



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

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**Planning Board Minutes**  
**September 19, 2012**

**Board Members:**

Margaret Crisler, Chairman – Present  
Ruth-Ellen Post, Vice Chairman– Present  
Pam Skinner, Member – Excused  
Kristi St. Laurent, Member – Present  
Jonathan Sycamore, Member – Excused  
Lee Maloney, Alternate Member – Excused

Carolyn Webber, Member – Present  
Ross McLeod, Selectman Alternate – Excused  
Kathleen DiFruscia, Selectman, Member – Present  
Sy Wrenn, Alternate Member – Excused  
Vanessa Nysten, Alternate Member – Present

**Staff:**

Laura Scott, Community Development Director  
Elizabeth Wood, Community Planner  
Cathy Pinette, Planning Board Minute Taker

**Call to Order/Attendance/Pledge of Allegiance**

Chairman Crisler called the meeting to order at 7:02 pm, followed by the Pledge of Allegiance and attendance.

The Chairman appointed Ms. Nysten to sit for Mr. Sycamore

**Public Hearings**

Ms. Post read Case #2012-27 into the record.

**Case #2012-27/Subdivision Application (Continued from 8/29/12)**

A Subdivision proposal has been submitted for 53 Blossom Road (Lot 11-A-1620), located in the Rural District and Wetland and Watershed Protection District. The applicant, Wesley Aspinwall of Edward N. Herbert Associates, Inc. on behalf of the property owners, Kenneth and Susan Hebert is proposing to subdivide the existing lot into two lots, thus creating one new lot for a single-family residence. No new roads or other infrastructure is proposed.

- The Chairman asked Ms. Wood if the Board had already accepted this case for Public Hearing.
- Ms. Wood stated yes.
- Ms. Wood stated that at the last meeting there were soil requirement concerns. The Town's consultant found that the soil requirements were just under what was required. The applicant has

- Since reconfigured and has one lot in compliance and one lot under 96% which they received a variance for on 9/11/12.
- Mr. Wes Aspinwall, of Edward N. Herbert Associates, Inc. on behalf of the property owners, Kenneth and Susan Hebert, addressed the Board. He stated the property was located at Blossom and Greenway Rd. The lot is 2.87 acres. The subdivision was done in 1985. The existing house is at the extreme northerly part of the lot. The house was built in the 90's. They are proposing to divide this lot into two lots. Lot 11-A-1656 is 1.22 acres and is 100% compliant with zoning and meets all soil requirements. The lot with the house is 1.65 acres and has a large wet area and a WWPD which goes through the garage area now. At the time of the subdivision the house was not in the WWPD and is a pre-existing condition. There is excess frontage on both lots. The driveway on the propose lot would be on Greenway Rd.
- Ms. Wood addressed the Chairman and stated this Case has not been accepted for Public Hearing.
- The Chairman asked Ms. Wood if this application was complete so it could be accepted. Ms. Wood stated yes.

The Chairman entertained a motion to accept Case #2012-27 for public hearing.

**Ms. St. Laurent motioned to accept Case #2012-27 for public hearing, seconded by Ms. Post. Motion passed 6 – 0.**

- Mr. Aspinwall stated that there is a small shortage for soil on one lot and they did get a variance. They also received a variance for the 18,000 sq ft on 5/9/12. They have gone to the State DES for a subdivision approval and the note is on page 3 of the plans. One variance they have is fairly recent and is still subject to the 30 day appeal process before being recorded.
- Ms. Nysten asked Mr. Aspinwall to explain why there is a mulch berm on the plan. Mr. Aspinwall stated it is there to control erosion during construction and will not be put in place until construction starts. This is required as part of the subdivision regulations.
- The Chairman asked why there was a new proposed well for the existing house. Mr. Aspinwall stated that they are not necessarily putting a well in, but DES requires that as part of the subdivision. They want it on the plan to show the radius.

The Chairman opened the hearing to the public at 7:18 pm, hearing no comment, the public portion was closed.

The Chairman entertained a motion.

**Ms. Webber motioned to approve Case #2012-27 subject to the 30 day appeal period for the variance, seconded by Ms. Post. Motion passed 6 – 0.**

Ms. Post read Case 2012-30 into the record.

