

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Meeting Minutes

August 23, 2023

Present: Members: Sandra Kelly, Peter Claypoole, Brendan Connolly, John Annaian,
Kevin Quinlan (Selectmen's Representative)
Alternate: Allen Hoch
Excused: Scott Bartlett, Norman Larson
Staff Present: Dari Sassan, Town Planner; Bonnie L. Whitney, Administrative Assistant

I. Call to Order: Chairman Kelly called the meeting to order at 7:00 PM.

II. Pledge of Allegiance: The Pledge of Allegiance was recited, led by Ms. Kelly. The members and staff then introduced themselves to the public. The Chair appointed Allen Hoch to sit on the Board with full voting privileges in place of Norman Larson.

III. Review/Approval of Minutes:

Motion: Mr. Hoch made the motion to approve the Planning Board Minutes of August 9, 2023, as written. Mr. Quinlan Seconded. Motion carried with Mr. Connolly abstaining.

V. Citizens Forum - None

VI. New Submissions - None

VII. Boundary Line Adjustment - None

VIII. Hearings - None

IX. Other Business/Correspondence:

1. **Voluntary Merger** – Francis A. & Patricia A. Petrous (121 – 88 & 87) (84 Baden Street)

Ms. Kelly noted that the Board was in receipt of an Application for and Notice of Voluntary Merger of Tax Map 121 Lots 88 and 87, as submitted by Francis A. & Patricia A. Petrous.

Ms. Kelly stated for the record that she was a friend and former co-worker with Mrs. Petrous, adding that she did not have a direct personal or pecuniary interest in the outcome of the application submitted and that she did not have a conflict and would impartially judge the application for voluntary merger.

Planner Sassan referred to his staff memo prepared August 22, 2023, noting comments and recommendation.

Motion: Mr. Connolly made the motion that the Board determines that the Application of Francis A. & Patricia A. Petrous (121 – 88 & 87) does not present a potential regional impact as defined in RSA 36:55. Mr. Hoch Seconded. Motion carried unanimously.

Motion: Mr. Quinlan moved to approve proposed voluntary lot merger of Tax Map 121 Lots 88 and 87, as requested by Francis A. & Patricia A. Petrous subject to the following conditions: 1) Applicant shall comply with all requirements of RSA 674:39-a. 2) No more than one unit suitable for use or occupancy as a dwelling unit shall exist on the lot unless necessary approvals are obtained, and to inform the applicant

that this merger will be regarded by the Land Use Office as an overt action on the part of the landowner to treat the entire area of the merged lots as a single lot, thus eliminating the possibility of performing a lot restoration pursuant to RSA 674:39-aa, as well that the resultant lot will be less than 5 acres, the lot will not be exempt from the Wetlands Ordinance because this merger represents the “creation” of a lot after 1/3/2008. Mr. Hoch Seconded. The Motion carried unanimously.

2. Ms. Kelly noted that under RSA 674:39-a, voluntary mergers, any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the Planning Board or its designee.

If the Board were in favor of this, the process of voluntary mergers could be designated to the Town Planner rather than applying to the Planning Board.

Members agreed with this as it would speed up the process, noting that if currently there is an issue with an application it is brought to the attention of the Planning Board with the Planners staff memo. This change would provide the Planner with the opportunity to approve a voluntary merger, therefore making the process quicker. Should there be an abnormal situation, the Planner could consult with the Planning Board.

Members questioned if this task was delegated to the Planner, would he then report that to the Board? Planner Sassan noted that he could update the Board at each meeting or monthly.

Planner Sassan noted that Section 9.6 of the Subdivision Regulations speaks to voluntary mergers, referring to the Planning Board. This Section would need to be amended through a properly notice public hearing at a future meeting of the Board. Planner Sassan will review the zoning ordinance and regulations that may be in conflict with that and need to be amended as well.

Ms. Kelly stated that the Board will hold off on making a motion until Planner Sassan has completed a review of the zoning ordinance and regulations. Planner Sassan felt that this would be a good change. It would be a benefit to the community and the Planning Board.

3. Planner Sassan stated that the Town was cc'd on a letter dated August 21, 2023 from NHDES. He noted that there should be limited discussion on this matter. The letter was issued to the consultant for the Koss development on Bean Road. Essentially DES has suggested that it would be unlikely for them to approve the community well as proposed. Planner Sassan said that this means that the proposal that the Planning Board approved, according to DES, is unlikely to work. There is a possibility that this project may be back before the Board again in a different iteration.

