

MILFORD PLANNING BOARD PUBLIC HEARING  
May 15, 2012 Board of Selectmen's Meeting Room, 6:30 PM

Present:

**Members:**

Janet Langdell, Chairperson

Tom Sloan, Vice-Chairman

Paul Amato

Kathy Bauer

Steve Duncanson

Judy Plant

Susan Robinson, Alternate member

**Excused:**

Chris Beer

**Staff:**

Bill Parker, Community Development Director

Shirley Wilson, Recording Secretary

Dan Finan, Videographer

Malia Ohlson, Perspective alternate member

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**MINUTES:**

1. Approval of minutes from the 04/17/12 meeting.

**OLD BUSINESS:**

2. **Richard Labonte – 1 Nashua St – Map 26, Lot 156;** Compliance with the Nashua and Elm Streets Corridor District for proposed façade renovations. (Continued from 4/17/12)

**OLD BUSINESS:**

3. **Steve Trombly – North River Rd – Map 8, Lot 31;** Public hearing for a major site plan for an earth removal operation to excavate approximate 21,000 cu yards of material, re-grade and reclaim an existing agricultural field. (New Application)

**OTHER BUSINESS:**

4. **Beverly & Scott Brown – Union St – Map 42, Lot 37;** Request for a six month extension for a conditionally approved subdivision.
5. Request for partial subdivision revocation (Suzanne Fournier letter) – Ayotte property, Map 6, Lots 41 & 41-1

Chairperson Langdell called the meeting to order at 6:35PM, introduced the Board, explained the process for the public hearing and noted that there was a slight change in the agenda.

**MINUTES:**

S. Duncanson made a motion to approve the minutes from the 4/17/12 meeting. J. Plant seconded and all in favor.

**NEW BUSINESS:**

**Steve Trombly – North River Rd – Map 8, Lot 31;** Public hearing for a major site plan for an earth removal operation to excavate approximate 21,000 cu yards of material, re-grade and reclaim an existing agricultural field.

*Abutters present:*

*Susan Trombly, 148 North River Rd*

*Rajeev K.R. Thottathil, 12 Riverlea Ext*

*Darlene Trombly, 241 North River Rd*

Chairperson Langdell recognized:

Chad Branon, Fieldstone Land Consultants, PLLC

Stephen Trombly, owner

J. Langdell read the notice into the record and stated that the application was complete, per the staff memo. P. Amato made a motion to accept the application. S. Duncanson seconded and all in favor. S. Wilson read the abutters list into the record.

C. Branon thanked the Board and Mr. Labonte for allowing him to go first tonight due to a scheduling conflict. The applicant is requesting site plan approval for a minor operation on lot 8/31 to improve an existing 2.65 acre agricultural field located in the Residence R district with 317 ft of road frontage. Harvesting of natural resources is a permitted use in this district. The parcel is currently an agricultural field that slopes from west to east and in the eastern section the slope is approximately a 35% grade which is difficult to maintain and harvest. The intention is to re-grade the site to provide a safer field for mowing and harvesting with slopes averaging 8%. Sheet 2 of the plan set shows all proposed improvements. The design is to make the field much safer, not to maximize the materials to be excavated on the property. The soils are sandy and the excavation will reach approximately ten (10') ft at its deepest location; the proposed grading will start about 100ft from the abutting properties to the west, lots 8/4-8 and 8/4-9. RSA 155 allows excavation up to 50ft from the abutting property, so we are doubling the distance. The drainage patterns on the property will be maintained and the site will be reclaimed back to an agricultural field therefore not changing the runoff characteristics from the existing conditions. Access will be via lot 8/30 utilizing the existing gravel driveway. The project will remove 21,000 cu yards of material and the hours of operation will be Monday through Friday from 7:00am to 5:00pm and on Saturdays from 7:00am to 3:00pm, as needed. This is a minor project so depending on the user this project could wrap up quickly or may not need to be open daily. The truck route, the timing and the duration are unknown at this time as they will depend on the location of the customers and potentially, future projects. The timing would be to wait until next year to start. C. Branon then gave an example if the project were averaged out over a one year period of time. 21,000 cu. yards of material = 1,050 truckloads per week or 3.4 trucks per day. Site access will be from North River Rd and will require a NH DOT permit, which is currently pending and there are no other required permits for this project. The truck traffic will have less impact the longer the project takes.

J. Langdell inquired about the Saturday hours. C. Branon said State law limits Sundays but it is frequent to have Saturday work hours. Typically homeowners will buy materials on the weekends and schedule gravel pick-ups on Saturdays. J. Langdell noted that the applicant refers to this project as minor and stated that this application was only labeled as major due to development regulations, which classifies a minor plan as impacting 600SF or less.

