

**Brentwood Planning Board
Minutes
April 15, 2021**

Members	Bruce Stevens, Chairman	Present but not voting:
Present:	Kevin Johnston, Vice Chair	Alternate, Brian West
	Mark Kennedy	
	Doug Finan	Town Planner, Glenn Greenwood
	Paul Kleinman	
	Kristin Aldred Cheek	

Open: Chairman Stevens opened the public hearing at 7:00 pm.

Public Hearing

7:00 pm: Continued hearing for Master Plan Chapter adoption: Consideration of adopting the Community Profile chapter of the Master Plan.

Motion made by Aldred Cheek, 2nd by Finan, to continue the hearing for consideration of adopting the Community Profile chapter of the Master Plan to May 6th, 2021 at 7:00 pm in the Town office meeting room. All were in favor. Motion carried.

7:00 pm: Continued hearing for a 6-lot Subdivision with Open Space Application: Applicant Joseph Falzone; Owner Gardner & Mildred Ladd Revocable Living Trust. Property is located on Route 107, Brentwood, NH 03833 in the residential/agricultural zone, referenced by tax map 224.036.000. Intent is to subdivide the parcel creating 6 frontage lots with approximately 18.7 acres of open space. **Jurisdiction was invoked Feb. 18th, 2021 and hearing continued to 4/15/2021.*

Present: Applicant Joseph Falzone; Scott Cole of Beals Associates.

Abutters Present: Jay Wright.

Cole representing Falzone gave an overview. Originally, they came in with their 1st plan with shared driveways. During the review and meeting with Glenn, it was discovered that with an open space subdivision, the interior lot lines cannot impede on the 100' perimeter buffer. They came back with a revised plan showing three 50' ROW's, approximately 150' long. The Planning Board didn't like the ROW's and recommended ZBA relief for the lot lines. On Monday, April 12, 2021, the ZBA granted a variance to allow the interior lot lines to go through the buffer. With the variance, they are back to the original design with a 6-lot open space subdivision with about 18 acres of open space in the rear and 3 common driveways, split down the lines between the lots. Any comments pertaining to the three ROW's in the review letters would no longer be applicable.

Greenwood said RCCD did the density but Greenwood's comments from February, #5 through #18 are plan comments and have not been addressed yet. Cole agreed and said there is some tidying up still to do. Cole added the driveways are intended to split after the 100' buffer. The Board discussed the buffer and if there was a need for screening or plantings. Cole said it would be a natural buffer except for the driveway cuts. Greenwood said the ordinance was changed last year regarding more than one accessway and stormwater management can be in the buffer but that's all that can go in the buffer.

Kennedy asked can it be decided that nothing is to be built in the buffer? Stevens said no structures to be erected in the buffer. Falzone and Cole agreed it can be done in the deeds. Aldred Cheek asked for the house placement areas. Cole said the houses would be close to the 4K septic area. Stevens added there are no wetland soils or setback requirements. Greenwood said there should be a 40' x 80' building envelope shown on the plan that depicts the possible locations of the houses be put on the plan. It's listed in TEC's comment letter, #15 section 8.21.3 (e). Cole will add. Greenwood added it's to ensure that

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there is a location for a home, but it doesn't have to be the exact location of the home. Greenwood suggested that the hearing be continued to the next meeting as it would be nice to get back final sign off letters from everyone. Falzone said he's affected by a 30-day appeal process and will be out of contract. Greenwood suggested that the conditional approval can state that there has to be compliance with the comment letters from himself, TEC, SFC and the Fire Department. Greenwood didn't see any issues but if the applicant can't come to an agreement with one of the comments from one of the reviewers and it has to be mediated by the Planning Board, if a conditional approval is granted, this process would have to be re-opened if it's something that can't be handled administratively.

Greenwood added that SFC's comments are more on fire truck access and turn-a-rounds, the point of access is NHDOT's concern and SFC's comments are letting you know what needs to be done for what they are requiring and as long as the Board gets a letter from SFC saying that that's occurred, then it's fine.

Falzone met with the Fire Chief and they have agreed that Falzone will upgrade the old fire pond, the pond in failure on Mill Road, that is only 900' away. The Chief would like it updated for the existing houses around it. Falzone has agreed and will fix the apron, piping and cut the trees on the old pond. The owner is the person Falzone is purchasing the property from. The Town (*Fire Department*) would then maintain the fire pond. Stevens asked about an easement. Falzone said it's listed in the Fire Department's fire ponds so there is probably an easement already. Steven's questioned if the Ladd's had an easement. Greenwood added if the Town is to maintain it, there should be an easement allowing for the Town to maintain it.

