



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Workshop Minutes

February 16, 2022

7:00 pm at Community Development Meeting Room
3 North Lowell Road

Attendance:

- Chair, Derek Monson, Present
- Vice Chair Joe Bradley, Present
- Jennean Mason, Present
- Jacob Cross, Present
- Matt Rounds, Present
- Alan Carpenter, Present
- Tom Earley (alternate), Present
- Dave Curto, (alternate), Present
- Heath Partington, Board of Selectmen ex officio, Present
- Alexander Mello- Planner, Director, Community Development
- Christopher Sullivan, Assistant Planning Director, Community Development
- Renee Mallett- Minute Taker

The workshop opened at 7:01pm with the Pledge of Allegiance and an introduction of members.

Case 2021-46 – 86 Rockingham Road (Parcel 8-B-500); Major Final Site Plan and WWPDP Special Permit; Zone – Residence District B, WWPDP, and Rt. 28 Access Management Overlay District

Mr. Karl Dubay representing this application, which was continued on four times previous, to build sixty-eight residential duplexes on a 114-acre lot. Mr. Dubay reviewed the items of the Keach-Nordstrom memo related to this project and gave an update on which items had been addressed and which would be reviewed by Attorney Campbell. Mr. Dubay said a full conservation easement would be granted to the town for an estimated seventy-five acres.

Mr. Rounds asked if the plan was designed to handle a one-hundred-year flood. Mr. Dubay confirmed that it had been.

Mr. Cross asked to review the changes to the plan that addressed the conservation easement. Mr. Cross reiterated his ongoing concerns with the length of the road. He asked Mr. Mello to review the process of waiving the required road length.

Mr. Carpenter cautioned about pedestrians on the bridge and asked for confirmation that the fire department had reviewed the most current plan set. In particular, he wanted to know if the fire department had made comments about the two hammerheads seen on the plan. Mr. Mello read the fire department comments which seemed to indicate approval of the plans. Mr. Carpenter asked if, going

43 forward, there could be references to the version of the plan set that was being commented on so the
44 board could be assured that the feedback received regarded the most current iteration of the plan.

45 Vice Chair Bradley asked about the dimensions of the hammerheads as they were not marked on
46 the plans. Mr. Dubay said they met the NFPA guidelines. Vice Chair Bradley said he would like to see that
47 annotated on the plans.

48 Mr. Rounds said an abutter letter had raised the issue of opposing chemical fertilizers. Mr. Dubay
49 said that was already part of the covenants which would be reviewed by Attorney Campbell. Mr. Carpenter
50 said resident letters were usually read into the record. Mr. Earley said the abutter was attending the
51 meeting via Zoom.

52 Ms. Mason asked if an agreement has been reached with Salem regarding the municipal water. Mr.
53 Dubay said that approval had been confirmed. Vice Chair Bradley asked if any parking would be available
54 for residents wanting to access the conservation easement. Mr. Dubay said there were other areas where
55 they could park to walk the trails but their preference was not to add any parking lots to the development.
56 Mr. Cross asked Mr. Curto if there was other easy access and parking, which Mr. Curto confirmed there
57 was.

58 Mr. Rounds thanked the applicant for working with the board.

59
60 **Chair Monson opened the session to public comment.**

61
62 Steve Brady said he appreciated Mr. Dubay's response to his letter and that, overall, he felt many of
63 the issues he had raised had been satisfied. He asked about an older easement on an abutting lot and
64 questioned how that would impact the conservation easement. Mr. Dubay said that was a state easement
65 but that the covenants of this development protected the open space and eliminated any future roads from
66 being built in the open space. Mr. Brady confirmed that his letter did not need to be read into the record
67 during the meeting.

68
69 **Chair Monson closed the session to public comment.**

70
71 Mr. Carpenter asked for more information about the easement. Mr. Dubay said the easement was
72 a leftover and that it did not extend to the open space. Mr. Curto thanked Mr. Dubay and the applicant for
73 the conservation easement.

