

Minutes  
Planning Board Meeting  
February 23, 2016

Members Present: Neil Schuster, Chairperson; Don Girouard, Rene Ittenbach, Donna Bailey, Peter Scontras, Michael O'Toole, and Bob Hamblen, City Planner.

Absent: Marty Devlin

5:00 p.m. Workshop:

**a. Zoning Ordinance: review of proposed amendments to Articles 9, 10, and 11 related to procedures and appeals.**

**Hamblen:** The proposed changes to Saco's Zoning Ordinance are the result of Court comments, and the unusual procedural history, associated with the DesFosses/Bill Dodge matter. As the Board knows, Theresa DesFosses, an abutter to the Bill Dodge Auto parcel/project on US Route 1, appealed certain plan approvals (and the building permit) for the Bill Dodge Auto Group building project. Those appeals went to the Maine Supreme Judicial court. The Law Court concluded that Mrs. DesFosses' appeals should have been heard on the merits by Saco's Planning Board. In reaching this conclusion, the Law Court pointed to several parts of Saco's existing ordinance that could stand some updating. The attached changes were undertaken to address the Court's concerns, and should prevent a repeat of the long process incurred by Mrs. DesFosses.

**Tim Murphy, City Attorney:** highlighted some of the areas that the Law Court weighed in on.

1. The ZO was unclear as to how decisions made by the Planner for site plans should be considered and if they can be reviewed by anyone above (Planning Board, Zoning Board, and Superior Court). The changes set up a very clear, defined corridor: decisions of the Planner on site plans can be appealed to the Planning Board, decisions of the Planning Board go up to Superior Court. This effectuates the apparent intentions of the drafter to have all site plan matters stay outside of the review authority of the ZBA, and to stay within the planning side of the house.
2. The ZO also suggested "applicants" could appeal some Planner decisions but left open the issue of whether abutters like Mrs. DesFosses could appeal an adverse decision. The revisions have a consistent objective to say aggrieved parties can appeal. This allows for any person (not simply applicants only) truly affected by a decision to seek relief.
3. The ZO was unclear as to the appeals role of the ZBA. For example, were they authorized to hear appeals of site plans as some suggested. The changes are proposed to harmonize the overall appeal process of all matters within the ZO. It is proposed herein that the PB only hears appeals of site plan decisions. All other appeals run to the ZBA. Further, recent law Court decisions have clarified the matters a ZBA must be able to hear on appeal. Changes to the ZO section address that issue and are intended to more clearly define the matters to ZBA must take up.
4. The Law Court expressed concern that the ZO did not specify how some appeals are handled, meaning did the next body up conduct a full review on the merits (de novo) or was it acting only as a review body deciding whether the lower party acted appropriately. Changes were proposed to clarify this point, and harmonize the overall ZO.
5. The Law Court was also noted that an abutter might not be aware of decisions made affecting their abutting property if made by the planner. A change is proposed to address that concern.

**Don:** I am glad that decisions on site plans don't go to the ZBA, because I don't think it was appropriate for the ZBA to potentially substitute its judgement for ours on planning issues.. **Tim Murphy:** Article 10 is written up for Conditional Use, not site plan.

**Mike:** Sec. 901-10 Appeals, on page 9-7. The second sentence from end of paragraph should read: Facts “in the record to support”, instead of (in evidence to support). **Tim:** Something coming from Bob needs to be made known that it is a de novo review, but if from the planning board it isn't. **Don:** Section 1004-5. Submission of Evidence: Should the Zoning Board of Appeals announce before their meeting, that it will be a de novo hearing? **Tim:** I think it will already be pre-set and made clear what is being heard.

**Don:** Section 1004-7 Conflict of Interest: The end of the last sentence should read “except requested by member challenged.” Occasionally a member will challenge themselves or at least ask the Board for a determination on their situation.

**Bob:** Section 1003 Powers and Duties: The 60 days of the alleged act, action or failure to act. 60 days may be too long. **Donna:** She would suggest a middle ground of 45 days.

**Don:** Section 1003-2 Planning Board Appeals: He would reorient the sentences. He would add the last sentence and put it after the first sentence. It would structure it better. **Neil:** Section 1109 Changes in Plan: the end of the first sentence should read: “no action may be taken without notification to abutting parties having notice”. **Tim:** You should have Bob give some examples. **Don:** Who would be the aggrieved party? How do we determine what is a frivolous appeal. **Tim:** the court knows the term, “the aggrieved party.”

