



CITY OF GARDINER

PLANNING BOARD

Gardiner Planning Board
City of Gardiner, Maine

February 16, 2005
Regular Meeting 6:00 PM

ROLL CALL

Present: Pat Hart James Montell Deborah Willis Pamela Mitchel
Edward Lawrence

Absent: Allie Vigue Bob Moody, Alternate

Also Present: Barbara McPheters, Code Enforcement Officer (CEO)
Dorothy Morang, Planning Board Recording Secretary

Jan Boucher, Surveyor – Cornerstone Professional Surveying, Inc.
Paul Marsella Jackie Marcella Cindy L. Sirois
David Michaud

- 1.) Deborah Willis called the meeting to order at 6:11 PM.
- 2.) Deborah Willis made a motion to appoint Pat Hart as Acting Chair. Pam Mitchel seconded the motion.
Vote: 5 in favor. 0 opposed. Motion passed.
- 3.) Roll call taken.
- 4.) Deborah Willis made a motion to accept the January 19, 2005 minutes. Jim Montell seconded the motion.
Vote: 5 in favor. 0 opposed. Motion passed.

Acting Chair Hart noted for the record that all voting were in attendance at the January meeting.

Acting Chair Hart read item 4 from the Agenda.

HEARINGS AND PRESENTATIONS

4.) Public Hearing – Final Review

Jan E. Boucher of Cornerstone Professional Land Surveying, Inc., acting as agent for Jeremy Purington, is seeking final approval of a five (5) lot subdivision named Rolling Dam Brook Subdivision at 303 Marston Road on City Tax Map 17 Lot 15 in the Rural/Resource Protection (R/RP) Districts.

Acting Chair Hart asked the Board Members if any one of them feels that they cannot avoid the appearance of impropriety with respect to this application. Deborah Willis disclosed that she lives on the Capen Road and this sub-division is on the corner of the Capen Road and the Marston Road, but this will not impact her decision.

Acting Chair Pat Hart read the Project Description and asked the Applicant to introduce himself and offer any comments that he might have.

Jan Boucher, a land surveyor for Jeremy Purington, the owner, described the Final Sub-Division Plan as a 5-lot sub-division (Rolling Dam Brook Sub-Division) with a large open space area behind the lots near Rolling Dam Brook. He indicated that they have shifted the lot lines in Lot #4 to achieve the 80,000 square foot lot size requirement and straightened out lot lines. He has added the designation of a well to lot #2 on the Plan. He also has included the requested restriction that lots 1 through 5 are to be for single-family, detached, residential housing and accessory uses. The proposed open space is to be conveyed to each of the five lot owners, one-fifth (1/5th) each, with said fractional interest running with and inseparable from each such lot. A 100' setback from the mapped wetland boundaries was designated on Lots 1, 2 & 5, which, though not required, was voluntarily established by the Applicant. Mr. Boucher showed where the Resource Protection area is on the Plan.

6:23 PM meeting opened to public.

Paul Marsella, an abutter, asked that they open the letter with map showing the wetlands that he had provided. Jackie Marsella referenced the January 15, 2005 CEO memo describing the Marston Road as a “low volume access road”. Jackie thinks it is a high volume access road. She is concerned that if five new houses are added it will increase the traffic. In a letter from Attorney Goodall, Jackie referred to Attorney Goodall’s comments concerning the wetlands and that a 100’ buffer is required around the wetlands. Only lots 2, 4, & 5 have sufficient building envelopes to meet the wetland buffer requirements. Although Mr. Boucher indicated that some are forested wetlands, Mr. Goodall said that the Gardiner Zoning Ordinance defines a freshwater wetland and makes no distinction between types of wetlands. Jackie further quotes from Attorney Goodall’s letter that “State law in 38 M.R.S.A. § 436-A (5 and 5-A) specifically includes “forested wetlands” to be fresh water wetlands. This State law definition is from the Shoreland Zoning statute and the definitions contained in that statute are binding upon all municipalities in the State of Maine. Paul Marsella indicated that the green areas designated on a map he provided greatly expand the areas designated on the

Applicant's plan and makes a big difference on what the wetland area is. Paul Marsella said that jamming six homes into that area was turning the country into a city setting.

The CEO pointed out that the Zoning Ordinance that Attorney Goodall was referring to was the old one and had been replaced by the current one on June 28, 2003.

6:35 PM Public Hearing was closed.

Barbara McPheters, CEO, indicated that she had reviewed the Final Plan and the Applicant had addressed all of the issues that had been brought and that all requirements have been met. She indicated that she had taken the term "low volume access road" from the Applicant's information. The Applicant is not proposing any new streets. Whether it's designated low or high it doesn't matter because this proposal will generate such a small volume. The section that the attorney's letter refers to in the previous Ordinance has the same requirement in the current one. That requirement is only to show the wetlands on the plan. State law requires them to identify all wetlands and the Applicant has done this.

Jan Boucher, the Applicant, said that the current Ordinance states "other than forested wetlands." Pat Hart read that definition from Gardiner's Land Use Ordinance.

Jan Boucher indicated that the wetland area is surrounded by forested wetlands and is less than the 10-acre contiguous area that would cause further review by The Department of Environmental Protection (DEP), in fact, this area is less than one acre, about 300' x 25'. The only stream defined is Rolling Dam Brook and references in state statute are to shoreland zoning. The Applicant did place a 100' setback from the Resource Protection area even though it was not required.

Mrs. Marsella referred to her attorney's note on "natural vegetation". The Board discussed whether that was necessary in this proposal. Since the 100' setback is not required, it is not relevant.

