

MINUTES
PLANNING BOARD
March 20, 2024, 7:00pm
In-person/Zoom

Present: Chair Deirdre Daley- in person, Vice Chair Josh Muhonen- person, Shawn Talbot (Ex-Officio)-in person, Bruce Ruotsala- in person, Nichole Talbot-in person, Craig Smeeth- in person, Graham Heagy-in person, John Schaumlöffel-in person, Jennifer Minckler- in person.

Citizens in attendance –Sam Benedict- in person Sharin Smeeth-via zoom, Ed Rogers of Rogers Engineering Solutions, L.L.C.- in person, Bert Hamill, the Planning Board Engineer- in person, Kathy Boot -via zoom, Angela Gagnon-via zoom, Andrea Harmon of 88 Ashland Farm Road -via zoom, Liz Freeman-via zoom, Nancy Clark, Attorney for Abutters of Silver Scone Tea- in person, Jane Elwell-in person, Ray Holmes- in person, Abigail Fasanella-in person Kathleen Sheldon- in person, Tammy Langen-in person, Stan Zabierek-in person, Annmarie Fournier-in person, Robert Fournier-in person, Steve Berube- in person

Open meeting with the pledge of allegiance.

Roll Call taken by Chair Deirdre.

Governance1: Chair Deirdre confirmed that all newly elected members have been sworn in to serve on the Planning Board.

A motion was made by Bruce to appoint Deirdre Daley as Chair and Josh Muhonen as Vice Chair. Motion was seconded by Selectman Talbot. Majority vote. Motion carries unanimously.

Governance2: Chair Deirdre reviewed the terms of the current alternates which are Lou Guarino -term expires 2025 and John Schaumlöffel-term expires 2025. There are three alternate positions available if anyone would like to be appointed. The Bylaws of the Planning Board regarding alternates will be reviewed at the next meeting.

Selectmen's Report & Chairman/Land Use Report: Selectman Talbot advised that from the Board of Selectman meeting last night, there are no changes to the Select Board duties or Ex-Officio capacity regarding which Selectman is assigned to each committee. Chair Deirdre asked Selectman Talbot if there was a discussion because of the combined fire chief and code enforcement position not being passed. Selectman Talbot advised that was not discussed, but the Fire Department did come to the meeting and Ben Hatcher will be taking Gary Somero's place as Fire Chief when he retired in July. Gary will not be staying on as building inspector but a person who has served in that capacity may be interested in returning to the role. Chair Deirdre would like to be part of the group that completes the interviews for the Building Inspector. Selectman Talbot advised that on April 2, 2024, the Select Board will be discussing this open position.

The Land Use Clerk reminded the board of inviting the Cemetery Trustees to a meeting . Chair Deidre asked how the vote on that position went. Selectman Talbot advised that both the people who received votes were not interested in serving. Selectman Talbot advised that someone did show interest in serving, and the Select Board can appoint new members. There is a new nomination/appointment form to be completed by Boards and Committees that should be submitted to the Select Board.

The Land Use Clerk advised that the Assessors will be in town beginning on March 26, 2024, to complete the re-valuation. The police have been notified and this will also be posted on the website.

The Land use clerk also reminded the board that the Zoning Board Ordinance is to be revised as well as the Floodplain ordinance based on the voting results. The gravel Pit report letters need to be completed and mailed out.

7:15 Planning Board Education - Steep Slopes: Chair Deirdre advised that at the last meeting, the board was advised that a plan may have approved on steep slope plans that may have had errors. The board had asked the Chair to contact the Planning Board Attorney. The Attorney advised no activity on the complaint based on the timing, but the Board could use it as a learning opportunity regarding steep slopes. The Chair asked Ed Rogers to speak to the board and the Planning Board Engineer to provide additional guidance to the board.

Ed Rogers stated that the Steep Slopes Ordinance was re-written about fifteen years ago and prior to that, it was problematic with multiple interpretations. Ed advised that the definition of steep slopes was added to the ordinance and stated the definition: *Slope is defined as the change in the vertical rise of the natural terrain as measured over any segment of 100-foot distance as well as Steep slopes is defined as an area of natural contours.* Ed stated this clarifies the issue of a ditch in front of the property or the person who wants to regrade their property and then stating, "I have no steep slopes." Ed feels there is confusion on the 100-foot distance.