74
75 **Mr. Rounds made a motion to grant the waiver for length of the road, per subdivision regulation**
76 **602.2.4 and site plan regulation 702.1.4. Mr. Carpenter seconded the motion. Mr. Cross said he had been**
77 **concerned about this from the start and he did not know if the fire department comments saying the**
78 **hammerheads were adequate was enough. Mr. Cross said he did not want to send the message that**
79 **required road lengths would always be waived. Vice Chair Bradley said he would normally be against this**
80 **waiver but a similar plan and road had been previously approved and that other items had been added in**
81 **the name of safety. 7-0, the motion passed.**

82
83 **Mr. Rounds made a motion to grant the WWPD special permit for the purpose of crossing**
84 **wetlands to gain access to buildable land. Mr. Carpenter seconded the motion and suggested that the**
85 **motion be amended to include the phrase "as presented." Mr. Rounds amended his motion to say that**
86 **the WWPD special permit was being granted as presented and contingent on overall site plan approval.**
87 **Mr. Carpenter seconded the motion. 7-0, the motion passed.**

88
89 **Mr. Rounds made a motion to approve Case 2021-46 with the following conditions: that the**
90 **applicant receive DES permit approvals, DoT permit approval, that town counsel review and approve all**

91 legal documents, that no chemical fertilizers or pesticides be used (only organic) be added to the legal
92 documents, and that all items in the Keach-Nordstrom memo dated Jan 14, 2022 be met to staff's
93 satisfaction. Mr. Carpenter suggested the motion be amended to include the following additional
94 conditions of approval: that the conservation easement be put on the open space as presented, that staff
95 and fire department sign off on the turning stub dimensions, that the turning stubs be marked "No
96 Parking" in whatever way staff felt was appropriate, and that the use of Green Snowpro for maintenance
97 be added to the plans. Mr. Rounds amended his motion thusly. Ms. Mason seconded the motion. 7-0, the
98 motion passed.
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101 **Case 2021-49 – 154 Rockingham Road (Parcel 8-B- 6200); Major Final Site Plan**
102 **Application, WWPDP Special Permit, and Design Review Regulations Application;**
103 **Zone – Neighborhood Business, WWPDP, and Rt. 28 Access Management Overlay**
104 **District**

105 Mr. Shayne Gendron representing this application in place of Mr. Gregory to build a 3,600 square
106 foot commercial building with associated parking and improvements. Mr. Gendron said a Keach-Nordstrom
107 memo had been received but he would like board guidance on several of the items. Mr. Gendron said he
108 expected the application to be continued another six weeks.

109 Mr. Gendron said the state of NH had issued a driveway permit for the plan. Mr. Gendron
110 introduced Mr. Luke Hurley of Gold Environmental Services to discuss the issues surrounding the fill and
111 development of the wetlands. A culvert has been added for both drainage and as a wildlife crossing. He said
112 1.03% of the total wetland area on the site was being impacted by the development and that the state had
113 issued the needed permit. Mr. Hurley said most of the value in the wetlands, as far as functions, systems,
114 and wildlife, occurred towards the center of the terrain and that this project was limited to the edges in
115 what he described as a transitional part of the wetlands.

116 Mr. Carpenter asked how drainage would be treated before entering the wetlands. Mr. Gendron
117 said this site was so constrained they could not rely on swales or detention. He explained how a Coltex
118 chamber system would be utilized below the pavement. Mr. Carpenter asked about the size of the tank.
119 Mr. Gendron said it was a large tank with a ten thousand gallon capacity. He said it would have a
120 maintenance plan that was included as part of the application. Vice Chair Bradley asked what happened if
121 the unit failed. Mr. Gendron said it would back up and overflow. Vice Chair Bradley asked about an annual
122 certification to ensure that it was working properly. Mr. Gendron said that could be added as a condition of
123 approval.

124 Mr. Rounds asked about the ZBA comments that the plan not being engineered to handle a
125 hundred year flood. Mr. Hurley said unless the system had a reverse baffle it could go into the wetlands.
126 Mr. Rounds asked if that would be a minor or major impact to the wetlands if the system overloaded. Mr.
127 Gendron showed where the floodline was located and cautioned that a hundred year storm event was
128 different than a hundred year flood event. He said the system was designed for an overflow but that there
129 was nothing in the town that was engineered for a hundred year storm.

