



**TOWN OF
BROOKLINE, NEW HAMPSHIRE
PLANNING DEPARTMENT**

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**Planning Board Minutes
August 18, 2022**

Present: Alan Rosenberg, Co-chair
Scott Grenier, Member
Steve Russo, Selectboard Representative
Chris Duncan, Member
Absent: Eric Bernstein, Co-chair
Brendan Denehy, Selectboard Representative Alternate
Eric Pauer, Alternate
Staff: Michele Decoteau, Town Planner

General Business

A. Rosenberg called the meeting to order at 7:04 PM and read the rules for a hybrid meeting:

Mail

The Board reviewed mail folder. No comments.

Minutes

The Board noted the correction from “yards” to “feet” and did not have a quorum of members who were present at the meeting to vote. Minutes were tabled until next meeting.

Application Review

SP#2022-B:H-42

Jay Chrystal, Housing for Older Persons Development, 23 Main Street

A. Rosenberg opened the public hearing.

R. Haight, Meridian Land Services, appeared in addition to the applicant, J. Chrystal. M. Decoteau reviewed the staff report noting the new documents. The applicant had provided a traffic count study, the fire department and the DPW direct had new letters. New legal documents had been provided and Town Counsel reviewed them and said they were fine.

M. Decoteau said there were new documents regarding the need for an excavation permit. The Board discussed the location of the site, expected number of truck trips, and the environmentally sensitive nature of the location. The Board came to consensus that a permit would be prudent. J. Chrystal, the applicant, said there are precedents in Town where nearly as much material was removed from sites and no permit was required. He said that he would prefer to have the timing of trucks and reclamation be part of the site plan. B. Parodi (representing the applicant) said that the statute says that that if an excavation is incidental to a use it is exempt. B. Parodi cited *Carrol v Rines (Town of Carrol v William Rines, Nov 2012)* regarding the exemption of an excavation and that no other developer in Brookline has been asked to do this. The discussion continued regarding the Alteration of Terrain (AOT) permit application, the stormwater management, and FEMA flood maps of the area.

The Board wanted to discuss with Town Counsel and Town Engineer the timing of excavation, number of trips allowed per day, stormwater, and the AOT permit application. D. Bechis (39 Pepperell Road) asked about the Stormwater Management Plan for the site. R. Haight said he was planning to respond next week to DOT regarding the driveway, AOT with remaining questions, and the Town Engineer.

A. Rosenberg returned to the road issue. The Board discussed that the Select Board would be the authority to approve a public road. The Planning Board had the authority to set the standards. The applicant could seek a variance from the Ordinance limiting the number of driveways off a public road or other relief if they chose. J. Chrystal said he understood and may seek relief after this case. He asked the Board about the waiver request for the location of the sign for the shared driveways.

J. Chrystal confirmed that the new plans addressed some of the concerns raised by the Nashua River Watershed Association and had moved the fire suppression system to a new location to protect the vernal pools, one dwelling was also moved and the sidewalks were narrowed to reduce impervious surface. He confirmed that homeowners would be required to use non-chloride containing de-icing chemicals on their walkways and steps and the remaining surfaces would be treated by trained personnel to reduce chemical use in this development.

T. Quarles (32 Main Street) said he was concerned about the traffic study. He said it was a traffic count and not the safety study the Board had requested. He said that the board had heard about the traffic concerns and this report did not address all the concerns. T. Quarles said that the excavation was a concern. There is a school bus stop in that area and with the many trucks expected to be entering and exiting. The amount of the excavation is significant – even if Mr. Bechis' estimates are not exact, they are good estimates. His estimate is 100 times what is considered incidental and the Planning Board needs to hear from abutters as there are going to be serious problems with traffic.

T. Tochko (30 Main Street) said if Mr. Bechis calculations are correct, he estimated approximately 80 trips, 8-10 hours per day for months at a time. He urged the Planning Board to look at the whole picture.

D. Bechis (39 Pepperell Road) said he was glad to see the environmental concerns being addressed. He asked if the removal of this much material would affect the water quality in the future. He asked if NH Fish and Game would be interested in reviewing the proposal. He asked about the Town Engineer's comments on the excavation. D. Bechis asked if the removal of this much material would reach bedrock? Finally, he asked about stormwater calculations.