Ed provided two colored plans on an actual piece of property in town that he adapted as an exemplar. One plan reflects what the slopes would have looked like under the old zoning ordinance based on topographical representation and the other what the slopes look like under the 100 ft intervals. Ed reviewed both plans with the Planning Board. On the plan topographical data is represented with slopes of 25% or more are in red, slopes 15-25% are in orange , slopes 0-15% are in green. The tan color is estimated wetlands.

Ed stated that the wetlands need to be reflected on the steep slopes plan because you have to have an acre contiguous that is neither steep nor wet. There is a requirement of a 75x 75ft box of contiguous area within the setbacks, Ed's interpretation is that you are going to evaluate this on a 100-foot grid (each red x on the map represents a point on a 100-foot grid). The same data takes the topographic data but considers the elevations at those points. The alternate map looks at where the slopes are within those 100 x 100-foot squares (or divides the squares into triangles). It makes the map view simpler and less prone to gerrymandered areas. The areas that were steep over short distances are not steep when you consider them

over 100 feet. Ed has been creating this type of map when submitting a subdivision application. Ed noted the ordinance only applies to subdivisions because it does not apply to lots of record. If someone comes in with a lot approved 40 years ago or maybe subdivided prior to zoning and they want a site plan, Ed does not believe steep slopes ordinance applies to that. The landowners would not have to worry about demonstrating an acre contiguous. The purpose of this ordinance is to ensure when creating lots, we are not creating marginally buildable lots or lots that are difficult to build on.

Ed noted plans coming from applicants should look similar to the 100 ft representation of the topographical map. Bert asked if the second map was created from CAD. Ed confirmed he did create from CAD. Bert advised that it may not be commonly known how to manipulate the CAD program to establish the 100-foot grid system.

John stated that the board has frequently had applicants come before the board with a request to not have to provide the colored steep slopes map and often ask for a waiver for that. John asked Ed for his recommendation to the board in granting that type of waiver. Ed said he would not grant that waiver except in certain circumstances perhaps lot line adjustments, when no lots are being created. He feels requesting the color map is not a lot to request. Bert would grant the waiver with caveat that each lot be able to be considered individually if there are only a few areas that meet the steep slopes requirement and if that particular lot fell in that area. John asked how the board would know as it is difficult to interpret without color. Bert advised you would have to overlay this on top of the subdivision plan. Bert said colored maps can be difficult generate. Ed said he began this at 11am this morning. He advised if CAD is used, it is fairly easy. There is data available throughout the state from NH GRANIT which is basically two-foot contour data. GPS may need to be used for boundaries to be on the same coordinate system. Bert says no one is doing an on the ground topographical survey anymore unless it is a small lot.

Chair Deirdre advised that when the planning board was discussing revising the application, the Board considered requiring a colored steep slope map when any part of property that 15% or more. She noted there were opinions about questioned the direction of 100 feet. Ed the 100 ft metric is intended to be measured perpendicular to the contours. Chair Deirdre asks if this map uses that type of approach. Ed confirmed. John stated the reason he made that point is because it is difficult to interpret accurate steep slopes on a black and white map, regardless of quality of legend and contours. Chair Deirdre advised that this should be identified in our application (the expectation of how steep slopes should be presented). Ed questioned if the checklist states a colored map. Chair Deirdre responded that it is in the regulations but not the application itself. John said it is difficult to make a decision without a colored map. Josh commented that people have been coming in without colored maps and then the board requests a colored map. John feels it should be a default in the application. Ed stated that his clients pay him to come in and present the information about their lot and get them an approval. He needs to make the boards job easy to get that approval. Bert stated that this is expensive, and it takes time to complete.

