



1 **Planning Board Approved Minutes**

2 September 20, 2023

3 7:00 pm at Community Development Meeting Room

4 3 North Lowell Road

5
6 **Attendance:**

7 Chair Tom Earley, Excused

8 Vice Chair Derek Monson, Present and served as Chair

9 Jennean Mason, Present

10 Jacob Cross, Present

11 Matt Rounds, Present

12 Alan Carpenter, Present

13 Pam McCarthy (alternate), Present and seated for Mr. Earley

14 Timothy Zurowski (alternate), Present

15 Roger Hohenberger, Board of Selectmen ex Officio, Present

16 Bruce Breton, Board of Selectmen ex Officio (alternate), Excused

17 Also present was: Alexander Mello, AICP - Community Development Director

18

19 *Draft minutes provided by Alexander Mello.*

20

21 **Call to Order**

22 Vice Chair Monson called the meeting to order at 7:00 pm. He noted Chair Earley was excused and Pam
23 McCarther would sit in his place. Mr. Cross was absent to start the meeting, Mr. Zurowski will sit in his
24 place. Mr. Cross arrived at 7:17 pm.

25

26 **Announcements / Liaison Reports**

27 Mr. Mello provided an update on staffing in the Community Development Department. He proudly
28 announced that Julie Suech was promoted to the position of Assistant Director / Planner and would
29 become the primary Planning Board support staff. He also noted that George Frangomihalos will assume
30 ZBA support duties and Amy Casparius will become a full-time Administrative Assistant.

31 **Previously Opened Cases**

32 **Case 2023-12 – 20 First Street – Parcel 16-Q-179; Major WPOD Permit; Zone - Residential District A**
33 **and WPOD Overlay**

34 Mr. Hohenberger recused himself.

35 Mr. Monson noted new materials that have been submitted since the last meeting including the Blue
36 Moon Environmental Report prepared for the Applicant and the Keach-Nordstrom review of such on
37 behalf of the Town.

38 The Applicant, Joe Maynard, introduced himself and stated that he was accompanied by Craig Harvey,
39 the owner of the property, and Nancy Rendall, Certified Wetland Scientist with Blue Moon
40 Environmental. Mr. Maynard provided an overview of the subject property and the permit history with
41 the ZBA, Board of Health, and DES. He noted the buffer requirement of the WPOD and will have Ms.



42 Rendall provide an overview of her report. He went over the evaluation criteria of the WPOD as outlined
43 in the WZO.

44 Mr. Rounds asked Mr. Maynard if everyone agrees that the swale adjacent to the subject property is a
45 tributary stream. Mr. Maynard agreed. Mr. Rounds asked about the changes to the ZBA approved plan.
46 Mr. Mello recapped the Variance summary from his email to the PB on September 15, 2023.

47 Mr. Monson asked what the difference was in the septic design? Mr. Maynard stated the ZBA approved
48 plan showed a concrete chamber leach field. Now it is a traditional leaching area but in the same
49 location. A poly barrier has also been added to the plan for extra protection to ensure no effluent will go
50 into the stream. He noted the location of the tank has also moved.

51 Mr. Carpenter asked if well radii needed to be shown. He stated his concern on what neighbors might
52 have thought at the ZBA if things were going to be changed.

53 Mr. Rounds asked Mr. Mello if the PB consider can consider DES reports. Mr. Mello said yes and read the
54 first question from his email to the PB on September 15, 2023.

55 Nancy Rendall offered to answer any questions about her report.

56 Mr. Monson asked how the proposal offers the same protection as a full-width buffer. Ms. Rendall
57 believes that the WZO assumes there is an existing buffer, but there isn't any buffer in place. Larger lots
58 further upstream that have vegetation could have a buffer. Small existing lots, like the subject lot, do not
59 provide any buffer. The proposal includes keeping the existing trees on site. She believes that if this lot
60 was held to the 100-ft buffer, it could not be met. She also noted that the proposal has an approved
61 shoreland protection plan and an approved septic design plan that includes a state-of-the-art system for
62 small lots designed for protecting water quality next to lakes.

63 Mr. Rounds asked if there were high levels of stress in this area. Ms. Rendall responded yes. He asked if
64 she was aware of the current state of the pond. She responded yes and noted her knowledge of high
65 loads of phosphorus. She referenced the 2010 report [Cobbett's Pond Watershed Restoration Plan] that
66 made recommendations to reduce phosphorus loads by improving septic systems around the lake. She
67 noted the watershed that includes the subject property was not identified at the time. She stated that
68 there are things that could improve the water quality of Cobbett's Pond. Ms. Rendall stated yes, the
69 stream could be improved by vegetating the stream and moving the kayaks in favor of vegetation.