R. Haight said that the Alteration of Terrain (AOT) permit includes flood plain determinations, an estimate of material to be removed, remediation, and erosion controls. There will be a SWPPP (Stormwater Pollution Prevention Plan) provided to the EPA on the site and they will submit a Notice of Intent for the trees and gravel.

C. Duncan asked about the calculations for the amount of gravel to be removed. R. Haight said that once we know the final grading, we will provide a calculation and the number of trucks needed and list hours. D. Bechis asked why a more accurate number was not available now. A. Rosenberg asked about why so much material needed to be removed. R. Haight said this need to be a nearly flat site both for the elderly and for fire access. He said they don't want any steep slopes and need to grade to keep the stormwater onsite.

The Board discussed the expiration of the 65-day review period. The applicant provided a written request for a 35-day extension.

S. Grenier MOVED to grant a 35-day extension for review. S. Russo SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

C. Duncan MOVED to continue case SP#2022-B:H-42 to September 15, 2022, at 7:00 PM. S. Russo SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

LLA#2022-5:C-001

Jerry Farwell on behalf of Jane E. Provins Revocable Trust of 1999, 3 lot subdivision of C-001, North Mason Road
A. Rosenberg opened the public hearing.

J. Farwell appeared for the applicant. M. Decoteau confirmed that all fees were paid, abutters were notified, and notices were posted. She reviewed the staff report and noted that the applicant resolved all the questions she had. The Fire Department said that once a foundation is in place, measurements need to be taken and if the foundation is more than 2500 feet from an approved water source, additional fire protection will be required. The Conservation Commission and the Selectboard had no comments. She said the application was complete except for the waivers requested.

J. Farwell reviewed the subdivision. The owner wants to subdivide her house lot, create a second lot and have a large remaining lot for potential future development. The applicant provided a list of requested waivers and supporting information in writing for the Board. The Board reviewed the waiver requests.

S. Grenier MOVED to grant the waiver request for Section 4.6.04.f since the utilities are already in place. S. Russo SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

J. Farwell discussed the need for a waiver for Section 4.6.04.I – the need to demonstrate that there will be no net increase in stormwater off site. C. Duncan said he wanted to clarify that the stormwater will not runoff on to the road or other lots. J. Farwell said that once development is proposed, then the stormwater plan will be provided to the Building Inspector. M. Decoteau said that if the Building Inspector had any questions about the stormwater plan, he could return this to the Planning Board. J. Farwell said this waiver request was more about timing not a request for stormwater management to be waived on the site.

C. Duncan MOVED to grant the waiver request postponing the fulfillment of Section 4.6.04.I requiring the need to demonstrate that there will be no net increase in stormwater off site, until the time of development and this information will be included on a building permit application. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

C. Duncan MOVED to accept application LLA#2022-5:C-001. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

The Board discussed the conditions that would be part of an approval. The conditions will be:

- The waiver requests need to be noted on the plan including a note postponing the fulfillment of the stormwater requirements.
- Satisfactory resolution of off site improvement fees with the DPW director
- Administrative conditions of 8 paper copies and one recordable Mylar to be provided to the Planning Board along with a \$25 check for the Hillsborough County Treasurer and prepaid mailing tube.
- A letter from the Surveyor shall be received stating that all bounds are in place prior to the recording of the final plan.
- Administrative conditions of 8 paper copies and one recordable Mylar to be provided to the Planning Board along with a \$25 check for the Hillsborough County Treasurer and prepaid mailing tube.
- Any outstanding fees be paid.

The Board agreed on the finding of facts: Along with the granted waivers, this subdivision of C-001, meets the subdivision regulations of Brookline NH.

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

SD#2022-6:E-090

David Farwell, Lot line adjustment between E-090 – E-090-I, Mason Road

A. Rosenberg opened the public hearing.

M. Decoteau confirmed that all fees were paid, abutters were notified, and notices were posted. She reviewed the staff report and noted that the applicant resolved all the questions she had. This is a lot line adjustment from a recent case. There will be no change in access. She had asked that information provided on past plans be included if that was still correct such as the woods road. She recommended approving the requested waivers and accepting the plan.