**Mike:** Section 901-10, Appeals: the second to the last sentence should read: “in the record” instead of in evidence. **Donna:** Section 1109 Changes in Plan: She doesn't know the meaning of all parties. **Bob:** we could change it to “previously noted parties”. **Bob:** Section 1109 Changes in Plan: second sentence should read, “as matters delegated to the City Planner”.

**b. Sketch Plan: a proposed 20-unit senior project on the site of the previously approved Kerry Village 10-unit Multi-Family Dwelling. Applicant is Kerry Brothers, Inc. Tax Map 30, Lots 48, 40 and 54. Zoned B-2d.**

**Hamblen:** Applicant Kerry Brothers, Inc. proposes to put aside the approved ten unit Multi-Family Dwelling on this property adjacent to Horton and Woodland avenues, and instead consider a twenty unit Elder/Disability Housing Facility, a permitted use in the B-2d zone.

The latter proposal would allow double the number of units by virtue of footnote 17 to Table 412-1, which establishes the minimum lot area per dwelling unit for Elder/Disability Housing Facilities on public sewer at 2,000 s.f. per unit, as opposed to the 4,000 s.f. per unit required for a Multi-Family Dwelling.

Parking requirements are also more forgiving, as one space is required for every two units for “multi-family residential restricted to elderly,” while two spaces are required for two-bedroom units for multi-family dwellings, plus another space for every six units or fraction thereof. So, ten spaces could suffice for the elderly configuration, while 22 would be required for the multi-family.

The Board granted approval for the conditional use – multi-family dwelling – on April 23, 2013, then approval for site plan and final subdivision plan at its meeting of June 11, 2013. The plan included two 4-unit buildings, and a single 2-unit. The applicant returned seeking to amend the plan with a change to five 2-unit building, and received approval on Feb. 17, 2015.

**Bill Thompson, BH2M, is project manager.** There will be 2 floors with 10-units on each floor. There will be less pavement, because there will no longer be 5 buildings. The access stays the same, which is off of

Woodland Ave. **John Kerry, applicant:** there is a demand for senior housing. Due to economics, they haven't been able to make the duplexes work. **Bob:** what about screening? **Bill:** they are 40ft off the property line, and there is some existing buffering. They will add more as needed.

**Peter:** this is a good plan for the seniors. We don't have enough. However, the design of the building should be looked at.

**Neil:** Has anyone checked into the stop sign? Was it determined if the McDonald's plan has it on their plan? There isn't one there now.

**c. Sketch Plan: a proposed 26-lot subdivision off Chantelle Way and Blake Avenue. Applicant is Star Homes. Tax Map 88, Lot 12. Zoned R-1d.**

Hamblen: This is a proposed 26 lot clustered subdivision on the 19.4 acres at the rear of the Sierra Woods subdivision. Clusters are allowed in the R-1d zone on parcels 15 acres and larger, served by public water and sewer – these criteria are met. A little history on the overall property: the Sierra Woods subdivision was approved by the Board on April 10, 2001, subject to both local subdivision and Site Location of Development review. The original, undeveloped parcel was 65.78 acres and had been owned for a number of years by the Laurel Hill Cemetery Association. Sierra Woods occupies a 46.08 acre portion of that. Laurel Hill sold the rear 20+/- acres to Andy Howard dba Sierra Gardens Sierra Woods, Inc., in 2004. The current applicant acquired the parcel at auction in 2012 (Now proposed as Sandy Brook subdivision.)

Work on Sierra Woods began in early 2003. The site was a difficult one, with a layer of marine clay making for a soupy mess. With routine inspection of the site by both Deluca Hoffman and BH2M, the design engineers, the City was reasonably confident of the integrity of built infrastructure by the time streets were accepted in 2009. The original developer left the country, and the City 'took' the remaining financial guarantee funds of roughly \$110,000, with which it oversaw the completion of streets as far as the money would go. Blake and Jasmine were completed; Chantelle was built and base paved, but the money ran out before sidewalks and curb were installed, nor was finish paving done. It is the City's intent that the developer of "the back 20" will complete Chantelle Way.