S. Duncanson asked how dust-control would be handled. C. Branon said there was a note on the plan and typically the dust is controlled by water, so the site could be watered.

J. Langdell read the staff comments from interdepartmental review on the Staff Memo dated 5/15/12.

By consensus of the Board, it was determined that this project, by the location and intent, was incidental to an agricultural purpose, in accordance with RSA 155-E.

K. Bauer brought up the gravel regulations and asked how homeowners going to the site to purchase materials is compared to contractors taking out materials and does that then becomes retail. P. Amato said he would expect the bulk of this will be trucked out and there is no reference in the regulations. The problem in this industry right now is that there is not much call. K. Bauer said we're not here to just talk about now, but also about the future. P. Amato said this is a relatively minor amount of gravel and the dilemma of gravel operations is that the market dictates the length of the operation and whether there is more time with less traffic or less time with more traffic. J. Langdell said we have to look at a cost effective business model and if we are trying to promote some form of economic development, a shorter period of time would be a win/win situation for the operator and the agriculturalist. It sits right beside and is part of an active farm. K. Bauer said this is being used agriculturally now and harvested for hay. P. Amato said yes, but it is very steep. J. Langdell said it could potentially be used for more produce which could be a greater money generator.

Chairperson Langdell opened the hearing to the public.

R. Thottathil, an abutter to the west asked several questions:

1. Having an open pit in the back of his house for three to five years could devalue his property if he looks to sell within that timeframe, so would it be possible to set up a three year maximum and then reevaluate if another two years would be required. He understands that Mr. Trombly has to do his business and it takes a long time for trucks to haul it out, but that is a long time to put up with the truck traffic and the sound of the excavation.
2. Would it be possible to access the trucking road from North River Rd rather than going down behind his house?
3. Dust is a big concern because it will blow right to his house that is directly behind this property. Would it be possible to put some metrics up for dust control; for example, using a specified MPH or degree for wind and heat, that would state when the ground would be watered down.
4. The hours of operation will not be a problem.
5. Where will the extracted material be stored; will it sit in piles like the other site down North River Rd for a long period of time or will it be moved off the property in trucks.
6. What will the process be?
7. What is the purpose of the reference to a septic system?

C. Branon replied to the above:

Dust control is a function of Mother Nature and winds can certainly play into it. One of the features of this property which benefits the abutter to the west is the existing berm between the two properties and it will be maintained. Also we will work the site into the bank so that any material will be further sheltered from the abutting properties to the west. There really are no metrics that can be placed on dust control. It is a function of being a responsible operator. It has always been a different question to address. With that said, the contouring and configuration of this property lends itself to a situation that will be less likely to create a problem for the abutters to the west. Utilizing the existing driveway will minimize the impacts and maintain the aesthetics along North River Rd, as much as possible. This is a good design, as it will be safer than an alternate access off North River Rd due to sight distance and it lends itself to less tracking and less likely to have materials transported onto the state highway. The mention of septic system was merely a checklist item only to show that it is a conforming lot and referenced note #8. We are providing more than 100 ft of separation from the common boundary and will maintain the existing berm which conforms to the local and state regulations.

J. Langdell asked if materials will only be processed on site? S. Trombly said that's the intention; to get it out of there and to reclaim the field as quickly as possible. It is highly more economical to screen on site rather than to take it off and handle it twice. We would only be taking the rocks out of the sand because winter sand seems to be the only market right now, in these economic times. It is unfortunate that gravel excavators always seem to get a bad rap when realistically the sand coming out of this hillside will probably benefit a lot of Milford residents, neighboring towns and construction projects in the area. We have a natural resource right here and the costs

increase if you have to have it trucked in. We have already installed a six (6) ft fence on the westerly border of the property line and the existing berm is higher than the fence. We also have some shrubbery growing that was planted three or four years ago that helps create more of a buffer. We don't like the dust any more than anyone else, so if it's a dusty day, we'll get the water and the absorbent material down to help out the situation. Having traffic go one-way causes inconvenience to residents and his thought is to let them go where they have to go, it makes life a lot easier. J. Langdell also noted by observation that the wind, in her section of town, generally moves from west to east, so that may help.

Chairperson Langdell closed the public portion of the hearing.

