



PLANNING BOARD MINUTES AUGUST 12, 2021

Christopher Huston- Regular 2022
Curtis Lunt- Regular 2022
Patrick Maloy - Associate 2024
William Kuhl - Regular 2023
Lisa Ward - Regular 2024
Shaun Carr - Regular 2024
Dan Leeman - Associate 2022

1. **CALL TO ORDER:** The Chairman, Mr. Kuhl called the meeting to order at 7:00 PM.
2. **ROLL CALL:** Regular members present were William Kuhl, Curtis Lunt, Shaun Carr, Lisa Ward (arriving at 7:10pm) and Chris Huston (Arriving at 7:03pm). Dan Leeman was excused. Pat Maloy was absent. Also present were Diane Barnes, Town Manager and Mark Lunt, Town Councilor. There were 2 audience members.

3. REVIEW OF MEETING RULES:

The Chairman explained the meeting rules are located on the back of each agenda.

4. WRITTEN COMMUNICATIONS: Minutes of July 22, 2021

The meeting minutes of July 22, 2021 were distributed to all the members. The Chairman asked if there were corrections or additions.

VOTE (2021-58) Mr Carr, seconded by Mr. Lunt moved to approve the Minutes of July 22, 2021.
Vote 3-0 Carried.

5. PUBLIC HEARING – None

6. UNFINISHED BUSINESS- None

7. NEW BUSINESS- Case #21-12 Tier II Pre Application

5 Memorial Street

Rural Open Space II Zoning District Language Modification

The Applicant was not in attendance. No discussion.

8. OTHER BUSINESS – Case #21-11 Subdivision Review Application Amendment

Johnson Woods Estates Phase II

David A. Johnson

Hatch Road & Ferry Road

Stuart Davis, of Davis Land Surveying explained the reason for the amended Plan is to fix a minor revision to Note 6 which the Plan Book as referenced was missing the Page #. The other revision is based on having to move the southeasterly sideline along land of Hathaway and Davis northwesterly 1.4 feet due to wrong location of existing pins back when the original Boundary Survey was done around 2005.

The result of having to shift the southeasterly sideline 1.4 feet northerly changed Lot areas by very little for Lots 1-5. For example, Lot 1 on approved Plan had an area of 115,671.5 sq.ft. or 2.7 acres – Amended Plan has Lot 1 now as 115,479.7 sq.ft. or 2.7 acres being a difference of ± 192 sq.ft. The area for each lot changed by only a few hundred square feet or less per lot as exemplified above. All Lots affected have had the areas recalculated along with wetland areas per Lot adjusted and lot dimensions adjusted as well. Lots 1-9 still meet or exceed the minimum lot area of 60,000 sq.ft. and all still have a minimum road frontage of 200.0' within the Rural Residential Zone.

VOTE (2021-59) Mr Carr, seconded by Mr. Huston moved to approve the Amendment to the Subdivision Review Application for Case #21-11, Johnson Woods Estates Phase II.

Vote 4-0 Carried.

Jay Raitt from Little River Land Surveying Inc. spoke about some of the difficulties with the ROSII District. (Rural Open Space).

An email from Mr. Raitt to the Town Manager and Councilor Fellows and a response from Councilor Fellows, Town Council Liaison was submitted to the Planning Board as follows:

August 3, 2021: (From Mr. Raitt) Hello Diane and Don,

I am trying to determine where we are with modifying the language for the ROSU zoning district, which can be difficult to interpret as a surveyor and to enforce as a CEO. That zone appears to have been the result of the 2009 era Comp Plan. The recent 2019 Comp Plan seems to have been cut and pasted from the earlier 2009 plan when it comes to that topic, see below:

Amend the Zoning Ordinance to require new residential lots in the Rural/Open Space II area to have a maximum lot area and frontage on a publically maintained road/street.

Responsibility/Time Frame Planning Board/Short

Amend the Zoning Ordinance to prohibit back lots in the Rural/Open Space II Area.

Responsibility/Time Frame Planning Board/Short

Those things had already been adopted after the 2009 plan was in place so this section of the recent plan doesn't make much sense. This was first on the agenda for January 28, 2021 and again for February 11, 2021. I attended those meetings and stayed for some of the workshops in order to address the planning board on the topic. Don may recall we discussed possible resolutions at that time. At the time I had two of my clients who were trying to acquire building permits. One of them (the Kelly family) appears to have found a working solution with Dennis Douglass but the other has not. Could you please advise as to what steps are needed next to improve this ordinance?

August 4, 2021 From Councilor Fellows to Mr. Raitt: This is a stab at some proposed language, I think it better allows for family division which was clearly an issue in the original conversation (I highlighted it below) and which does not seem to be adequately provided for in the ordinance as it was implemented.

"Sec. 70-363. - The previous sections shall not preclude the division of property between family members in any way, and the standards listed therein may be waived, provided a plan of said family division is reviewed for conformity with the intent of this district and approved in a conditional use application by the planning board."

I may go so far as to say such a waiver should be allowed for ANY potential division of the land as long as that division does not constitute a subdivision (which is specifically prohibited) and it is approved by the planning board in a conditional use application. That way if a parcel can be divided in a way that makes sense and conforms to the ordinance, it can be handled by a surveyor, but if it cannot be done in a way that conforms, the planning board has the authority to waive standards that are making it difficult to do so.

