

Town of Pelham, NH
Pelham Conservation Commission
6 Village Green
Pelham, NH 03076-3723

MEETING OF 05/08/19

Members Present

Karen Mackay, Louise Delehanty
Brandie Shydo, Paul Gagnon,
Al Steward (alt)

APPROVED 07/10/19

Members Absent:

Ken Stanvick, Dennis Hogan (alt),
Lisa Loosigian, Mike Gendreau
Kara Kubit (alt)

Paul Gagnon brought the meeting to order at 7:04 p.m. and appointed Al Steward as a voting member for tonight.

NEW BUSINESS:

Map 17 Lot 12-182	988 Bridge Street – Proposal to subdivide one lot into two lots with impacts to the wetland conservation district (WCD) for driveway access – Presentation by Joseph Maynard of Benchmark Engineering.
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Bridge Street is a state road which has more stringent requirements than town standards. Mr. Maynard needs 400 feet for sight distance. The lot has 478 feet along Bridge Street, but only one spot on this property meets Department of Transportation (DOT) requirements. The existing driveway does not meet DOT standards but has been there since the 1940's. Bridge Street was widened in the 1950's to its current configuration.

There will be a driveway easement across the lot with the house. The easement for the driveway is wider than the driveway itself. The easement covers the distance over the original lot only, not any placement on the new proposed lot. The driveway dead ends at the proposed lot line. No house is proposed on the subdivided lot at this time so the driveway is only drawn to the lot line. Mr. Maynard is not sure where the new lot owner will want to build their house.

These lots meet the town requirement of 200 feet of frontage on a road to build the lot; however, the sight distance is impaired due to the embankment along Bridge Street. The current driveway location can't meet the 400 foot sight distance. The 400 feet includes all seasons which means the sight distance must be maintained even in winter with 18 inches of snow on the ground. The standard requires the applicant factor in the possibility of 18 inches of snow, when they calculate the sight distance. The grade of the land affects sight line. The line of sight over the ground must be calculated then 18 inches must be added to the height. Drivers must be able to see down any state road 400 feet while sitting in their driveway.

Mr. Maynard spent a lot of time on this driveway location working with pitches, slopes, and DOT regulations. Originally, he thought he could get 3 lots from this property. The ZBA rejected the 3 lot option and told him to come back with a plan for 2 lots in this location. Mr. Maynard

has a Zoning approval for a joint driveway. He must go to Planning for a special permit to site the driveway in the WCD.

The proposed driveway location is the only spot along the frontage that meets the DOT requirement. DOT will not waive the 400 foot sight distance rule. DOT also requires a 90 degree angle to enter a state roadway. The 90 degree angle must be maintained 50-100 feet from the entrance to the state road. The old driveway is grandfathered which means the owners can use the driveway forever as long as they do not upgrade the property. If changes are made to the property, such as, subdivision, then the driveway must be upgraded to the new location with the proper sight distance and meet all DOT requirements. Mr. Gagnon asked if the driveway could be curved out of the WCD quicker if the angle on the driveway was tightened. Mr. Maynard may be able to reduce WCD impact by a few hundred square feet by changing the angle of the driveway as it starts to turn.

The proposed driveway will be approximately 3-5 feet from the wetland at the closest location. Mr. Maynard reiterated multiple times that the proposed driveway location was the only possible location for the driveway due to DOT requirements.

The crest of the hill on Bridge Street is roughly at the intersection of Beacon Hill, but visibility on the lot side of the road is impaired. Measurements of sight distance must be taken from a specified distance from the road. The proposed location of the driveway just makes the sight distance from the easterly direction. Sight distance from the westerly direction can be made easily because of the gradual up slope, to the top of the hill.

The proposed driveway is at grade. Members asked if the driveway could be raised in order to compensate for the height of possible snow. If the driveway was raised 18-24 inches, could the driveway be moved to a location out of the WCD? Mr. Maynard said it was not possible to raise the driveway in the current location because then he would be grading into the wetland and would need a wetland permit. He could not raise the driveway at any other location on the property because DOT requires a 5 percent negative grade off a state road into a property, then Mr. Maynard would have to make a 5 percent positive grade up from the negative grade. This would require extensive cutting into the hillside along Bridge Street. There is no way to raise the driveway to be level with Bridge Street because of the state regulations.