K. Bauer said the trouble with processing is that it can be very noisy and she also has a concern that processing gravel requires action by the ZBA. B. Parker said that was correct, the processing of natural resources would require a special exception for a parcel with a minimum of five (5) acres. T. Sloan added that would not be allowed on this site, then. P. Amato questioned if we differentiate between processing, which could be crushing and screening, which could be sifting. B. Parker said we have not, in the past. K. Bauer said it would seem to her that any change to materials that come out of the ground would be a form of processing. C. Branon said one could make the argument that screening operations happen on every construction site and on every home site. Routinely they try to use materials generated on site. Processing in general typically involves larger machinery to crush or wash materials and is more substantial than a small screener that one could rent. Screening is a routine operation that happens all over in Milford and that would be an enforcement nightmare for staff. J. Langdell agreed. K. Bauer asked Mr. Trombly to describe his operation. S. Trombly said he would use the same machinery as a homeowner would use; a loader and screener. Requests for winter sand is a big issue and it would certainly speed up the process of getting the material out of there, otherwise he would have to wait for a customer to come along for bank run sand. While you would have the noise of the screener, you'd have it gone quicker and the site would be green quicker. K. Bauer referenced the note stating the duration will be five years. C. Branon said the five year limit is a requirement of the town and they would be happy to remove it from the plan, if that was the Board's choice. J. Langdell suggested there may be a middle ground or balance. S. Trombly said from past experience, and referenced behind Kathy Bauer's house, that site was done in four different stages the intentions are the same here; to get it green and growing as soon as possible. P. Amato asked how much gravel was on that site. S. Trombly said about 40 cu yards, so this site is less than half of that and he didn't expect to get started on it for at least another year. K. Bauer asked if there was a limit as to how many times the operator would be allowed to come back before the Board. J. Langdell said it is a touch base point. C. Branon explained also that past projects had AOT permits that lapsed in five years which could have been what triggered Board review for compliance on their progress and state permits.

T. Sloan inquired about the hours of operation on Saturdays. J. Langdell said 7:00-3:00, as needed. T. Sloan asked if there was a dust control plan. C. Branon pointed to note #16 on the plan and said that is what typically has been required. It is a statement that you are acknowledging dust control and how you intend on addressing it. P. Amato referenced last month's dry weather and said it is good for the applicant to use best judgment. J. Langdell added that most of the business people in town use Best Management Practices, including the Trombly's. T. Sloan said his only concern was with the 7:00am and that was already raised and not an issue.

S. Duncanson said he did not have a problem with Saturday hours. North River Rd has a dump nearby and the road is heavily traveled on Saturday so a couple more trucks won't make more difference. Two of us live close by and he didn't think there would be much more traffic. K. Bauer disagreed, saying that there is a residential subdivision abutting this operation and one of the abutters already spoke. It's not out in some remote, isolated area; there are several single family homes that will be affected by this operation and the noise. P. Amato said, for the most part, guys don't want to work on Saturdays but it would be nice to have that option, when needed, especially in the interest of getting things done sooner. He doesn't have a problem with this, but he also doesn't live on that road. P. Amato asked if the top soil would be sold or would it be just sand. S. Trombly said yes.

J. Langdell read the staff recommendations and it was agreed that note #2 does not apply in this case. P. Amato explained that note pertains to particular customers, but there are none in this case so it is hard to determine. C. Branon said he didn't have a problem with the wording for note #3, but asked whether this project will actually

trigger a stormwater permit. It is an agricultural field being reclaimed to an agricultural field and self-contained. It doesn't have any stormwater impact. J. Langdell said to keep the note on the plan and if it is not triggered then you are still good to go; stormwater can be discussed with staff. It has also been agreed around the Board that Saturday hours are fine.

S. Duncanson made a motion to approve the application subject to staff recommendations #1, and 3-6. J. Plant seconded for discussion. K. Bauer commented that she still feels this needs ZBA action for processing materials on site, per the town's ordinance. T. Sloan said if the operation and the plan in front of us proposed to process you would be correct. Being that the site does not meet the five acre minimum, they are not eligible for processing of natural resources and we are granting approval to remove 21,000 cu. yards of material from the site, not granting approval to process natural materials. K. Bauer asked what if processing should take place. T. Sloan said the principle understands that our ordinance doesn't permit that use and he would have the option to go to the ZBA. This approval does not give explicit permission to process. J. Langdell and called for a vote on the motion on the table. S. Duncanson, J. Plant, S. Robinson, J. Langdell, T. Sloan, and P. Amato voted in the affirmative with K. Bauer voting in the negative. The motion carried by a vote of 6-1.

**Richard Labonte – 1 Nashua St – Map 26, Lot 156.** Public Hearing for compliance with the Nashua and Elm Streets Corridor District for proposed building façade renovations.

*Abutters present:*

*John "Yiannis" Vasilopoulos, Owner of Bravo Pizza and the Family Fun Center*

*John Griffin, representing Yiannis*

Chairperson Langdell recognized:

Richard Labonte, owner

R. Labonte presented revised plans dated 5/07/12 and said this was continued from last month. This is basically the same plan but he has broken up the open areas; he added freeze boards, showed the foundation, added the doghouse entry to the basement, the handicapped access and a corner board on Nashua St to break up the two different colors.

