

**PLANNING BOARD MINUTES**  
**WEDNESDAY, SEPTEMBER 22, 2021**  
**MUNICIPAL COUNCIL CHAMBERS – 6:30 P.M.**

**Present:** John Beckett, Michael Costello, Phil Ruck, Lisa Buck, Christa Schwintzer, Ashley Case, Robert Bayer, Dave Thompson

**Absent:** Jud McIntosh

**Town Staff:** Kyle Drexler, Jessica Chadbourne

**Acceptance of the Agenda**

Phil Ruck asked for a motion to accept the agenda.

Motion: Lisa Buck

Second: Michael Costello

Mr. Ruck asked for a roll call vote to approve the agenda. In the absence of Jud McIntosh, Ashley Case was made a voting member for the evening. The vote to accept the agenda passed with seven for, none opposed.

**Approval of the Minutes of the August 18th Planning Board Meetings**

Mr. Ruck asked for a motion to approve the August Planning Board Minutes.

Motion: Lisa Buck

Second: John Beckett

After corrections to the August minutes were noted, Mr. Ruck asked for a roll call vote. The vote to approve the August meeting minutes passed seven for with none opposed.

**New Business**

**Item A: A preliminary subdivision review for NKSE Investment, LLC located on Stillwater Avenue on a lot which abuts 115 and 133 Stillwater Avenue, also referred to as Tax Map 18-0 Lot 72-1, in the Low Density Residential District. The application is for a clustered development comprising 6 single-family attached units on the 6.65 acre lot.**

Mr. Ruck asked the applicant to come forward and present their project to the Board. Mr. Jim Kiser, engineer for the project, approached the podium to represent NKSE Investment LLC. In brief he described for the Board the planned housing development on Stillwater Ave. The property allows for a density of seven housing units, but the plan is to construct six units, specifically three two-unit single-family attached structures. The board has been provided with a full set of plans, as well as the MDOT entrance permits for the site and traffic documentation. They are asking for four waivers, though Mr. Kiser did acknowledge that he was aware one of the four waivers falls outside of the Planning Board's authority.

The first waiver request was for the sidewalk requirement. Mr. Kiser explained that given the rural and somewhat undeveloped nature of that part of Stillwater Ave, particularly that there are no sidewalks on Stillwater and no where to walk to in the immediate vicinity, it doesn't make sense to require a sidewalk along the entrance road to the housing complex. There will be sidewalks in front of the buildings and parking areas, to allow residents to move easily from car to building, but those

sidewalks will not extend to the entrance road itself.

The second waiver pertained to the requirement for subdivisions to provide the a right-of-way for potential through traffic, to encourage potential connectivity between the subdivision and possible future developments on adjacent properties. Mr. Kiser explained that the waiver request was due to both the small scale of the development and the fact that, unlike a usual subdivision, this property will remain undivided and privately owned by a single party. Which makes the likelihood of connecting it to future neighborhoods unlikely, so a right-of-way on this property would not be in keeping with the the intention of that requirement.

The third waiver being requested was with regards to the stormwater calculations and summary table submissions requirement. Because the development is small and will not create a large amount of impervious area, it will not make a significant impact to the amount of stormwater flowing into the surrounding wetlands.

Mr. Ruck then asked Town Planner Kyle Drexler to present the Board with his report. Mr. Drexler explained that, as Mr. Kiser indicated, one of these single-family attached units of the development is already under construction on the property, because the low density residential district allows for a one single-family attached building to be constructed on a lot with only a permit. However, because NKSE Properties plans to construct a further two single-family attached structures with two units each, Planning Board approval is required before the property can be further developed.

If someone wanted to develop the lot without the cluster development standards, the lot has enough acreage to allow for two single-family attached structures, so a total of four units, if the lot were split. What a cluster development does is allow for an additional couple of units on a lot that would not normally allow for that density, on the condition that a certain amount - in this case 40% - of the lot area is designated as open space. That area is shown on the plans. Single-family attached structures are allowed in the low density residential district, they're considered a two-unit structure each, so it doesn't fall into that multi-family category which is three units per structure.

