

Planning Board Minutes
January 21, 2015 – 7:00 P.M.
Town Council Chambers
125 Main Street
East Greenwich, RI

Present: Stephen Brusini, Chair; Michael Donegan; Jason Gomez;
John Ayotte; Chris Russo; Daniel Tagliatela; and Brad Turchetta.

Staff Present: Lisa Bourbonnais, Planning Director; and Sarah Jette, Legal
Counsel.

Mr. Brusini called the Planning Board meeting to order at 7:05 PM and
introduced the members and staff present. The Board welcomed newest
member Brad Turchetta who hasn't yet been sworn in and so will participate
in the evening's discussion but not vote on applications.

1. Pre-application of owner Jane Willoughby for the "Willoughby Plat No.
3", a four (4) lot residential subdivision located at 1214 Middle Road,
being Map 51 AP 16 Lot 4 on 48 acres in a Farm F-1 zoning district. All
lots are intended to be serviced by individual on-site septic systems and
wells, and the site is encumbered by wetlands and flood zones. While all
lots meet the dimensional standards, including frontage, a shared driveway
for three of the lots is proposed to minimize wetland crossings.

Professional Land Surveyor Michael McCormick was on hand to represent
the application. He explained the location of the property as being on the
south side of Middle Road about ½ mile west of Route 2. The property
abuts the historic Bailey Farm and open space owned by the East Greenwich
Land Trust. Existing on the undulating lot currently is a single house
accessed via a gravel driveway from Middle Road that includes a culvert
through the wetland. The house has a private well and septic system. The
soils in the upland areas are outwash types that are expected to drain well to
the wetlands. There is also a substantial outbuilding at the western edge of
the property where the property line juts out awkwardly.

Several years ago, the property owners considered developing up to 16 house lots on the property which would have required road construction of close to 2,000 feet. Now, in the interest of settling the estate, the applicant seeks to simply create four frontage lots, one of which would contain the existing house. Three of the lots would share the existing driveway which would branch off once it got past the wetland crossing. The fourth lot, at the western edge, would have its own ingress from Middle Road. Per the TRC's recommendation, the existing driveway would be widened and a turn-around would be provided in the interest of avoiding traffic conflicts. The process to get DEM to approve a culvert widening would be far simpler than seeking multiple wetland crossings for individual driveways or a standard road. As a Minor Subdivision, the applicant is not required to seek Master Plan approval. By the time the applicants come back before the Planning Board, they will be seeking Preliminary Plan approval and will have their DEM permits including either a Subdivision Suitability Determination or individual OWTS approvals. Each lot will also be served by a private well.

Noting that the proposed lots were all very large, far exceeding the minimum lot size requirement, a discussion ensued about the possibility of further subdividing these lots in the future. Mr. McCormick stated the applicants have no interest in additional density here and their real goal is to create large, high value estate lots. The Board was concerned that some subsequent owner might pursue additional development, the impacts of which would need to be aggregated with the current proposal. For example, the addition of only a couple more lots from this original 48 acre parcel would change the way the Board looks at traffic impacts, the need for a real road versus a shared driveway, and the need to provide a deed restricted affordable housing unit (required in the regulations for any development of six or more housing units). Staff added that the goal is always to master plan new development to the degree possible rather than taking a more incremental approach and there is always concern that developers may seek to propose two Minor Subdivisions over time rather than a single Major Subdivision just to get around the affordable housing mandate.

There was brief discussion regarding the potential creation of a homeowners' association to deal with maintenance and upkeep, particularly of shared driveway. Staff noted that while associations work well in many

neighborhoods where common areas need attention, they are not absolutely necessary for proper driveway maintenance. Some other mutual agreement with perhaps a deed notation may work as well as a dues collecting association. The Board agreed it will likely address the responsibilities for the shared driveway in a condition on their final decision. Board members, including the Chair, also felt strongly that any further development proposed for any of the subject lots be treated essentially as a major project wherein public safety, traffic impacts, inclusionary zoning and all other aspects of land development and zoning regulations are carefully considered. For the most part, board members opined that the proposed project is a good use of the land, and will have minimal fiscal, environmental or other impacts. The applicant was encouraged to continue engineering their plan sets for submission to DEM and other agencies and to return for Preliminary Plan Review when they are ready.

2. Referral to the Planning Board of an Administrative Subdivision by applicants Joseph and Michele Madden for 7 Ashbrook Run, being Map 73, Plat 9, Lots 248 and 277. The applicants desire to re-draw the lot line between the two parcels (yielding no increase in the number of lots) resulting in a lot configuration wherein one of the lots does not meet the Minimum Buildable Area standard set forth in the Subdivision Regulations.

Michael McCormick, Professional Land Surveyor, was sworn in to represent the applicant. The Chair noted Mr. McCormick had previously been qualified as an expert by the Board and there was no objection from the membership to accepting him as such.