The Board briefly discussed why this readjustment was necessary and that the old woods road noted in the past had grown in.

S. Russo MOVED to grant the waiver request for Section 4.6.04.p on E-090-I since the wetlands are already delineated and granting this waiver would honor the spirit and intent of the ordinance. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

S. Russo MOVED to grant the waiver request for Section 4.6.05.d on E-090-I since there is no change to the west of lot E-090 are proposed that are not shown. This would carry out the spirit and the intent of the ordinance. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

S. Russo MOVED to grant the waiver request for Section 4.6.05.k for contour lines. This would carry out the spirit and the intent of the ordinance since this lot is already developed and is merely being reconfigured from 10.007 acres to 15.351 acres with a lot line adjustment plan. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

C. Duncan MOVED to accept #2022-6: E-090 & E-090-I. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

The Board asked about the new pins and if the old pins would be left in place. The applicant's representative confirmed that the new pins are already in place. The driveway easement needed to be updated to accommodate on pin change.

C. Duncan MOVED to approve #2022-6: E-090 & E-090-I subject to the following conditions:

- **Impact fee note added to the plan**
- **Waiver note added to the plan.**

With the finding that this is approved because it is in compliance with Town standards, ordinances, and regulations.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

Compliance Review:

Site Plan # 2016-D: J-50 – Compliance Hearing: Robert Waite, Averill House Vineyard

A. Rosenberg opened the hearing. R. Waite and S. Waite represented the Vineyard. R. Waite asked why he needed a compliance hearing if the nuisance complaint was shown to be false. The Board responded that in the February 2022 Compliance hearing, some changes were discussed that would address the complaints. This an opportunity to see if those changes were effective.

M. Decoteau shared the staff report that Valerie Rearick started for the February hearing. She discussed the site walk she had recently. She noted parking and event locations. She noted the location of the old spring house. She said the Police Chief responded that the only complaint regarding Averill House Vineyard was a noise complaint, he noted no driving under the influence stops near the Vineyard.

M. Decoteau said in February, R. Waite was asked to review the Home Business Ordinance and regulations. She said that concerns raised at that meeting included traffic and parking. At the site walk, she said they mapped out 30 parking spots in addition to the 6 set aside for resident use. She noted that Section 17.5 of the Home Business Ordinance says that a business that generates more than an average of 24 trips per day is prohibited. She asked for the Board to clarify what "average" referred to. Hours of operation was also raised in February – and the events outside were wrapped up by 6pm generally with a few going to 7pm. She reported that R. Waite said also that he had events from time to time that required more than two non-family staff members where the Ordinance says two is the maximum. She said that the Board should discuss when a Home Business outgrows the "Home" and should move to a commercial location. Also M. Decoteau noted that in one previous staff report, it was said that weddings were not allowed as a home business. M. Decoteau asked for clarification. She noted that some of the business plans for the Vineyard included catering and a bed and breakfast. That should be added to the site plan if the Vineyard was hosting weddings. M. Decoteau noted that the parking area in front of the house may need a temporary barrier to keep traffic using the driveway for egress. She noted that R. Waite had sent a response to the staff report.

R. Waite said that they are a Home Business only because there was no other category. There was always the understanding that this is a farm. He noted that there are additional employees for tending the grapes and production. They still have 2-4 employees as stated in the 2016 Site Plan, and for special

events, they hire a caterer who may have employees who use the employee parking area. He reviewed what happened in 2020 when they became very popular and that a reservation system helped with parking and visitor timing. He said that the nuisance complaints are just not valid. He said that noise is the only possible complaint but we hear our neighbor's radios and their kids playing in the yard. We are not louder than they are. They have moved more of their events to the middle of the day. He shared that they are close to the size that they want to be for events. We are looking for an outside area for larger events from time to time.