As the applicant stated, Staff has had conversations about some the waiver requests. In talking with the Public Works Director and Town Engineer Staff generally agreed that a sidewalk along the entrance drive doesn't necessarily make sense. The LDR is a transitional district to the rural part of town, it's not in the town growth area. It's not where the Town is promoting a lot of higher densities and walkability. It also doesn't makes sense, for this particular property, to require the development to put aside a right of way. The right of way is requested by the town for the purposes of street connectivity. If additional land around a subdivision should become developed, the right of way would allow the two neighborhoods to be linked by a road, rather than being two dead end streets. But the land around the proposed project on Stillwater Ave is not developable. There are already single family homes to either side of the property, and the large parcel behind the proposed development is largely unbuildable wetlands and already has two points of potential road frontage, one on Stillwater Ave and one on Kelley Rd.

The Fire Department and Town Engineer have both looked at the access road onto the property and and have no issues with the road as proposed, and the Fire Department has no issues with the area next to the garage to be used as a turnaround. Staff discussed the stormwater, and no stormwater management facilities are proposed as this is a fairly flat area and the development would be largely surrounded by wetlands. Given the surrounding wetlands, and the fact that the development's impervious areas would be centrally located on the property, the Town Engineer recommended that the waiver for the stormwater management plan be granted, as the impacts of runoff will be limited by

the existing natural buffers.

The fourth waiver, which was not introduced by the applicant, pertains to the requirement in the clustered development standards that open space must be a part of a plan designed by a landscape architect. Though the applicant has requested this waiver, it is not within the authority of the Planning Board to grant his request. The Board may waive the requirements of the Subdivision ordinance, but does not have the ability to waive performance standards from the portion of the Land Use Ordinance where the standards governing clustered developments are located.

Something potentially missing from the submitted plans is the fact that the cluster development standards require shade tree plantings along a street going into the property, and while in this case there is not a sidewalk being proposed, shade trees could still be something the Board could require if they so choose.

It had been some time since a subdivision had come before the Planning Board, so Mr. Ruck gave them a brief explanation about waivers, and why the board had chosen to grant or not grant them in the past. He summarized the requested waivers, explained why some of those requirements exist, then asked the Board for comments or questions.

Dave Thompson commented that it's important for the right-of-way to be included in the plans because in instances when there isn't further development right-of-ways often can serve as trail heads for surrounding wooded areas. Mr. Kiser countered that the other reason to not include a right-of-way, aside from development size and the undevelopable nature of adjacent parcels, is that the road going into the development will be private, not a town road as in the other, larger subdivisions.

Mr. Drexler explained that he and Rob Yerxa, the Public's Work Director for the Town, had looked at the proposed development as being similar to the Webster Point development on Shore Drive, where an access drive, privately maintained, extended into the property for tenant use but did not include a right-of-way, given that the property at Webster Point is bounded on two sides by river and adjacent to an already developed neighborhood on the third. It's also a small, condo-style development centered around that central access drive. So it's a similar situation to the proposed development on Stillwater Ave in that a right-of-way doesn't make sense because either the surrounding properties cannot be developed, or it is not desirable that the land be developed. In this case because, as Phil Ruck pointed out earlier in his discussion about waivers, the wetlands behind the proposed development are the headwaters for Johnny Mack Brook and it wouldn't be desirable to cut a road through there.

Mr. Thompson asked why the applicant was requesting a waiver for open space when it's clear that the property will have ample open space once developed. Mr. Ruck explained that it was because of a discrepancy in the area detailed on the plans versus what was calculated. Mr. Kiser confirmed that he had miscalculated and was off by about two tenths, and that the plans would be adjusted accordingly. Mr. Drexler added that the waiver request was for the landscape architect designs. The open space indicated on the plans meets the necessary requirements for open space, but the cluster development standards require that the open space plan be designed by a landscape architect. That is the piece the applicant is asking to be waived.