Mr. Marsella believes that there is a stream running through the property and in the spring there is a tremendous amount of water from the valleys on the other side of the road.

Jan Boucher explained that all of the lots slope back toward the stream and all wetlands would be used as stormwater structures to carry the water. He said the area Mr. Marsella is referring to is outside of the building envelopes. Ed Lawrence asked if there is a stream there. Jan said that other than Rolling Dam Brook, the others were runoffs. There is a steep bank that runs into a culvert. Mrs. Marsella asked about the water sloping towards the brook. Jan explained that the only water from impervious surfaces would be the water shedding off the houses.

Pat Hart asked if the CEO had received any correspondence or calls concerning this Application. Barbara said no. Pat asked about the abutter notification. Barbara said she had the slips for the certified letters indicating the notifications had been sent.

Barbara indicated that she had obtained information from Bill Najpauer concerning the location of the “Marston Road Water Hole.” He believes it to be down the road further and across the street as is the “Marston Road Tree Canopy”. Bill was here at the time and part of the planning.

The Board reviewed the Applicant’s waiver request for relief from the required landscape plan. After discussion, the Board voted on this matter.

Pam Mitchel made a motion to grant the waiver. She indicated that this requirement pertains to sub-divisions with new roads. Deborah Willis seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Jan Boucher added the date to the sub-division plan Mylar.

Acting Chair Hart referred to the CEO’s memo of February 15, 2005 detailing the request, history, project description, her comment that the applicant has addressed all issues raised by the Planning Board during preliminary review, Department Heads (Police, Fire, City Services) reviews of this proposal, waiver requests, final subdivision review and the proposed Finding of Facts.

Board members discussed the common area and it was suggested and agreed upon by the Applicant to include the description in the warranty deed even though it is clearly defined in Note #8 on the sub-division plan.

Jim Montell asked for clarification of why the wetland areas on the map Attorney Goodall presented and the sub-division plan differ. The CEO indicated that the map Attorney Goodall provided included forested wetlands and the current Land Use Ordinance specifically exempts forested wetlands from the definition of freshwater wetlands.

Jackie Marsella indicated that state law says that forested wetlands are included in the definition of fresh water wetlands.

The CEO said that DEP guidelines changed to address only freshwater wetlands and no setback is required. The State statute is referring to a shoreland zone.

With respect to Land/Lot Design Standards, Mr. Boucher indicated that if he can get the sight distances, he plans to have separate driveways. He also applied for and was granted a waiver of the requirement for a landscaping plan and pins.

Paul Marsella stated that Jan Boucher is not a lawyer. His lawyer is the best in the State. He asked that the Planning Board not make a quick judgment. Before they make their final judgment, he asked that the CEO talk with his lawyer. Pat Hart said they would take that under advisement. Jackie Marsella asked for a draft copy of the minutes.

With respect to a discussion concerning land features, it was noted that this was addressed in notes # 5 & 7 on the plan.

Jan Boucher addressed Access Control and Traffic Impacts. He explained that that provision refers to the road to an access street. The CEO suggested taking out “low volume access” from the Findings of Fact and adding to “on the existing road.”

Acting Chair Pat Hart read the responses to each of the Review Criteria and each was voted on separately.

Review Criteria 1.

Deborah Willis made a motion to accept Review Criteria 1 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 2.

Deborah Willis made a motion to accept Review Criteria 2 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 3.

Deborah Willis made a motion to accept Review Criteria 3 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 4.

Deborah Willis made a motion to accept Review Criteria 4 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 5.

Deborah Willis made a motion to accept Review Criteria 5 as modified, replacing “low traffic volume” with “existing”. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 6.

Deborah Willis made a motion to accept Review Criteria 6 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 7.

Deborah Willis made a motion to accept Review Criteria 7 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 8.

Deborah Willis made a motion to accept Review Criteria 8 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 9.

Deborah Willis made a motion to accept Review Criteria 9 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 10.

Deborah Willis made a motion to accept Review Criteria 10 as modified; “the Applicant has provided documentation of sole ownership of the property.”. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 11.

Deborah Willis made a motion to accept Review Criteria 11 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 12.

Deborah Willis made a motion to accept Review Criteria 12 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 13.

Deborah Willis made a motion to accept Review Criteria 13 as written. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Review Criteria 14.

Deborah Willis made a motion to accept Review Criteria 14 as written with the modification, “Applicant has requested and received a waiver.” Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Deborah Willis made a motion that the Applicant sends an updated warranty deed to the CEO that adds Note #8 from the Final Plan to it. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Pam Mitchel made a motion to approve the Application with the standard conditions and have the warranty deed sent to the CEO with Note #8 added to the deed. Deborah Willis seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Board members signed a Mylar copy of the Final Plan. Jan Boucher will get it recorded at the Registry of Deeds and return copies to the CEO.

8:08 PM Meeting adjourned for a short break.

8:12 PM Meeting called back to order.

OTHER BUSINESS

The Board members reviewed the Standards, Finding of Fact and Conclusion of Law for Mr. & Mrs. Kaufman's Appeal of a Site Plan Review Approval for Sunspot Tanning Salon, Items 1, 2 & 8 of their appeal items 1 – 10.

Deborah Willis made a motion to accept the Findings of Fact and Conclusions of Law and that we deny Sunspot Tanning Salon's Site Plan Review Application Approval. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

It was noted that they Planning Board would meet the second Tuesday of each month at 6:00 PM in the future.

6.) Adjourn

Deborah Willis made a motion to adjourn. Pam Mitchel seconded the motion.

Vote: 5 in favor. 0 opposed. Motion passed.

Adjourned 8:25 PM