There is an existing NRPA permit for Sierra Woods, which required that the portion of Deep Brook that crosses the property be protected by a conservation easement. Now that more of the property is proposed for development with more of the stream involved, the DEP may seek to extend that easement – unknown at this point. Also, what additional wetlands impacts there may be is unknown. We would expect the applicant to confer with the DEP as to whether this project would be viewed as a common scheme along with Sierra Woods, as noted in Joe Laverriere's 2/16/16 memo.

**Bill Thompson, BH2M engineers:** Joe Frustaci, applicant, acquired this parcel through auction. There is an existing stormwater pond. This will be a clustered subdivision with most of the lots being 10,000 sq.ft. and a few at 15,000 sq.ft. Open Space in the center of the development, as well as open space on the perimeter. There will be some off-site improvements to Chantelle Way. Mr. Frustaci will be making improvements such as, sidewalks and curbing and finish paving on Chantelle Way. There will be a per lot fee at time of building permit for those improvements. A Site Location of Development permit is needed, with the City having delegated authority.

**Joe Frustaci:** This is my 16<sup>th</sup> subdivision. He met with Pat Fox and Angela on the issues that occurred prior, so he is aware of the bad name it has. He will develop, at his cost, the infrastructure and improvements to Chantelle Way. He would like to give the Open Space to the City. He is sensitive to the neighbors' concerns.

**Peter:** Will these houses have full basements? **Joe:** Yes. They will be marketing the houses around \$300,000 plus. **Don:** As requested in Article 6 of the zoning ordinance, the applicant must bring a conventional plan to the Board. **René:** The Parks and Rec dept. will determine whether they would want the Open Space.

**Joe F:** Maybe the center open space could belong to the Home Owners Association, and the City has the outer areas of open space? **Neil:** Because of the concerns from the neighbors, regarding this development, he opened questions from the public.

**Tony Palleschi, 7 Chantelle Way:** He would like to know what the process is, especially moving forward. Bob explained that there would most likely be 2, and seeing that this is a proposal for a clustered subdivision, a 3<sup>rd</sup> meeting would be needed, all of which abutters would be notified. There would most likely be revisions to the plan as comments come from engineering.

**Cynthia Chadwick-Granger, 3 Sean Place:** She is glad to hear that the house prices will be \$300,000 - \$400,000 range because that will bring their property value up. She is concerned about traffic. She would like the sidewalks to be installed and finish pavement on Chantelle Way. She does not, however, agree with having a clustered development. Her lot is .66 acres, and that is what is in this development. She would like to keep it that way. Cluster doesn't work. We have the look of a traditional and conventional development.

**Peter Koffler, 21 Blake Ave:** You mentioned one phase. How many years will it take to complete? **Joe F:** At best would be a 2 year process. It is their intent to keep the lots and not sell them off to other developers. This way we keep control. **Tony P:** He lives on Chantelle Way and they are still waiting on sidewalks. It is the primary road in to the neighborhood. At this rate, his son will graduate from high school before he sees a sidewalk built. **Joe F:** He will put the sidewalk in before he builds in his development. **Tony P:** He has concerns with the proposed Open Space in the center of development. It might be neglected.

## 7:00 pm Regular Meeting

**Mike O'Toole** recused himself, because of his relationship with the applicant.

### 1. Minutes of February 9, 2016

Donna: Correction on the approval of the Jan. 19 and Jan. 26, 2016 minutes. The Jan. 26 minutes should have read "Donna asked for clarification, not Don". Donna asked that the Jan. 26 minutes be clarified that on her motion found on p. 5, the second was provided by Mike. Peter: I move to accept the Feb. 9 meeting minutes with corrections, seconded by Donna. Motion passes 5-0.

### 2. Public Hearing: subdivision review of a preliminary plan for a proposed five lot single residential subdivision at 107 Flag Pond Road. Applicant is Bill Koch. Tax Map 76, Lot 5. Zoned R-1a.

**Hamblen:** Applicant Bill Koch proposes to create four new lots from a roughly 5.54 acre parcel with frontage on Flag Pond Road. Lots 1, 3, 4 and 5 would each be accessed via the proposed Apple Tree Lane. Frontage for Lot 1 would be via Flag Pond Road. Frontage and an existing driveway would be provided via Flag Pond Road for Lot 2, an existing single family dwelling. Lots would be serviced with public water and septic systems.