Mr. Thompson raised a concern about future development on the site, and Mr. Kiser explained that they had no interest in constructing any more units, even if the ordinance would allow for one more unit. Mr. Thompson argued that a future owner of the property might choose differently, and Mr. Kiser agreed that if said future owner chose yes, they could technically turn one of the two unit structures into a three unit structure and still meet the ordinance requirements. But that was not their

intention for the project. As far as they are concerned, all space on the property not taken up by a building or a roadway is open space for the use of all the tenants.

Mr. Ruck asked about the existing culvert under the access road. Mr. Kiser explained the the culvert was put in by the logging contractor to allowed access to the property for harvesting. It's in poor condition and not in the right spot, so it will be replaced in the construction of the access road for the development.

Mr. Ruck then asked the board for their thoughts about the requested sidewalk waiver. Christa Schwintzer pointed out that, while this road is proposed as private driveway, it may not always remain private, and recommended that rather than requiring the construction of a sidewalk, the board require the landscape designer to reserve space for a sidewalk along one side of the access road. This would remove the need for the applicant to create a sidewalk for the original development, but leave open the option for one should it become necessary or desirable in the future.

Mr. Thompson suggested that if there are children living in the community, a sidewalk leading out to Stillwater so they can catch the bus would be preferable.

Mr. Drexler explained that Town Staff were okay with the waiver request for the sidewalk because the development is being constructed in a low density transition zone where the Town is not pushing for large amounts of growth or development, as opposed to other areas of town where the focus is on development, density, and walkability. Mr. Thompson suggested that if it is a transition zone, the town is more like to encourage development in that area than in even lower density outlying areas, the implication being that it's not impossible that this area could be more thoroughly developed in the future. In response, Mr. Ruck pointed out that Ms. Schwintzer's suggestion would be an apt solution for that scenario, as conserving space for a sidewalk allows for the possibility of future growth without imposing a currently unnecessary requirement on the developer.

Ashley Case raised a question about the environmental cost to benefit ratio was in requiring sidewalk. If you consider the construction materials and financial cost required to create a sidewalk, versus simply reserving the area and leaving it as green space in the meantime, Ms. Schwintzer's compromise seems more be beneficial in the longer term. To which Mr. Kiser added that there is a patch of wetlands near one side of the drive, and requiring the construction of a sidewalk would increase the projects overall impervious area as well as its impact on said wetlands.

Mr. Ruck asked each planning Board member if they agreed with Ms. Schwintzer's proposed compromise. Lisa Buck said that from a public health standpoint, and promoting walking as exercise, she'd prefer the sidewalk be built. Mr. Thompson also remained adamant that he would prefer the sidewalk to be built. The remaining Board members were in support of the compromise.

Mr. Thompson asked about the proposed new culvert for the entrance driveway, asking if it would be an open bottom culvert. He explained that it should be, with wetland on both sides of it and wildlife passing back and forth. Mr. Kiser explained that as the project is not currently large enough to require DEP permitting, they are not required to put in an open bottom culvert. Mr. Thompson replied that he was aware they did not need to DEP permitting, but from an environmental standpoint it should be an open bottom culvert, which are available for installation. Mr. Kiser responded that they're not really available. They have to be constructed. Mr. Ruck interjected that Mr. Thompson was making a good point but that for the scale of this project he didn't believe the Planning Board could require an open bottom culvert without overstepping. He did however recommend that if the developer could opt for a larger culvert, that would be preferable.

Mr. Ruck returned the discussion to the sidewalk proposal and confirmed that Board members were in

favor of Ms. Schwintzer's proposed plan. He then moved on to the right-of-way issue, recapping the earlier discussion on the matter, and asked the Board's thoughts on the right-of-way. Mr. Thompson agreed with Mr. Ruck that the waiver should be granted so as to not encourage development of the Johnny Mack Brook headwaters area. Mr. Drexler added that even if the large parcel behind the project location was ever developed, because the rear portion of the parcel is wetlands, any development would likely be located on the other side of the property and could not be connected to the project location on Stillwater without driving a road through the wetlands, which is obviously not desirable.