Case 2012-30 Subdivision Application (Continued from 9/5/12)

A Subdivision proposal has been submitted for 30 Marblehead Road (Lot 25-G-20), located in the Residence District A zone. The applicant Peter Zohdi of Edward N. Herbert Associates, Inc. on behalf of the property owners, The Crayton Irrevocable Trust of 1999, is proposing to subdivide Lot 25-G-20 into three (3) lots, one (1) sized, 151,516 sq. ft. with an existing single-family residence, and two (2) sized 126,121 sq. ft. and 97,472 sq. ft. for future development of single-family residences. No new roads, infrastructure, or drainage features are proposed.

- The Chairman asked Ms. Wood if this case was ready for acceptance.
- Ms. Wood stated yes. She said that at the last meeting there were some concerns. The Chairman stated the Board was concerned about sight distance. Ms. Wood stated at the last meeting there were some concerns about road frontage from the 50' of the lot line. There are memos in tonight's packet addressing that. Mr. Keach is satisfied. The Fire Department did an inspection and there is also a memo in the Board's packet from the Chief of Police, Highway Agent and Chief McPherson, Chairman of the Highway Safety Committee. Mr. McCartney, referring to determining whether the road is classified as a Residential 1 and Residential 2, stated it would be difficult to say without doing a traffic count. He was on the cusp of a Residential 2 road. He didn't feel it was necessary to have the applicant incur the cost of a study. He stated since the Fire Department has no issues and it was okay. Ms. Wood stated small issues have been addressed. The Police Chief and Assessor have come up with a plan for addressing. The Fire Chief has a new location for the cistern and it is reflected on the plan.
- Mr. Peter Zohdi, Peter Zohdi of Edward N. Herbert Associates, Inc. on behalf of the property owners, The Crayton Irrevocable Trust of 1999, addressed the Board. He stated that he presented at the last meeting and there was a question of sight distance. He has met with the Police and Fire Chief's and the Highway Agent and they approved. He has only changed the location of the cistern per the Fire Department's request. They now have a State Subdivision approval. Mrs. Crayton and her son are in the audience if the Board has any questions.
- Ms. Webber questioned if she was correct that only if more than one house was going in they needed a cistern. Mr. Zohdi stated the he will be sprinkling for fire protection but will also have a cistern location.

It was determined that the Board did not have a correct copy of the plan with the new cistern location.

- Ms. Wood stated that in her memo of 9/13/12, the location of the cistern was pending, when the packets for this evening were distributed on 9/19 she did not have an updated plan and the Fire Chief had stated the applicant had to move the cistern. Ms. Wood did not receive the plan until today. Ms. Wood distributed the new plan to the Board.
- Mr. Zohdi stated he changed the plan this past week and just heard back with Fire Department approval today.
- Ms. DiFruscia asked Mr. Zohdi where the cistern was located. Mr. Zohdi stated on lot 25-G-20.

- Ms. Webber stated that it appears there are two notes for two cistern locations on the new plans. Mr. Zohdi stated on page 2 of 5 of the plans he has detailed the easement. Ms. Wood stated Deputy Martineau went to the site and has no issues. Ms. Post stated again that there are two notes on the plan. The Chairman stated one should be removed.
- Ms. Nysten asked why a waiver is requested for Section 602.3.1 (b). Ms. Wood stated she suggested to the applicant to ask for that. The Highway Safety Agent wasn't sure if it was a Residential 1 or 2 street, so the applicant was advised to ask for that just in case.
- Ms. DiFruscia questioned if the Board could grant a waiver if they were not sure of the classification. The Chairman suggested they could add it to the motion relying on written documentation from the Highway Safety Committee and Highway Agent. Ms. Post was reluctant to grant a waiver on a hypothetical. The Board discussed the number of cars for Residential 1 and Residential 2 roads.
- Ms. DiFruscia asked Mr. Zohdi about the note from Chief Lewis regarding Lot G-25-40 changing the street numbers from 34 to 36. Mr. Zohdi stated he cannot change any house numbers until the Board approves the plan. Neighbors have been notified to come to the meeting, and he would take care of the re-numbering if the Board approves by working with the Assessor and Ms. Wood.

The Chairman opened the hearing to the public at 7:37 pm, hearing no comment, the public portion was closed.

The Chairman entertained a motion.

**Ms. Post motioned to approve Case 2012-30 with the following conditions: The cistern location is to be located on the lot line of Lots 25-G-20 and 25-G-21 as requested by the Fire Department, and as depicted on the revised plans that were presented to the Fire Department on 9/13/12 and remove the erroneous note indicating a cistern location on Lot 25-G-22. The Board determined a waiver is not required from Section 602.3.1 (b) of the Subdivision Regulations because the site distance has been determined to be adequate per letters from the Chairman of the Highway Safety Committee and the Highway Agent. Additionally there is no evidence that this proposal is in violation of Section 602.3.1, seconded by Ms. DiFruscia. Motion passed 6 – 0.**

Ms. Post read Case # 2012-32 into the record.

