

FILE

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
October 18, 2001

AGENDA

- 7:15 David & Patricia Morse – 3 lot Subdivision – Continued Public Hearing
7:40 Steve Hallet – Elderly Housing Dev. - Discussion
7:50 Julian Dunlop – Carmen’s Restaurant - Discussion
8:30 Wayne Day – 2-lot Subdivision – Public Hearing
9:00 Lewis Builders – Elderly Housing Dev. – Public Hearing

Members attending: Richard A. Smith, Sr. – Chairman, Beverly A. Fillio – Vice-chairman, John L. Fillio – Ex-officio, Dr. Robert Marston, David G. Morse and Alternate Member J. Roby Day, Jr.

Others attending: Conservation Commission Chairman Larry Smith, Fire Department Lieutenant Andy Conti, Dennis Quintal, Atty. John Ratigan, Chris Frey, Peter Lewis, Richard & Elena Poelaert, Greg Buck, LLS, Wayne & Micki Day, Deputy Fire Chief Rob Carter, Sue Jordan, Gordon & Lydia Mitchell, Conrad Moses, Kathy Gonet, Fire Chief Alan Mazur, Atty. Jeff Towers, Julian Dunlop, Steve Hallet, Marjorie Anderson, Robert Pressmen, David Young, Pat Morse and other members of the public who did not address their concerns.

Chairman Smith opened this October 18, 2001 planning board meeting at 7:07 p.m. with the role call.

Amendments & Adoptions: Chairman Smith acknowledged the following items to be considered for adoption or public hearing:

1. Capital Improvements Plan - Ms. Carriel distributed final drafts of the updated portions of the CIP. Members agreed it was ready for adoption at a public hearing.
2. Article III-A – an amendment to include a timeframe for the reconstruction of conforming buildings. Dwellings not completed in this timeframe would need to comply with the Growth Control Ordinance: *In the event of damage, destruction or demolition of any building, said building may be rebuilt provided construction is started within two years of its damage, destruction or demolition or it will need to comply with the Growth Control Ordinance.* Discussion regarding the timeframe transpired and at the recommendation of Mr. Day, the board voted that this timeframe should mirror the timeframe set forth in Article XVIII regarding nonconforming buildings – construction to begin within one year and completed within two.
3. Amend Article XVIII to clarify its language – Mr. Day submitted new language for paragraph D: *Subject to any zoning ordinance restriction triggered by its present nonconformance to this ordinance, said building may be rebuilt for its former nonconforming use in the same manner and extent, provided construction is started within one year of its damage, destruction, or demolition, and is completed within two years.*

Mr. Day then offered the following changes to the remainder of Article XVIII to further clarify its intent: paragraph B to read: *Permitted to revert to a nonconforming use once the property has been brought into conformance;* and paragraph C to read: *Re-established after abandonment of either use or structure for one year, except to a use and/or structure conforming to all East Kingston Zoning Ordinances currently in force.*

MOTION: Mrs. Fillio motioned to accept Mr. Day’s amendment recommendations for Article XVIII as outlined. Mr. Fillio seconded. With no further discussion, the motion carried 5-0.

4. Amend Article XII-Elderly Housing Ordinance to include provisions for assurance of age restriction: *12.5 – Residency restrictions for residential projects approved under the Elderly Housing ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and /or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall include enforcement provisions in favor of the Town. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants.*

It was noted that this was submitted to Town Counsel for review and the following comments were received: 1) place this amendment as Article 12.6 not 12.5, 2) remove “Covenants shall include enforcement provisions in favor of the Town” and replace it with “Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injuncture

relief or otherwise"; and 3) replace the last sentence "Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants" with Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted thereunder, without the prior written approval of the Planning Board."

Member agreed to incorporate these changes as recommended by Town Counsel.

5. Subdivision Regulations – add language to include provisions for lot line adjustments: *Minor lot line adjustments which do not create additional lots or increase the development potential of a lot require subdivision application and approval in the same manner as ordinary subdivisions, except that a public hearing shall not be required. However, notice to abutters shall be given prior to approval and any abutter may be heard on the application upon request. (RSA 676:4 1 (e)(1)).* Members approved this language.
6. An amendment to Subdivision Regulations and Site Plan Review Regulations regarding waiver procedure:
 1. *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 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:*
 - a. *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.*
 - b. *The waiver will not, in any manner, vary the provisions of the East Kingston Zoning Ordinance, Master Plan or Official Maps.*
 - c. *Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.*
 - d. *A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver.*
 2. *Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.*
 3. *Procedures. A petition for any such waiver shall be submitted in writing by the applicant with the applicant for Board review. The petition shall state fully the grounds for the waiver and all the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial.*

Members agreed on this language.