Ms. Schwintzer's opinion on the right-of-way, and she replied that while ordinarily she would be in favor of it, with all the wetlands around the property does not seem like an ideal place to potentially encourage further development with a right-of-way. Ms. Case agreed with the idea that the right-of-way did not make much sense on a property surrounded by area that ought to be protected from development. Mr. Costello added that he had considered the site of the project and couldn't even see where a right-of-way might be located.

Mr. Ruck asked for any additional questions or comments from the Board. Ms. Schwintzer commented that in addition to the trees along the entrance road, she was hoping the landscape design would include some amenity plantings around the buildings, as well as an area of mowed vegetation that would allow residents to recreate without immediately interacting with the local tick population. To which Mr. Ruck added that native plantings are preferred by the Board.

He then asked for a motion to approve the requested waivers.

Motion: Lisa Buck moved that the Board waive the need for the right-of-way, and the stormwater calculations and summary tables.

Second: Michael Costello

Mr. Ruck asked for a roll call vote. The vote to approve two waiver requests passed six for with one abstaining.

Following the approval of the waivers, Mr. Ruck opened up the public hearing for discussion. There were no comments for the public who were present, so Mr. Drexler read for the board an email that he had received from Scott Thomas, owner of 100 Stillwater, expressing Mr. Thomas' concerns about the proposed development. Mr. Drexler then clarified some of the points Mr. Thomas had made in his email. Specifically that this project is not, as Mr. Thomas had suggested, multi-family. It is a cluster development, which in the LDR allows for two units per acre. The wetlands portion of the property was subtracted from the total acreage, leaving only the usable acreage, which was then multiplied by the two units per acre allowed under the ordinance to arrive at the number of allowed units for this project. Single-family attached units are an allowable use in this district. You can actually have up to four connected, though this project only has two. And while the mapping does show a possible vernal pool across the street from the proposed project, but its existence is not confirmed and it is not at risk from the new development.

There were not further comments from the public, so Mr. Ruck closed the public hearing and asked for a motion.

Motion: Lisa Buck motioned to preliminary subdivision review for NKSE Investment, LLC located on Stillwater Avenue on a lot which abuts 115 and 133 Stillwater Avenue, also referred to as Tax Map 18-0 Lot 72-1, in the Low Density Residential District, with the following conditions:

1. That documents be provided as part of the final plan submission to include

provisions for maintaining all private infrastructure, including reserved open space, the access road, and wastewater disposal system.

2. That copies of any Maine DEP permits, if issued as of the date of final plan review, be provided to the Planning Board, or, if not issued, that copies of the applications be provided;
3. That the open space requirement be amended on the plan to show the required amount, and that at least the required amount be represented on the plan;
4. That a landscape plan be provided detailing the existing conditions of the proposed open space area and show adequate shade trees along the proposed access drive meeting the standard for clustered developments.
5. That same landscape plan should also include room for a potential future sidewalk along the entrance road, and landscaping around the buildings.

Second: John Beckett

Mr. Ruck then asked for a roll call vote. The vote to approve the preliminary subdivision plan, with the proposed conditions, passed seven for with none opposed.

#### **Other New Business**

There was no other new business.

#### **Old Business**

There was no old business.

#### **Discussion**

Mr. Ruck asked Mr. Drexler if there were any upcoming projects that the Board would be reviewing. Mr. Drexler responded that they could expect to review the final plans for this subdivision project in October, as well as minor changes to the marijuana ordinance requested by Council, and a site plan application from the University to renovate two buildings on campus into a boutique hotel.

#### **Adjournment**

Mr. Ruck asked for a motion to adjourn the September meeting of the Planning Board.

Motion: Lisa Buck

Second: John Beckett

The motion to adjourn the meeting passed seven for, and the meeting was adjourned at 7:50 pm September 22, 2021.