

Town of Yarmouth

MINUTES OF THE PLANNING BOARD MEETING OF April 17, 2013

The Yarmouth Planning Board held a business meeting at 5:30 p.m. on Wednesday, April 17, 2013 in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Norm Weare, Chris Vincent, Tom Roche, Tom DiPersio, and Brad Goodwin
Planning Board Absent: Ken Driscoll

Others Present: Kathy Williams, Town Planner; Kieran Healy, BSC Group; Attorney Paul Tardif; Paul Bulter; Attorney Matt Fitzsimmons; Fred Kaczor; Pat Kaczor; Nancy Stewart; Thomas Grew; Nick Grew; and Robin Wilcox

Planning Board Chairman Chris Vincent opened the meeting at 5:31 p.m.

1. **PUBLIC HEARING: Definitive Subdivision Plan 2121B:** Paul K. Butler, 192 & 196 Pleasant Street, South Yarmouth, Assessor's Map 51, Parcel 102. The 4.51 acre lot is located in the RS-40 zoning district. The proposed Definitive Subdivision Plan includes a short road with 3 lots.
 - a. **Hearing Opening and Public Notice:** Chris Vincent opened the public hearing at 5:32 PM. The attached public hearing notice was read into the record and was published in the Register on March 28, 2013 and April 4, 2013 and sent to the certified abutter lists for the Definitive Plan.
 - b. **Presentation:** Kieran Healy of BSC Group and Attorney Paul Tardif, represented Paul K. Butler. Kieran Healy gave a brief summary of the proposed project as follows. This project has gone through Preliminary Subdivision review process with approval for some requested waivers. The Definitive plan has reduced the number of waivers requested. The applicant is now proposing to pave the roadway per comments from Engineering, DPW and Fire, and eliminated the waiver request to not tie into the Mass Coordinate system. The roadway alignment addresses the Fire Dept comments and all lots meet the zoning requirements. The road name chosen was Jessie's Lane. Each property will have new buried utilities, including water from Pleasant Street, as shown on the attached revised plans. The property currently has a shared waterline with the adjacent property to the west owned by Dr. Brooke Seckel, stemming from when these properties were part of a larger estate. Paul Butler and Mr. Seckel have spoken and scheduled a site visit to identify the best route for relocating the water line that runs across Mr. Butler's parcel to service Dr. Seckel's property. The revised plans reflect most of the Planning Board suggestions with regard to radius, widening the road width at the corner, and shoulder areas. Kieran Healy indicated that a small Cape Cod style berm would be located at Pleasant Street to prevent Pleasant Street runoff from coming into the property.
 - c. **Correspondence and Public Comments:** No letters or correspondence were received by the Planning Board for this project. No one from the general public provided comment when asked by the Chairman. However, some members of the public did respond to specific questions later in the Public Hearing, as outlined below.
 - d. **Planner Comments:** Kathy Williams indicated that the applicant had provided revised plans, dated April 17, 2013, that addressed most of the staff comments. The Planner gave a brief overview of the attached Supplemental Planner Report, dated April 17, 2013. The Planner report recommended not granting waivers for the as-built drawings and tying into the Mass Coordinate

system. There are still some concerns with regard to water easements which should be discussed further by the Board. A Draft Declaration of Access & Maintenance Covenant was prepared by Attorney Tardif and reviewed and accepted by the Town Planner and Town Counsel.

e. **Planning Board Comments/Questions/Discussion:**

Brad Goodwin asked about how changing the road surface from shells to pavement would impact stormwater runoff. Kieran Healy indicated that the drainage swale and infiltration basin were designed assuming the roadway was impervious. Kathy Williams indicated that the applicant did submit drainage calculations indicating that the infiltration basin could handle the required 25-year storm event, at a minimum.

Tom Roche was pleased to see the roadway widened at the corner from 14' to 18' as one concern he had was in regard to visibility and the ability for two cars to pass.

Norm Weare has no questions at this time.

Tom DiPersio was pleased that the applicant agreed to tie into the Mass Coordinate System. He liked the use of pavement due to the shallow slopes being provided. He also felt as-built drawings should be provided to ensure the shallower slopes were properly constructed and would not like to set a precedent for other projects. The waterline is something that sounds like it is being worked out with the worst case being the need for an easement.

Chris Vincent agreed with the need for as-builts and had a question regarding the need for shade trees. Paul Butler indicated he would be willing to provide landscaping on the lightly vegetated eastern side of the roadway. Nancy Stewart, the property abutter in this location, indicated that she was not concerned about shrubbery. Her concern was the location of the housing on Lot 1. Kieran Healy indicated the house would be south of the existing garage structure, away from this abutter's property.

Attorney Michael Fitzsimmons, representing Dr. Brooke Seckel, indicated that Paul Butler and Brooke Seckel hope to meet on Sunday to review the best location on Dr. Seckel's property to relocate the waterline and avoid impacts to buffer vegetation. Paul Butler has indicated he has agreed to pay for the relocation of the waterline onto Dr. Seckel's property. Attorney Fitzsimmons indicated that he felt an easement is not needed.