MOTION: Mr. Morse motioned to hold a public hearing on amendments 2-6 on Thursday, November 15, 2001 at 7:05 pm. Dr. Marston seconded.

DISCUSSION: The purpose of the public hearing on items 2, 3, and 4 would be to place these amendments on the March 2002 Zoning Ballot. Items 5 and 6 would be adopted at the public hearing.

Chairman Smith called the vote and the motion carried 5-0.

MOTION: Mrs. Fillio motioned to hold a public hearing to adopt the revisions of the Capital Improvements Plan on Thursday, November 15, 2001 also at 7:05 pm. Dr. Marston seconded. With no further discussion, the motion carried 5-0.

David & Patricia Morse –3-lot Subdivision– 40 Willow Road– Continued Public Hearing: At 7:31 pm Chairman Smith opened the public hearing for David & Patricia Morse's subdivision plan for MBL# 8-2-19, located at 40 Willow Road. Mr. Morse excused himself from the board table and took his position at the applicant's table. Chairman Smith then designated Alternate Roby Day to participate in voting matters regarding this case. Mr. Morse is proposing a 3-lot subdivision of a 33-acre parcel. This hearing is a continuation of the September 20th meeting.

At member inquiry, Mr. Morse stated that the road length is about 960 to 970 feet long.

Ms. Carriel stated that the comments she submitted regarding this plan were addressed at the last meeting, however, she wanted to raise the question about roadway design and the upcoming site plan review for this property. She stated that the roadway plan for the Lewis Builders' site plan review does not match the road plan submitted by Mr. Morse. The site plan shows a private road off the cul-de-sac. She recommended that Mr. Morse's plan also show this private loop road.

Noting the loop road would allow for two-way traffic, Mrs. Fillio stated that it appeared to her the loop road was just a continuation of the cul-de-sac. Mr. Morse responded that he could install stop signs. Mr. Day added that this loop road raises the question of the dead end's access.

Mr. Fillio stated that the plan before them is for a 3-lot subdivision with a cul-de-sac and that the board can only consider the application before them. The site plan is a separate issue not yet before the board.

Ms. Carriel stated that in her view they would not be building the road as planned on the subdivision plan. It would be ideal if the two plans could be coordinated. Mr. Morse replied that the loop road should be addressed with the Lewis Builders' application. He is just proposing a 3-lot subdivision. Mrs. Fillio agreed and stated that the elderly housing proposal is not before the board at this time.

Mr. Fillio stated that there must be a road with a cul-de-sac in order for the board to approve the subdivision – each lot must have road frontage. Ms. Carriel suggested that the subdivision plan be consistent with the site plan (by adding the loop road).

Mr. Morse responded that the town standard is for a cul-de-sac; if the board wants to eliminate it at a later date they can, but he must show it on the plan because it is required.

Conservation Commission Chairman Larry Smith indicated that he had no problems with the drainage report submitted. It was noted that the board invoked jurisdiction at the last meeting.

Mr. Morse then inquired if he would be able to set the bounds along the proposed road after the construction of the road so as not to knock the bounds out of place during construction. The remainder of the bounds could be set prior to recording. Two Certification of Monumentation forms can be submitted— one on the back bounds and one on the roadway bounds. This would be incorporated with the road bond agreement between the applicant and the Board of Selectmen.

It was also noted that the fire pond must also be completed prior to the issuance of any building permits.

MOTION: Mrs. Fillio motioned to grant conditional approval of the subdivision plan for MBL# 8-2-19 as presented with the following conditions:

1. The bounds along the newly proposed road frontage be set after the construction of the road;
2. The road bond be submitted and approved by the Board of Selectmen; and
3. The remaining bounds be set and verified by the Building Inspector (prior to the construction of the road) and the Certification of Monumentation form be submitted.

Mr. Fillio seconded. With no further discussion, the motion carried 5-0.

Mr. Morse then resumed his seat at the board table as well as his position to vote in any matters.