Case # 2012-32 Minor Site Plan/Change of Use Application

A Minor Site Plan/Change of Use Application was submitted by Tae Kang, Kang Enterprises, for 18-L-310 (63 Range Road, Units 203 & 301) in the Professional, Business and Technology District. The application is to changing the use from office space to a Massage Chi Therapeutic Bodyworks Center, which will offer therapeutic massage, yoga, personnel training and spa work. No exterior site modifications are proposed.

- The Chairman asked if this application was complete and ready for acceptance.

- Ms. Scott stated yes, it is just a change of use and there are no exterior modifications, just changing the interior and use. The applicant will continue to work with the Fire Department and Building Inspector to make sure that fire, building, and septic are up to code. The Department did receive the septic design today but the Building Inspector was not working. It meets the parking regulations, the TRC approved, and the uses are allowed.

The Chairman entertained a motion to accept Case # 2012-32.

**Ms. Webber motioned to accept Case # 2012-32, seconded by Ms. DiFruscia. Motion passed 6 – 0.**

- Mr. Tae Kang of Kang Enterprises addressed the Board. He stated this is a holistic practice and the headquarters of the company. He believes this is a great opportunity for himself and the Town.
- Ms. DiFruscia asked Mr. Kang if he was in the front or back of the building. Mr. Kang stated he owns the whole building. He has met with the Building Inspector and has fixed everything that was needed.
- Ms. Scott stated that he will be moving into units 201 and 203. There are other tenants who are staying there. This used to be a call center; therefore it is just a change of use.
- The Chairman stated she recalled a parking problem at that location. Ms. Scott stated there are 71 spaces at the location in the front, back and side. She stated that the shrubbery was overgrown and has been cleared by the applicant. They also have 8 shared parking spaces with the animal hospital. There is a leach field that could be moved if additional parking is necessary.
- Ms. Post asked the applicant if designated parking with the shared parking. Mr. Kang stated yes. Ms. Scott stated there is a recorded document that the parking is shared.
- Ms. Nysten asked about wetlands in front of the lot. Ms. Scott stated there is a detention pond that everything will go into. The applicant hired a landscaping company that has cleaned it all up and it looks very nice now.

The Chairman opened the hearing to the public at 7:50 pm, hearing no comments, the public portion was closed.

The Chairman entertained a motion.

**Ms. Post motioned to approve Case # 2012-32 for a change of use as described, seconded by Ms. Webber. Motion passed 6 – 0.**

### **Medicus Freestanding Sign Amendment**

- Ms. Scott stated there is a memo from Ms. Prendergast. The applicant is in the process of getting their signs done. They would like to change the sign design. The sign design was a condition of approval. The Board needs to approve a change.

The Chairman entertained a motion.

**Ms. Webber motioned to accept the plan for a new sign for Medicus, seconded by Ms. DiFruscia. Motion passed 6 – 0.**

Partial Financial Guarantee Release– Great Mountain View Estates II

- Ms. Scott stated there was a typographical error with the station numbers on the paperwork that was approved previously by the Board. The Board would need to make a motion to recommend to the Board of Selectmen to correct this.

The Chairman entertained a motion.

**Ms. St. Laurent motioned to recommend to the Board of Selectmen to reduce the letter of credit to \$1,485,764, for Great Mountain View Estates II, seconded by Ms. Post. Motion passed 5 – 0 -1 with Ms. DiFruscia abstaining.**

### **Rules of Procedure Workshop**

- Ms. Scott stated that Ms. Webber and she made changes in the Rules of Procedure from the last workshop. It is now being brought back to the Board to make sure the amendments are properly reflected. Ms. Webber stated there was no date on the draft that she worked on with Ms. Scott. This draft before them is dated September 2012.

### **Questions/Comments**

- Page 5, Section 5.4 – Ms. Scott stated there was a question regarding the language “may be made” and stated it could be stronger and say “had to be done”. Ms. Scott checked the RSA and there is no language.
- End of Section 3.3 – Ms. Post stated she thought the Board added “or participate in discussion of motions”.
- Section 5.4 and 5.5 – question of “may” or “shall”.
- Section 3.5 – Ms. Nysten asked about Ms. Post’s suggestions of her email dated 6/22. The Board agreed this would be added.
- Section 3.6 – Ms. Nysten suggested regarding recordings that the Cable Department ask whether or not the Planning Board wanted to keep old videos of meetings before they discard them. Ms. Post stated that the Board had no jurisdiction over Cable and she was not sure it was needed in the Planning Board By-Laws.