130 Mr. Rounds asked if a wildlife study had been completed and Mr. Hurley said it had not. He said a
131 heritage report had been pulled and referenced just a few species of turtles. Mr. Cross said he wasn't
132 concerned about run off into the wetlands, he was concerned that the building was being constructed in
133 the wetland. Mr. Hurley said there was 2500 square feet of wetland impact and that it was mostly for the
134 construction of a fire lane, not for the construction of the building. Mr. Gendron said a variance had already
135 been approved for building the structure, parking, and drainage in the WWPDP. Mr. Hurley estimated that
136 20 to 40 square feet of the building was in the wetlands. Mr. Gendron said the construction of the retaining
137 wall created less filling of the wetland than grading the parcel for development would have been.

138 Mr. Curto said during the site walk he had photographed standing water within ten feet of where
139 the building would be constructed. Mr. Hurley said it may have been seasonal standing water as during his
140 many visits to the site over the years and in different seasons there was not consistent standing water.

141 Mr. Rounds asked about the requested waiver of parking within 20 feet of the property line. He
142 asked how that worked with DoT's requirement about not building in the right of way. Mr. Gendron
143 explained that the property line was at the edge of the right of way, so it did not apply.

144 Mr. Rounds said the 24 foot travel way could be reduced to twenty feet if the traffic circulated
145 behind the building. He asked for board input on what they would like to see. Mr. Gendron said Design
146 Review requested the dumpster be located away from the front of the site and showed where else it could
147 be located. Mr. Carpenter said moving the dumpster away from the traffic flow would be ideal. He
148 suggested the parking spaces be angled to encourage drivers to follow the one way flow of traffic around
149 the building.

150 Mr. Rounds asked if Design Review's comments about snow storage had been addressed. Mr.
151 Gendron showed where it could be located and said they would consider the rain garden that had been
152 suggested. Mr. Rounds asked about the request for granite curbing. Mr. Gendron said they could do so if
153 needed.

154 Mr. Cross said he did not know if this was even a buildable lot and he did not see why snow storage
155 and dumpster placement was being discussed. He asked how the ZBA variance allowing building in the
156 wetlands worked in conjunction with the Planning Board needing to approve a WWPDP special permit. Mr.
157 Mello said the ZBA had criteria they needed to consider that was different than what the Planning Board
158 needed to consider. Mr. Cross asked when the variance was granted and if it expired. Mr. Mello said the
159 variance was granted in 2019 and that it had a two-year lifespan with the ability to extend it once.

160 Mr. Round reviewed the specific variances which had been granted to this parcel from the ZBA.
161 Chair Monson added that DES had approved the needed permits. Mr. Cross asked questions to determine if
162 this was a buildable lot. He asked how small the building would need to be to keep it out of the wetland.
163 Mr. Gendron said the building was not in the wetland that the wetlands permit jurisdictioned by the state was
164 sought at fire department insistence that a fire land be added to the back of the building. He said the
165 applicant's preference would be to not build the retaining wall or road but that it was out of their hands.
166 Mr. Cross asked again how small everything would need to be to keep everything out of the wetlands. Mr.
167 Gendron said another twenty feet of land was needed. He said there would need to be a waiver to allow
168 everything to be built along the road. Mr. Cross said not every lot was buildable.

169 Mr. Carpenter said the last time this application was seen he had mentioned inverting the plan,
170 putting the building along the road and the parking behind it, in order to save ten feet or so of pavement.
171 Mr. Gendron said that did not work with the variances they had been issued before they could go before
172 the board. He said in order to implement that design they would need to start over from the beginning.

173 Mr. Gendron said the state permits already issued showed that this was a buildable lot. Ms. Mason
174 said she was agreeable to the one-way traffic flow around the building. Mr. Curto asked if the applicant
175 would consider granting a conservation easement to the wetlands part of the parcel. Mr. Zohdi said he
176 could foresee deeding the back three acres to the Conservation Commission. He said permanently
177 protecting the overall wetland could mitigate the development in the one part. Vice Chair Bradley asked if a
178 1500 square foot building would minimize the impact to the wetlands. Mr. Carpenter said with the costs of
179 developing this lot he was amazed that a 3600 square foot building was worthwhile to the applicant and
180 could not imagine that a 1500 square foot building would be.

181 Mr. Rounds said he would like to see snow storage kept away from the retaining wall as much as
182 possible and said the Coltex system seemed like a robust system but he would like to see some redundancy
183 added to the drainage.

