

**TOWN OF HENNIKER
PLANNING BOARD**

December 10, 2008

Draft Minutes

Members Present: Kristin Claire, Chairwoman; Scott Osgood; Kellie Dyjak; Terry Stamps; Ron Taylor, Selectman, ex-officio; Leon Parker, Alternate Selectman, ex-officio; Ed Miner, Alternate

Others Present: Laura Scott, Planning Consultant; Jennifer Astholz, Recording Secretary; Pete Dooley, Art Siciliano; Rick Patenaude; Wayne Patenaude; Lori Runsmeier; Jennifer McCourt; Dr. Roger Belson

Chairwoman Claire called the Planning Board meeting to order at 7:26 pm. She stated the Ed Miner is voting in Jim McElroy's absence tonight.

Public Hearing

Planning Board Case 2008-012 Lot Line Adjustment Application (cont. from 11/12/08)
Map 1 Lot 279-A and Map 1 Lot 279-J located on Foster Hill Road in the Rural Neighborhood (RN) Zoning District. The applicant, Joseph Dooley, is proposing a lot line adjustment that will adjust Lot 279-A from 1.34 acres and 252.85' of frontage to 1.51 acres and 247.84' of frontage and will adjust Lot 279-J from 5.80 acres and 151.94' of frontage to 5.63 acres and 156.95' of frontage.

Laura Scott, Planning Consultant, reviewed the materials in the Board's packet.

Chairwoman Claire explained that it was appropriate for the case to go to the ZBA as they were creating two nonconforming lots. Now that the ZBA has granted the Area Variance, the Planning Board may hear the case.

Ms. Claire stated that the Board would first consider completeness of the application. The Board reviewed the following list of requested waivers:

202-9F Watercourses and wetlands within 250' of lot lines: No concerns were expressed by the Board.

202-9H Benchmark ties to USGS: No concerns expressed by the Board.

202-9J Elevation contours: No concerns expressed by the Board.

202-9M Soil delineation: No concerns expressed by the Board.

202-9B(1) Buildable area for each Lot: Mr. Siciliano reminded that Board that this is an existing lot.

202-9N Proposed well and septic system locations with protective radius: No concerns expressed by the Board.

202-9O Plans and profiles of existing or proposed utilities: No concerns expressed by the Board.

Ms. Stamps **MOVED** to grant the waivers as requested from the following Sections: 202-9F; 202-9H; 202-9J; 202-9M; 202-9B(1); 202-9N; 202-9O. Scott Osgood **SECONDED** the motion. Motion **PASSED, 6-0.**

Chairwoman Claire called for any further Board deliberation before voting on completeness. As there were no further comments from the Board, Ron Taylor **MOVED** to accept the application as complete. Terry Stamps **SECONDED** the motion. Motion **PASSED, 6-0.**

Chairwoman Claire opened the public hearing at 7:31 pm. Hearing no public comments, the public hearing was closed.

Mr. Taylor stated that this appears to be a reasonable request and should be approved. Ms. Stamps agreed.

Mr. Osgood **MOVED** to approve the application for Case 2008-012 as submitted with the approved waivers. Ms. Stamps **SECONDED** the motion. Motion **PASSED, 6-0.**

2009 Town Meeting Warrant Article Public Hearings

Board of Adjustment. Amend Article XIV Board of Adjustment and Article XV Zoning Board of Adjustment to reflect the roles, procedures, and authority of the Zoning Board of Adjustment as outlined in NH RSAs and NH court case decisions.

Leon Parker presented the proposed changes to Article XIV and XV. He stated that the ZBA has been required to follow the guidance of the Superior Court. Decisions have been modified to follow Superior Court decisions. These drafts reflect current RSAs and such court decisions. Ms. Scott stated that the proposed amendment has been reviewed by legal counsel.

Chairwoman Claire opened the public hearing at 7:39 pm.

Dr. Belson stated that it appears that the entire document has been changed. He asked if the changes raises or lowers the bar for the Henniker residents.

Mr. Parker stated that it is his personal opinion that the Superior Court has changed the interpretation of the hardship requirement and allows for more situations that can qualify for a variance. The application the ZBA now uses reflects those decisions and this document reflects the same.