J. Langdell said there was a question at the last meeting about the alley way and asked if there was any more information available. R. Labonte said said Fieldstone is in process of doing a full site plan to give the exact dimensions. Bill Parker gave me what the town had, which may also be what is on file at the HCRD, but there is probably still some confusion as far as who owns what with the alley way. Yiannis may have had some confusion about the handicapped ramp possibly blocking his access, which I don't believe it does because the bulkhead that was there when I bought the building actually sticks out a foot further than the handicap ramp. The reason the ramp was located there was because together with Jillian Shedd from the Governor's Commission on Handicap Accessibility, Bill McKinney, and Dennis Labombard, we came to the conclusion that this was the best place to give access to these two units without major renovations. J. Langdell asked if that was the only place. R. Labonte said he just added sprinklers at \$50,000 and an ADA lift at \$30,000 to the project, which is a major increase in costs, so that is best place and I doesn't believe it affects Yiannis in any way. He'll still be able to get his dumpsters in there and has been able to do it all these years with the foundation in place. I have no choice about handicap accessibility; the new regulations are very strict, but without them I can't do business there. That is our proposal based on the State, Town and my recommendations. I am also putting in a hallway and losing rental space. I will work with the town to develop signage to break up the green area.

Chairperson Langdell opened the discussion for public comment.

J. Griffin said Mr. Vasilopoulos is not opposed to redevelopment and the bettering of this neighborhood; however, he has several concerns with the proposed façade, the renovations and the design in particular on both streets and hopefully when this Board it goes about its business of making sure this is in compliance with the ordinance, it recognizes and addresses those concerns.

- There are going to be significant structural modifications to the existing building in terms of height and that height increase is going to impact the aesthetics, looking from Nashua St and also the view from his client's property looking north from the second floor windows significantly blocking the view for those apartments.
- The proposed wrap around deck will also be a significant modification from the way that building and the buildings in the neighborhood have always looked. Certainly we are not experts but we do want the Board to critically look at the layout and the façade to make sure that in accordance with the terms of the ordinance the general façade is both reflective of the general historic nature of the neighborhood and reflective of the other buildings in the area. He wants to make sure those concerns are carefully looked at.
- After reviewing the Nashua and Elm Streets Corridor Ordinance I had a number of concerns. Does this preserve and enhance the architectural and visual character of the corridor? Does it reflect the historic development pattern in town and enhance Milford's sense of community and place? One can certainly make the argument that the design is inconsistent with the neighboring properties and doesn't reflect the historical nature of the area. The ordinance does provide for potential review of matters that are being considered, in subsection D, by an historic preservation consultant or architect and be designed by a NH licensed architect. That is something that Mr. Vasilopoulos would like to ask the Board to consider; not at great expense but hopefully somebody to review to provide input and some suggestions so that the ultimate development is consistent with the spirit and intent of the ordinance. Building heights in particular, under the ordinance, should generally be compatible with and transition from the adjacent development within the historic context of the corridor. We don't believe that this does and quite frankly we think that it is a glaring difference from the existing building heights and not aesthetically pleasing.
- We knew that there had been some survey work done for the alley. According to the deeds, Mr. Vasilopoulos is supposed to have an 11ft wide ROW running from South St to the arcade. We are concerned that that 11 ft had not been preserved. He believes that the 11 ft is supposed to be exclusively on Mr. Labonte's property and we ask this Board to await survey work before making any determinations regarding the handicap access or increase to the bulkhead, and give us the opportunity for review and comment.

S. Duncanson said in regards to height, the building was two-story in the past. The building to the south has two stories and the building on the west side of South St has two stories, so he doesn't think the argument holds. In regards to the alley, Mr. Labonte said he was not increasing the foundation for the handicap access, just rebuilding it. J. Langdell said it is not our job to approve or disapprove the configuration of the alley. Questions about the handicap access were only brought up from a façade perspective only. S. Duncanson said we do not have a historical district in town. J. Langdell noted that while we may not have a historical district, the ordinance, the master plan and the corridor guidelines ask us to be sensitive to the historical nature and architecture of buildings in the neighborhoods and Milford in general. K. Bauer added that we do have the Heritage Commission. P. Amato pointed out that this ordinance is relatively new and it is this Board's first attempt to keep things more in compliance with what the neighborhood does. The ordinance was written with certain amount of latitude and while he may not like what is being proposed, Mr. Labonte has made a good faith effort to try to follow the spirit of the ordinance and he, for one, would like to see this project completed. J. Langdell stated that this is the third or fourth case that has involved a property within this district and consideration of the ordinance has come up in each decision.

K. Bauer agreed with Steve regarding the height and also mentioned that two other businesses have open air decks in the Oval district. J. Langdell noted that although architecturally there, they were not visible from the main street.

