

Planning Board Meeting Minutes

October 8, 2019

6:30 PM

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Chairman Burns called the meeting to order at 6:30 PM.

**Members Present:** Scott Burns – Chairman, Tim O’Neil, Peter Corey – Selectmen’s Rep., Alan Theodhor, Frank Lombardi, Steve LaRoza – Alternate and Joyce McGee – Secretary.

**Public Present:** James & Deborah Newton, Richard Harris Sr & Jr., Duncan Nevers, David Scalley, Thomas Smith, Robert Stiles, Brian Lennox and Christopher Diego.

**Minutes:** Peter Corey had a correction to the October 1, 2019 minutes. Page 3 under Development Code, take out to address Agricultural Use. The Board agreed that this was not going to be addressed this coming year. **A motion was made by Peter Corey to approve the minutes with the recommended changes of deleting to address Agricultural Use, seconded by Frank Lombardi. All in favor, motion carries. APPROVED**

**Public Hearing(s):**

**1. Boundary Line Adjustment:**

**#627 – Owner(s)/Applicant: Rexford, Carroll & Marion, Land Only Colby Road, Tax Map 233 Lot 035 and Rexford Trustees, Larry and Kathy of the Rexford Revocable Trust– 140 Colby Road, Tax Map 233 Lot 036** – who is/are requesting a Boundary Line Adjustment on said parcels. Tax Map 233 Lot 035 currently is 106+/- acres, said lot will add 12 acres to Tax Map 233 Lot 036 currently 11.15+/- acres. Tax Map 233 Lot 035 to become 94+/- acres and Tax Map 233 Lot 036 to become 23.15+/- acres. Survey is prepared by Thomas S. Smith, Licensed Land Surveyor.

Land Surveyor Thomas Smith was present stating no changes were made to the plan since the consultation in September. Currently, Larry & Kathy have 11.17 acres and they are adding a mirror image of the lot to make it 23.17 acres. Carroll & Marion Rexford will go from 107.52 acres down to 95.52 acres.

A question came up at the September 3, 2019 meeting regarding the driveway going to Larry & Kathy’s lot, Mr. Smith stated that he misspoke on the topic of the driveway access. The RSA that speaks to driveway access, ROW, easements etc. has to do with building permits. The original subdivision in 1985 was approved by the Town which created the lot and access off of Colby Road, so it was his feeling that it was an approved access (see attached RSA).

Peter Corey felt an opportunity was missed to correct the non-conforming lot, by increasing the lot another 12 acres just makes it more non-conforming. Mr. Corey believed it’s not a road as it wasn’t approved as a road or built to specs. Mr. Corey stated he was not in favor of the Lot Line Adjustment, if land had encompassed the access then it would had been a conforming lot.

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Mr. Smith still felt it was on an approved plan with a 50' ROW that was conforming when on record. Mr. Corey stated it's not an approved road access.

Frank Lombardi stated the land around Larry & Kathy Rexford is going into Conservation Land, and it's an existing home lot not creating a new building lot for Larry & Kathy.

**A motion was made by Frank Lombardi to approve the application as complete, seconded by Alan Theodhor. All in favor, motion carries. APPROVED**

**A motion was made by Frank Lombardi to approve the Boundary Line Adjustment as presented, seconded by Tim O'Neil. All in favor, with Peter Corey voting no, motion carries. APPROVED**

**2. Site Plan Review:**

**#628 – Owner(s)/Applicant: Scalley, David – 99 Union Street, Tax 231 Lot 003:** who is/are requesting a Site Plan Review to build two (2) apartment buildings, one with 4 units and the second with 6 units on said parcel.

David Scalley was present to address the Board with plans for two apartment buildings. The Murphy's previously owned the lot with him owning on both sides of the newly owned lot. Peter Corey asked about a NHDOT driveway permit, Mr. Scalley stated that he had filed for one. He also stated that he needs to talk with the Fire Chief regarding safety codes and Water/Sewer as wants to tap onto the Town lines, maybe a 1" line as he needs to sprinkle them and would like two separate curb stops. The snow storage will be toward the back of the lot where it slopes off toward the railroad tracks. The height of the buildings will be less than 33'.

Discussion took place regarding a safe walking area along Rte 3, Mr. Scalley would like to team up with the Town to extend the sidewalk all the way to Foster Drive as it currently ends at Greenwood Street. Peter Corey will let the PWD know to make sure Mr. Scalley is included with any talks regarding sidewalks in that area.

The Absolute Criteria Chart was reviewed along with the Residential Activities Chart (see PB File).

The Newton's wondered where the driveway was going to be placed, they were shown the plan. Mr. Lennox wondered how many more apartments were needed, he would like more business. Tim O'Neil stated that more business would be nice but Whitefield is more of a bedroom community with housing being one need. Mr. Scalley stated he had a waiting list. Ms. Newton liked how the buildings were kept.

Utilities, sidewalk, safety and driveway permit were conditions noted on the criteria chart.