Dr. Belson asked what the other roles are of the ZBA. Mr. Parker stated that this amendment specifies other roles that are already in the RSAs. The ZBA is the authority that governs appeals of administrative decisions. Mr. Osgood stated that the language is taken right from the RSAs.

Jennifer McCourt stated that she voted against this amendment last year and will vote against it again as the language is arduous. She stated that it would be easier to understand if it were not so full of legal terminology.

There was discussion about ZBA procedures, and it was noted that this amendment outlines the rules and procedures that the ZBA follows.

Mr. Osgood stated that this is a good compromise of actual RSA language and capturing the intent of the RSA.

Ron Taylor stated that he would hate to rewrite the amendment in layman's terms and would prefer to see the RSA to avoid any problems.

Ms. McCourt stated that the document is hard to read and the public will have to ask lots of questions to understand what it actually means.

There was more discussion about the intent of the capturing current RSAs, case law and zoning practices. Ms. McCourt stated that many other Town ordinances reference the RSAs but are not so difficult to read through. The Board invited Ms. McCourt to be involved the process of (re)writing the amendments.

It was noted that Section 133-67(B) was suggested by legal counsel.

Ms. Claire stated that this document, while difficult to read, needs to govern the ZBA at a legal level.

Dr. Belson suggested that it might be helpful for the RSAs to be hyperlinked in the document. Mr. Osgood stated that, while it is a good idea, the State website has been found to be out-of-date. Ms. Scott stated that copies of the applicable RSAs are available for the public to review and ask questions.

Ms. Claire stated that it is a disservice to the public if this amendment does not pass because the ZBA is required to follow these procedures regardless of the outcome of the vote. There was discussion about a notice being placed in the next printing of the zoning ordinance that the ZBA must follow the current RSAs whether this amendment passes at Town Meeting or not.

Ms. Stamps agreed with Ms. Claire's comments that it is actually unfair to the public to continue to print information that is not accurate because this may not pass at Town Meeting, yet the ZBA must adhere to the RSAs and court rulings.

Dr. Belson suggested that they publicize the need for this ordinance so that the public better understands the reasoning behind it.

Ron Taylor **MOVED** to forward Article XIV and XV to the ballot. Mr. Osgood **SECONDED** the motion. Motion **PASSED, 6-0.**

Excavations. Rename 133-14 "Excavations" and correct a typo; add language referencing the authority of the Town of Henniker and the Planning Board to regulate

excavations per NH RSA 155-E; and add language referencing the Planning Board adopted Excavation Regulations (Chapter 201) and the intent of such regulations.

Kellie Dyjak presented the proposed changes to “Excavations.” She stated that the only changes are typographical and are informational only. She stated that no new regulations or restrictions are proposed.

Terry Stamps said 133-14(B) should be corrected to RSA 155-E:*I-III*.

The Planning Board was designated in Town Meeting 1981, Article XXXII as the “Regulator.”

It is the consensus of the Board that this amendment only clarifies the Article and makes no substantive changes.

Chairwoman Claire opened the public hearing at 8:04 pm.
The necessity of this ordinance was discussed further.

Jennifer McCourt stated that it may be helpful to write a description so that the public knows that this is only to clarify the regulations and does not impose any further regulations for excavations.

Ms. Claire stated that this is another instance where the regulations that must be followed whether the Town passes the ordinance or not.

The public hearing was closed at 8:10 pm.

Terry Stamps **MOVED** to carry “Excavations,” with the necessary corrections to Town ballot. Scott Osgood **SECONDED** the motion. Motion **PASSED, 6-0**.

Manufactured Housing. Amend Article II Definitions for “Manufactured Housing Park” to delete the current language and to reference NH RSA 205-A:I(II); delete “Manufactured Housing Subdivision” from Article II Definitions; and delete 133-10 from Article IV General Provisions.

Ron Taylor presented information regarding this amendment. He stated that the language in zoning is unnecessary, and “Manufactured Housing Subdivision” is not necessary. Manufactured housing park references RSA 205-A:I(II). If it keeps changing, zoning will be updated without the need for further amendments.