- Section 5.5 – add the Board may consider “any other” decision.
- Section 5.1.5 – Discussion of subcommittees and minutes. Ms. Nysten stated the RSA’s only require draft minutes to be posted. She would like final approved minutes posted for subcommittees as it is done for PB. The Board agreed that language would be added.
- The Board discussed the next steps. Ms. Scott will make the necessary changes and send to Attorney Campbell. She will then post for a Public Hearing which will be scheduled for October 17<sup>th</sup>.

### **Regional Planning Commission Affiliation Recommendation**

- Ms. Scott stated that at the June 4<sup>th</sup> BOS meeting, three Planning Commissions (Rockingham, Nashua and Southern NH) did presentations. They each spoke about what they each did. Ms. Scott sent emails to the Board on 6/8 and 8/12 asking the Board to look into each one so that the Planning Board could recommend to the BOS which regional Planning Commission the Town should affiliate with in 2013.
- Ms. Webber stated she believes the Rockingham Planning Commission knows Windham better than anyone and they have done well by the Town.
- The Chairman disagreed with Ms. Webber and referred to the 2000 Master Plan and the Study for Wall Street to connect to North Lowell Rd. She thinks the Southern NH Committee is best.
- Ms. Post stated that her experience with the Rockingham Planning Commission has been positive without exception. They are very supportive with every request the Town has put forward. She is very pleased but feels our interests as a Town aligns with Route 93 Corridor to Manchester. The RPC focuses on the seacoast area and our interests align more clearly with the Southern NH Planning Commission.
- Ms. St. Laurent agrees with Ms. Post’s comments. They are supportive. She is reluctant, however, to go with Southern NH given the size of the towns they serve. The seacoast towns compare with Windham more. She recommends the Rockingham Planning Commission.
- Ms. Nysten stated she was happy with the Rockingham Planning Commission and doesn’t know what would change if the Town went with someone else. She would like to have the Rockingham Planning Commission, but would like to hear from Ms. Maloney. Ms. Scott and the Board discussed Ms. Maloney’s potential conflict of interest in this case.
- The Board discussed the Nashua Planning Commission.

The Board was split and decided to recommend to the Board of Selectmen to consider between two Planning Commissions: the Rockingham Planning Commission and the Southern NH Planning Commission.

## **2013 Town Meeting Workshop**

### **Demolition Delay Ordinance**

- Ms. Scott stated this was the second workshop on the Demolition Delay Ordinance. It was looked at in August. Ms. DiFruscia, Ms. Scott and the Heritage Commission worked on it. The Heritage Commission would like a few edits.
- Ms. Scott stated the following edits will be added as requested by the Heritage Commission
  - Historical Resource List with date and title
  - Add under Definitions - Archeological Sites and Resource List with title and date
  - Section 719.3 D – correct title of document and date - add in the Architectural Site and Resource List
  - Section 719.4.3 – “by phone and certified mail”
  - Section 719.5.1 – add a comma
  - Section 719.6 - if the parcel has a structure on the structure list, or if there is an archeological resource that is on the list, it applies in both cases.
- The Chairman stated she would like to invite the HDC to site walks. Ms. Scott stated that will be done.
- Ms. Carol Pynn of the Heritage Commission addressed the Board. She spoke of the historical sites in Town and thanked Ms. DiFruscia for her work on this project. On the Town website, under HDC/ Heritage Commission there is a link to the list of archeological sites and structures.
- Ms. Scott stated she would send the document to Attorney Campbell and will schedule a public hearing for 10/31.