Steve Hallet – Elderly Housing Dev. – Discussion: Chairman Smith opened discussion with Steve Hallet at 8:00 pm. Mr. Hallet stated that he was accompanied by an assistant and Shafmaster Company counsel, Jonathan Towers. He said he is the president of his company called Senior Resource Development and that he currently has several elderly housing developments under construction. He advised that next month the board could anticipate a subdivision application to subdivide the Shafmaster property on Freeman Street into two lots. The horse farm would have frontage on Freeman Street, however the new lot would be fronted on Main Street between the Staple's property and the gift shop. The new lot would also consist of approximately 111 acres: 88 acres would remain with the farm.

He continued to explain that he is trying to stay out of the wetlands and would tie into the existing crossing to the high land located in back of Freeman Street. He is proposing 68 units of retirement housing and then presented several drawings of projects he completed in areas of York, ME, Newmarket, and Meredith, NH. Of the 68 units some are duplexes – there are only 50 buildings proposed. He then noted the traffic flow: Off Route 107 by gift shop, up existing gravel access road at the end of Freeman Street to the homes.

Mr. Day stated that it only looks like one way in and out of the development and that furthermore, the length of the proposed road is over 1,000 feet. Mrs. Fillio asked why he (Hallet) did not use Freeman Street— why disrupt other land?

Mr. Hallet replied that he is here to get input from the board and that this was a starting point. He thought access off of Route 107 was better than disrupting the residents along Freeman Street. Mrs. Fillio stated that she thought this access (Route 107) was a poor site as visibility is not good there and adding another road does not seem in the best interest of the town. There is already a street and accessing off of 107 would only disrupt the wetlands.

Mr. Hallet stated that he was staying out of the wetlands. Conservation Commission Chairman Larry Smith responded that the field where he is proposing his access was previously drained and it is still considered wetland – it is shown as a wetland on the town map. Furthermore, a Site Specific Soil Survey would need to be done to insure this is not a wetland – the wetlands go beyond the little stream that is located in that field.

Mr. Day stated that it is important to address the length of the road. The town allows for not more than 1,000 feet – that is the *maximum* length allowed. There is only one way in and one way out. He stated that if they located the road at the end of Freeman Street, they could begin measuring from that point.

Mr. Hallet responded that he would be looking for some waivers along the plan. He is just seeking board input at this time – is the board interested and what avenues are available to him. When asked about the marketing price for each unit, he replied he would sell them for about \$250,000 per unit and that he would do a full range of options. He said he has been developing these types of communities all over the country and he has a good idea where the market is. East Kingston is a desirable community. He would offer recreational facilities though not yet identified at this time. He would not offer a swimming pool, but other amenities.

Joseph Pigsley of Haverhill Road stated he was concerned with Mr. Hallet's interest in East Kingston.

Mr. Hallet replied that he is in business to build retirement communities and that he has had a lot of interest expressed for this area – that is why he is here. He had studied the area's demographics and it shows this type of housing is needed here. The zoning in East Kingston also makes it attractive – he is not proposing assisted living. This type of development would benefit the town because it would not make any demands on the school system – it would create a positive tax base.

When asked about the impact to wildlife, Mr. Hallet responded that he would propose cluster zoning where about 10 to 15 acres would be developed out of a total of 111 acres. He would keep much of the land open. Regarding public access to trail facilities, he stated that he had to be careful to maintain the integrity of the privacy of the residents who would live there. He will do a complete economic analysis to the impact on taxes and would supply the town with that information. He then thanked the board for their time.

Julian Dunlop – Carmen's Restaurant – Discussion: Chairman Smith opened discussion with Julian Dunlop at 8:21 pm. Mr. Dunlop has been before the board on previous occasions to discuss development potentials of the Carmen's Restaurant property. He distributed a narrative of this latest proposal and Mrs. Fillio read it aloud.

Carmen's proposal dated October 18

The existing restaurant is beyond economic repair and more importantly has no foundation. We propose removing the building, pouring a floor and rebuilding a two-story structure. The layout would be a rectangle 54 feet by 40 feet, with an 8-foot additional open verandah. This will give adequate working space to support:

A kitchen for breakfast, lunch and dinner, 12 booths, 6 tables and a counter for 8 totaling 80 places, a men's and women's washroom facility, handicapped facilities for both floors, four exits, stairs to second floor, a takeout service for chicken and pizza, and a service area for drinks.

The verandah would wrap around three sides, but not encroach upon the southwest corner, which is closest to the road. The main entrance would be on the north side, away from the road, and have an enclosed portico. Upstairs we propose a function room, with storage space, and restroom facilities.