Bruce asked what the steep slope regulation is trying to accomplish. Ed responded by stating that if you ended up unknowingly creating lots that were all 20% slope or more, it could be difficult or impossible to develop and could only be developed with extremely steep driveways

leading to erosion problems. John said that we are protecting applicants because if a lot were created that could not meet requirements for house lots, septic etc. which means it could be declared as a non-buildable lot. Anyone who wants to purchase the lot and do their due diligence, he believes it would be recorded on the deed or in the town records. That would protect a purchaser of the lot. Bruce asked what makes a lot unbuildable, cost or regulation that you cannot alter the terrain. Ed responded and said the ordinance applies to the creation of new lots. If someone comes in with a site plan, that would be a site plan review not subject to the steep slopes ordinance. It might be subject to no development on slopes greater than 20% and that would be something for the board to consider. Chair Deirdre advised that it is possible an applicant could go to the ZBA for a variance.

The discussion continued on steep slopes and wetlands. Ed would like to see the ordinance include a minimum amount of flat and dry land. Who cares how much steep and wet as long as you have met the certain amount of flat and dry. Chair Deirdre wanted to clarify that on the map, each box with a "x" on the map is 100 x 100 feet so the planning board could easily identify the area where a house could go. Ed confirmed and advised each of the red x are 10,000 square feet or each triangle are 5000 square feet. The blocks also make it relatively easy to see if there is an acre contiguous.

Bert suggested uploading the map by pdf onto the website showing which is not acceptable and which map is acceptable as we go forward. Ed Rogers advised that if anyone is using CAD technology, this map would be available. Chair Deirdre asked that Ed provide the maps in pdf format.

Ed advised the board to be mindful of the fact that the ordinance requires 1 acre contiguous that in non-steep and non-wet. So, if someone comes in and says my lot is super flat, well it could have wetlands. The board may still want to see that acre continuous mapped out.

7:45 Non-public RSA 91-A:3, II (1) Consideration of legal advice provided by legal counsel:

Selectman Talbot made a motion to enter Nonpublic session. Josh seconded the motion. Motion Passed. Motion to leave nonpublic session by John. Motion seconded by Nichole. Motion pass unanimously. Public session reconvened at 8:00pm. Motion made to seal the minutes by John. Motion seconded by Bruce. Motion carried unanimously.

8:00PM Silver Scone – Deliberation and clarification of remanded items regarding which of the conditions in the Planning Board's Notice of Decision were meant to be conditions subsequent or conditions precedent in accordance with the Superior Court's March 5th, 2024, Order in Docket Number 2023 CV-00286, regarding the Planning Board's June 19, 2023, Notice of Decision approving the site plan review application of Jane Elwell of Silver Scone English Tea Afternoon Parties, 99 River Road, New Ipswich, NH 03071, Map 11, Lot 129 (File # SP23-2 11/128):

Chair Deirdre advised that goal is to address items that the Judge at Superior Court has remanded back to the board. It will be handled in two segments. One is to review the conditions which are subsequent or precedent. The Chair also advised that final planning

board approval is of the plans themselves and not for any business operation approval. Chair Deirdre explained what a condition means to be subsequent or precedent by stating when we do conditional approval, it means that the application has been approved with conditions that have to be met. Chair Deirdre went further in the explanation to advise Conditions precedent are conditions that must be fulfilled before the planning board may give final approval to an application, such as receiving state permits, obtaining bonds for construction, and making revisions to the plans. Conditions subsequent are conditions that appear on the final plat and deal with restrictions on the use of property or safeguards that must be observed during development of the parcel or once the project is in use. Such issues might include preservation of vegetation or hours of operation and details of security protection for a commercial use. Chair Deirdre further explained that there are a few court cases that have further defined these terms which include: a “condition precedent” is some action that has to be taken by the applicant in order to remove an impediment to “final approval.” A “condition subsequent” defines an action or behavior that binds the applicant but does not need to be accomplished before planning board “final approval” is granted.

Chair Deirdre stated that Craig Smeeth has recused himself and appointed John Schaumlöffel as a voting member of the board.