The state holds a right-of-way (ROW) 15+/- feet back from the edge of the road. The land owner does not own the land up to the edge of the road. Strict restrictions govern how the land in the ROW can be used. The state requires all curb cuts off a state road come off at a negative slope. In order to move the driveway to a different location, Mr. Maynard would possibly need to cut slopes, move utility poles and possibly fix the angles and slopes on Bridge Street which is not feasible. Mr. Gagnon is concerned about the WCD and its proper function not the movement of utility poles.

The rear portion of this lot is wetland. There are no wetland impacts. There are approximately 3,000-3,500 square feet (sf) of WCD impacts to the west side of the lot for a proposed shared driveway and associated grading. Mr. Maynard tried to get the driveway out of the WCD, but that was not possible because of the 400 foot sight distance required by DOT. Mr. Maynard

showed pictures of the area with a swale that picks up water from the rear of the site and directs water under Bridge Street via a culvert. Water will sheet flow off the driveway toward the wetland. Members are concerned about salts flowing off the driveway into the wetland.

The 4K area designated on the plan is required, by town regulations, for this subdivision. This location is set aside on any subdivided lot to ensure space for a new septic system if the lot ever needs one. Mr. Gagnon asked if the area could be moved so the driveway could come closer to the house and farther from the wetland and WCD behind the house. Mr. Maynard said he would try to adjust the location of the 4K area so the driveway can move out of the WCD sooner.

A row of tall pine trees creates privacy from neighboring lots and route 38. There are no trees along the driveway easement. Mr. Gagnon does not want cutting in the WCD. The lot owners should stop mowing the lawn and using fertilizers in the WCD. If the plan is approved members would like to see no cutting, mowing, clearing of any land to the side of the driveway next to the WCD and have WCD signs added along the driveway.

Ms. Mackay is not in favor of the plan and is inclined to vote against the plan, but suggested the Commission visit the lot to see the layout of the property. Mr. Gagnon asked Mr. Maynard to make adjustments to the plan for the driveway and 4K area which will reduce the WCD impacts. Mr. Gagnon would like to see the new plan at the site visit.

Motion: (Mackay/Shydo) to request a site walk.

Vote: 4-1 in favor, Delehanty opposed, she is opposed to the plan and does not think a site visit will affect her decision.

A site walk was scheduled for Saturday, May 18, 2019 at 8:30 a.m. at 988 Bridge Street. Mr. Gagnon stated that we may vote at the site walk if we have a quorum and we feel voting is appropriate at the time.

Map 21 Lot 3-101	32 Tenney Road – Proposal to build a single family home with extensive WCD impacts for the house and well – Presentation by Joseph Maynard of Benchmark Engineering.
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This lot has been around since the lots around it were developed. In a 2008 variance, the house, septic, driveway, yard and well were all approved to be located in the WCD buffer. The variance allowed for a 12 foot grass/yard area around the house. These restrictions were placed on the property because of its limited square footage outside the WCD. Mr. Maynard assumes the restrictions run with the property and he could build a house on the lot to the specifications in the 2008 variance. The lot was sold to a new owner who did not realize the restrictions on the property. The new owner would like a different design for the house/lot.

Mr. Maynard went to Planning to see if changes to the design would be acceptable under the old variance if he did not increase the WCD impact. Ms. Beauregard told him the process would need to be repeated.

The original plan describes a driveway and drainage that cannot be built. The bulk of the property is within the WCD. A house was permitted on this lot, but that house cannot be built as designed. The grading to the left side of the driveway is a 1-1 slope which is steep. The driveway itself has a 7 percent grade into the road which is not allowed because all water would flow down the driveway into the road and create an icing hazard in winter. The driveway must have a negative slope from the road. If this plan was used, the negative slope from the road would cause the remainder of the driveway to have a 20 percent up slope to the house. Town regulations allow a maximum driveway slope of 8 percent.

