

NORFOLK PLANNING & ZONING COMMISSION

Regular Meeting

Norfolk Town Hall

April 11, 2023 @ 6:30 p.m.

Approved Minutes

Present: Chris Schaut-Chairman, Paul Madore, Melissa Renkert, Jonathan Sanoff, Marion Felton, Kevin Gundlach, Wiley Wood (alternate), Edward Barron (alternate), Steve Landes (alternate)

Also Present: ZEO Michael Halloran

1. **Call to Order-6:30**
2. **Roll Call** –Edward Barron will be seated for Tom Fahsbender
3. **Agenda Review-**
 - A. Application 23-006 withdrew application.
 - B. Move New Business and Bills and Correspondence to before Old Business since the public hearing cannot start until 6:45.
Melissa Renkert made a motion to move #7 New Business and #8 Bills and Correspondence to before Old Business and after Public Comment, Paul Madore seconded, and it was approved unanimously.
4. **Public Comment-** none
5. **New Business-**
 - A. **Ellen Battell Stoeckel Trust, review of minor change to approved plan per Fire Marshal.**
A year and a half ago the Commission approved proposed work at the music shed. Upon review, the Fire Marshal had to make a minor change to the east side of the building that required a second handicap access which will include a ramp. The Commission needed to determine if it is significant enough to open a Public Hearing.
Jonathan Sanoff made a motion to approve the changes to the plan as submitted on the grounds that it is a minor change to comply with the Fire Marshal request and with the Americans with Disabilities Act, seconded by Marion Felton and approved unanimously. Revision date January 16, 2023. Original date July 27, 2022. Sheet A13 will be added to the file.
6. **Old Business**

Public Hearing 6:35 pm, Special Permit Application 23-006, Applicant Richard McCue agent for Carlene Laughlin 305 Mountain Road. Accessory Dwelling Unit in accordance with provisions of Section 3.05D. Possible deliberation and vote.

This application has been withdrawn. Michael Halloran read the withdrawal letter into the record.

7. Bills and Correspondence

A. Review by Todd Parsons of Haley Ward Engineers of a minor change to the site at Haystack Woods

Water was found under the road at Haystack Woods and a pipe was discovered under the road. Ken Hrica, engineer for The Foundation for Norfolk Living, presented a plan to the Wetlands Agency to address the issue. The Wetlands Agency wanted Haley Ward, the engineering firm for the Town, to review the suggested plan. Todd Parsons from Haley Ward approved of Mr. Hrica's plan, which is a swale running by the side of the road and eliminating the pipe.

B. The Commission received regular Wetlands minutes of the March 6, 2023 meeting.

Since there was still a few minutes until 6:45 when the public hearing would begin, Jonathan Sanoff made a motion to move the ZEO report to before Old Business, it was seconded by Paul Madore and approved unanimously.

8. ZEO report

A. Brian and Brenda Lily application approved last month by public hearing.

B. Richard McCue application accepted last month and withdrawn this evening.

C. Paul Lussier on 45 Sunset Ridge to build a screened-in porch approved.

D. Enforcement action for Ben Schiff at 24 Greenwoods Road West.

Last week Mr. Halloran signed an Assessment by Default Judgement by Norfolk Citation Hearing Officer, Attorney Peter Ebersol and he delivered this to Mr. Schiff last week. The fines began Jan 17th and are continuing to accumulate at \$150 a day.

E. The Cultural Center on West Side Road has agreed to plantings in front of the air conditioning units, minimum of 4 feet.

6. Old Business

B. Continuation of Public Hearing, #23-001 Special Permit Application for Recreational Facility 3.05L. A Dog Park on vacant land on Westside Rd. Lot parcel #7-10/18.

There were no recusals from the Commission. Wiley Wood said that he has read all information from last meeting and he felt he could sit if required.

Chris Schaut read the legal notice into the record.

The Friends of the Norfolk Community Dog Park (TFNCDP), member Joel Howard wanted to stress that the community aspect was about 50% of the reason for wanting a dog park. Mr. Howard read their mission statement. Mr. Howard then explained the history of the dog park explaining that last spring Patricia Nooy approached Mr. Howard and just said "dog park". He went to many different dog parks and scouted many different locations. They have a board of 11 people. Mr. Howard explained the extensive research that he has done, and he then said Colleen Hellerman offered a piece of her property on Westside Road. They also looked at many different locations but none were right for a number of different reasons. They liked Mrs. Hellerman's property the most, for a number of different reasons as well. Cindy Leffell then spoke about the Special Permit criteria and how they feel they have met the conditions. She then read and explained the criteria which was in a letter in the packet that the Commission received.

