badly hurt.

ADJOURNMENT:

Mrs. Belcher entertained a motion to adjourn.

MOTION: Dr. Marston **MOVED** the Planning Board adjourn. Mr. Sullivan seconded, and the motion carried unanimously at 8:30 pm.

Respectfully submitted,

Barbara A. White
Recording Secretary

Catherine E. Belcher.
Vice Chairman

Minutes approved October 9, 2007