John Schaumlöffel noted a point of order referencing RSA 673:14 and his recommendation to the board that any board member who has or will be doing work that results in payment to them recuse themselves. His other recommendation is that the Selectman’s representative recuse himself from this because a cease letter was sent to the applicant and the Select Board has made the decision, for whatever reason, not to enforce that cease letter. John feels this demonstrates the existence of bias. Nichole asked John to repeat what he stated about board member now or in future and John quoted RSA 673:14 by stating: *No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, historic district commission, agricultural commission, or housing commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.*

Selectman Talbot, advising the Select Board can exercise discretion in how they act, but he agreed to recuse himself from this part of the meeting and sat in the audience.

The board determined each item as subsequent, or precedent as noted below in the body of these minutes. John questioned the official name which is listed as Silver Scone English Tea Afternoon Parties. Chair Deirdre stated this is how it was in the Judge’s order, and it was copied verbatim.

Following discussion by the board members, Chair Deirdre confirmed that the only items on the list showing as precedent are item number 9,10,13, 14, 15, 16 and 17.

John made a motion to accept the conditions as follows and read through the list stating either subsequent or precedent (See list below in the body of these minutes). John called for a roll call vote. Chair Deidre completed the roll call vote. All members were in favor. Motion carries.

8:15 Silver Scone – Deliberation and clarification of remanded items regarding whether the Conditions precedent, if any, in the Planning Board’s Notice of Decision have been met by the Applicant in accordance with the Superior Court’s March 5th, 2024, Order in Docket Number 2023 CV-00286, regarding the Planning Board’s June 19, 2023, Notice of Decision approving the site plan review application of Jane Elwell of Silver Scone English Tea Afternoon Parties, 99 River Road, New Ipswich, NH 03071, Map 11, Lot 129 (File # SP23-2 11/128)

Chair Deirdre advised that the board is reviewing the precedent items (those that are necessary to obtain final approval of the plan for Silver Scone). It was decided to vote on each item individually by roll call vote.

Item Number 9 resolution of DES wetland crossing complaint has been completed. John motioned that it is complete. Bruce seconded the motion. Roll call vote. Motion carries.

Item Number 10 Resolution of potential turtle sightings with DES and/or NH fish & Game.

Chair Deirdre commented that the board has not received documentation, and there hasn’t been receipt of information that there is an outstanding complaint that was filed. John stated that the applicant should provide information that a complaint was resolved or if there was a complaint. His recommendation would be to get evidence that there has not been a complaint or that a complaint has been resolved prior to today. The applicant could request from the DES or NH fish and game if they have a complaint of a turtle sighting and to provide that if so. Motion to deem item 10 as incomplete by Bruce. Motion seconded by Nichole. No further discussion. Roll call Vote. Motion carries

Item Number 13 Removal of the two parking spaces behind the mailbox on the Fieldstone plans. Bruce motioned to deem item 13 as complete by Bruce. Motion seconded by John. Roll Call vote. Motion carries

Item number 14 relocate the walkway out of the wetlands buffer on Fieldstone plans.

Chair Deirdre showed Graham Heagy the walkway on the new plans and the prior plans. Josh questioned that the walkway must pass through the wetlands to get out of the wetland. Chair Deirdre recalled that when the board looked at the existing woods road, there were complaints about the culvert and potential wetland crossing concerns, and she would have to look to the minutes but believes in her recall the board decided that DES would need to consider this topic and the board would defer to their decision. The letter received from DES stated there was no further action needed regarding dredging but if anything changed or was modified in the wetland crossing, the applicant would need to go back to DES. The woods road ends approximately twelve feet within the 25’ buffer. John stated that when he looks at the plan, the path appears to pick up between 25 feet and 50 feet. Chair Deirdre stated, referencing the plan, the 25 feet is solid dash, dash and the 50 feet is where the path turns. Chair Deirdre advised that the ZBA decision indicates the path must be outside the 50-foot setback. That is a standard that will complicate this. Graham asked of the concern of the turn before the 50’ setback. Chair Deirdre confirmed that the pathway needs to be within the 50 feet stretch and there will need to be something done to complete that. Josh said originally the path fell within