70 Mr. Carpenter inquired if the stream could be pointed out in relation to the neighborhood.

71 Mr. Zurowski asked what the chance of failure of the poly barrier was? Mr. Maynard stated that he
72 expects a 100-year life expectancy of the textile fabric, and the septic tank can last a lifetime if solids are
73 pumped out on a regular basis.

74 Ms. McCarthy noted that Ms. Rendall's report looked at other properties in the area. She asked how
75 many lots have clean solution septic systems. Mr. Maynard responded that approximately 65 around
76 Cobbett's Pond in total. He also identified the clean solution septic systems that he is aware of on First
77 Street. Ms. Rendall noted that the 2010 study provides an inventory of septic systems at that time.



- 78 Mr. Carpenter asked if the Applicant put any thought into moving the leach field to the other side of the
79 lot. Mr. Maynard explain that he was trying to reduce the amount of well radii that are impacted,
80 relocated the field to the other side of the lot would impact 2 additional well radii.
- 81 Mr. Cross asked what the distance was from the leach field to the stream. Mr. Maynard responded that it
82 was seven feet to the center of the culvert.
- 83 Mr. Monson opened the meeting for public comment.
- 84 Roger Hohenberger, 5 Thomas Street: read an excerpt from Chris Danforth's letter. Thinks that saying
85 other properties have worse conditions is irrelevant. He noted Section 616.8.4.1 of the WZO that
86 prohibits septic tanks and drain-fields from the buffer zone. He believes that the ZBA felt the changes to
87 the septic design were drastically different.
- 88 Mr. Carpenter asked if the BOH had rational for granting the waiver.
- 89 Lynn Bartsch, 18 Second Street: showed the Board pictures of the tributary stream. She stated that
90 nobody can give 100% guarantee that things won't get washed out in floods. Believes development on
91 Third Street has made water flow coming down the stream more intense. The pond is a resource and #2
92 highest rated bacteria impairment.
- 93 Mariam Cianciulli, 8 Third Street, summer resident. She stated that the subject property never had a
94 house, only a summer cottage used 10 weeks of the year. Thinks this proposal is an overuse of the land.
- 95 Steve Beaudet, 2 Second Street. He does not see any positive impact. He questioned why the Applicant is
96 closer to the stream instead of two well radii. He also questioned why the Town has a 2-acre minimum
97 lot size, if you can build on 4,000? He highlighted the proposal is to reduce the buffer by 93-feet.
- 98 Ava Beaudet, 2 Second Street, is worried about human error not pumping the septic systems. Thinks
99 human error could cause one to fail.
- 100 Jackie Saba, 33 First Street, thinks the Board should consider that this is a new build. Other houses have
101 been there a long time. Believes this is an unnecessary proposal with 4 bathrooms, no other 4-bathroom
102 houses in the area.
- 103 Mr. Monson closed the public portion of the hearing.
- 104 Mr. Cross stated that the buffer rule is 100 feet, and the proposal is 7. He stated that he read the Blue
105 Moon report. Thinks there is a better system that could be done. Not convinced the risks to the water
106 would be mitigated by the proposal. Asked for clarification on the Variance. Mr. Mello provided an
107 overview of the approved Variance.
- 108 Ms. Mason inquired when the ZBA discussed it recently. Mr. Mello noted it was in August when Staff
109 asked the ZBA for a consultation to help their decision making down the line.
- 110 Mr. Rounds stated that he was surprised that the ZBA does not have recourse on an approved case that
111 didn't show a tributary stream. He stated that he thinks it's the Planning Board's job to protect the
112 community and environment and believes the pond will be affected.