The house should be pulled down and relocated at the northwest corner of the property within the appropriate setbacks. A single family home will be designed and built, with a new driveway from 107. The old driveway to be blocked off and landscaped.

We would like the Selectmen to approve this concept, itemize any concerns as soon as possible. Thank you. The major concern we have is to understand what is acceptable regarding the restaurant, as this governs the economic viability and therefore the size of the building.

According to a consultant who specializes in kitchen design for restaurants, you need 1200 square feet to operate a three-meal kitchen (breakfast, lunch and dinner). Therefore you need 960 square feet of seating space for 80 persons to recover the operating costs of the kitchen, food and staff. This is a combined area of 2160 square feet downstairs.

Julian Dunlop

Mr. Dunlop stated that the new proposal is 160 square feet more than the existing building – he was told to use the roofline in his calculations. The added 160 feet is needed to accommodate the total amount of square footage required for this proposal of 80 seats.

Mr. Day stated that this was not the type of natural expansion allowed under the provisions of NH court cases. The courts deny bigger footprints of grandfathered buildings and furthermore in NH court case Granite State Mineral v. City of Portsmouth, the courts denied the request of a three-story addition citing it changed the whole operations and it had a substantially different impact on the neighborhood. Now adding one story might be okay. Noting that the footprint doesn't have to be in the same exact spot of the existing building, he asked why it is being proposed there.

Mr. Dunlop replied that moving the footprint would force him to go to the State for approval – the footprint has to stay the same though he can change the shape to be more rectangular. He said he was planning to remove the house and barn and relocated them to a different area on the parcel.

Members agreed that the lot is zoned residential so as long as the setback are met, the house can be relocated on the parcel. Mrs. Fillio stated that when rebuilding, Mr. Dunlop has to comply with the current building codes – he should move the restaurant back farther away from the road.

Mr. Dunlop stated that if he were to move the building back, it would be impossible for him to meet the rest of the requirements for an 80 seat diner - so many feet are required to accommodate a leachfield that would service this restaurant.

Mr. Day agreed that the nature of the business is grandfathered – how this new proposal is substantially different to the impact of the neighborhood is the question.

Ms. Carriel noted that a few months ago she drafted a memo to the board regarding nonconforming uses. Article XVIII states that nonconforming uses cannot be altered to be substantially different from their existing use. She asked if a variance would be required to remove and rebuild the buildings.

Mr. Day stated that the addition is not a change of use. The impact to the neighborhood is the issue the board must address.

Mr. Fillio stated that the board needs to interpret the word “substantial”. Is moving the house substantial? Is adding a second floor? The language of the ordinance is not as precise as some people think it is.

Ms. Carriel noted that Article XVIII paragraph A addresses use and paragraph E addresses the structure. The natural expansion of the use is permitted, but not the expansion of the structure.

Mr. Dunlop stated that the structure was enlarged two times before and asked why it is not allowed now. It was noted that ZBA files on the property are available at the Selectmen's Office. A variance was granted on the property back in the 1970's.

Mr. Fillio stated that if Article XVIII says you can't expand or enlarge the building, then the project would require a variance. If the relocating of the building on the lot is better for public safety, he does not see how they can say no.

Mr. Day added that a nonconforming use would be changed to be more conforming – that is how they should look at it. He then advised Mr. Dunlop to seek legal advice on this issue.

Wayne Day – 2-lot Subdivision–Public Hearing: Chairman Smith opened the public hearing for Wayne Day's 2-lot subdivision proposal of land located at 64 Depot Road, MBL# 8-1-3 at 8:46 pm. Present with Wayne Day was Greg Buck, LLS from Little River

Survey Company. Mr. Buck submitted a revised plan and statement from their Soil Scientist as a result of Ms. Carriel's review of the plan prior to the meeting. Ms. Carriel's review generated a letter of comments which were addressed as follows:

1. A note specifying the Zoning District and associated area, frontage and building setbacks requirements for the parcel should be listed on the plan. A statement should also be included confirming that the lot is not within the East Kingston Flood Hazard Area.

Mr. Buck stated that a note has been put on the plan showing zoning and setbacks and that the parcel does not lie within the flood hazard zone. He is proposing a new 2-acre lot with 200 feet of road frontage and 38,184 feet of contiguous uplands. Mr. Fillio inquired about the remaining lot and how much uplands were on it. Mr. Buck replied that more than 20,000 square feet of uplands remained on that parcel and that since it is over five acres, he does not need to get State Subdivision Approval on it. There are no plans to build on that lot and it already has a septic system.