Leon Parker asked about campgrounds. Mr. Taylor stated that there is a problem with deleting the ordinance until the Town Ordinance is worked on to clarify the needs of campgrounds. He stated that the entire section needs to be re-worked.

Ms. Stamps stated that the term “subdivision” is referenced in 133-98(C) and needs to be removed.

The public hearing was opened at 8:20 pm. Hearing no comments, the public hearing was closed.

Ms. Scott stated that a second public hearing will need to be held on January 14, 2009 for the removal of the term “or subdivision” in 133-98(C).

Ron Taylor **MOVED** to bring this ordinance forward to Town ballot. Ms. Stamps **SECONDED** the motion. Motion **PASSED, 6-0**.

Educational District. Amend Article II Definitions to add definitions for “Fraternity/Sorority”, “Fraternity/Sorority House”, Health Care Facility”, and “House of Worship”; Amend Article II Definitions to rename “Student Housing” to “Dormitory”; Amend 133-33A to remove “Fraternities” and “Sororities” from Permitted Use and add them to Allowed by Special Exception; and rename “Churches” to “Houses of Worship” in 133-33A and 133-33E.

Ed Miner presented the proposed changes to the Educational District. He stated the reason for the changes is to clarify the ordinance and uses currently permitted and allowed, as well as to provide additional oversight and review by the Board of Adjustment for a use prior to the Planning Board reviewing the proposal.

The public hearing was opened at 8:25 pm.

Dr. Belson asked if they were trying to regulate fraternities and sororities or their houses. He suggested that it be changed to “Fraternity/Sorority Houses” allowed by Special Exception.

Health Care Facilities were discussed. Dr. Belson stated that there are items listed that are not defined.

Ms. Scott stated that other definitions were brought to Town Meeting before, and it failed. The Board wanted to work on the first four changes this year and continue to work on the ordinance.

Ms. Claire stated that she has always had difficulty with this specific zone and believes that the whole thing needs to be revised.

The term “Houses of Worship” was discussed. Mr. Miner stated that the Educational District is the only district where they are allowed.

Mr. Osgood stated that he believes this amendment should be abandoned until it can be appropriately revised.

Mr. Taylor agreed that the entire section needs revision but thought that making the change of allowing “fraternity/sorority houses” by special exception should happen at this Town vote. Ms. Stamps agreed.

Ms. Scott stated that she is compiling a 2009 discussion list. She will add creation of an Education overlay district on that list.

Mr. Taylor **MOVED** to forward the amendment without the “Health Care Facility” definition to Town ballot. Section 133-33A will be changed to allow “Fraternity/Sorority Houses” by Special Exception. Mr. Osgood **SECONDED** the motion. Motion **PASSED, 6-0.**

Ms. Scott stated that the amendment will be re-noticed for the January 2009 meeting for a second hearing.

Continued Public Hearing

Case 2008-011 Excavation Application. Map 1 Lot 99 located on NH 114 (70 Bradford Road) in the Medium Commercial (CM) Zoning District. The applicant, Jennifer McCourt, on behalf of Mink Hills, LLC, is proposing a commercial excavation operation on Lot 99 with access through Lot 44 to NH 114.

Jennifer McCourt presented the application. She stated that the Conservation Commission would like to be part of an upcoming site walk.

Ms. McCourt stated that a dirt road has been there for a long time. An easement was granted in the 1800’s to cross Lot 44 to access the other lot. Lot 99 is landlocked and is approximately 25.09 acres. She showed the zoning lines (CM and RR zones) dividing the property. Various wetlands and Amey Brook were shown on the plans.

Ms. McCourt explained that Phase I consists of a plan for a two-acre parcel to be excavated. They expect 12 total acres to be excavated over time. She stated that there are many boulders in the area that can be crushed, and they anticipate mining of the ledge. She showed a 1:1 slope along the ledge. She stated that there will be a 5’-8’ ditch created for water flow. They plan to stockpile loam as they work. A sediment trap is proposed on the plans. During the Alteration of Terrain permitting process, DES asked for swales, creating three safeguards before anything gets into the stream. They have also added a mulch berm as another barrier. There is a 50’ buffer to the property line which will be flagged. She stated that a total of approximately 100,000 cubic yards will be excavated. No fuel or petroleum will be stored on the site.