- 113 Mr. Zurowski stated that he believes the distance of the stream to the leach field is going to be closer
114 than 7 feet as rain overflows the channel and could run into the leach field.
- 115 Ms. McCarthy stated that she sees a lot of moving parts. She noted the many references to the ZBA, but
116 that is not part of the PB's purview. She stated that she thinks the PB needs to deal with what is in front
117 of them, the two questions mentioned in Mr. Mello's email.
- 118 Mr. Cross stated that he doesn't think the ZBA approval is valid and thinks staff should tell the Applicant
119 to file for a Variance.
- 120 Mr. Mello reminded the PB of the two questions they need to consider.
- 121 Mr. Rounds assumed the ZBA approval is valid.
- 122 Mr. Carpenter noted that the Variance is for lot size and setbacks, not for septic system and well
123 placement. He does not have an issue with the plan that is in front of the PB. He doesn't see his role as
124 keeping the developer from developing their land. If anyone wants to keep the land as is, then buy it. He
125 believes the PB role is to use judgment to enforce zoning variances. He noted the Conservation
126 Commission's comments about the plan not meeting the WPOD comments. Also, that the impervious
127 area is 28.7% and the porous surfaces of geo-grid, walkways, and about 25-30% in a vegetative state. He
128 does not trust the poly barrier to hold everything so close to the stream. He would like the plans to be
129 expanded to see the abutters lots and their septic systems, leach fields, and wells before deciding. He
130 believes he is not here to deny a landowner the rights, would like to see the leach field to be placed as
131 far from the stream as possible, maybe being closer to other neighbors would be better than being
132 closer to the stream, would like to see the lot coverage reduced to return to natural vegetation, does not
133 like the drip lines – would rather infiltrate directly underground. He questioned if the culvert backs up
134 and water overflows the road? He believes the plan could be modified to make him more comfortable.
- 135 Mr. Zurowski concurs with Mr. Carpenter's points.
- 136 Ms. McCarthy: inquired if the leach field could be moved at this point?
- 137 Mr. Maynard introduced Attorney John Bisson on his behalf.
- 138 Mr. Zurowski asked if it is a fact that the proposal does not comply?
- 139 Atty. Bisson stated that he believes it is true and referred to the consideration criteria outlined by staff.
- 140 Mr. Carpenter stated that he would like to hear from Mr. Maynard to see if modifications can be made.
- 141 Mr. Monson noted that the wetland upstream could be cleaned out to store more water, widening the
142 pipe could help, and any other off-site improvements could be made that could be beneficial for
143 everybody.
- 144 Mr. Maynard stated the wetland would be best if it had an outlet, which DES may not approve – hasn't
145 approved similar in the past 10 years. Culvert under first street – if it went from 12 to 36 inches, it would
146 still overflow the road because of the rate of runoff from the asphalt lined stream. It would need a 30 to
147 40-foot-wide disturbed area to provide a box culvert. The 30-feet of grade change makes reducing



148 volume and velocity very difficult and would require multiple catch basins. Moving the leach field would
149 push it 20 feet away, can sketch a plan showing other septic tanks and leach fields. Poly fabric performs
150 well. Clean Solution has been around since 1980, requires contracted maintenance every 2 years.

151 Mr. Rounds wants to meet with Attorney Cambell due to Atty. Bisson's intimidation tactics.

152 Mr. Cross stated that he was ready to make a motion, but open to Mr. Carpenter's suggestion of a
153 continuance. He advised abutters to get a wetland scientist.

154 Mr. Monson asked the Board if they would be open to plan revisions and continuing.

155 Ms. Mason agrees. Ms. McCarthy agrees with continuing but doesn't want to keep kicking the can down
156 the road, not sure if other members could be convinced. Mr. Zurowski stated that he could be convinced.
157 Mr. Carpenter would not be in more favor if they came back with plans that were 99% similar. Mr.
158 Rounds could be convinced if the leach field was moved so it could be 50 feet away from the stream and
159 if BOH and ZBA signed off. Mr. Cross is open to seeing something new, but stated that if there was a way,
160 the Applicant would have shown it by now.

161 Brian Harvey, Applicant's father, stated that this process has been a snowball going down a hill. They just
162 want a house on the pond. It is a difficult lot, not trying to pollute the pond. Takes offense to statements
163 that his son is an out-of-stater and that water is going right in the pond. Wants to work with the Planning
164 Board, but this has gone too far. Worried that other boards will pull the rug out from underneath them.
165 Willing to build a rain garden, but it would be on beach property, and the abutters are adversarial and
166 may not grant permission for improvements.

167 Mr. Carpenter asked if it would need to go back to the Board of Health. Mr. Mello thinks it would and
168 could be a condition of approval.

169 Mr. Carpenter inquired how many houses Mr. Harvey has built. Mr. Harvey stated that he has built
170 approximately 600 homes in Windham.