Mr. Fillio stated that the second lot (5 acre piece) should also have the wetland delineated to show that it meets all lot requirements. Ms. Carriel agreed.

2. Abutter information for Swisher should be added to the plan. - This was completed.
3. Wetland setbacks should be drawn on the plan to show the building envelope. - This was completed.
4. The proposed house location should be shown for lot 8-1-20. - This was completed.
5. The existing well and radius for proposed lot 8-1-3 should be shown on the plan to ensure that the protective radius does not extend onto proposed lot 8-1-20. - This was completed.
6. The proposed 4K septic reserve area for lot 8-1-20 does not meet the Town's required 20' setback from property boundaries. - The 4K area was moved and shown on the plan.
7. The material does not include a drainage report which is required. - A drainage report has since been submitted and will need to be reviewed by the Conservation Commission.
8. The plans do not meet the Town's requirement for delineations of wetlands and surface waters and soil information.

A statement from the Soil Scientist was submitted. The statement met the approval of the Conservation Commission Chairman, however, specific language would need to be changed on the plan (Hydric B changed to poorly drained) and the statement or plan would need the stamp of the Soil Scientist.

9. The Fire Chief must approve fire protection provisions. - Fire Department Lieutenant Andy Conti stated that the proposed home is within the distance required—1,200 feet from the hydrant on Willow Road.
10. The text "to be set" should be removed from the legend, and "Proposed" removed from "Proposed Property Line" on the plan. A Certificate of Monumentation will need to be submitted prior to the Board's final approval. - Bounds are in and set, plan shows text changes. Still need to submit Certification of Monumentation form.
11. State subdivision approval and a NHDOT driveway permit are required for lot 8-1-20. - Still waiting on both permits.

It was again noted that the upland calculations for lot 8-1-3 should be listed on the plan to confirm there is enough uplands on that lot.

MOTION: Mr. Fillio motioned to accept jurisdiction on the subdivision plan for MBL# 8-1-3. Mr. Morse seconded. With no further discussion, the motion carried 5-0.

ABUTTERS COMMENTS

Marjorie Anderson questioned where the septic system for the new lot was being proposed as she was not sure where in front of her house her own well was located. She said she does not object to the subdivision itself, just that she doesn't want her well contaminated or any water runoff in her cellar. Her house was then pointed out on the plan.

Mr. Buck responded that the newly proposed house would sit way back on the property at least 75 feet from the well. Mrs. Fillio stated that her well needs to be shown on the plan. Mr. Buck then responded to the water runoff issue and noted that the drainage looks like it will go to the back of the property with the house being proposed as presented on the map. He stated he could not be sure where the developer of the lot would actually build the house.

Ms. Carriel stated that any well protection radius on that property must be shown on the plan. It is currently not listed anywhere on it.

Robert Pressman stated that he has an artesian well near the driveway, about 70 feet from the right-of-way line. Furthermore he was told when he bought his property that the area in question was not a buildable lot.

David Young stated he had one minor correction— his address was incorrectly stated on the plan. His property is located at 23 Willow Road – not Depot Road as listed.

BOARD COMMENTS

The board reviewed the items to be addressed prior to approving the plan as follows:

1. Show the uplands on lot 8-1-3 to confirm the lot meets upland requirements;
2. Driveway permit is needed for lot 8-1-20;
3. State Subdivision Approval is needed for lot 8-1-20;
4. Certification of Monumentation form needs to be submitted and bounds inspected and approved by the Building Inspector;
5. Correct the Young's address on the plan;
6. Show the well on the Anderson property;
7. Review and approval of the drainage report by the Conservation Commission;
8. Change Hydric B term to poorly drained;
9. The plan receive stamp of the Septic Designer;
10. The plan or soil's statement received the stamp of the Soil Scientist; and
11. Note the distance from the hydrant on Willow Road to the proposed house on the plan.

Mrs. Anderson inquired if the purchaser of the property was obligated to build their house in the exact location as shown on the plan. The board responded that the house could be built anywhere on the property as long as it met all the setbacks.

