

MADBURY PLANNING BOARD  
13 Town Hall Road, Madbury, NH 03823

Official Business

Approved on: \_\_\_\_\_ 1/20/16 \_\_\_\_\_

Motion by: \_\_WD\_\_ 2nd: \_\_DH\_\_

\*as amended, MG abstained

Minutes of January 6, 2016

Meeting convened at 7:00 p.m.

**Members in attendance:**

Fritz Green - Chairman  
Tom Burbank - Vice Chair  
Wallace Dunham  
Douglas Hoff  
Julie McCabe  
Bruce Hodsdon

**Support Staff:**

Tarah Beaupre  
Jack Mettee

**AGENDA**

**Approval of Minutes from meeting December 16, 2015:**

**Motion** made by Member Dunham to accept the minutes as corrected, seconded by Member McCabe. All aye. **Motion approved.**

**Application: Smith Subdivision, Map 1, Lot 22 (continued):**

The Chairman noted the differences in the total acreage to be divided. Mr. Garvey stated that the discrepancy is just based on different technologies. The total acreage is 33.7 +/- on the deed but 34.4 on the plans.

Mr. Garvey stated that he submitted a conditional use permit application for a wetland crossing. He included a check and the supporting letter from Mark Jacobs which indicates there is no adverse impact to the wetlands.

Mr. Garvey stated that the lot remaining is 19.3 acres and the lot created is 15.1 acres with a buildable area of 2.1 acres. He stated that the area was in the creek zone and not in the Bellamy Reservoir zone. He stated that the actual zoning has no definition of the Bellamy Reservoir. The Shoreland act is not really referenced in the zoning either. Mr. Garvey stated that therefore it is not part of the zoning ordinance. He pointed out that Article 10, Section 2 (c) directs the reader to

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the topographical maps which labels the area in question as the Mallego Brook. In addition, Section 2 (a) indicates that a 300 feet distance from the seasonal high water mark from the Bellamy Reservoir is required. Mr. Garvey pointed out that despite that, there is no indication of the Bellamy Reservoir. The latest FEMA maps also show that the water is the Mallego Brook.

Mr. Garvey stated that during the first meeting, it was discussed what setbacks should be used. He indicated that he decided to go conservative with the 250 feet, when realistically only 75 feet is required as it is just a brook. Mr. Garvey shared the FEMA Map with the Board. In using the 250 foot set back, Mr. Garvey showed on the plans that there is plenty of room outside the 300 foot setback to do all that is required for a house. He pointed out that the lot being created is 7 times the legal lot size with a restrictive buildable area as the remainder is uplands and wetlands mixed and therefore couldn't really ever be further developed.

Mr. Garvey shared that he spoke with Tom Perley, Fire Chief, earlier and it was discussed that they could put in a sprinkler system in the home or they could put a turn out on the driveway, which Mr. Perley deemed acceptable. This allows one truck to pass another with the turn out being 10-12 feet wide and 20 to 30 feet long.

Member Hodsdon questioned if Mr. Garvey is going to challenge the 300 feet setback. Mr. Garvey stated they are fine with the 300 feet but want to keep a test pit as a back up, which is in the 250 feet setback.

Mr. Al Pratt, City of Portsmouth, shared that the Reservoir is defined by the elevation of 136 feet.

Member Hodsdon questioned how Mr. Garvey would like to proceed. Mr. Garvey stated they are going by the 300 feet setback and they could dig a new test pit later. He stated that he is not agreeing to the definition of the reservoir.

The Chairman questioned sheet 1 of 4 regarding the 4x4 granite bounds, noting that the North and South bounds were indicated on the plans. Mr. Green asked the applicant to add a note to the plan that points to the center granite bounds.

The Chairman stated that sheet 3 showed a well and questioned if Mr. Garvey is asking for an easement for the well. Mr. Garvey stated he is going to create an easement that gets sent to DES for the well. The Chairman asked Eric Fiegenbaum about the setback around the well and the wetlands. Eric Fiegenbaum referenced the Shoreland Protection Overlay District, Section 4 Permitted Uses, which stated that the construction of well water supplies is permitted. He confirmed that it is also a permitted use in the Wetland Overlay District.

Mr. Ken Berry stated you cannot have a leach field within the 75 feet without waivers from the State. The Chairman stated that State requirements must be abided by even though they are not in the Madbury ordinances.