The lot is 7 acres in size, but only 1 total acre, including front and back land, is high and dry. The applicant wants to build a ranch on the property. The original footprint was small so Mr. Maynard suspects the house was originally designed with two stories. The proposed ranch has a larger footprint that Commission members suspect is double the size of the original house. Mr. Maynard said the new house was not quite twice as large. The old plan had 80 percent of the house in the WCD. The percentage is higher for the new house. The house is 14 feet from the wetland at the closest point. The proposed house location is not within the flood plain.

The wetland to the left of the site picks up street drainage from the road and water from a cross culvert from the other side of the street. This is a somewhat man-made condition. The wetland to the right side of the site has poorly drained soils. The bulk of the water along the sides of this property is coming from street drainage.

The new proposal is for a garage under the house with a walk out basement. All encroachment into the WCD buffer is for construction and falls within the defined area from the 2008 variance plan. This is a lot of record that the land owner should be able to build upon.

Mr. Maynard proposes shallow swales along both sides of the home which will pick up runoff before the water enters the wetland. The swales will be 4 feet off the side of the house and will visually limit people from encroaching into the WCD or the wetlands. Mr. Gagnon speculated the swale will be filled in within months by the owner because the narrow width between the house and swale will not be wide enough to fit a wheelbarrow or lawn mower.

The driveway cannot be built as described. Mr. Maynard will be asking Zoning (ZBA) for farther encroachment into the WCD for the house and driveway. The new proposed driveway will be along the right side of the house. The driveway will enter from the road and turn at a 90 degree angle to enter the garage under the house. The backyard encroachment is to stay the same as the original plan.

The well has been installed in compliance with the original variance.

The septic design is the same as approved in 2008. The regulation for the septic system set back from the wetland is 75 feet. This plan has only 55 feet. Mr. Maynard updated the permit for the system a few years ago. The new permit has been approved through the state. The septic will be a clean solutions system.

The water table in the front of this house is 2-3 feet below the surface grade. At the time of the variance, regulations required the septic system be 3 feet above the water table. With improvements in technology, the state currently requires only 2 feet between the septic and water table. Mr. Maynard used the new technology limits when he applied for the new septic permit.

Mr. Maynard roughly estimated the plan from 2008 has an about 6,000 sf WCD encroachment. The new plan has a proposed 7,800 sf encroachment. Mr. Gagnon would like the specific WCD impacts from 2008 and the new plan. Mr. Gagnon requested Mr. Maynard bring specific numbers for WCD or wetland impacts in future meetings. The Commission needs an exact square footage of impacts. Mr. Maynard will be going back to ZBA for the WCD impacts. He must also go to Planning for a building permit, but does not need to go before the Planning Board.

Ms. Shydo reminded the Commission of the recent ZBA case that the land owner had removed vegetation and dumped fill to make a parking pad for a camper. Much of the lot was within the WCD so any location on the lot for the camper pad would be a violation of the WCD. This lot appears to be a similar or worse situation. No matter what this land owner does on his/her property there will be a violation of the WCD because nearly the entire lot is within the WCD.

This situation keeps happening in town because construction on marginal lots is too close to the WCD. New land owners do not know about the restrictions and fill or build within the WCD. They do not realize the impact because they only see their lots, but this is going on all over town. Commission members and town board members know because we deal with this all the time. Land owners often do not realize or understand the limits of their own property. We, as town board members, are partly responsible for allowing development on marginal lots. We know land owners are going to add patios, decks, pools, etc. to their lots. We are an advisory board. Planning and ZBA listen to our advice so if we say yes to a marginal project, they say "Well Conservation said it was ok."

Ms. Mackay was reading the ZBA minutes from this case in 2008. ZBA members discussed how Conservation thought this was a good plan. We did not think this was a good plan. We thought this was a horrible plan. Members voted for the 2008 plan because the applicant threatened to build a driveway through hundreds of feet of wetland to get to the back area of the lot in order to build there. Members were fearful that building a driveway through a wetland would cause more damage than the WCD impacts for the house along the street. The manner in which the case was discussed at the ZBA meeting misrepresented Conservations thoughts.