Y. Vasilopoulos asked if anyone remembered what the building looked like when it had 2.5 stories; he has a picture in his store of both buildings. The corner building had exactly the same pitch as the building on South St and they looked harmonious. S. Duncanson said that shouldn't have any bearing on our decision. P. Amato said part of our ordinance calls for it to look more harmonious. S. Duncanson said yes, but the west side of South St doesn't look the same anymore. It's a catch 22 and you can't please both views. P. Amato said he wasn't so sure because he hasn't seen what the building looked like before. R. Labonte showed a picture from 1797 in the book Images of America, Milford by Christopher J. Thompson.

Y. Vasilopoulos said per the deeds, Mr. Labonte has to allow 11 ft ROW forever and keep the alley the way it was forever which means a bulkhead, forever. The new doghouse restricts access. J. Langdell said personally, she was sympathetic and this civil matter will be brought forward and worked out between the building Department and the lawyers. We can only look at the façade and what the handicap access will look like, if all the deeds allow it. The legality of that alley way and your deeds is not up for discussion here.

Y. Vasilopoulos asked what the purpose or exact usage of this project would be. Handicap access can be up front, but Mr. Labonte explained he doesn't want to put it in front because it will cost him more money and he would sacrifice usage in his building. He'd rather sacrifice the alley and we don't know what the usage is going to be upstairs. J. Langdell said at the last meeting, the proposed use would be some type rental space for meetings, small conferences and a bedroom or so. This is all being worked out with the Building Department and Code Enforcement to comply with all the rules and requirements from sprinklers systems to handicap access. Y. Vasilopoulos said there is a lot of gray area. Mr. Labonte told him when he first started this project that he would put two apartments on the second floor; the same as his building which is stores on the first floor and apartments upstairs. J. Langdell said we have a lot of buildings in this area like that; commercial/retail/restaurant on the first floor and apartments above.

Y. Vasilopoulos said he was concerned about the deck with fifty people smoking and drinking up there. What are my tenants going to do? J. Griffin asked, to the extent that this is just an approval of the façade, will there be any further site plan review before the Planning Board and if not, will there be further review to grant the building permit for handicap access within that ROW? B. Parker said Bill McKinney will check everything out as the building permit moves forward. If the deed prohibits the work, a permit will not be issued. J. Griffin inquired if the Board required the survey work at the last meeting, and if so why wouldn't it be completed before the Board makes their decision. P. Amato reiterated that the decision is on the façade, not necessarily on the deed issues regarding the alley. J. Langdell said the discussion about the alley way came up because the plans didn't have the visual aspect of the ramp and the Planning Board suggested it ought to be done, but did not require any survey work. J. Griffin suggested it be done before the board makes their final approval because he thinks it will be an issue.

R. Labonte said he didn't realize that he should have brought his attorney to this meeting, but the building did have a second floor which was removed around 1985 and this building conforms with the town code of under 40 ft and Yiannis's building is actually taller. The deck will offer more of a view than he would have had with the old building. We can iron out the alley way issues, and he can't speak to people drinking and smoking. We just added a better access to the basement and we're trying to improve the downtown area. The building was on the verge of being condemned when he purchase it and it will only add value to Yiannis's property. Yiannis put a lot of words in my mouth; this is a good building, a good project and this is a viable business. If Yiannis would have bought the building, he could have done whatever he wanted, but this is be my building, showing my vision and I know I will not make everybody happy. The building was engineered and approved by the Town to accommodate this second floor and we have the go ahead. The alley does have easements and the foundation was in place. Referencing the book Images of America, Milford by Christopher J. Thompson R. Labonte gave a history of the building and showed the photos to the Planning Board members.

Chairperson Langdell closed the public portion of the hearing.

K. Bauer asked Mr. Labonte to review the handicapped access location. R. Labonte said it wasn't so much his decision, but the State sent down Jillian Shedd, who met with Bill McKinney, Dennis LaBombard and myself. It was their determination that this was the best location. J. Langdell said we are talking about major improvements that would have to happen on the other side in order to try to accommodate handicap access from the sidewalk with the pitch and requirements in play today. K. Bauer agreed and said she just wanted Mr. Labonte to make it clear to the abutters. R. Labonte said access from South St or Nashua St would add a lot more cost and would involve cutting the foundation. It would require major construction and costs for the retail shops, especially the former Boston Shoe Store. Again, this wasn't necessarily his decision, it was the Governor's Commission on Handicap Accessibility and the advice of the Town; it's their best access point. R. Labonte said he loves the façade and it will offer some great space for the town. The deck will offer great views, especially for people with handicaps who will be able to enjoy the Oval experience. This has been designed for total commercial use, so it

could be either commercial or residential use. We didn't skimp on anything and will conform with the fire codes and the occupancy limits. There are a lot of regulations we have to follow and we don't get away with anything being across the street from the town hall. He don't understand why the opposition.