It was noted that the gravel road existing on the plan might not be the location where the NHDOT will want the driveway to be located. Ms. Carriel informed the applicant that the new driveway must be at least 10 feet from the property line. Members then reviewed the fire suppression requirements again and ordered that the distance from the proposed house to the hydrant on Willow Road be noted on the plan.

MOTION: Mrs. Fillio motioned to continue this public hearing to Thursday, November 15, 2001 at 9:00 pm. Dr. Marston seconded. With no further discussion, the motion carried 5-0.

Lewis Builders – Elderly Housing Dev. – Public Hearing: Chairman Smith opened the public hearing for Lewis Builders Development, Inc. at 9:30 pm. Noting Mr. Morse was the landowner, he recused himself from the table and took a seat in the audience. Alternate Roby Day would vote in his absence. Representing Lewis Builders was Christian Frey. Mr. Frey distributed revised copies of the plan. He then outlined the proposal and noted they are proposing 11 buildings with a total of 22 bedrooms on one of the three lots that received conditional approval tonight (David & Patricia Morse 3-lot subdivision located at 40 Willow Road). He stated they would develop lot 8-2-27, an 11.21-acre parcel, and are proposing an onsite community water system. Each unit would have two bedrooms. The perc tests were conducted and witnessed the Builder Inspector, Kent Shepherd.

Mr. Frey continued to say that he has met with Jeff Hirsch and Joe Coronati of the Maplevale projects and they have all agreed to connect walking systems. He said the density used was based on the Town's Zoning Ordinance – they deducted 1.9 acres that were very poorly drained. He stated that their intent was to construct a private 22-ft wide road off the end of the cul-de-sac and post the speed limit at 20 mph. Signs indicating it to be a private road would be erected. A site-specific application has already been submitted to the State. They will use the existing fire pond on the property. He said that the Fire Chief told him that he had no concerns about the fire suppression system, and that the Police Chief also supports their proposal via verbal approvals.

He then reviewed the letter of concerns prepared by Ms. Carriel and the applicant's responses as follows:

1. The plan should list all applicable building and septic setbacks for the Zoning District. The plan does not meet the required 30' front setback— The plans have been revised to meet all front setbacks.
2. Designated Open Space and calculations are provided, however there is a question about the 1.7 acres added to the total area of the lot.— The 1.7 acres is the total acreage of the right-of-way.
3. Submission requirements include wetland data requirements. The Morse subdivision was granted a waiver for SSS mapping. A written waiver for this proposal is also needed. — A waiver will be forthcoming. Mr. Frey also stated that Mike Seraikas delineated the wetlands and recorded his plan at the Registry.

Mr. Frey then presented pictures of model houses to be built— these would be very similar to homes built in Danville, NH. The photos depicted single-family houses, however two homes would be butted up against each other to create duplexes. Sheet #3 shows the footprint of the buildings as well as the floor plan. Side elevations were also noted. Two-car garages for each unit is proposed and four parking spaces for each unit (two spaces in driveway, two spaces in garage). Detailed landscaping plans also noted along with sign detail and lighting. Each unit measures 1,300 square feet of floor space. They have built this type of home in Kingston, Danville, and Atkinson.

4. Plans are missing the type and location of solid waste facilities — this will be shown on the plan.
5. Plans are missing size (footprint) and elevation of first floor slab of proposed buildings - no slab elevations shown yet but other elevations noted.
6. Plans are missing proposed contours and finished grade elevations — still missing, will add.
7. Plans are missing detail on the type, extent and location of proposed landscaping in the required 25' buffer around the perimeter of the parcel — the 25' buffer will remain natural. There is sparse growth around the meadow, but the wetland vegetation buffers the rest.
8. Additional detail is needed on the location and size of any proposed signs — they are not yet clear on general shape, or exact location.
9. Plans are missing the location and type of lighting for any outdoor facilities — need to add lighting to the plan.
10. Erosion and sediment plan not submitted — this would be prepared with the drainage report, not yet submitted.