Abutters

A. Tate (6 Muscatanipus Road) said she had two nuisance complaints, lighting and noise. The lighting has been addressed. She said the Vineyard did move their events to the middle of the day, but she said that was still a nuisance as that is the time she is home from work. She said that a neighborhood should sound like kids laughing not an acoustic guitar playing. This is just about every weekend. She would like to hear additional decreases in noise on the weekend. They could put up a fence. Noise is still an issue.

T. Perry (4 Muscatanipus Road) thanked the Board for following up. She said she never made a trash or DUI complaint. She has always maintained that if this home business continued to grow, there would be some problems. She asked for guidance on the hours of operation. She noted that in February, events that were inside and not apparent, could go past 7pm. She said they have had events that do go past 7pm. She wanted clarification since even if the event happened indoors, there would still be traffic and lights apparent from off site. Other guidance she requests, the number of trips per day. She noted the hours of operation and said that using the reservation system could provide data on trips. Averill is a very busy road. Finally, she requests guidance on the land that was cleared in January, what is the gating factors that will keep the Vineyard a Home Business and curtail the commercial crescendo.

There was a discussion about a sound check made by S. Waite and it was in a good location. A. Rosenberg wanted to start with the noise issues. He asked about the proposed changes and if they had decreased the sound. R. Waite said they had moved the outdoor events so the sound carried away from the neighbors.

B. Doherty (11 Ruonala Road) urged the Planning Board members to drive through the neighborhood during an event and to see what impact it has on the area.

A. Tate (6 Muscatanipus Road) reiterated the history of the sound check from Muscatanipus Road. A. Tate said that the location was not the best to hear the noise they experience. Wanted to invite the Board or staff to experience and event from her backyard.

The Board asked for clarification regarding sound. R. Waite said he had moved the direction of the stage and turned the volume down. He has received no calls from the neighbors. S. Grenier asked about a noise ordinance. M. Decoteau said there is no noise ordinance per se. Noise is addressed in the site plan regulations but doesn't include specific decibel levels. A. Rosenberg said that Home Business were envisioned to be conducted inside the home. S. Grenier asked if there was a way to delineate what is part of the farm and what is part of the Home Business. He said that in February, the Board discussed agritourism. How do we determine what is part of agritourism? M. Decoteau said that some events are easy such as farm tours and tastings are clearly agritourism. The concerts and comedians are less clear. R. Waite said that he had the RSAs that allowed these uses including enjoying the wine in the open area. The Commissioner of Agriculture has stated that these events are covered by those RSAs.

T. Perry (4 Muscatanipus Road) wanted to discuss hours of operation and number of cars that are limited in the Home Business site plan. For both residential and agricultural uses, even with business in

place, there needs to be limits that are followed. The point at which the use becomes too big for this location hasn't been discussed.

K. Arpin (18 Averill Road) said she lived directly across the street from the Vineyard. She said the traffic issues on Averill arise from the subdivisions and houses not because of the Vineyard. She said with the intensity of the traffic, it is not safe. The Vineyard actually slows people down and she said she enjoys the music. She said that if the other abutters think a fence will help, they should put a fence on their property.

A. Rosenberg reviewed the original site plan approved in 2016. The site plan was amended in 2018 to allow for outdoor wine tasting. He noted that the hours of operation were not amended. They were Thursdays 9-5, Saturdays 11-4pm, Sundays 11-3pm. R. Waite said he needed to be open a certain number of hours per day to qualify for an agritourism permit. The Board discussed the hours and agritourism and what might take precedent. The Board asked that Town Counsel be asked to weigh in on the question.

C. Duncan MOVED to continue Site Plan # 2016-D: J-50 compliance hearing to September 15, 2022, at 7:00 PM. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

The Board noted the time and determined that a second meeting would be necessary in September. M. Decoteau briefly touched on the remaining items on the agenda and determined a second meeting each month would be necessary.

S. Grenier MOVED to schedule a work session on September 1, 2022 at 7:00 PM. C. Duncan SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

C. Duncan MOVED to adjourn at 10:59PM. S. Grenier SECONDED.

Discussion: None

Vote: All in Favor (4-ayes, 0-nays, 0-abstentions).

Respectfully submitted by Michele Decoteau, Town Planner & Board Secretary

Approved 2022.09.01