Attorney Paul Tardif briefly discussed the method of guarantee. Now that the road is being paved, the applicant will be following the traditional route of a covenant until the road has been constructed with base course, then provide a bond for the completion of the roadway to allow for lots to be released.

VOTE: On a motion by Brad Goodwin and seconded by Tom Roche, the Board voted (5-0) unanimously to approve Definitive Plan 2121B with the road name of Jessie's Lane and the following waivers and conditions:

Waivers from the Rules & Regulations Governing the Subdivision of Land:

1. Waiver granted from the requirement to provide a 125' centerline radii for a Lane, as outlined in Section 4.2.1 (f), to allow for a 39' and 57' radii.
2. Waiver granted from the requirement to round property lines at street intersections to accommodate a radius at the traveled way of 40', as outlined in Section 4.2.1 (i), to allow for

no rounding of the right-of-way of the new roadway intersection with Pleasant Street and a travelway radii of 20' to the east and 12' on the west.

3. Waiver granted from the requirement to maintain a minimum of one percent (1%) street grade, as outlined in Section 4.2.3 (a), to allow for a centerline slope ranging from 0.55% to 0.91%.
4. Waiver granted from the requirement for structured drainage, as outline in Section 4.4 and Section 5.4.2, to allow for country style drainage consisting of a short drainage swale and infiltration basin which can accommodate the 25-year storm.
5. Waiver granted from the requirement for the roadway sections to have a width of 20', have berms, and 10' shoulders, as outlined in Section 4.2.5, Section 5.1.2, Section 5.1.5, Section 5.1.6, Section 5.2 and the "Typical Street Cross Section", to allow for an access road ranging in width from 14'-18', no berms, and 1' gravel shoulders on each side.
6. Waiver granted from the requirement to provide an 80' diameter paved cul-de-sac at the end of a dead-end road, as outlined in Section 4.2.6 (b), to allow for a "T" style turnaround sized to accommodate a fire engine.
7. Waiver granted from the requirement to clear the entire right-of-way and to remove all unsuitable materials 10' wider than the road width, as outlined in Section 5.1.1 and 5.1.2, to allow for a clearing width and removal of unsuitable materials to 2' outside the shoulder edge, or greater as required to install the drainage.
8. Waiver granted from the requirement to plant street trees every 40', as outlined in Section 5.5.5, to allow for retainage of existing trees within and adjacent to the right-of-way.
9. Waiver granted from the requirement to have no cutting of existing pavement for installation of utilities, as outlined in Section 5.4.5, to allow for the interconnection of the proposed hydrant line with the existing watermain in Pleasant Street.
10. Waiver granted from the requirement for the developer to retain title to the fee of each street until conveyed to the Town or for not more than 3 years, whichever is the lesser, as outlined in Section 5.5.7, to allow for an Association to own the fee in the street in perpetuity.

Conditions:

1. The street sign shall include the word "Private".
2. Applicant must provide written approvals by all utilities to provide services within the subdivision to the Planning Board and Building Commissioner prior to release of any lots.
3. The "T" style turn around shall be capable of turning around a fire engine. The access off Pleasant Street shall be capable of handling the Tower 41 truck. The access road and all driveways shall provide a minimum clearance of 14' wide by 14' high to accommodate fire trucks.
4. The applicant must file a Declaration of Access and Maintenance Covenants with the Barnstable County Registry of Deeds that includes provisions for the creation of an Association to own the fee in the street, and to be responsible for the maintenance of the street, drainage, Parcel A and the street sign, in perpetuity. This document must be recorded with the Barnstable County Registry of Deeds before requesting any lot releases. No town services for paving, maintenance, replacement, repair, improvement, or snow plowing will be provided, nor shall the town provide any maintenance, replacement, or repair of the drainage system.
5. The plan must be altered to show the waivers granted and the conditions imposed by the Planning Board.
6. The plan must be altered to show ties into the Massachusetts State Plane Coordinates per comments from the Town Surveyor.

7. A portion of the existing building on Lot 2 needs to be removed for this new lot to meet the minimum 20' side yard setback requirement. This portion of the building shall be removed within two years of the date of Certificate of Approval of the Definitive Plan.

f. **Hearing Closed: VOTE: On a motion Tom Roche, seconded by Norm Weare, the board voted (5-0) unanimously to close the Public Hearing at 6:01 PM.**

2. **ANR Plan 2487I:** Thomas A. Grew Jr., 353 Weir Road, Yarmouth MA, Assessor's Map 126, Parcel 42.1. The ANR plan creates two lots, with Lot 2 having frontage on Bentbluff Lane.