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The Chairman stated that he would like to see the second leach pit removed from the plan. The Chairman recapped that while Mr. Garvey isn't agreeing with the definition, he is not contesting either. He questioned when will this come up for discussion again in the future. Mr. Garvey stated that if they dig another pit in the spring, then the initial one can be noted as void and that would eliminate the subject from being addressed in the future.

The Board discussed the outstanding items for the application: conditional use permit, remove the old leach field pit, add granite marker, and the addition of a new viable test pit. Member Hoff stated he would like the applicant to submit a fire protection plan that has been approved by the fire department.

Mr. Mettee stated that the conditional use permit should be noticed and a separate meeting should occur. Mr. Mettee shared with Mr. Garvey that the Board changed the regulations at the last town meeting. Eric Fiegenbaum reminded the Board that the Conservation Commission and the Water Board need to comment on that application before the Planning Board can make a decision.

Mr. Garvey reminded the Board that they area also seeking a waiver from HISS delineation for the high intensity soil for both lots from where they stopped the delineation up to Littleworth Road.

Member Hodsdon asked to review the 2.1 acres again. He stated that the 60,000 square feet is the land area from the wetland setback out to the limit of restriction to the City of Portsmouth. The 90,000 square feet goes from the wetland delineation lines to the limit of restriction. Mr. Berry indicated that all the minimum areas can be included in the calculation. The Board agreed. Member Hodsdon pointed out the word "may" be used. Member Hodsdon stated that it is his opinion that the lot can adequately handle a house.

**Motion** made by Member Hodsdon to waive the High Intensity Soil Survey for the area and the Topo for the entire parcel, seconded by Member Dunham. **Motion approved.**

Mr. Berry shared that the 250 feet setback is based on the assumption that the Mallego Brook was a 4th order stream. Mr. Berry agreed to remove that note. Eric Fiegenbaum questioned if they would be adding lawn. Mr. Garvey stated that the area in the 300 feet is already grass which is mowed.

**Motion** made by Member Hoff to continue the public hearing to Wednesday, February 2, 2016 at 7:00pm at the Madbury Town Hall. Seconded by Member Burbank. **Motion approved.**

**Proposed Update to Zoning Article:**

Mr. Mettee stated that for this change, the Board is only looking at the nonconforming lots to make sure that any new development on a nonconforming lot is monitored. Mr. Mettee stated that the Planning Board doesn't have jurisdiction to rule on single lots. A single lot review is done by the building inspector. However, if it is a nonconforming lot, there should be some addi-

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tional criteria. Mr. Mettee read his proposed new language from his memo dated January 6, 2016:

*A nonconforming Lot of Record, which does not meet Town requirements established by this Ordinance, may be used for the purposes provided in the district in which the property is located provided that:*

- a. The lot is in a district where the proposed use is permitted;*
- b. The requirements of this chapter regarding setbacks, yards and height are met;*
- c. The Code Enforcement Officer determines that the arrangements for sewage disposal and water supply are in accordance with the provisions of state law;*
- d. The Selectmen or the Selectmen's designee determine the lot has frontage, as defined by this Ordinance, sufficient to provide access to the lot and the use of the lot will not create potential health or safety problems due to inadequate access for police and fire protection or other factors.*

The Board discussed the Selectman or Building Inspector acting instead of the Code Enforcement Officer. Mr. Mettee stated that the Selectmen need to issue the permit. Member Hodsdon questioned if the Selectmen can claim a designee. Member Hodsdon questioned if they refuse to issue a permit, then it would be an administrative appeal through the ZBA and if necessary from there, the Supreme court. Mr. Mettee confirmed.

**Motion** made by Member Hoff for the Board to accept the proposed changes as outlined in Jack Mettee's memo dated 1/6/16 with the correction of Building Inspector, seconded by Julie McCabe. **Motion approved.**

**Motion** made by Member Hodsdon to approve the amendment of Article XIII to reference the new proposed Section 3, Nonconforming Lots, to be put before the 2016 Town Meeting, seconded by Member Dunham. **Motion approved.**

**Attendees:**

Lorraine Morong  
Dave Garvey  
Eric Fiegenbaum  
Kenneth Berry  
Al Pratt

Meeting adjourned at 8:35 pm.

Respectfully submitted by Tarah Beaupre, January 11, 2016 - 4 pages.