184
185 **Chair Monson opened and closed the session to public comment.**

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Mr. Earley asked about the distance to the abutting residences. Mr. Earley said they were recently reassessed to close to million dollar houses and he wondered what they thought about the possibility of this lot being developed. Mr. Gendron said they bought houses next to a commercial parcel and that all abutters would have been notified when the application was submitted. Mr. Gendron said abutters had not attended or commented at any of the Planning Board meetings or at the ZBA. He described the homes as removed from the parcel and showed where a billboard was currently located behind some of the abutters, blocking their visibility to this parcel. Mr. Gendron confirmed Mr. Carpenter’s speculation about the need to balance cost of development with the finished project.

Mr. Rounds asked if the abutters had been re-noticed at every continuance. Mr. Gendron said they had not but that the applicant would be agreeable to re-noticing if the board thought they should. Mr. Heath said this was a neighborhood business and said the board was considering it as if it were Commercial A. Mr. Gendron said that there were not currently tenants lined up and that future use would have to meet zoning. Mr. Carpenter said he could see value in having some businesses on the parcel that residences in this area of town would frequent. He said this would be as tax positive as anything that could be built in town.

Mr. Rounds said nuances to the design would not impact the board opinion on the WWPD special permit and said the case had been continued many times to this point. He questioned if it was worthwhile to have them engineer the building for another six weeks if the WWPD permit failed.

Chair Monson informally polled the board, but Mr. Rounds was the only member in favor of deciding the matter of the WWPD special permit at this time. Mr. Carpenter said he would like to see the abutters be re-noticed for the next hearing.

Mr. Mello cautioned that the criteria for issuing a WWPD special permit did not include whether the lot was buildable or not.

Ms. Mason made a motion to continue Case 2021-49 to April 20th at 7:00pm. Mr. Carpenter seconded the motion and asked Mr. Mello to send the board the special permit criteria so the board could educate themselves before the mid-April meeting. 6-1, the motion passed with Mr. Rounds opposed as he felt he committed to his previous statement about not continuing the case again.

Case 2021-62 – 47 N. Lowell Road (Parcel 11-A-885); Preliminary Site Plan; Zone – Residence B District and Watershed Protection Overlay District (WWPD)

Mr. Mello reviewed legal communication from Attorney Campbell regarding the legacy status of this application. Attorney Campbell said this application would be subject to any changes to zoning amendments at the March election and has suggested that the application not be heard until after that time. Chair Monson clarified that the hearing for the application had been advertised on the same day as the potential changes to the zoning amendment and that discussion on the zoning amendment had been made in public meetings before this application had been filed.

Mr. Rounds asked if the approval of the zoning amendment would drastically impact the number of units possible. Mr. Mello said the number of units could be cut in half.

Attorney Cronin, speaking for the applicant, said he had reviewed recent amendments which led him to believe that his previously raised concerns about the noticing negated Attorney Campbell’s findings. Chair Monson said he felt the board needed to follow the advice of their legal counsel. Attorney Cronin said he understood that would be the case but that he thought the record should show that he had raised the question.

232 Attorney Cronin shared the history of the efforts to develop this parcel. He said half a million
233 dollars has been spent on engineering this parcel and that it has been discussed with the CDD staff and
234 abutters for some time. Attorney Cronin shared information on common law vesting and cited several court
235 cases where the courts had ruled in favor of defendants who had shown good faith and invested significant
236 money and time in the potential development of a parcel. He said this application added diversity to the
237 housing stock and that he also thought it met the criteria for common law vesting. He suggested that
238 common sense could sway the board to decide to hear this case now rather than risk the expense and
239 uncertainty of the legal avenues available to the applicant.
240

241 Mr. Partington said he would like to consider Attorney Campbell's advice while taking into
242 consideration the other side of the argument as presented by Attorney Cronin so he could make his own
243 decision.
244

245 **Mr. Carpenter made a motion to continue the preliminary hearing for Case 2021-62 to March 16**
246 **at 7:00pm. Mr. Rounds seconded the motion. 5-2, the motion passed, with Mr. Rounds and Ms. Mason**
247 **opposed as they thought the question of vesting could be decided before the election.**
248