Ms. McCourt stated that no processing of material will occur on the site. Material that is excavated will be transported by Rte. 114 to Henniker Crushed Stone. Trucks will not be on any Town roads. She stated that the Mining and Health Inspection Agency will also enforce site operations.

Ms. McCourt described the restoration plan of 2:1 slope with 5’ benches at every 20 vertical feet. This is shown to occur between Phase I & Phase II. They will have to come back to the Board for approval of future phasing. Material in between the zones will be reused over the ledge. Native tree seedlings will be used. They are planning on using most of the topsoil back on the site. A statement could be added indicating that “as

long as they have enough topsoil to put back the required 4" at reclamation, the topsoil can be taken offsite." Once reclamation has been done per the approved plan, topsoil may be removed.

Ms. Claire stated that it is her opinion that topsoil should be kept on site.

Ms. Scott's memo dated December 3, 2008 was reviewed. Ms. McCourt stated that most notes have been added to the plans already. She stated that a bond is needed; this will be done at the appropriate time. An additional \$1,000 has been deposited into the escrow account.

Ms. McCourt stated that there is a note on the plans stating that no petroleum products are stored on site.

Waiver request from Section 201-8G was discussed. The Conservation Commission asked that the Planning Board not make a decision until they go on a site walk. Ms. McCourt said that she explained the process of quarrying stone below the soil seasonal water table at a Conservation Commission meeting. Ms. Stamps stated that she was not in attendance at that meeting, and there were apparently still some questions about the waiver.

Mr. Miner stated that 202-8G refers to aquifers and recharge areas.

Ms. Scott stated that the applicant must prove that they are not in these areas.

Ms. McCourt offered to explain the process again to the Conservation Commission.

Mr. Miner expressed concern about the overburden of extra soil above the ledge. There is glacial till with a hard pan, and it is not useful silt.

Ms. McCourt stated that she had a meeting with KV Partners and Ms. Scott. She stated that she has no issues with comments made in their letter, but would like to have comments on the revised plans.

Ms. Claire stated that the issue of completeness has to do with granting the waivers about the water table.

The Board scheduled a site walk for Wednesday, December 17, 2008 at 3:00 pm. Ms. Scott will invite the Conservation Commission.

Ms. McCourt stated that she come to the next meeting of the Conservation Commission on December 17, 2008 at 7:00 pm, if her schedule allows.

Mr. Miner stated that Phase I is shown at a 1:1 slope, but the reclamation plan shows a 2:1 slope. He asked about taking out additional 15' of material at the top. Ms. McCourt

said that, hopefully, they will continue on to Phase II. If Phase I does not continue to Phase II, it would have to go into the Reclamation plan.

Kellie Dyjak **MOVED** to continue the hearing to the January 14, 2009 meeting. Mr. Miner **SECONDED** the motion. Motion **PASSED, 6-0.**

Ms. Claire stated that Mr. Miner will continue to sit on the Board until the completion of this case.

Ms. Dyjak left the meeting at 9:43 pm.

November 24, 2008 Meeting Minutes – Review and Approve

The minutes from the 11/24/08 meeting were reviewed and corrected. Ms. Stamps **MOVED** to approve the minutes as corrected. Mr. Miner **SECONDED** the motion. Motion **PASSED, 5-0.**

New Business

Mr. Osgood reported on a transportation meeting he attended. He stated that there appears to be community support for the Safe Routes to School project, and there is potential to get a \$100,000 grant for this project. He stated that he would like to see the Planning Board support this community need.

He stated that he attended a statewide transportation conference run by two DOT commissioners. Local transportation needs and opportunities were explored. He stated that there will be an effort to coordinate public transportation. He stated that White Birch offers a great deal to the Henniker community. There will be more discussion of this in the future.

Ron Taylor stated that it was noticed in the Budget meeting that most Town departments are working hard to keep their budgets from increasing this year.

Adjournment

Mr. Taylor **MOVED** to adjourn at 10:00 pm. Mr. Miner **SECONDED** the motion. Motion **PASSED, 5-0.**

Respectfully submitted,

Jennifer Astholz
Recording Secretary