Next the Commission was free to ask questions. Paul Madore asked if the handicapped parking would be paved? Michael Halloran said that handicap spaces must be a hard surface. Jonathan Sanoff asked if they have decided on insurance and Mr. Howard said they did, which is an insurance that is specific for dog parks, it protects the owner of the land. Edward Barron asked about parking on the road and Mr. Howard said that the parking lot holds nine cars and he believes, from viewing other parks, that that should suffice. Wiley Wood asked about the elevation from the road to the far end of the dog park, stating that it looks like it is not flat and Mr. Howard said that that was part of the appeal because it gives more exercise and good drainage. Mr. Howard said they are putting in a French drain as well. Mr. Barron asked them to address the issue of it being a wildlife corridor. Ms. Leffell said that it is not known to be an official wildlife corridor. Mr. Howard said that there will be quite a few trees in the dog run for shade. He also said that they will not remove the trees in front of the dog run that are not dead. Michael Halloran noted that on the site plan the Handicap is on the left side and it should be on the right side. Mr. Howard said that he will change that on the site plan.

Michael Halloran received 20 letters and they will read them into the minutes. Bill Thomas asked for the letters to be read after the public comment and it was stated by Chris Schaut that if any person wrote a letter they wouldn't have to speak, and he emphasized that this is the usual format. Avis Meehan 390 West Side Road stated that she wrote a letter so that she did not have to speak. Larry Nelson from Litchfield Road said that the letters should be in a synopsis saying for example, 14 against and 14 for to get an idea what the community wants. Mr. Schaut explained that the board needs to read the entire letter into the record. Cindy Leffell said that she understood the comments but said she felt strongly that the process should be the same as any other application. Mr. Schaut then asked the Commission what they would like to do. Discussion ensued. Avis Meehan then said that she did not anticipate that this would be almost a full

public hearing but thought only new information would be included. Mr. Schaut explained that the previous letters would not be read only new information.

The Commission decided to do what has been historically done at public hearings which would be to read the letters first.

Mr. Schaut then explained how the Public Hearing will proceed, which is if the public would like to speak, they should direct their statement or question to Mr. Schaut and not the applicant.

The Commission proceeded to read the letters.

The Public then had the opportunity to ask questions and make statements.

Julie Scharnberg from Westside Road thinks that the park is a nice idea. She sees many people walking dogs down her street and thinks it is a great idea to have a place for dogs to run off leash and might be a nice inducement for people to spend more time in town and go to the farmers market etc.

Larry Nelson on Litchfield Road is not in favor of a dog park. He has a concern that once the dog park gets established that we would have no control over who would use. He also has concerns about insurance and liability.

Hannah Silverman of 8 Emerson Street said that salamanders get squashed by cars already and does not believe that dogs would hurt them.

Bill Thomas of 9 Maple Avenue said that he has been a homeowner here since 1994 and is very much in favor of the dog park. He thinks there a group of people that are against change or improvement in town and he finds it disturbing. He believes it will be nice for Norfolk.

There were several questions raised from public and Chris Schaut asked the applicant if they would like to address them.

Cindy Leffell said that they will not have lights so there will be no one coming at night, it is completely dark there. They will also not be policing the dog park because it is fine for people from other towns to come and believes it will encourage them to go to town and spend time at the Berkshire Store or the Pub and more. She said they asked about using the ball field for the dog park and the ball field is owned by Yale and they are not open to extending it to more activities.

John Funt thinks the area is saturated with facilities and does not need more.

Avis Meehan wants to know the management plan and the process for managing concerns.

Joel Howard said that every abutting neighbor was sent a letter of the plans and the management plan is their non-profit group, their board.

Cindy Leffell said that they wrote a detailed plan and sent to all abutters.

Holly Gill of 117 Westside Road said that she received no phone call or letter. She said that it is a giant concern for them living next door to the dog park. She loves the peaceful nature of the land.

Tom Hodgekin of 10 Emerson Road reminded all that there is a paid company that comes in for cleaning. He said that he has ridden his bike by Egremont dog park a minimum of 75 times and has only seen 3 cars at once.

Hannah Silverman has been taking her dog to Egremont dog park and she has only seen 3 or 4 more people at the most ever there.

Tom Burr said that the spotted salamander becomes active this time of year and crosses the road to go to the vernal pools. He is not concerned about the dogs per se but the destruction of the forest land.

Bill Dobbins said the location on Westside Road is a known endangered species area by DEEP. He does not know if the dog park will endanger them.

Wetlands has approved the use of the dog park because it is not in a Wetlands area.

Chris Schaut explained that the POCD is a document put together by the Planning and Zoning Commission and it is an advisory document for the P&Z Commission and although they do consider it when making decisions, they are not bound by it and updating of the POCD is required by the state every 10 years. In the regulations for P&Z they have a set of criteria for reviewing a Special Permit use. The POCD is mandated by the state and it is something they strongly consider when making decisions.

John Funt doesn't think the dog park fits the requirement for the 20 acres that is required. Chris Schaut read the regulation for the Special Permit for a recreational facility which is "minimum lot area shall be 5 acres for any tennis, swimming, fishing, horseback riding, or stables facility or any indoor facility and 20 acres for all other facilities" and then in the regulations the definition for a lot is "a parcel of land which complies with the minimum area street frontage and other dimensional requirements as specified in these regulations and for which a deed has been recorded in the land records or a building lot shown on a subdivision map approved by the commission and recorded in the land records". Mr. Schaut said that it was the Commission's opinion that this means the lot within where the use is going to be located has to be at least 20 acres, not that the dog park itself needs to be at least 20 acres and they received a decision from the Commission's attorney Mr. Zizka and Mr. Schaut read the letter into the record. The lease is for less than the 20 acres but the lot is at least 20 acres. The lease is for 2 acres.