Robin Wilcox of Sweetser Engineering, representing Thomas Grew, gave a brief outline of the proposed ANR Plan as follows. The conservation Commission has issued an Order of Conditions to locate a house within 100' of a wetland. The ANR Plan shows frontage off of Bentbluff Lane, which is an adequate way from an approved subdivision. Weir Road is a Town Road. Each lot has the minimum frontage and minimum lot size required.

Kathy Williams, Town Planner, gave a brief overview of the April 12, 2013 staff report, which expressed concerns about the viability of the access from Bentbluff Lane to the buildable portion of Lot 2. The location of wetlands along the entire frontage, and the fact that the Town of Yarmouth Wetland Regulations do not allow for the destruction of vegetated wetlands, would appear to make the frontage illusory. Based on input obtained from Bruce Gilmore, if the Planning Board determined that there is no viable or practical access along the proposed lot frontage, they could deny the ANR.

Brad Goodwin inquired about access off Weir Road. Robin Wilcox indicated this was the anticipated access to Lot 2 but also indicated that a letter had been sent to the Board of Selectmen to request an easement across Town owned land to the south of the subject parcel. No response has been received by the BOS on this request and would require a Town Meeting vote.

Tom DiPersio stated that this was a case where the frontage was cut off from the buildable portion of the lot. The Conservation Commission plans used the existing driveway to access Lot 2 and did not show access off Bentbluff Lane. If it were just the Massachusetts Wetlands Protection Act to consider, a driveway could be allowed as a limited project. However, the Yarmouth wetland regulations prohibits filling of wetlands. Lot 2 as shown can't access the way through its own frontage, which would make it illusory frontage and can't endorse.

Thomas Grew indicated that they want to access Lot 2 from Weir Road with an easement. Tom DiPersio indicated that if the Town wetland regulations did not exist, then could show an easement, but Yarmouth wetland regulations allow for no alteration of wetlands, so there is no viable frontage.

Robin Wilcox indicated he felt an ANR Plan could be done coming off of Weir Road.

VOTE: On a motion by Brad Goodwin and seconded Tom DiPersio, the Board voted (5-0) unanimously to deny endorsement of ANR Plan 2487I as access from the way (Bentbluff Lane) to the buildable portion of the lot is deemed to be illusory. Wetlands having jurisdiction under the Town of Yarmouth Wetland Protection Regulations stretch the entire width of the frontage shown on Bentbluff Lane. The Performance Standards outlined in Section 3.02 (3) of these regulations states that "Any proposed work, permitted by the Commission, in a vegetated wetland or within 100 feet of a vegetated wetland shall not destroy any portions of said vegetated wetland, nor shall

the proposed work impair in any way the vegetated wetland's ability to perform any of the functions in section 3.02 (1)." As the Town wetland regulations do not allow the destruction of vegetated wetlands, the lot cannot be accessed over its own frontage, making the frontage illusory.

3. **Meeting Minutes**: None
 4. **Zoning Board of Appeals**: Briefly discussed the April 25, 2013 ZBA agenda. Appeal #4444 for employee housing is not based on the recently passed zoning amendment (Article 31), but is a request for a variance from the motel length of stay to accommodate seasonal employees from multiple employers for up to 100 days.
 5. **Correspondence**: None
 6. **Board Items**: Norm Weare indicated that the Community Housing Committee did approve the one affordable apartment for 251 Route 28. Norm Weare also mentioned the possibility of another friendly 40B project on Pierce Street.
 7. **Staff Update**: Potential planning board candidate interviews on April 24, 2013, pending scheduling by Jim Quirk.
 8. **Next Meetings**:
 - a. May 1, 2013
 - b. May 15, 2013
6. **Adjournment**:

VOTE: On a motion by Tom Roche, seconded by Tom DiPersio, the board voted (5-0) unanimously to adjourn at 6:26 p.m.

ATTACHMENTS:

- Agenda 04/17/13
- **Definitive Plan 2121B**: April 12, 2013 Staff Report Memo with attachments, including staff comments; submittal information with three plans dated February 28, 2013; and Draft Declaration of Access & Maintenance Covenant. April 17, 2013 Supplemental Staff Report Memo with April 17, 2013 e-mail from Matthew Fitzsimmons; April 15, 2013 letter from Brian Yergatian of BSC Group; and three revised plans dated February 28, 2013 and revised April 17, 2013.
- **ANR Plan 2487I**: April 12, 2013 Staff Report Memo with attachments, including submittal information; shape factor sketch; and ANR Plan 2487I, dated March 14, 2013. April 17, 2013 supplemental Staff Memo with attachments, including April 17, 2013 comments from Doug Wrock with aerial photos.
- Town of Yarmouth ZBA Legal Ad for April 25, 2013

Approved on May 15, 2013

On a motion by Norm Weare and seconded by Brad Goodwin, the Planning Board voted (4-0-1) to approve the Planning Board meeting minutes of April 17, 2013. Ken Driscoll abstained.