4. Discussion of Zoning Amendments

Planner Sassan noted that he had distributed a memorandum (see attached) which was a list of considerations pertaining to the regulation and permitting of driveways. He noted that the opinions expressed within the list were his.

He stated that this is a big issue in the sense that it touches the ordinance and regulations, as well as multiple departments in the Town, and the Selectboard has a role in the approval of driveway permits. Mr. Sassan believes that this should be the Planning Board due to the fact that the Planning Board is the entity that has subdivision approval authority. And as part of that subdivision approval authority the Planning Board has retained the authority to approve the grading of streets in subdivisions. Whoever does that, should be the body that oversees it, which is the Planner, DPW Director and Fire Chief.

It was asked how the Selectboard got that authority? Mr. Quinlan replied that it was most likely that it was a time before the adoption of zoning. Adding there a number of similar things where the Selectboard has to sign off on, and in today's day and age it doesn't necessarily make sense anymore. The question was then asked how that can be reversed? Mr. Quinlan suggested a letter be sent to the Selectboard seeking that the Planning Board be given that authority.

Planner Sassan stated that he and Mr. Hoch met with Chris Theriault, DPW Director, today. The ordinance talks about who pays for the installation of a culvert, which also needs to be addressed, and at that same time they can address anything else that might suggest that the Selectboard are the approval authority.

Mr. Hoch said that a driveway permit covers the intersection with the roadway, not all the internal portions or length of a driveway.

It was noted that there is a lot of confusion as to who regulates driveway permits, when a permit is required, are permits required for lots on both town and private roads, and do you need a permit to pave an existing driveway.

Mr. Connolly mentioned that driveway locations are depicted on both subdivision plans and site plans, which are reviewed and approved by the Board. If there is no development on a lot that was approved for several years, someone installs a driveway not in the location as approved, where the enforcement falls? How many situations exist where there is a private road that does not have a subdivision plan depicting driveway location? It was stated that there are many situations like that. Mr. Connolly asked where then does the enforcement lie?

A discussion ensued regarding the current process for the issuance of driveway permits. It was noted that there is a building code component, an environmental component, as well as drainage and life safety concerns.

Members shared concerns with a homeowner having to get a permit to widen an existing driveway, noting if it required Planning Board approval the homeowner may be required to get a storm water management plan at a great cost.

Mr. Sassan said that he and Mr. Hoch discussed if someone was looking for our driveway regulations, where would you logically look? They should be easily accessible.

Mr. Quinlan recommended that the Planning Board send a letter to the Select Board seeking approval to transfer the process for driveway permitting from the Select Board to the Town Planner. Mr. Sassan noted that he had been speaking with the Town Administrator regarding this.

Motion: Mr. Quinlan moved that the Planning Board requests the removal of the Select Board in the approval process of the issuance of driveway permits. Mr. Connolly Seconded.

Discussion on motion. Mr. Connolly questioned if the motion should include an assignment of where it will go. Mr. Sassan noted that there a likely a few steps that need to be taken. They need to review the ordinance, once determined it is the Planning Boards responsibility, they can make that determination.

Vote on Motion. Motion carried unanimously.

Ms. Kelly reiterated what is going to be done going forward, which includes simplifying the language of driveways, accessways, etcetera, centralize where to find the regulations and permit applications, as well as review of the existing regulations and zoning regulations that refer to the driveway regulations. Mr. Sassan noted unless it is decided because the driveway permitting is only supposed to address the one section where the driveway intersects the public road system, it's decided that having requirements associated with an area further in on a property, should not be in the driveway regulations, then they would propose to conciliate them in one place, potentially zoning in that case.

Planner Sassan said that the feedback provided from this discussion was beneficial and that he would incorporate the Board's comments as he continues to draft language pertaining to the regulation and permitting of driveways.

5. Planner Sassan noted that August 30th was the “fifth” Wednesday of the month, and that often times in the past the Board has utilized this extra Wednesday to hold a work session. He noted that there are no new submissions or continued hearings for the regularly scheduled meeting on September 13, 2023, and that they could hold a work session then. Members questioned if Planner Sassan could use the next few weeks to work on items discussed this evening. With the Planner indicating yes, it was the decision of the Board to not schedule a work session for Wednesday, August 30, 2023.