Chairperson Langdell re-opened the meeting for public comment.

Y. Vasilopoulos brought in the photo he referred to earlier and said he doesn't dispute the foundation, his dispute is with the opening of the alley and the alley going from 11 ft to 8 ft. The bulkhead was down low and permitted pick-up trucks to move back there to load things. J. Langdell thanked Mr. Vasilopoulos for showing the photo and said that again this is part of a decision that is outside the purview of this Board. We are not ignoring you; this Board does not have the authority to make those decisions. Y. Vasilopoulos said this is not personal with Mr. Labonte but a matter of principle and in the deed.

Chairperson Langdell closed the public portion of the hearing.

J. Plant questioned if Mr. Vasilopoulos was concerned with the direction of the pitch of the roof line or with the height of the pitch for the second floor. Y. Vasilopoulos asked to see the old picture from the book and said from South St, both buildings looked harmonious and this doesn't match the pitch. The height is in the matter of the Board's hands.

S. Duncanson referenced other pictures; one of the Café on the Oval as a three and a half story building with a pitched roof and interesting discussion pertaining to the oval area buildings followed. S. Duncanson said he had a concern with the colors; they just don't seem to fit. J. Langdell said it comes down to the fact that we can't regulate aesthetic taste.

K. Bauer said this building was in such disrepair for so many years, so many people have commented that they are so glad this building is being renovated and improved. This plan does match what we're looking for in terms of a second story; there are others in the area and the town hall is right across the street, so proportionately, this works better and the colors really don't bother her because of how it looked for so many years.

P. Amato said he didn't agree with Mr. Labonte about loving this design; however, this is what has been presented and it does meet the intent of the ordinance and we should move forward to get this project completed. The town spent a lot of money on the restoration of the town hall and this project, along with the newly renovated Café on the Oval on the other corner will help to complete that picture.

T. Sloan said the design characteristics and configuration both meet the intent of the design guidelines, so he has no objections.

J. Langdell said she recognizes that change is sometimes difficult and she recognizes that while the pitch may be different from the 1980's or the 1700's, it is still in keeping in with the design elements around town and the porch area is also consistent with the area in town. She can see an attractive corner in the future. Mr. Labonte took some of our suggestions from the last meeting and added them to the plan and future signage will also help break up the area on Nashua St. The rest of the issues can be addressed by the Building Dept.

T. Sloan made a motion to grant approval for the façade changes as proposed. K. Bauer seconded and all in agreement.

A brief recess was taken.

#### OTHER BUSINESS:

**Beverly & Scott Brown – Union St – Map 42, Lot 37;** Request for a six month extension for a conditionally approved subdivision.

Chairperson Langdell read correspondence from Tom Quinn representing the Browns dated 5/3/12 requesting a six month extension and said this request is within the guidelines of our Development Regulations.

P. Amato made a motion to grant the six month extension through 9/30/12. T. Sloan seconded for discussion. K. Bauer inquired what conditions were left to be done. B. Parker replied that they were wrapping up the easements and a few notes on the plan. Chairperson Langdell called for a vote. All voted in favor of granting the request for a six month extension.

**Request for partial subdivision revocation(Suzanne Fournier letter) –Ayotte property, Map 6, Lots 41 & 41-1.**

Chairperson Langdell recognized Suzanne Fournier.

S. Fournier said she thought Mr. Parker would speak per his request to have the town attorney look at the evidence that she put forth in a letter dated 4/1/12 to revoke the second part of the subdivision where the house has not been built. J. Langdell stated that the request is based on a letter submitted by Ms. Fournier along with background information, photographs and her view of the RSAs and town regulations regarding the subdivision. She then read the background pertaining to the subdivision of Lot 6/41 and 6/41-1, from the Staff memo dated 5/15/12. P. Amato inquired if the house was on the front lot or the back lot. J. Langdell said it was on the front lot and she used overhead GIS photos to show the parcels.

J. Plant asked if the owners of the property were notified that we would be discussing this. B. Parker said yes, they were.

S. Fournier began her synopsis by saying that two houses, shown on the document just passed around, were supposed to be staggered on the first piece of property. The entire 26 acre lot was supposed to be split lengthwise, 12.5 acres and 12.5 acres so the houses would be together with the one driveway for both. J. Langdell clarified that this information was based on what was presented at the ZBA meeting in 1989, not necessarily the subdivision plan that was presented and approved. S. Fournier said Mr. Parker did a good analysis and it is a legal lot. The nitty-gritty is that there is this really long winding driveway where the Nordman's have lived for almost nine years and the driveway goes right through their property. It was changed from the original 75'; the driveway was shifted 75 ft over and now it is 150 ft from the stonewalls and neighbors. J. Langdell noted that the shifting was based on an easement agreed upon by all property owners, at that time. S. Fournier stated that the first owners, Daniel, the son and the father made a deal to shift that driveway 75ft and she presented a plan from HCRD and now it is very intrusive on the first property and it's also not straight line. The driveway winds and meanders going to the first house and then turns and continues to nowhere ending up in a wetland. S. Fournier referenced the pictures presented in the request.