### **Multifamily**

- Ms. Scott stated they looked at 3 sections; Rural, Residential A and Residential B. There is also a new definition of duplexes and multi-families.
- The Board discussed more than one duplex on a lot, modular homes, trailers, and multifamily. Ms. Scott said that our current zoning allows more than one multi-family building per lot.
- Section 200 – Ms. Nysten questioned whether we no longer need the words “trailers” or “mobile homes”. Ms. Scott stated yes, because trailers and mobile homes are not multifamily.
- The Chairman spoke about what can go in what area. She stated it is now clear what can go in what area. It was not clear how it was written before.
- Section 602.1.3 – deleted
- Section 603.1.4 – deleted

- Section 603.3 – added (can have more than one dwelling per lot. If you have two, you need a building permit, and more is a site plan).
- Ms. Nysten questioned if there was a certain distance requirement between buildings. Ms. Scott and Ms. DiFruscia stated the State Building Code and Fire Codes regulate that.
- Ms. DiFruscia questioned if 6 units complies with building codes. Ms. Scott will look into that. Ms. Scott stated in Residential B there needs to be 40 feet between buildings. The notes in Appendix A1 will need to be changed if this is adopted. Ms Scott will rewrite Section 603.3 to make the language clearer. The Ordinance will be brought back to the Board on 10/17.

### **Appendix A-1**

- Ms. Scott stated the whole purpose was to reformat. Ms. Maloney and she worked on this.
- Ms. Nysten stated that in Residential B it used to say multifamily. Ms. Scott stated other things are now allowed in Residential B. Ms. Nysten stated the front yard setback should be 50' not 175'. Ms. Nysten stated under notes it should be "frontage" not "front yard". Ms. Nysten questioned the word "dwelling unit." The Board discussed the definition of "dwelling unit" vs. "dwelling." Ms. Nysten stated that on page 2 from the existing document to the draft, note 9 should not be deleted even though it is also listed in Section 702.5 to avoid trees in buffer areas between residential and commercial districts from being removed.

Ms. Post left the meeting at 9:35 pm.

- There was discussion about what Note 9 means in comparison to the set backs when a residential district abuts a commercial district. Ms. Scott explained that if a commercial building, driveway, parking area , etc. is closer than 100 ft. from a residential zone, there needs to be a 50 ft. vegetated buffer . The Board discussed vegetative buffers on large lots. Ms. Nysten would like it to remain in two places so it does not get missed. The consensus of the Board was to keep the buffer language in both Note 9 and in section 702.5.
- Ms. Nysten spoke in regards to Residential C and the minimum requirements of floor area/dwelling is 600 sq ft and Residential B multifamily is 750 sq ft. The Chairman stated that is what Residential C is for. Ms. Nysten asked what happens if the Board goes forward with multifamily in Residential C. Ms. Scott stated that notes on B would go under C also. Ms. Nysten asked what happened if someone obtains a variance to put a multifamily in a district that doesn't allow it. What would happen with the setback requirements? Ms. Scott and Ms. DiFruscia stated they would need a variance for the setbacks, as well. Ms. Scott said that the ZBA can set conditions for setbacks if they grant a variance.
- From Appendix A-1, #2: Ms. Nysten asked about private roads and the deletion of Residence B. Ms. Scott stated private roads are allowed in all areas.
- Under Notes from Appendix A-1, #5 Ms. Nysten asked about the 40 ft. distance between multifamily dwellings and why that numbering has changed from 4.1 to 5. Ms. Scott said that was

an error in the existing ordinance that is being corrected by the renumbering, and she will check into the 40 ft. distance between buildings with the fire department.

### **Old/New Business**

- Ms. Scott stated she has given the Board a chart of the meeting schedule. It will be updated and emailed to the Board after every meeting for workshops, hearings, etc. She stated there is one more major application in the works and it will be coming. There is a copy of the Cafua Lawsuit as the Board is being sued. If Attorney Campbell wants to meet with the Board she will let them know.
- On September 7<sup>th</sup> the Non Residential Zoning Sub-Committee, Ms. Nysten and Ms. Post voted 2 – 0 to request that the PB appoint Ms. D’Angelo and Ms. Donovan to the Sub-Committee. Ms. Nysten asked the Board if someone else could join as Ms. Post would not be able to attend in October. The Chairman volunteered.

The Chairman entertained a motion.

**Ms. DiFruscia motioned to appoint Ms. Donovan, Ms. D’Angelo, and Ms. Crisler, seconded by Ms. Webber. Motion passed 4 – 0 – 1 with Chairman Crisler abstaining.**

Ms. Scott stated there is a meeting on 9/26 from 6:00 pm – 7:30 pm for site plan revisions and Ms. Post will be Chair.

### **Adjournment**

The Chairman entertained a motion.

**Ms. DiFruscia motioned to adjourn, seconded by Ms. Webber. Motion passed 5 – 0.**

Meeting adjourned at 10:05 pm.

These minutes are +respectfully submitted for your approval by Cathy Pinette, Planning Board Minute Taker.