Additional comments also submitted by Ms. Carriel were addressed as follows:

1. The site plan is inconsistent with the proposed Morse Subdivision plan currently being reviewed by the Board. The plans for this site plan propose leaving the cul-de-sac bulb in place and simply extending a loop road from the bulb. This is currently an unbuilt roadway. — Mr. Frey explained if they extended the road it would measure more than 1,000 feet, however drawn as presented they can call the loop road a private road. Both the Police and Fire Chief's say its ok. There would be two accesses to the loop road at the end of the cul-de-sac.
2. Additional information is needed on architectural design — Mr. Frey agreed to add more details.
3. A second sheet needs to be submitted showing existing conditions as it hard to discern which lines are existing lines and which are proposed.— Mr. Frey would create a separate map as requested.
4. Easements must be clearly identified — easements around the fire pond were noted.
5. The board will need to review comments received from the Conservation Commission, the Fire Department and the Police Department— Mr. Frey stated that the Police and Fire Departments say the proposal is ok; they are just waiting on the Conservation Commission.
6. Plans need to be reviewed by the Town Engineer— When the board invokes jurisdiction, they will submit the plans to the Town Engineer.

7. Any State permits will be needed prior to final board approval – No dredge and Fill approval needed, just SSSS and State subdivision approval.

ABUTTER COMMENTS

None were noted.

Discussion then transpired on the 1.7 acres used in the density calculations. Ms. Carriel stated that she does not see how this was added to the parcel as it from the right-of-way – it doesn't belong to that lot.

Mr. Morse responded that at one of the work sessions while drafting the Elderly Housing Ordinance he asked the board if roadways could be included when calculating the bedroom density. He was told it was ok to use it. The recording secretary also recalled the meeting and offered to research the minutes to support Mr. Morse's statement. It was noted that the board advised Mr. Morse of the procedure for calculating density in good faith, and it would not be fair to change the procedure at this stage of the application. Mr. Morse stated that these 1.7 acres makes a 4-bedroom difference.

Members then considered whether or not the application was complete enough to invoke jurisdiction. Mr. Frey stated that the access off of the cul-de-sac and the density calculation are the major issues remaining, the rest are minor. Members requested the density issue be researched before moving forward on any decision about it. Regarding the road access, members were not convinced the loop road was separate from the cul-de-sac. Concerns about the safety issues at the intersection of the end of the cul-de-sac and the two access points to the loop road were raised.

Mr. Day reiterated that the maximum allowable length of a cul-de-sac in East Kingston is 1,000 feet and that past court history has supported the Town's position on it (Tebo case). Mr. Frey responded that the loop road is actually a proposed driveway into the development. Mr. Day countered that it is a road with two-way traffic, not a driveway. He then inquired as to where the 1,000 foot mark was on the road's length. It was noted that the cul-de-sac itself measures 970 feet.

Peter Lewis offered to discourage traffic flow on the loop road. Mrs. Fillio stated that if the development was a gated community, she might be more apt to believe it was a private driveway.

Mr. Day then cited reasons for the road length limitations – fire safety, police safety, etc. He further noted that the Town of Kingston's maximum road length is 800 feet. Mr. Lewis stated that the loop road would offer two ways in and two ways out and that he would put up signage to discourage unnecessary traffic.

Chairman Smith stated that this road plan exceeds the length allowed in the ordinances. Mr. Lewis called the road a driveway.

Mrs. Fillio asked if this driveway was going to be the same width of the road, Mr. Lewis responded affirmatively. She asked him if it would be the same construction of the road, again he replied yes. She asked if it was going to be two-way traffic like the road, he replied yes. She then responded that it was a road.

Mr. Frey offered that instead of the loop road, they design individual cuts (driveways) off the cul-de-sac to each unit – use common driveways.

Dennis Quintal stated that he thinks the length of the cul-de-sac applies to the cul-de-sac road itself. Since all the safety issues have been addressed, the loop road should be considered a loop road and not an extension of the cul-de-sac. Mr. Frey stated that the individual driveways would make it harder for the fire department to back up apparatus.

Further discussion regarding the loop road and the cul-de-sac resulted in the applicants agreeing to re-configure the road design and present their new plan at the next meeting. The following items still needing to be addressed were noted:

1. Drainage report still needed;
2. Driveway permits still needed;
3. Location of community solid waste disposal facilities;
4. Building footprint for the first floor slab still needed;
5. Proposed contours and finish grade elevations still needed;
6. Location and design of proposed lighting needs to be submitted;
7. Sediment and erosion plan needed;
8. 1.7 acres density calculation research needed;

9. Pedestrian access needs to be addressed and shown (does the board want sidewalks?); and
10. Boundaries of open space need to be shown on the plan.

At board inquiry, Mr. Lewis stated that he was looking at sale pricing for these units to be \$225,000 each.

Parking plans are shown on sheet #3 which would provide for two cars in the garage and two in the driveway. Garages would be at the first floor elevation. Mr. Smith stated that stairs are not conducive with elderly living, he noted the extensive stairwells shown at the back of the proposed units.