J. Langdell said you are not a current owner of either of these properties. S. Fournier said she is an abutter to the driveway at Lot 10/8. J. Langdell said the area being referenced is on lot 6/41 which is owned by the Nordmans, but they're not here tonight. Have we heard any comments or input from them? B. Parker said he has not talked with the Nordmans nor have they contacted us. S. Fournier said maybe the Nordmans couldn't be here tonight. She talked with the Nordmans and they had sued the Ayottes. Due to fault of their title company that didn't catch the error of the driveway being shifted, they went through a two year, expensive legal process. There was a P&S in place, and apparently Mr. Ayotte went to Nashua to record this document, plan #209-10, that is unsigned by either property owner. The document also has a certification with an illegible signature "*I certify that this survey plot is not a subdivision pursuant to this title and that the lines of streets already established and ways shown are public or private streets already established and that no new ways are shown,*" and he quote the RSA and signed it. So this whole shifting of a ROW 75ft may be considered a new way. It is not the location that was approved by the Planning Board in 1989. In fact, when I met with Mr. Parker a few weeks back, he was very surprised when this plan was compared to the original subdivision plan.

P. Amato asked who owned lot 6/41-1. S. Fournier replied Roland and Clara Ayotte. S. Duncanson asked where Ms. Fournier lived. S. Fournier replied that she lived on a very small lot, #10-9 and she is an abutter to lot 6/40 that the Ayottes have just purchased. J. Langdell clarified that had no bearing on tonight's business. S. Fournier said the Ayottes now own lot 6/40, the lot next to her and lot 6/41-1, the lot accessed by this driveway and she is very concerned for herself and her neighbors.

S. Robinson asked which lot the Nordmans owned. S. Fournier said they are on lot 6/41. They got 5.5 acres in the subdivision whereas it was supposed to be split into 12.5 acres and 12.5 acres when presented to the ZBA, but by the time it got to the Planning Board it changed to 5.5 acres and 17 acres, losing 3 acres in the process, which nobody has been able to explain.

J. Langdell said certainly under our regulations as well as the RSAs, if there is good cause and it meets the criteria, the Planning Board can, in fact look for a revocation or partial revocation of a subdivision. Some of the items Ms. Fournier brought up do pertain to those criteria. J. Langdell then read the conclusion from the letter presented by Ms. Fournier *..to consider reviewing the Ayottes' 1989 subdivision plan #26866 for partial revocation, in order that any future development considerations of the second lot meet all current laws and standards.* Given that intent, if this lot were to come back to sell off part of it, it would have to go through the entire subdivision process again and if a house were to be built on the lot, they would have to go to the Building Department for a permit and to the State of NH for septic approval. All current regulations and laws would apply including the current Development Regulations which govern development on that property. S. Fournier said she did not know that at the time and thought this was good motivation to express this to you and also to say she likes justice. Environmental justice would not be served if a house is placed on this property. This undeveloped portion is all up a hill that connects to Mr. Wisniewski's land; its 500 contiguous acres of unfragmented habitat that goes into Wilton. The original plan showed proposed houses behind other houses and to now have a future house in this habitat doesn't make sense. She described the beautiful land area and said it is a beautiful place to hike, in fact, 12 of these 17 acres have been put into current use. So it is conservation land, open for walking and a house could be intended to be placed on the five acre area, if there were to be one. Maybe the town ought to take a look at this because quite a bit of evidence has been provided and she totally agrees with Mr. Parker that it is worth the town attorney taking a look at this. J. Langdell reiterated that there were no appeals and no motions at the time in 1989 or in 1994 to prohibit, repeal or object to the decisions made at that time.

B. Parker said it is not necessarily correct that he thinks the town attorney should be consulted. From his perspective, there is no reason to revoke any approvals for that remaining lot and he doesn't see how that can be done based on the criteria, but the comments in the staff memo were suggesting that if the Board felt it was necessary to get the town attorney's opinion, they could go ahead with that. S. Fournier contested the staff memo saying that from reviewing the files, this is a legitimate lot, but you also don't have plan 209-10 in the file which is pointed out in the evidence and she also read *Upon a review of the evidence provided by Ms. Fournier in her attached letter dated April 1, 2012 it is the desire of the Planning Board to obtain the opinion of the Town Attorney on this matter, the Board may request this and the Office will follow up on the matter.* B. Parker stated that he left out the "if." S. Fournier said I am just reading what you wrote and can only go by the text that you provided me; then you may correct it. J. Langdell noted that the Planning Board had understood Mr. Parker's intent and a brief discussion followed.