Mrs. Bourbonnais and Mrs. Jette briefly addressed the process for dealing with the subject application, noting that while it is uncommon, the Board has the authority to hear and decide the petition. Mrs. Jette confirmed that staff and the Board had been right to hold the two lots that are the subject of the application to the same MBA standard as all new lots created under the Land Development and Subdivision Regulations are held to. (The staff report had indicated the applicants felt that since their plan yielded no more lots than currently exist on the tax rolls and simply reconfigures the ones that are there, the MBA did not apply). Mrs. Bourbonnais noted that if the Board

opts to not approve the application, there is no appeal process immediately available to the applicant. On a “referral” petition, the applicants would be required to re-submit as a formal Major Land Development, officially requesting a waiver from the MBA Standard.

Mr. McCormick provided some background regarding the existing lot configuration and how the two lots came to be. One is accessed off Ashbrook Run and the other is a frontage lot on Howland Road. Apparently, when Howland was being developed in the 1960’s, the subject frontage lot was essentially a residual piece from other buildable parcels that were carved out. It is heavily encumbered by wetlands and has, up until now, been used as essentially part of the yard for the Ashbrook Run home. Unfortunately, it is being taxed as a buildable lot since it exceeds the lot size minimum for the zone, and now that sewers have been extended, it will be subjected to a sewer assessment as well. The applicants would like to sell off a buildable lot to avoid these costs. It was Mr. McCormick’s strong opinion that the plan, as proposed, would yield a more rectangular and more conforming lot than the parcel as configured now, and the buildable area, while not meeting the minimum standard, would certainly be greater in square footage than the existing lot. He had thus concluded that the plan as currently submitted is a better one from a practical and environmental standpoint than any plan attempting to site a house on the Howland Road lot as currently configured. There is some upland on the existing lot but zoning relief would be needed in order to build structures there.

Responding to questions from the Board, Mr. McCormick stated that any house footprint on the new lot would be modest with dimensions of roughly 26’ X 36’. Such a house would fit in with the character of its surroundings. There is more contiguous upland on the proposed lot and any house proposed for the current lot would have to be even smaller and would need to be sited off to the western corner of the parcel. It was Mr. McCormick’s assertion, based on his experience with DEM, that it would be easier to get a wetlands permit for the property as configured per his layout because it is environmentally a much more sound plan. It avoids zoning relief and avoids any impact on the biological wetland. The only impacts would be to the defined perimeters whereas attempting to build on the existing lot would

likely involve filling a wetland which is not a good environmental solution and which involves a lengthy, arduous and expensive DEM approval process.

Mrs. Bourbonnais gave brief history of the MBA standard noting that its inclusion in the Subdivision Regulations dates back about 10 years. The standards were based on the underlying zoning and no adjustments were made to accommodate access to public sewers. The standards are probably due to be updated since, at the time of their writing, there were still R-30 zoned parts of Town that were un-sewered and obviously more land area is needed when individual septic systems are required. While the standard probably could and should be modified, both staff and the Board agreed that such revisions would certainly not reduce the required buildable area to as low a number as is being proposed here. The proposed lot has just about 1/5 of the required area which is an extreme deviation.

Board members discussed this aspect of the proposal at some length and ultimately concluded that while the proposed lot configuration actually yields a lot that is more buildable than the lot as it stands, the degree to which it fails to meet the standard is too severe and it would set a very bad precedent. The Board reviewed the language from the relevant Appendix addressing the MBA standard and noted that it applies to all “proposed” lots and is clearly applicable here. Some Board members questioned their authority to even grant such a large waiver without a formal Major Subdivision Application being filed and thus no advertised public hearing being conducted.

The Chair opened the meeting to public comment and the property owner Joseph Madden asked to speak. He stressed that he is faced with paying two sewer assessments here and is being essentially taxed twice as if he has a developable lot. Attempts were made in the past to donate the lot to the Town to get it off the tax roll but the Town had no use for it. He then requested a brief recess to discuss his next steps with Mr. McCormick.

Upon reconvening, the Board agreed by consensus to a continuance of the application to allow the applicant time to figure out how to best proceed. Submitting an application to DEM and trying to get one or the other of the lot configurations approved was suggested as a course of action. Once any

such approval is in place, the Board would then be prepared to further consider the application.

3. Discussion: Brief overview of potential upcoming zoning revisions.

Mrs. Bourbonnais suggested that 2015 will likely be a busy ordinance-writing year for the Board. Updates resulting from the recently approved Comprehensive Plan will be required along with some special projects that have been prioritized by the Town Council. Planning Staff is currently working on one such ordinance amendment which involves addressing medical marijuana growing and dispensing. The goal is to not only deal with residential scale cultivation but to more broadly address cooperative cultivations, compassion centers and other related land uses. Board members were asked to start familiarizing themselves with the legal framework in Rhode Island so that a local Ordinance can be advanced to the Council for adoption in the near future.

4. Minutes: Motion by Mr. Donegan, second by Mr. Gomez to approve the minutes of the December 3, 2014 meeting. VOTE: 5 – 0 – 2 with Mr. Ayotte and Mr. Turchetta recused.

5. Planning Board Member Comments: For items not on the agenda and not relating to specific applications. The Board asked that staff send a 2015 meeting calendar via e-mail to all members for advance planning purposes.

With all business concluded, there was a motion by Mr. Gomez, second by Mr. Ayotte to adjourn at 8:30 PM. VOTE: 6 – 0 – 0 in favor.

Minutes respectfully submitted by Lisa Bourbonnais, Planning Director.

For further information, please refer to the recording available in the Planning Department.