The ZBA approved building on this lot in 2008. At that time, the land owner agreed to place the back land into a conservation easement. Commission members want to know if the land was ever placed in a conservation easement as that was a condition of the original variance. Mr. Maynard was not sure if the easement was ever done, but thought an easement on the back land would be acceptable to the owner if they were able to build the house they want on the front land. Mr. Gagnon said the Commission would be asking for the conservation easement when Mr. Maynard came back to us after the site walk.

Conditions were placed on the lot 12 years ago. Clearly, at that time, the owner didn't think building the lot was worth the trouble. Ms. Mackay speculated the seller did not tell the buyer of the restrictions on the property which seems somewhat dishonest. Mr. Gagnon speculated the lot was not built in the 1980's when the other lots in the area were built because the lot was too wet. Mr. Maynard thought the lot was filled in the 1940's or 1950's. Ms. Mackay stated that the property was definitely fill as witnessed when we walked the site in 2007.

Ms. Delehanty read a statement from the ZBA minutes that stated a Conservation member thought the property did not get developed in the past because of the sizable wetland and that the property should not be developed now. Ms. Mackay admitted she had made that argument at the time, in 2007. The lot had a very unusual shape and looked like the left overs of the surrounding development. This may not have been the case, but that is how the lot looked. Mr. Gagnon commented that years ago developers would fill a wetland, then wait 20 years and come back and develop the land.

Mr. Maynard is just trying to make this parcel work for his client. Mr. Gagnon said he could not vote a house that was twice as big as the 2008 variance allowed. He swallowed hard the first time, 12 years ago, and has regretted the vote as we have learned more over the years. Mr. Gagnon cannot vote for anything that impacts even more WCD.

WCD signs must be posted on the site.

The Commission will ask for the back land to be placed in a conservation easement in order to permanently protect the area from development. The easement should follow the same language as the previous variance condition. The easement will be from the wetland border to the rear lot line. The exact language of the easement, as described in the previous variance, was to be worked out between the town attorney and the land owner's attorney. There is a gas line through the rear of the property, 400-500 feet from the house location. The gas line easement will take precedent over the conservation easement.

A few residents were concerned about water backing up onto their lots at the ZBA meeting in 2008.

Ms. Mackay suggested a site walk. Her thoughts were that new members had not seen the site. She will be voting no on this project again. She cannot say yes to a project that is more extensive than what she said no to 12 years ago; however, in order to be fair to the applicant, as many people that can see the lot should see the lot. After viewing the lot, members can be voting with knowledge of the site. If however, members think there is no chance they will vote for this proposal, a site visit may be a waste of time.

Mr. Gagnon took Ms. Mackay's comments for a motion to conduct a site walk and asked for a second to the motion. No members seconded. The Commission will not have a site walk for this property.

Public Input:
None.

Motion: (Mackay/Steward) to vote to deny this plan proposal.
Vote: 5-0 in favor (meaning to deny the plan)

WALK IN ITEMS:

Ms. Shydo told the Commission she has been talking to a representative from NH Fish and Game. She has asked the representative to give a presentation on vernal pools at our next meeting if that was acceptable with the Commission. The Commission agreed this would be good. Ms. Shydo will keep in touch with Ms. Mackay to make sure we don't have too many cases come up for next meeting. We don't want to schedule a presentation if we have a lot of cases because time will be limited.

Ms. Delehanty reminded the Commission the Vietnam Memorial Moving Wall will be on the town green on Memorial weekend, May 23-27, 2019. The committee bringing the wall to town is looking for volunteers to set up the display and stay with the wall overnight.

MINUTES:

Motion: (Steward/Shydo) to approve the minutes of April, 10, 2019.
Vote: 4-0-1 in favor. Delehanty abstained.

NON-PUBLIC:

Motion: (Shydo/Steward) to go into non-public to discuss land acquisitions in accordance with RSA 91-A:3, seal the minutes of non-public, and adjourn after non-public.
Vote: 5-0 in favor.

Adjourned 8:50 p.m.

Respectfully submitted,
Karen Mackay,
Recording Secretary