There being no more questions and no more information asked for, Jonathan Sanoff made a motion to close the public hearing at 8:40, seconded by Edward Barron and approved unanimously.

Commission discussion ensued.

Jonathan Sanoff made a motion to approve the application subject to conditions, if any, seconded by Marion Felton and approved unanimously.

Mr. Schaut opened the meeting for deliberations. (I am not sure that this still stands?)

Jonathan Sanoff believes that the opposition to the dog park suffers from a failure of proof. He expressed that the notion that the place will attract crime or criminals is highly speculative and unproven. A law enforcement expert or security expert could have been brought in to give expert opinion, but that was

not done. As for the decline in property values, if people genuinely felt that property values would decline and they wanted to offer proof of that they would have brought in an appraiser and they have not done that. Noise from dogs barking can be an obnoxious thing and troublesome but there is nothing in the record to say that the noise would carry to adjoining or even reasonably approximate landowners and disturb their enjoyment of the property. He said that sound can be objectively measured but no one has come forth with objective measurements. He also said that the wildlife corridor could be a concern but there is no proof that the animal population would be adversely affected. He stated that the opposition is genuine and heartfelt but there is a lack of objective demonstration, therefore he thinks they should allow the dog park to go forward.

Michael Halloran told the Commission that they should consider conditions since there is strong opposition, to help mitigate the aversion to the dog park. Mr. Halloran has a list of conditions he is suggesting which are 1) Parking-He said they are proposing 10x20 parking spaces and the regulations only require an 8x19 parking space and he thinks it would be a good idea to make it smaller so it is not as big of a footprint. 2) The handicap accessible parking only needs to be 13x18 instead of 20x20. Mr. Halloran thinks this could shorten the parking lot and thus be able to push it back farther from the road. 3) Mr. Halloran said they are required to have a handicap space that is not gravel. 4) Signage-they are asking for three signs on site plan and the Commission regulations allow only a 2 square foot free standing sign on the road stating the name, for a residential area. They might be able to put a sign perpendicular to the road on the fence. Chris Schaut read 6.01B4 which says "warning, street numbering, or directional sign no permit required. Size not to exceed 2 square feet in area and setback 1' from the property line." The Commission then discussed signage. Mr. Halloran suggested that there would be one sign by the road and the second sign could be approved but would require a zoning permit by the ZEO and the Commission could put size restrictions on the sign as well.

Jonathan Sanoff suggested listing the Town of Norfolk on their insurance as well and Chris Schaut did not believe that was in the purview of the Commission. Mr. Sanoff then noted that it is on private land so that is a matter with the owner of the land. Mr. Halloran also suggested that the hours of operation should be 8 am to 8 pm. Mr. Halloran mentioned that the trees from the road are sparse and maybe the Commission should recommend planting something to hide the open area from the road.

Edward Barron has concerns with parking on the road and he thinks parking on the road should not be allowed and this should be addressed. Mr. Barron also thinks that as a Commission they could require setbacks. The Commission discussed setbacks at this point. Mr. Barron also thinks that the Commission should discuss a condition for doing an environmental impact study. He would like to read the DEEP report that was given and the other articles as well. Chris

Schaut mentioned that the Commission doesn't have evidence that this project would have an impact on any animal species and the people that brought up the effects on the endangered species brought no evidence to show that the construction would have an impact. Mr. Halloran said that when they did the wind turbines in Colebrook they had a professional give a report and if a professional had shown an impact on the wildlife it would be a different matter. Mr. Schaut also mentioned that there is case law that shows that as a commission they can question the testimony that is given to them by the public since they are not experts in what claims they are making it isn't necessarily the Commission's burden to decide if their claims are legitimate, it is up to them to substantiate. The Commission decided that they would think about what conditions they should require if they approve the application next month. Melissa Renkert made a motion to continue deliberations for next meeting of May 9th, 2023, seconded by Jonathan Sanoff and approved unanimously.

7. Approval of Minutes

Regular Meeting March 21, 2023

Jonathan Sanoff made a motion to table the approval of minutes of the regular meeting of March 21, 2023, seconded by Paul Madore and approved by all with the exception of a no vote by Edward Barron.

10. Action items and responsibilities

Each Commission member should be considering conditions of approval of the dog park and bring those to the next meeting for a discussion.

11. Adjournment

Jonathan Sanoff made a motion to adjourn at 9:58, seconded by Marion Felton and approved unanimously.

Respectfully submitted,

A handwritten signature in black ink that reads "Marinell Crippen". The signature is written in a cursive, slightly stylized font.

Marinell Crippen, Secretary