Bickum mentioned an updated impact fee block on the plan \$9,368 per lot, 6 lots. The new block has no signature lines.

The Board discussed conditions of approval and with no roads proposed now, there was no need for a construction bond and there is no landscaping bond.

Conditions:

1. Satisfy any outstanding comments from Greenwood, TEC, SFC, and the Brentwood FD. (*Per discussion earlier, Board needs a final comment letter from SFC for compliance*).
2. Receipt of all State permits.
3. Receipt of legal documents; draft deed language including "nothing can be built within the 100' perimeter buffer" and the HOA docs.
4. Provide a copy of an existing easement for the fire pond or a new easement for the fire pond is to be prepared.
5. Receipt of \$2,000 to be put into escrow for inspections to be replenished as necessary. (*Additional \$500 for pre-construction meeting not required*).

Motion made by Kennedy, 2nd by Finan, to grant a 120-day conditional approval with the conditions stated above for a 6-lot open space subdivision on Route 107 for applicant Joseph Falzone to August 13, 2021. All were in favor. Motion carried.

7:00 pm: 2nd Preliminary Consultation: Owner's Michael & Teresa Kirby to discuss a potential Lot Line Adjustment with their two properties on Scrabble Road, Brentwood, NH in the residential/agricultural zone. Tax map 210.023.000, 56 Scrabble Road, with 2.02 acres and an existing 3-bedroom house and tax map 210.024.000 with 12.87 acres and 50.67 feet of frontage. Intent is to create a right of way in order to provide the frontage on each lot in order to construct a single-family home on 210.024.

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Present: Bruce Scammon from Emanuel Engineering; Michael Kirby; Resident Paul Kirby.

Scammon representing the Kirby's gave an overview. Back in January, they were here to discuss Kirby's plan to add a new ROW off Scrabble Road to obtain additional frontage to build a single-family home on the back 12-acre parcel that has a 50' ROW. The Kirby's own both lots, front lot with existing house and the back lot. There is a note on the plan that in order to develop this lot (*12+ acres*), septic and frontage that meets Town regulations would have to be approved. They had proposed a private ROW about 5,000 sq. ft. between the two lots creating 258' of frontage on one lot and 200.67' for the other. They had left the meeting in January thinking they could move forward with a private ROW. After the February 18th Planning Board meeting, they received an email from Greenwood saying that it had to be a public ROW. My client would like to keep this as a private ROW until the day it's extended and the lot is fully developed, if that ever happens. They went back to the ZBA to continue seeking a variance for frontage relief and on Monday, April 12th, 2021, the ZBA asked them to go back to the Planning Board to discuss further.

Scammon is concerned with having it a public ROW and having to be a hammerhead where it's just serving a single residence and asked if the Board could give waivers to those regulations. A hammerhead here would extend very close to his client's existing house and it doesn't make sense to build a road 600' or so for a single residence; it's \$300 to \$400 a lineal foot for a road plus a wetland's crossing; a quarter of a million dollars for a road. Putting in a small section that meets road standards here makes more sense and asked what is required absolutely and what is reasonable?

Kennedy confirmed that it would need a lot line adjustment. Scammon agreed and said then this would become a private ROW for both lots. Kennedy said the ordinance clearly states that you need 200' of road frontage on a Class V or better road. Scammon explained the frontage has to be on a road, such as a hammerhead. The edge of the ROW, not the road, along the edge of the ROW, adding frontage on the sides and from Scrabble Road. Stevens confirmed that they need the frontage on a newly created roadway to satisfy the frontage for both lots.

Stevens pointed out the regulations on page 18 and 19 of the zoning ordinances on lot area requirements; Residential/Agricultural Zone:
300.002.006.005 Lot Area Requirements

- A. *Lot size shall be determined as provided in the lot size by soil type regulation found in the subdivision regulations for the Town of Brentwood, but in no instance will the lot size be less than two (2) acres in size. (3/13/2001) Each lot shall have a minimum continuous lot frontage of two hundred (200) feet provided that where lots are located on the exterior of a curving street, a shorter front dimension may be permitted provided the average width of the lot measured across its center shall be two hundred (200) feet and have a minimum of seventy-five (75) feet of road frontage on the exterior curve. (3/1996) This reduction in frontage shall be permitted only on newly developed subdivision roads and only when the curvature is located on a cul-de-sac bulb. (3/13/2001)*