the 25 foot off woods road and followed through the wetlands further. The ZBA saw the plans and knew they had to connect from woods road to the back of the property somehow and that was the straightest path. Chair Deirdre stated that typically this would be covered by an approved wetland crossing but the only thing we know is something is grandfathered that stopped inside the buffers, so there could still be work going on inside the buffer. Chair Deirdre asked if the applicant needs to go back to the ZBA for clarification. It is not the purview of the Planning Board to waive the buffer. John suggested relocate the walkway out of the wetlands buffer on the Fieldstone plans. He questioned if this is addressed at all by the July 14, 2024, letter from DES. Chair Deirdre advised she did not think so, as the complaint was about the culvert. Josh quoted the letter from DES which states: *Please be aware any future work to repair or replace the pre-existing 8- inch culvert crossing.* Josh confirms DES is not referencing work on the walkway. He said the plan that the board was completing conditions on, the path was clearly following through the wetlands buffer, so the intent was to get a plan with a path that was out of the wetlands. Chair Deirdre advised that initially the board did not specify which buffer because the board did not see a clear interpretation on the path. The ZBA did clarify after the fact that it is a 50-foot buffer. Bruce feels our condition was met but John advised it is not out of the wetland buffer.

Motion made by Josh to deem #14 relocate the walkway out of the wetlands buffer on Fieldstone plans as incomplete. Chair Deirdre seconded the motion. No further discussion. Roll call vote. 5 yay. 1 nay by Bruce. Motion carries.

Item number 15 Revise note 6 on sheet 2 to “all disturbed non-paved and untraveled areas shall be covered with 2”-4” of loam and seeded with 1# of grass seed per 400 sf. John motioned to accept item number 15 as complete. Josh seconded the motion. Roll call vote. Motion carries.

Item number 16 Add key to the Fieldstone plans. Motion made by Bruce to accept item number 16 as complete. John seconded the motion. Roll Call vote. Motion carries.

Item number 17 Correct Scribner error; correcting stone type on Parking area and Walkway from crushed stone to processed gravel.

Chair Deirdre advised that the parking section notes state it is now 2” of $\frac{3}{4}$ ” processed gravel and 4” of 1½” of processed gravel. It was changed but on gravel path detail it wasn’t as clear. It began as crushed gravel. The condition states changing from crushed stone to processed gravel and Chair Deirdre is not sure if that is complete or not. John says crushed gravel is processed gravel. John made motion to accept item number 17 as complete. Josh seconded the motion. Roll call vote. Motion carries.

Chair Deirdre requested a recall on item 5 final inspection prior to Certificate of Completion and asked what the criteria was. John stated there were none stated. Chair Deirdre will review the minutes. John asked for confirmation of the roll call vote on condition item number 5. Josh advised as did the Land Uses Clerk that there was not a roll call vote on that. Those confirmed subsequent and precedent as confirmed by the board were voted on as a whole by John reading each item number and what the board determined to be subsequent and precedent.

Motion to move onto the next item by Chair Deirdre. Motion seconded by Bruce. All were in favor.

Minutes of March 6, 2024: to be reviewed at the April 3, 2024, meeting.

Motion to adjourn 9:05pm by John. Motion seconded by Nichole.

Respectfully submitted,
Jennifer Minckler
Land Use Administrator

Planning Board Review of Conditions per Superior Court's March 5th, 2024, Order in Docket Number 2023 CV-00286, regarding the Planning Board's June 19, 2023, Notice of Decision approving the site plan review application of Jane Elwell of Silver Scone English Tea Afternoon Parties, 99 River Road, New Ipswich, NH 03071, Map 11, Lot 129 (File # SP23-2 11/128)

Part 1 - Deliberation and clarification of remanded items regarding which of the conditions in the Planning Board's Notice of Decision were meant to be conditions subsequent or conditions precedent in accordance with the Superior Court's March 5th, 2024, Order in Docket Number 2023 CV-00286