No open space is proposed; the draft conditions of approval require payment of an open space and recreational facilities impact fee. Based on feedback from the Board during sketch plan review, the proposed right of way includes a connection as a future ROW to the abutting parcel to the east, 980 Portland Road. Project manager Mike Tadema-Wielandt, P.E., is representing the applicant.

The applicant has requested waivers for sidewalk and curb along the proposed street.

**Rene: I move that the Board waive the specified submission requirements: Section 5.2.2.16 sidewalk and curbs, seconded by Donna, motion passes 5-0.**

**Don: I move to find the application for preliminary subdivision review to be complete, seconded by Rene, motion passes 5-0.**

**Don:** His concern is, kids in the interior. Will this become a feeder road to a much larger development? It doesn't make sense. **Rene:** There is an existing trail that could be part of the development. **Bob:** But there is a parcel in between abutter and the development. Can't assign that responsibility to the developer.

**Michael Tadema-Wielandt, Terradyn Consultants LLC:** The parcel is 5-1/2 acres. There is an existing house that was carved out, so they will create four new residential lots and a 525 linear foot road, and will be offered to the City for acceptance as a public street at the conclusion of the project. All four lots will have access on Apple Tree Lane. The road will end with a hammerhead turn-around, which will also provide for possible future street connectivity to the adjacent parcel to the east. The new lots will be served by City water, and individual subsurface wastewater disposal systems. Stormwater runoff from the developed site will largely follow existing patterns. Runoff from the road will be collected in roadside swales and conveyed to two forested stormwater buffers for treatment and infiltration.

**Don:** Lot 1 has access on Apple Tree Lane, but his frontage is on Flag Pond Road. The frontage has to be counted on the street it comes out on. Can the Board waive frontage requirements? And on item 1.11 of Stantec's comments dated February 19 regarding identifying water wells on adjacent properties? **Mike TW:** they haven't found any.

**Don:** Also 2.08 regarding traffic. **Michael TW:** this subdivision doesn't trigger traffic analysis. I will provide an estimate. **Don:** Item 3.03. Do we have the jurisdiction to change the access limitation? **Bob:** Dick Lambert's comments dated Feb. 10, states that frontage is all set. **Don:** Were the street and lots all looked at together? **Joe Laverriere, city engineer:** Chapter 500, it's permissible. The building lot as a whole has to be looked at, but this does not fall under Site Law.

**Donna:** Item #3.02 "Flag Lot". **Michael TW:** this is not a flag lot. **Joe L:** He agrees that this is not a flag lot. That was not the intent of the ordinance. **Don:** We need to get Dick's input and his interpretation of frontage and flag lots.

**Rene: I move to open the public hearing, seconded by Donna. Motion passes 5-0.**

**Susan Gibney, 116 Flag Pond Rd.:** we live across from where this development will take place, and they have vehicles using their driveway all the time, to turn around. They don't want construction vehicles using it to do the same. **Michael TW:** Most of the construction vehicles will be coming from Route One, but we can add to the plan and put signs up to discourage that. **Bob:** we could make that a Condition of Approval as well.

**Rene: I move to close the public hearing, seconded by Donna. Motion passes 5-0.**

**Discussion:**

**Neil:** There are five items to be considered as conditions of approval. Does Lot 1 have enough frontage? Is Lot 3 considered a flag lot? No construction vehicles to turn around in the Gibney's driveway, comments from both Stantec and Joe Laverriere to be satisfied.

**Don:** What constitutes frontage, because it could change the whole proposal, and do we have jurisdiction to change it? He would like to have Dick Lambert's input.

**Rene:** He is confident in making it a condition of approval.

**Peter:** Move that the Board grant approval under the provisions of the Saco Subdivision Regulations for the preliminary plan submitted for the proposed Apple Tree Lane subdivision based on the attached Findings of Fact and Conditions of Approval dated February 23, 2016, with amendments: to have clarification from the Code office regarding Lot 1 frontage, and Lot 3 as a flagged lot, and no use of construction vehicles on neighbors driveway, and that all comments from the City engineer and Stantec be met to the City's satisfaction, seconded by Donna, motion passes 4-1 (Don).

Meeting adjourned at 8:00 p.m.

Respectfully submitted by,

Maggie Edwards  
Board Secretary