249 The board questioned if the public should comment on the plan, knowing that it may change
250 drastically depending on the results of the question of vesting and the election. The attending residents
251 said they were content to comment at a future date.
252
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254 **Case 2022-03 - 7 Indian Rock Road (Parcels 11-A-450 & 11-A-500); Major Final Site** 255 **Plan; Final Subdivision, and WWPDP Special Permit; Zone – Village Center District** 256

257 **Mr. Carpenter made a motion to open Case 2022-03 after confirming that the application was**
258 **complete and appropriate. Mr. Rounds seconded the motion. 5-1-1, the motion passed with Mr.**
259 **Partington opposed due to the question of sharing the case number between different applicants and**
260 **Mr. Cross abstaining as he had briefly stepped out of the room.**
261

262 Chris McCarthy, the applicant, addressed the board. The application has gone before TRC and the
263 Design Review Committee. A full traffic study has been completed. Mr. Cross asked if the residential units
264 would be condominiums. Mr. McCarthy said per zoning they could not be, but they would be smaller single-
265 family homes.

266 Mr. Rounds asked how Center School would impact the traffic in and out of the development. Mr.
267 McCarthy said they have been working in conjunction with the fire department and the school
268 superintendent to handle that issue.

269 Mr. Earley asked about using the pocket park, potentially, for the youth athletic programs. Mr.
270 McCarthy said it was more a gathering place for small casual tournaments among friends. He said the grade
271 limited the ability to make it an ideal field location. Mr. Earley said he would like to see the park illuminated
272 so it could be used year-round. Mr. McCarthy said there was a lighting plan but that he also envisioned it
273 would be a dawn to dusk park, as they did not intend to police it. Mr. Sullivan said dimming lights were
274 used in parks in other towns where he had worked previously.

275 Vice Chair Bradley had concerns that if Rt. 111 was widened in the future that it would result in a
276 large retaining wall on the corner with Hardwood Drive. Mr. McCarthy said the plan was created with the
277 expectation that widening could happen in the future and that he agreed that a retaining wall would not be
278 ideal.

279 Mr. Jason Plourd discussed traffic. He said his company had been coordinating with DoT and the
280 school while pre-planning for the potential for state improvements to Route 111. He said they have already
281 discussed split phasing for the traffic light with DoT. He said the existing light was meant to be tied into a
282 coordinating system of three lights but that the other lights on the road had not been added to that
283 coordinated system. The result was that the light at the corner of Hardwood and Rt. 111 was being held to
284 a series of guidelines that did not mesh with what was happening to the lights around it. Mr. Carpenter
285 asked if DoT was going to allow them to make these changes before the state did their corridor work. Mr.
286 Plourd said there was a process to go through and that approval could not be sought until after the project
287 left the Planning Board process.

288 Mr. Carpenter said he thought the hours of the businesses and restaurant would mean the school
289 use times were off hours. He thought the addition of a curb cut on the Rt. 111 side would help keep some
290 of the traffic off that road and ease congestion from backing up on Hardwood. Mr. Earley said that after
291 school activities went from three to seven and that he thought that would overlap with the dinner hours of
292 the restaurant.

293 Mr. Cross thought any efficiency added to the lights would more than make up for any increased
294 traffic generated by the development. Mr. Curto asked about any studies done on Cobbett's Pond Road, as
295 it was often used to avoid the traffic on Rt. 111. He had concerns that the traffic would increase on Rt. 111
296 when the drivers who normally avoided the road began to use it.

297
298 **Chair Monson opened the session to public comment.**

299
300 Steve Christianson thanked Mr. McCarthy for working closely with abutters. He's lived in the
301 neighborhood for twenty years and cares about what happens to the neighborhood.

302
303 David Sheldon echoed Mr. Christianson's comments, saying he appreciated Mr. McCarthy's concern
304 for the abutters. He said it's a big development and the meeting had raised some questions, including a
305 curfew on the park and asking about the lighting. He said the neighborhood had been getting brighter and
306 he loved the idea of dimming lights.

307
308 **Chair Monson closed the session to public comment.**

309
310 **Mr. Carpenter made a motion to continue Case 2022-03 to March 16 at 7:00pm. Ms. Mason**
311 **seconded the motion. 7-0, the motion passed.**

312
313 **Mr. Cross made a motion to adjourn the meeting 10:30pm. Ms. Mason seconded the motion. The**
314 **motion passed, 7-0.**