K. Bauer read RSA 676:4-a.1 (b) *...conforms to the statements, plans or specifications upon which the approval was based...* and asked if it this conforms. Based on that, among other arguments that Ms. Fournier has brought forward, I would like to have Attorney Drescher review this matter as it is quite complicated. J. Langdell inquired what specifications were being referred to. K. Bauer said moving the driveway, the ZBA discussion on how the two lots would be subdivided, although it may not be relevant and the legal aspect of changing that easement.

P. Amato said that we would hope that today if the ZBA made a recommendation, the Planning Board would take it under advisement as we made our subdivision approval; however, it appears that the ZBA looked at one thing and this Board looked at something else. What was approved is what was presented in 1989 and these have been lots of record, and taxes have been paid as two separate lots. There is access to both lots and there is a 5 acre area outside of current use where a house could be built today meeting all current standards and codes. The fact that nothing has happened in twenty years is not our concern; it is still a subdivision with lot lines in place. It is their prerogative to put their land in current use and land in current use is still private property. If the present owners are allowing people to walk the land, that's great for everybody but they don't have to do so. It is not practical to put many houses on that large lot and we approved two houses out there. The only thing that seems to have changed is the access easement and if you own both properties you can certainly change that. If you sell one of

those properties and the attorney didn't make that change clear to them, that is a civil matter not a Planning Board matter.

T. Sloan said he doesn't get the sense we've met any of the conditions for the revocation of approval. We don't have the applicant or the applicant's successor, in interest, and those are very important; however, following Kathy's train of thought, it may be in the Planning Board and the community's best interest to inquire of our attorney if there was action that occurred that we may need to take action upon. Were the differences between boards discussed? Were there reasons to approve it in a different orientation? Do we have authority, after the fact, as a Board to take action?

S. Duncanson disagreed saying that the original owner owned all three pieces of the property and he changed the easement and doesn't see a problem with it.

J. Plant said she is a little troubled that the none of the owners or other abutters to lots 6/41 and 6/41-1 are here.

S. Robinson agreed in essence with Tom and Kathy, but does find it very surprising that the owners of the properties in question would not be here as Judy stated. J. Plant noted that no other abutters are here and clarified that Ms. Fournier is an abutter to lot 6/40, not to lots 6/41 or 6/41-1. P. Amato asked what would happen if we revoked the subdivision because the lots are owned by two different people. B. Parker said he understood Ms. Fournier's concerns, but didn't see how this subdivision can be revoked because revoking the subdivision of a legal non-conforming lot that exists gets you to a legal non-conforming lot that exists. There would be no change. P. Amato asked could this be made in to a non-buildable lot. B. Parker said he didn't see how when we have an approval for a subdivision.

J. Langdell said this was approved without question of appeal in 1989 and we've not heard anything at this Board level since that time. The rational for bringing this forward by the petitioner is in order that any future development considerations of the second lot meet all current laws and standards and clearly that would have to happen. I don't think we have grounds to pursue this in terms of the RSA for revocation; however, if the majority Board would like the Town of Milford to send this to our town attorney for an opinion, we can incur that expense.

T. Sloan clarified that his request to consult with the town attorney wasn't based on the changing of an easement, rather his concern was that the Planning Board may have approved something different from what the ZBA approved, and if that happened is there liability?

P. Amato asked if staff could provide the minutes from those ZBA and Planning Board meetings for this Board's review prior to making a determination to send this to the town attorney for opinion. S. Fournier said she reviewed everything. The Planning Board decided about a driveway; didn't decide about the houses. J. Langdell said she would prefer to read those minutes herself, and requested copies of all ZBA and all Planning Board minutes from 1989 and 1994, in order to take the next step. K. Bauer said based on the arguments provided, it sounds like there were conditions placed upon the granting of the variance. B. Parker said those conditions were included in the staff memo, which the chair read earlier and were also included in a note on the approved subdivision plan. K. Bauer said it's a good idea that we read the minutes first and then decide. P. Amato added that we would then be able to make a more intelligent decision.

T. Sloan made a motion to table the discussion to the 6/19/12 meeting to allow for distribution of the requested minutes. P. Amato seconded and all in favor.

**Public Service Announcement:**

J. Langdell stated that the ZBA and Planning Board are looking for alternate members and asked interested individuals to contact the Community Development Office or go online for a volunteer application.

T. Sloan made a motion to adjourn the meeting at 9:15PM.

**MINUTES OF THE MAY 15, 2012 PLANNING BOARD PUBLIC HEARING APPROVED JUNE 19, 2012.**