Condition	Precedent or Subsequent
1. Continued standing of ZBA conditions (ZBA approval 2/20/2023)	n/a
a. Silver Scones Teas shall operate not more than 4 days per month	Subsequent
b. Silver Scones Teas operate as an "Occasional Food Service Establishment" to hold tea parties to guests by reservation and not to the general public	Subsequent
c. The operating hours shall be from 9 am to 6pm on any day of the week, but limited to 4 days a month.	Subsequent
d. Each tea party shall have no more than 50 guests. If multiple events on the same date, total guest shall not exceed 50 guests.	Subsequent
e. The business shall primarily take place inside the residence, except in the summer when tables and chairs shall be set up in the back courtyard behind the house. An existing or improved vegetative buffer shall screen the public view. No tables or chairs shall be set up in the front or side yard bordering River Road or Currier Road during tea parties. <i>(note: this item was formatted incorrectly in the Planning Board decision letter and combined with the item above)</i>	Subsequent
f. Noise shall be kept to a minimum and follow New Ipswich Town Ordinances.	Subsequent
g. Guests of the tea parties shall not park on the Monadnock Conservancy easement.	Subsequent
h. Off road parking will be required	Subsequent

i. There shall be a walking path from the parking area to the back, side and/or front of the house that will have low impact ground lighting to provide a safe walking path so guests so that they do not have to walk on Currier or River Roads for the guests safety	Subsequent
j. The interior conditions required by the Fire Chief and code enforcement must be met	Subsequent
k. The approval shall be for tea party events only	Subsequent
l. When having exterior signage, a signage permit shall be applied for and approved. Temporary signage to guide parking to the lot shall be removed immediately after the event has ended.	Subsequent
2. Continued Conservancy access/use permissions from the Monadnock Conservancy (or Successor organization)	Subsequent
3. The Applicant will notify the Town/Land Use Office of any changes in conditions or permissions regarding access to conservancy land within 10 days of notification	Subsequent
4. The Conservancy and the Road Agent should be notified by the Applicant 3-5 days prior to any work starting following receipt of a building permit. The Conservancy shall also be notified 72 hours prior to any scheduled inspections involving Conservancy land	Subsequent
5. Final inspection prior to Certificate of Completion	Subsequent
6. Parking signage approved by the Select Board (if applicable)	Subsequent
7. Parking to include a sign indicating right turn only onto Currier Rd when leaving the parking area	Subsequent
8. The applicant will address parking in the lot off Currier road during the reservation process with Clients	Subsequent
9. Resolution of DES wetland crossing complaint	Precedent
10. Resolution of potential turtle sightings with DES and/or NH Fish & Game	Precedent
11. Code Enforcement inspection and Certificate of Compliance. Documentation of conditions re: handicap accessibility, accommodation and readiness should be provided to the Land Use clerk (starting reference) so improvements can be tracked over time on this property.	Subsequent
12. Code Enforcement Officer will address the need for/installation of a grease trap as appropriate	Subsequent
13. Removal of the two parking spaces behind the mailbox on the Fieldstone plans	Precedent
14. Relocate the walkway out of the wetlands buffer on Fieldstone plans	Precedent
15. Revise note 6 on sheet 2 to "all disturbed non-paved and untraveled areas shall be covered with 2"-4" of loam and seeded with 1# of grass seed per 400 sf	Precedent
16. Add key to the Fieldstone plans	Precedent
17. Correct Scribner error; correcting stone type on Parking area and Walkway from crushed stone to processed gravel	Precedent

Part 2 - Deliberation and clarification of remanded items regarding whether the Conditions precedent, if any, in the Planning Board's Notice of Decision have been met by the Applicant in accordance with the Superior Court's March 5th, 2024, Order in Docket Number 2023 CV-00286

Condition	Precedent or Subsequent	Notes
9. Resolution of DES wetland crossing complaint	Precedent	Completed (Met)
10. Resolution of potential turtle sightings with DES and/or NH Fish & Game	Precedent	Incomplete
13. Removal of the two parking spaces behind the mailbox on the Fieldstone plans	Precedent	Complete

14. Relocate the walkway out of the wetlands buffer on Fieldstone plans	Precedent	Incomplete (Not Met)
15. Revise note 6 on sheet 2 to "all disturbed non-paved and untraveled areas shall be covered with 2"-4" of loam and seeded with 1# of grass seed per 400 sf	Precedent	Complete
16. Add key to the Fieldstone plans	Precedent	Complete
17. Correct Scribner error; correcting stone type on Parking area and Walkway from crushed stone to processed gravel	Precedent	Complete