Greenwood said in the definitions section: *200.033 Frontage. Frontage means the length of the lot bordering on the right-of-way as defined in this Article; and definition of ROW: 200.061 Right-of-way. Right-of-way means and includes any highway for which the town, state or federal government has the responsibility for maintenance and liability for the use thereof excluding bonded roads not accepted by the Town. Roads closed subject to gates and bars are not considered rights-of-way for the purposes of this Ordinance.*

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Stevens commented so after the last meeting, the Board discussed that it would have to be a public road. A private driveway is not a public road. Ultimately this will be a development and the Board has to consider that. This lot is unique in that it is not a lot of record. It's not a lot that was created prior to the adoption of the zoning and the 200' requirement and that's why it was noted it wasn't for building purposes as it lacked the frontage. The owner at the time, Sanborn, had his bite of the apple and understood what he was doing at that time; they were limiting that lot. Adding frontage with a hammerhead is a remedy. We have a dozen of these around Town and it would set a precedent. Scammon asked if the BOS would allow Kirby to take over the maintenance of the road and Greenwood said he doesn't think the Town can relinquish the maintenance of a Town road to a private landowner and without ZBA relief for frontage on a public ROW, they couldn't initiate that discussion with the Selectmen. The Board discussed subgrade, maintenance and remediation that could happen with a future development. Scammon and the Board discussed a T vs. a hammerhead.

Scammon said this is unique that there are a few others in Town. Greenwood said an attorney will take the information gleaned from this if there are allowances made here for a circumstance where there are 10 of them in Town, to expand it to show why frontage relief should be granted in instances where there isn't this circumstance. Kennedy added everyone's driveway becomes frontage. Greenwood added this was done back then for a definitive reason and the allowance for a 50' of ROW was for the sole purpose of developing that back land by way of a road.

Stevens suggested that Scammon work with the Fire Department and TEC to mitigate a hammerhead, how much room is needed etc. Talk to TEC and get an estimate for a few hours of consulting and write a check to the Town of Brentwood for that and any money not spent would be returned. Scammon asked if the Planning Board could relinquish the "not buildable" note on the Sanborn plan. Greenwood said they couldn't with present zoning. The only reason it was allowed then was that there is an allowance in the zoning to create lots for open space that don't meet the Town requirements for frontage.

Scammon reiterated just to be clear, unless there is ZBA relief, this has to be a public ROW. Kennedy said frontage means a portion of a lot bordering on a highway, street or ROW. Greenwood said the definition of ROW is not private. Scammon needs TEC on board with a hammerhead or similar in order to come back to the Board and will provide TEC with an email of their proposals and ask for an estimate for TEC to review, copying the Town.

Board Business:

Micah Denner/Septic Designs of NH. Board to discuss site violations at 217.024.000; 88 Route 125; SPR 8-6-2020 approved parking pad, electric and solar only. Greenwood site visit on 4/13/2021. "Property can only be used in accordance with the approved site plan – parking pad for commercial trucks, electrical hookup and solar. Storage structures and stockpiles exceed the site plan approval granted last year."

Present: Owner Micah Denner

Denner said his vacant lot is on Route 125, is half commercial and half residential. Greenwood said a plan was approved by the Board last year to allow for the construction of a 100' x 100' parking pad to allow parking for the commercial vehicles and an electrical hookup by way of solar panels. That's what was approved. A neighbor called and said stuff was going on there. Greenwood visited the site on Tuesday, April 13th, 2021 to confirm and there are storage containers on-site, several stockpiles of materials, and a small mini-tractor or backhoe that may be doing some digging but what is there exceeds what the approval was for. There shouldn't be stockpiled material out there unless it's to create

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the 100' x 100' parking area only and no storage containers; this would require an amendment to the granted approval but it's not a recorded plan.

Denner said he has always had material on site. Loam and fill sand were on the site when he was approved before and it hasn't been touched. The third pile of fill on the site grows and shrinks as it's used on jobs. There are two more piles; one is 1½" double washed stone and wash course grit sand. When it gets cold, the pits shut down and they pull pumps out so it's impossible to get material. This is over 5 months old and was put on the site after the last meeting. All that has been there. There has been no excavation on the site. Stevens said the piles of material have grown. Denner said the fill sand grows and shrinks. Greenwood asked about the storage units. Denner said the storage units have been there since October or November 2020 as he needed something to contain his tools and supplies. He didn't see anything in the regulations regarding permits for temporary structures. Storage containers are on 6 x 6 PT posts, so they are off the ground. His builder recommended he wait a year so any building is on hold due to Covid and construction costs.