The apartments will not be for low income it will be market rate housing.

**A motion was made by Tim O'Neil to approve the application as complete, seconded by Alan Theodhord. All in favor, motion carries. APPROVED**

**A motion was made by Peter Corey to approve the Site Plan Application/Development Application as submitted with the condition that need NHDOT driveway permit approval, water/sewer connection to the town and need to meet with Fire Chief regarding life safety codes, seconded by Tim O'Neil. All in favor, motion carries. APPROVED**

**Other Business:**

**Development Permit(s):**

**Stiles, Robert – L/O Freds Way, Tax Map 101 Lot 017.1:** Continuation from 10/1/19 meeting. Mr. Stiles was present, he is looking to build a 50'x50' garage, he will be moving the proposed location so that the building is away from the power lines. This will be for residential/personal use only. He would still like to hook onto the Town water/sewer connection that was put on that site by him years ago. The Board directed him to the various departments.

**A motion was made by Tim O'Neil to approve the development permit as submitted contingent on approval from Town Water/Sewer Departments, seconded by Frank Lombardi. All in favor, motion carries. APPROVED**

**Mountain View Grand Hotel, Chris Diego – 101 Mountain View Road, Tax Map 217 Lot 012:** Mr. Diego was present, the hotel would like to put an addition on the Northside of the west wing. Currently, 352 sq. ft is existing and would like to add 660 sq. ft to expand existing housekeeping work area and add a maintenance department area as on 4<sup>th</sup> floor. The building will connect to the sprinkler system and fire safety codes of the main building.

**A motion was made by Frank Lombardi to approve the development permit as submitted, seconded by Peter Corey. All in favor, motion carries. APPROVED**

**Davis, Jourdan – 12 Park Street, Tax Map 104 Lot 043:** To construct a 12'x18' wood shed, setback requirements met.

**A motion was made by Tim O'Neil to approve the development permit as submitted, seconded by Peter Corey. All in favor, motion carries. APPROVED**

**Wright, Stephen & Tina – 395 Old East Road, Tax Map 204 Lot 001:** To construct a 28'x54' manufactured home with a 12'x24' front deck and a 4'x8' back deck, along with a 12'x28' shed on said property. No change to existing driveway, all setback requirements met.

**A motion was made by Frank Lombardi to approve the development permit as submitted, seconded by Alan Theodhor. All in favor, motion carries. APPROVED**

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**Demolition/Development Permit: Pagnotti, Irma -111 Old East Road, Tax Map 213 Lot 001:** To remove roof and demo the current interior of the house structure. The Board asked about where the demolition was being disposed of, Northern Builders will be handling the material.

**A motion was made by Peter Corey to approve the demolition permit as submitted, seconded by Alan Theodhor. All in favor, motion carries. APPROVED**

Development permit is to construct a second floor, interior renovation to current structure, add a 12' addition to make home 40', new roof. Home will continue to be 2 bedrooms.  
The Board wondered about the height of the building, nothing stated on the application.

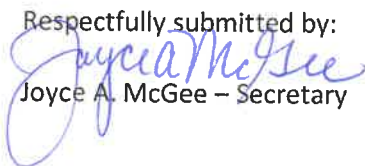
**A motion was made by Tim O'Neil to approve the development application as submitted with a condition that the structure height is less than 35', seconded by Peter Corey. All in favor, motion carries. APPROVED**


No other business at this time.

**A motion was made by Frank Lombardi to adjourn the meeting at 7:36 PM, seconded by Alan Theodhor. All in favor, meeting adjourned.**

Happy Birthday Tim O'Neil!

Respectfully submitted by:

  
Joyce A. McGee – Secretary

  
Scott C. Burns - Chairman

**Notice of  
Submission of Application/Public Hearing on Proposal  
Legal/Public Notice  
Before  
The Whitefield Planning Board**

Notice is hereby given in accordance with RSA676:4 & 675:7 that an application(s) described below will be submitted to the Whitefield Planning Board on **Tuesday, October 8, 2019 @ 6:30 p.m.** at the Town Offices located at 56 Littleton Road during a regular meeting of the Board.

**Public Hearing(s):**

**1. Boundary Line Adjustment:**

**#627 – Owner(s)/Applicant: Rexford, Carroll & Marion, Land Only Colby Road, Tax Map 233 Lot 035 and Rexford Trustees, Larry and Kathy of the Rexford Revocable Trust– 140 Colby Road, Tax Map 233 Lot 036** – who is/are requesting a Boundary Line Adjustment on said parcels. Tax Map 233 Lot 035 currently is 106+/- acres, said lot will add 12 acres to Tax Map 233 Lot 036 currently 11.15+/- acres. Tax Map 233 Lot 035 to become 94+/- acres and Tax Map 233 Lot 036 to become 23.15+/- acres. Survey is prepared by Thomas S. Smith, Licensed Land Surveyor.