Septic systems layout was reviewed with three leach fields proposed – one servicing two units, another servicing three units, and the third leach field servicing four units. Fire pond capacity must be a minimum of 30,000 gallons and the design must be approved by the Fire Department before building permits are issued.

Pat Morse inquired if it made a difference if the loop road were gated. Mr. Day replied that it did not and again noted a court case. Mr. Lewis replied that the cul-de-sac stops short of 1,000 feet. Mr. Day said the board chose to include the length of the driveway in measuring the cul-de-sac.

Conservation Commission Chairman Larry Smith responded that the ordinance says cul-de-sac lengths are limited for town roads – this is a proposed private road that would be maintained and owned by an association.

Mr. Fillio stated that if the road were private and gated, she might not consider it a road but a driveway. It was then suggested that this loop road be tied in with the private road on the Maplevale property. This would eliminate any length problem as then it would be considered a through road. Mr. Frey replied that that could be an option.

Ms. Carriel agreed to look at other town's loop road designs. Maybe other towns count the road distance differently. Mrs. Fillio stated that waivers have been granted in the past. She said she does like the 1,000 foot safety issue and that this road design does have a nice look to it – she sees both sides of the issue. She said they need to do some research to alternative designs and the applicant needs to go back to the drawing board and come back next month. The board may need legal advice about what constitutes a cul-de-sac and a loop road.

At this time the board went to schedule the next meeting for the applicant and realized that the November 15th meeting was already too full. They then decided to reschedule the Day application (the secretary would contact by phone the abutters), the public hearings for the amendments and the upcoming Ewald application.

MOTION: Mrs. Fillio motioned to continue this public hearing to Thursday, November 8, 2001 also at 8:15 pm. Mr. Day seconded. With no further discussion, the motion carried 5-0.

The agenda for November 8, 2001 is as follows:
7:05 pm – amendments and adoptions
7:15 pm – Wayne Ewald's lot line adjustment
7:45 pm – Wayne Day's continued subdivision public hearing
8:15 pm – Lewis Builders' continued site plan review hearing

The agenda for November 15, 2001 is as follows:
7:15 pm – Resident's of Maplevale subdivision
7:45 pm – Maplevale Woods site plan review
8:15 pm – Maplevale Farms site plan review

Elderly Housing Ordinance: The board then held discussion regarding the possibility of capping the number of elderly housing units to be built in town per year citing they did not expect there to be such a development boom for this type of housing and they were not sure the town could accommodate its rapid growth. If the board were to adopt an interim growth control ordinance on elderly housing development, they questioned how the permits would be fairly distributed. Ms. Carriel stated that the application of permits would start at jurisdiction acceptance and that she advises the board to give this matter serious thought – this spurt of growth might just have to play out. The town adopted the elderly housing ordinance for a reason.

Mr. Morse stated that he thinks the board should let the development play out, though he has a vested interest in this matter. Mr. Day stated that the board should not wait for a crisis and then react; if they find fault in the ordinance, they should correct it before it becomes a crisis.

Ms. Carriel stated that growth cap numbers must be researched and supported before considered. Mr. Fillio stated that the board was trying to encourage this type of development and now they want to discourage it – he doesn't think that is right; there is no justification for it.

At this time, Atty. John Ratigan joined in the discussion and noted that he is unaware of any growth control ordinances upheld in court. If developers don't find the terms too demanding, they live with the restrictions. He suggested the board "let sleeping dogs lie." He then disclosed that he is not only representing the Maplevale projects, but the Caley projects on North Road. He said that a lot of money has been spent and these developers would be required to recover some of their losses should they be shut down.

He then suggested the board go out and figure out the impacts of elderly housing – he does not think there is a negative to this type of development. These properties will still pay full taxes even though they would not burden the school system, which makes up about 80% of each tax bill. If a negative impact cannot be proven, then there are no grounds for capping its growth.

Members agreed to take Atty. Ratigan's comments under advisement.

With no further business,

MOTION: Dr. Marston motioned to adjourn. Mr. Filio seconded. With no further discussion, the motion carried 5-0 and this October 18, 2001 Planning Board meeting ended at 11:33 p.m.

Respectfully submitted,

Catherine Belcher, Secretary
Minutes completed and on file October 22, 2001.

Approved: 11-9-01