Board discussed. Denner asked so residential houses can have a shipping container with no plan but commercial lots need a plan to do it. Greenwood agreed. Stevens read structures: *Anything constructed or erected except a boundary wall or fence, use of which requires location on the ground or attachment to something on the ground, for purposes of this ordinance, buildings are structures.* Greenwood said the premise of a site plan is for it to display exactly what is going on on the site and is done in a safe, responsible manner for the health and safety of the residents and so the Planning Board knows what is happening on a commercial site.

The Board would like an updated plan showing the stockpile area, containers, and any other proposed uses that are not permanent structures or would require site work. Stevens said but if it goes beyond a certain threshold there needs to be an engineered plan.

The Board signed the manifest.

The Board signed the Affidavit of Amendment for Sig Sauer for 2 replacement classrooms/trailers approved on April 1st, 2021, for recording.

Refund \$621.50 in unused escrow funds for Jesse Elliot, a recorded 2 lot subdivision; tax map 213.031, 230 Pickpocket Road.

Refund \$1,479.20 in unused escrow funds to Dexter Swasey, a recorded 2 lot subdivision; tax map 218.048; 42 Ole Gordon Road.

Motion made by Finan, 2nd by Kleinman, to approve the two refund checks: \$621.50 in unused escrow funds to be returned to Jesse Elliot and a refund of \$1,479.20 in used escrow funds be returned to Dexter Swasey. All were in favor. Motion carried.

Bickum received a letter today from Pentucket Bank that the Letter of Credit for Dymment Realty, LLC not being renewed as of end of June 2021. Commercial Drive; 208.015.000. D-31862; A three building site plan recorded in 2004 and only 2 of the 3 proposed buildings were completed. The proposed 5000 sq. ft. smaller building was never built. The LOC is for \$22,500; open since 2004. Board discussed. Greenwood would like to review the files.

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Rules of Procedure: Draft for review on file.

Motion made by Aldred Cheek, 2nd by Finan, to keep the Rules of Procedure on the agenda to discuss at the next meeting, May 6th, 2021. All were in favor. Motion carried.

Rullo Update: tax map 209.010 construction activity in wetland buffer. Neil Bilodeau with NHDES met with Mr. Rullo on site on April 13, 2021 and is aware that fill has been placed in the wetland and needs to be removed. Bilodeau has retained Certified Wetlands Scientist, Bruce Gilday to delineate the wetland boundary and assess the impacts. Mr. Gilday will also develop both stabilization and restoration plans for the impacted area. NHDES will be sending Mr. Rullo a formal notice requesting corrective action as soon as possible (email on file).

Greenwood and Stevens felt that Gilday should be made aware of the revised wetland ordinance so he can remediate to whatever our wetland buffer is based on the value of what the wetland should have been. Stevens suggested Greenwood also follow up with the BOS for a cease and desist of activity delivered by the police regarding the wetland filling and request for site plan review.

Motion made by Finan, 2nd by Kleinman, to have Greenwood submit a cease-and-desist letter to the Board of Selectmen regarding the site activity and wetland filling and to request that Rullo come in for site plan review. All were in favor. Motion carried.

199 North Road re: junk The Board discussed a complaint regarding 199 North Road: tax map 208.034.000. Owner Adam Silvestri, 2 acres – possible site of excessive junk vehicles. The Building Inspector's inspection report letter has been mailed to the property owner to start compliance conversations (on file); RSA on junkyards (on file). BOS action currently.

Sampson: Stevens requested Greenwood write a letter to the BOS regarding Sampson. Greenwood will send a cease and desist for Sampson.

Motion made by Finan, 2nd by Aldred Cheek, to have Greenwood write a cease-and-desist letter to the Board of Selectmen regarding the Sampson property. All were in favor. Motion carried.

Bickum informed the Board that alternate, Regan Elliot has resigned from being a PB alternate due to Thursday night conflicts. She is unable to attend anymore PB meetings and is interested in becoming a ZBA alternate instead (email on file 4-6-2021).

Bickum informed the Board that the site walk for 335 Rte. 125 is scheduled for May 6th, 2021 at 6 pm and is posted. The public is welcome to attend.

Approval of Minutes: April 1st, 2021

Motion made by Finan, 2nd by Stevens, to approve the minutes from April 1, 2021 as presented. All were in favor. Motion carried.

Motion made by Finan, 2nd by Kleinman, to adjourn at approximately 9:20 p.m. All were in favor. Motion carried.

Respectfully submitted,
Andrea Bickum,
Administrative Assistant,
Brentwood Planning Board