**2. Site Plan Review:**

**#628 – Owner(s)/Applicant: Scalley, David – 99 Union Street, Tax 231 Lot 003:** who is/are requesting a Site Plan Review to build two (2) apartment buildings, one with 4 units and the second with 6 units on said parcel.

Any other business as may legally be brought before the board.

Upon a finding by the Board that the application meets the submission requirements, the Board will vote to accept the application as complete and a public hearing on the merits of the proposal will follow immediately.

Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved.

**Available information may be viewed at the Whitefield Town Office, Monday through Friday during regular business hours. Should you wish to arrange a time to view the file or if you need assistance to attend this meeting contact the Town Office at (603) 837-9871.**

Per order of the Whitefield Planning Board - Scott Burns, Chairman

## Minimum Road Access Requirements Under State Law

RSA 674:41 has been characterized by some as zoning on the state level. It is a law that applies in all towns and cities, unless the municipality does not have a planning board with subdivision approval authority. Under RSA 674:41, no building permit can be issued, nor can any building be built, on any lot unless that lot has access from one of these five types of streets:

- A Class V or better public highway, including one that has been previously laid out, or one that has been accepted by the municipality (RSA 674:41, I(a), I(b)(4)); or
- • A road shown on a plat approved by the planning board—either a subdivision plat, or a street plat (RSA 674:41, I(b)(2) and (3)); or
- A Class VI highway, but only if the governing body, after consulting with the planning board, has adopted a policy allowing building on that particular Class VI highway, or portion thereof, and then only if the owner has recorded a notice in the registry of deeds acknowledging that the town is not liable for maintenance or any damage that might occur on that road (RSA 674:41, I(c)); or
- A private road, but as with Class VI roads, only if the governing body, after consulting with the planning board, has adopted a policy allowing building on that particular private road, or portion thereof, and then only if the owner has recorded a notice in the registry of deeds acknowledging that the town is not liable for maintenance or damage that might occur on that road (RSA 674:41, I(d)); or
- A street shown on a subdivision plat that was approved by the zoning board of adjustment or governing body before the planning board was granted subdivision jurisdiction. The street must already have at least one building on it and must have been constructed prior to July 23, 2004 (RSA 674:41, I(e)).

### HOW TO INTERPRET RSA 674:41

**Applicability.** RSA 674:41 applies to all lots, including those in older recorded subdivisions never approved by the planning board, as well as new subdivisions under the jurisdiction of the planning board. The only circumstance under which this law does not apply is in a municipality that has not granted subdivision regulation authority to the planning board. In *Vachon v. New Durham*, 131 N.H. 623 (1989), the Court held that the statute applies to all building permit applications, not just those related

to new subdivisions. The statute also must be considered if the erection of any building is proposed, even where the municipality requires no building permit.

RSA 674:41 applies to new buildings, as well as to remodeling, additions or conversions to year-round use of already existing buildings. The statute provides that “no building shall be erected... nor shall a building permit be issued for the erection of a building” unless the proposed building complies with the statute. Also, the first sentence of paragraph II speaks of the “structure or part thereof,” implying that any physical expansion of the structure must comply.

**Frontage.** The statute refers to the “street giving access to the lot.” Generally, the lot must have actual frontage on one of the five types of streets described in RSA 674:41, I. An easement giving access to a “back lot” over the land of another will not meet the statutory standard unless the easement itself either is a public highway or is shown on a recorded plat approved by the planning board. In *Belluscio v. Town of Westmoreland*, 139 N.H. 55 (1994), the Court approved a building on a lot whose only access was an unapproved deeded easement. But in 1995, reacting to the *Belluscio* case, the legislature enacted the second sentence of RSA 674:41, III: “For purposes of paragraph I, ‘the street giving access to the lot’ means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right of way, unless such easement or right of way also meets the criteria set forth in subparagraph I(a), (b) or (c).”

**Grandfathering.** Some municipal zoning ordinances “grandfather” existing lots. However, such zoning clauses do not make existing lots exempt from the state frontage requirement of RSA 674:41. Paragraph III of that statute provides: “This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section.” This sentence was added in 1989, and thus supersedes the holding in *Battock v. Town of Rye*, 116 N.H. 167 (1976), that a local grandfather clause exempts existing lots from road frontage requirements.

**Streets and Driveways.** A road is either some class of public highway or it is not. If it is not, then a lot fronting on that roadway does not qualify to be built on under RSA 674:41, I(b) unless that roadway is shown on a plat approved by the planning board. Otherwise, it must satisfy the requirements of paragraph I(d) or (e). Whether the roadway is colloquially referred to as a street or driveway doesn’t matter with respect to this law. The word “street” as broadly defined in RSA 672:13 includes all ways. So any roadway that passes muster under RSA 674:41 will count as a “street,” no matter what it actually looks like, or whether or not it was intended to become public. The purpose of this statute is to give the planning board jurisdiction over access to all lots. The relevant construction standards are whatever standards the planning board decides to impose when the plat is approved. For example, many zoning ordinances or subdivision regulations have provisions for shared driveways. In a municipality