Motion: Ms. Kelly moved to cancel the work session for August 30, 2023. Mr. Connolly seconded. Motion carried unanimously.

X. Committee Reports

Mr. Hoch commented that the Milfoil Committee had met earlier in the day, noting a new invasive aquatic plant “spiny naiad” has been found at the Lees Mill Landing on Lake Winnepesaukee. This is an invasive plant that is similar to Milfoil, only worse.

XI. Project Updates - None

XII. Adjournment: Mr. Hoch made the motion to adjourn. Mr. Annaian Seconded. The Motion carried unanimously, and the Board adjourned at 8:18 PM.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant



MEMORANDUM

from the

OFFICE OF THE TOWN PLANNER
TOWN OF MOULTONBOROUGH, NEW HAMPSHIRE

DATE: August 23, 2023
TO: Planning Board
RE: Regulating and Permitting driveways

Following is a list of considerations pertaining to the regulation and permitting of driveways. Opinions expressed within the list are mine.

- The Planning Board and the Land Use Department should assume ownership of driveway permitting. RSA 236:13 names either the Board of Selectmen or the Planning Board as the local driveway permitting authority, dependent upon which Board possesses the authority to regulate the grading and improvement of streets within a subdivision as provided in RSA 674:35. I do not see that an ordinance or resolution has been passed naming the BOS as the body responsible for regulating the grading and improvement of streets within a subdivision. However, if such an ordinance or resolution has been adopted, it can just as easily be undone. The Planning Board should be familiar with the application process and authorize the Planner and the DPW Director as its agents to issue permits following a process and parameters set by the Planning Board. I have discussed this with the Town Administrator and the DPW Director, and both are on board with relieving the BOS of driveway permitting responsibilities.
- Towns are only granted driveway permitting authority for town roads. Though well intentioned, the Town's existing practice of asking for driveway permits on private roads is technically an overreach. However, the Land Use Office is proposing to create a joint application for both driveway permits and E-911 addresses, which will provide a mechanism to obtain information about driveways on private roads without attempting to require a driveway permit. This is particularly important on private roads that have been declared emergency lanes, as the DPW and property owners both want to know that driveways have been constructed in a way that will neither damage the Town's maintenance equipment, nor the individual's property improvements.
- It does not make sense to have life safety requirements for driveways contained solely within the driveway regulations because those only pertain to local roads. Life safety provisions, such as necessary turnarounds, should be imposed within the zoning ordinance, so that they are a requirement for every home.
- The purpose of driveway permitting authority is to manage impacts to the public road system, not to manage the impacts of the entire length of a driveway (this is another reason why life safety considerations should be in zoning rather than the driveway regulations).

As such, limiting driveway length, slope, radius, etc. shouldn't really be considered regulations enacted under driveway permitting authority. Rather, they are imposed under the Board's authority to regulate land development. *Other communities have identified that there is a difference between a driveway and a parking lot and have set parameters for when a "driveway" requires a building permit or even site plan review.*

- Given that driveway permits are only intended to address the interface between the private driveway and the public road system, it would not be appropriate to require a driveway permit for changes to a portion of the driveway situated well outside of the roadway right-of-way. Also, given that the Town requires a permit for the placement of a small shed, it follows that the Town would also want to require a permit for the placement of a large area of pavement. I suggest that we consider establishing thresholds above which a building permit is required for placing pavement. Additionally, a secondary threshold could be established, above which site plan review is required.
- Driveway setbacks are not clear enough. The driveway regulations establish a setback of 5 feet, but again, that only applies on town roads. Also, because driveway permitting authority only extends some limited distance from the right-of-way, it's not the right place to be establishing setbacks for the entire length of the driveway. The Zoning Ordinance requires that commercial parking areas be at least 10 feet from the property line, but it doesn't say anything about driveways. The site plan review regulations contain a driveway table, but that doesn't apply to homes, and it is not carried over into the subdivision regulation (perhaps intentionally). *Of note, roads are allowed right up against the property line.*
- Al Hoch has identified sections of the Ordinance and Regulations where driveways are discussed and identifying conflicts between sections. His work is captured in another document to be circulated as part of our discussion at an upcoming work session.

We look forward to discussing this with the Board at an upcoming work session.

D.S.