In the specific case at hand, the lot he was given by his mother's estate is 25 acres and which does not meet the "maximum" lot size and is therefore unbuildable. We could cheat it by cutting off a "conforming" lot on the road, and leaving a non-conforming lot out back, but this would actually impact the current agricultural nature of the property. He wants to build in the woods out back, not on the road and the road frontage is where the fields are that contribute to the agricultural identity of this parcel.

August 4, 2021 Councilor Fellows to Mr. Raitt wrote:

Jay - Here are my thoughts regarding ROSII. Although I do not dispute what you have written, I know that the zoning ordinance was changed in 2011. I cannot remember just where the property in question is exactly, I think that the proper way to address this is to formally request a zoning change for that particular area. I am not sure that will work but it is possible. A more formal discussion with the Planning Board may be the proper course. The zone change was officially accepted on November 15th 2011 by the sitting Town Council. Here is an excerpt of the minutes:

ORDINANCE AMENDMENT TO CHAPTER 70 ZONING

(First Reading- Roll Call Vote)

** These minutes are not verbatim. A recording of the meeting is on file.*

Mr. Eldridge explained that the Planning Board had been working on this for quite some time. Part of the hold-up was making sure that the wellhead protection ordinance passed first.

Don Fellows, Planning Board member, said the Zoning Ordinance has been in place for some time. The Planning Board has been working on these amendments for a really long time. Councilor Cote said this was originally slated to be changed in 2007 with the Comprehensive Plan. Mr. Fellows indicated this had been under discussion since before his time on the Planning Board and so he did not know everything there was to know about it. He said the major change he noted was that everything has gone to chart form, which makes it much easier to read and compare zones.

Mr. Fellows said another major zoning change that happened as a result of this is Rural Open Space II, which was part of the Comprehensive Plan development. It had some minor tweaks, for example on page 16 and 17 Rural Open Space II is explained. He indicated that the purpose of the Rural Open Space zone was to keep that area in town agricultural and not have it divided and subdivided. He said the Planning Board spoke with current owners and that they listened to owners' concerns about selling or giving property to their own family members or others. He said there isn't a frontage requirement for that space, but a minimum of 60,000 square feet or a maximum of 100,000 square feet is set. Even though it is not stated, that frontage is essentially 200 feet and the depth 300 feet. Any subdivision after the passing of this ordinance has to happen on an existing public road. He said you cannot put a road in and start dividing in the background.

Councilor Larochelle said for this to move forward from the Planning Board, it has to have a majority vote of the Planning Board. Mr. Fellows said, yes, that was done in October.

Councilor Cote said he reviewed this document and talked to Michael Cote about it. He said, I sat on the Comprehensive Plan Steering Committee back in 2007 and this reflects what came out of the Comprehensive Plan. I want to thank the Planning Board for all they have done. I am definitely in favor of it.

Councilor Lunt said I worked on this a bit while I was on the Planning Board three years ago. I think you have done a great job.

VOTE (2011-208) Councilor Cote, seconded by Councilor Pomelow moved to adopt the Ordinance Amendment to Chapter 70 Zoning as presented (see attached).

Vote By Roll Call- Yeas: Councilor Larochelle, Bickford, Cote, Pomelow, and Lunt. Nays: None. Order Passed.

Councilor Lunt said we will have a public hearing and the second reading at the next meeting.

There may be reason to change this now, but I think a formal request would be the way to be considered.

I will forward a copy to the Chair of the PB. Knowing that we are in a bit of flux right now regarding staff for the PB, I anticipate it being resolved in the not too distant future

I realize that you have been discussing this for some time and your recollection of the times are most likely correct. Since we do not have any record of the workshop discussion, it is hard to determine and I could not find specifics in the minutes of any discussion, while I could see it in the agendas.

Hope this helps, but feel free to discuss with Diane as you want to move forward. Don F

Mr. Raitt stated the specific case at hand, two family members were given land by their mother's estate which is about 25 acres each, which does not meet the "maximum" lot size and is therefore unbuildable. Mr. Raitt said the Comprehensive Plan was not really amended between 2009 and 2019. He said because the Comp Plan is so specific, he didn't think they could do anything about the Ordinance, but could create an exemption for family divisions as a Conditional Use Application. We could cheat it by cutting off a "conforming" lot on the road, and leave a non-conforming lot out back, but this would actually impact the current agricultural nature of the property. One of the family members wants to build in the woods out back, not on the road and the road frontage is where the fields are that contribute to the agricultural identity of this parcel. He stated an alternative would be to push intended houses back away from the road to hide them which would be better conforming to the intent for that Zone, which was to preserve the agricultural areas.

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Mr. Lunt suggested getting advice from AVCOG on how to change the Zoning Ordinance and still stay within the rules of the Comprehensive Plan.

Mr. Kuhl suggested they also have a former Planning Board Member David Bowie give suggestions since he was part of the original drafting of the Ordinance.

The Planning Board agreed to bring in AVCOG and Mr. Bowie for discussion.

Mr. Kuhl wanted the Planning Board to be aware that the Fire Chief requested when a new Sub-development comes before the Board and they have access to a Water Main, they might consider making it a requirement to have fire hydrant access.

9. CODE ENFORCEMENT OFFICER - None

10. ADJOURNMENT–

VOTE: (2021-60) Mr. Carr, seconded by Mr. Lunt moved to adjourn at 7:25 p.m.

Vote 5-0 Carried.

Respectfully Submitted: _____

Lisa B. Smith

Date Approved: August 26, 2021