171 **Mr. Cross made a motion to deny the application for 20 First Street (Case 2023-12) because the**
172 **documentation submitted by Blue Moon Environmental, for the Applicant, does not meet the**
173 **standard of the same or a greater degree of water quality protection would be afforded as would be**
174 **with the full-width buffer zone. He cited the following language from the Blue Moon report as being**
175 **hopeful in nature and not factual:**

- 176 - *"As such, it is not expected that there will be adverse impact to the surface water quality of*
177 *Cobbetts Pond from stormwater runoff and/or pollutants that would be carried in said runoff*
178 *as a result of the construction of the proposed home on Lot 16-Q-179".*
179 - *"It is the intent of the design that no runoff will adversely affect the tributary stream."*

180 **He also noted that the Conservation Commission wrote to the PB that the proposal does not meet the**
181 **100-foot requirement and the Conservation Commission has concerns for impacts to the pond and**
182 **stream. There was not a second. Mr. Rounds didn't second it because there is information he doesn't**
183 **know and wants to talk to Town Counsel.**



184 **Mr. Cross made a motion to continue to October 18, 2023 for applicant to make plan amendments.**
185 **Ms. Mason noted her concerns for the Applicant about elected officials recusing themselves and**
186 **speaking to applicants in a particular manner. Ms. McCarthy hopes the Applicant responds to the**
187 **feedback. Mr. Cross asked if General Services or Keach-Nordstrom could look at a wider box culvert**
188 **under First Street. The motion passed with the following roll-call vote:**

189 **Vice Chair Monson, aye**
190 **Ms. Mason, aye**
191 **Mr. Cross, opposed**
192 **Mr. Rounds, aye**
193 **Mr. Carpenter, aye**
194 **Ms. McCarthy, aye**

195
196 **Old / New Business**

197 Mr. Cross asked if Mr. Hohenberger could approach the Board of Selectmen about considering switching
198 regional planning commissions.

199 Ms. McCarthy asked why a switch would be necessary.

200 Mr. Cross noted that their assistance on the master plan set the process back about 6-months. He also
201 stated that he believes SNHPC has more of a Manchester focus. He believes the Nashua Regional
202 Planning Commission includes towns that border Windham.

203 Ms. McCarthy noted that most of the NRPC towns are in Hillsborough County.

204 Mr. Cross noted that geographically, Windham is the southern edge of SNHPC.

205 Mr. Carpenter stated that he understands the BOS decide and the chair should write a letter to the BOS
206 explaining why they want to explore switching.

207 Mr. Hohenberger suggested the PB write a memo to the BOS and include reasoning.

208 **Mr. Cross made a motion to ask the PB Chair to write a memo to the BOS. Mr. Rounds seconded the**
209 **motion.** Mr. Mello noted that SNHPC has been great to work with, they have helped CDD staff, other
210 departments, and committees. Mr. Rounds noted NRPC's work on the Housing Needs Assessment was
211 well done. Ms. Mason stated that she believes the PB wasn't the most cooperative with SNHPC on the
212 master plan. She stated that she would like to see the PB try to work with them better before moving on.

213 **The motion passed with the following roll-call vote:**

214 **Vice Chair Monson, aye**
215 **Ms. Mason, abstained**
216 **Mr. Hohenberger, abstained**
217 **Mr. Cross, aye**
218 **Mr. Rounds, aye**
219 **Mr. Carpenter, aye**
220 **Ms. McCarthy, aye**

221
222 **Review and Approval of the minutes for September 6, 2023**

223 Mr. Carpenter made a motion to approve the minutes of September 6, 2023 as presented. Mr. Cross
224 seconded the motion. The motion passed with the following roll-call vote:

225 **Vice Chair Monson, aye**
226 **Ms. Mason, abstained**
227 **Mr. Hohenberger, aye**
228 **Mr. Cross, aye**



229 Mr. Rounds, aye
230 Mr. Carpenter, aye
231 Ms. McCarthy, abstained

232

233 **Adjournment**

234 At 8:13 PM, Mr. Carpenter made a motion to adjourn the meeting. Seconded by Hohenberger. The
235 motion passed with the following roll-call vote:

236 Vice Chair Monson, aye

237 Ms. Mason, aye

238 Mr. Hohenberger, aye

239 Mr. Cross, aye

240 Mr. Rounds, aye

241 Mr. Carpenter, aye

242 Ms. McCarthy, aye