



PLANNING BOARD MEMO • AMENDED MAJOR SUBDIVISION • FINAL PLAN REVIEW

DATE: October 22, 2024

TO: Windham Planning Board
FROM: Steve Puleo, Planning Director
Cc: Norman & Anastasia Harris,
Evan O'Connor, Town Planner

RE: #24-30 – Amended Major Subdivision – Third Amended Otterbrook Estates Subdivision –
12 Irving Lane – Final Plan Review –

Planning Board Meeting: October 28, 2024

Overview –

The application is to request for a Planning Board an amended subdivision approval of the Otterbrook Estates to modify the applicants' parcel boundary by swapping 18,336 SF land area with the abutter of a 17,036 SF portion of land. In 2012, the applicants received an amended subdivision to divide lot 15 of the Otterbrook Estates and to be access from Irving Lane. The property is identified as Tax Map: 11B; Lot: 15-1; Zone: Farm Residential (FR) zoning district and located in the Presumpscot River via Otter Brook watershed.

Amended subdivision application review does not require Development Review Team meeting.

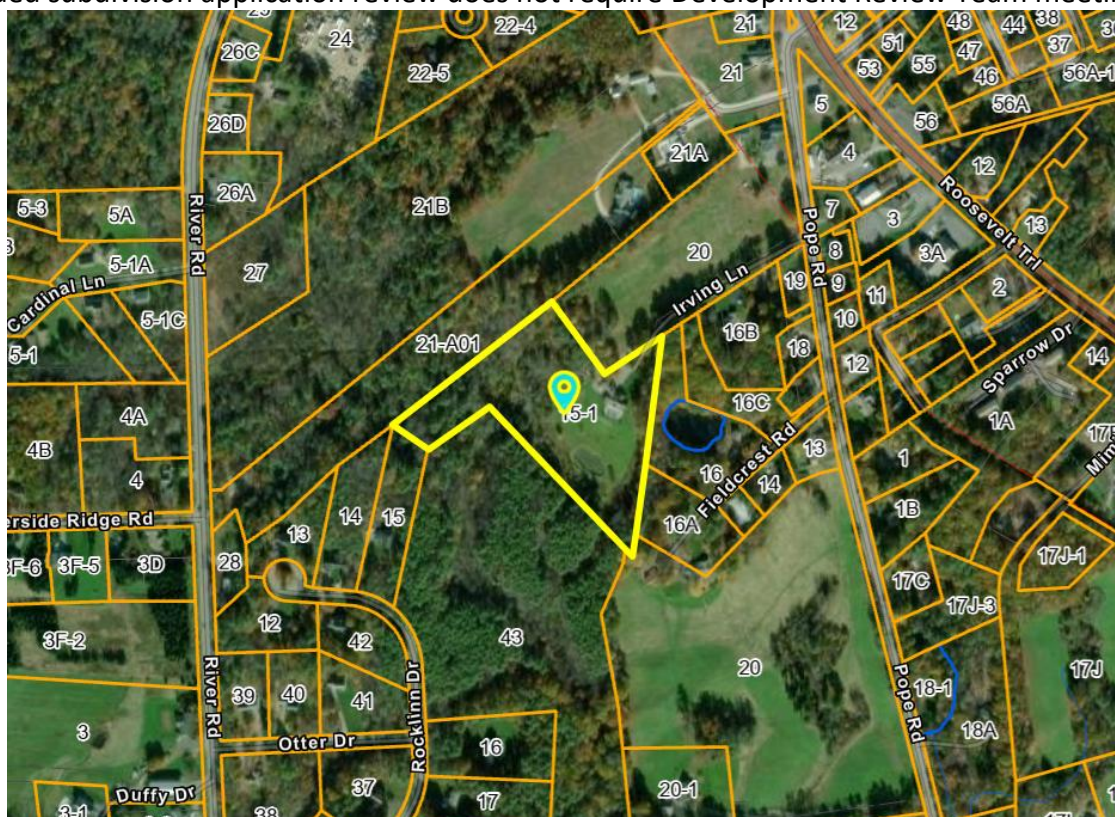


Figure 1: Aerial View of the subject parcel relative to surrounding properties and street network.

AMENDED SUBDIVISION REVIEW

PLEASE NOTE: The staff memo is a reference guidance document, and suggested topics for board discussion are listed; ~~the strikethrough text is items for the final review;~~ ***bold and italic text represent unaddressed existing and/or new staff comments;*** or plain underlined text are items that have been addressed by the applicant; and *italic text is for information or previously reviewed and/or approved items.*

Staff Comments:

1. Complete Application:

MOTION: [I move] the Amended Major Subdivision application for project #24-30 Third Amended Otterbrook Estates Subdivision project is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.

2. Waivers:

No waivers requested

3. Public Hearing: The Planning Board held a public hearing on October 28, 2024

4. Site Walk: The Planning Board may schedule a site walk

Findings of Fact, Conclusions, and Conditions of Approval for the Windham Planning Board:

MOTION: [I move] the Amended Major Subdivision application for the #24-30 Third Amended Otterbrook Estates Subdivision development identified on Tax Map: 11B; Lot: 15-1; Zone: Farm (F) zoning district and located in the Presumpscot River via Otter Brook watershed is to be **(approved with conditions/denied)** with the following Findings of Fact, Conclusions, and Conditions of Approval.

FINDINGS OF FACT

Jurisdiction: The Third Amended Otterbrook Estates Subdivision project is classified as an Amended Major Subdivision, which the Planning Board is authorized to review act on by [§ 120-913B\(2\)](#) of the Town of Windham Land Use Ordinance.

Title, Right, or Interest: The applicants have submitted a copy of a Warranty Deed between Kyle D. Rich and Jill C. Rich and Norman P. Harris and Anastasia P. Harris, dated November 18, 2011, and recorded on November 21, 2011 at the Cumberland County Registry of Deeds and found in Book 29139 and Page 191. Along with, a Warranty Deed between Dale S. Morrell and Janet L. Morrell to Page Properties, LLC, dated February 27, 2013, and recorded at the Cumberland County Registry of Deeds recorded on March 14, 2013 and found in Book 30467 and Page 38. On October 13, 2024, the

applicants and the abutter agreed to property exchange as show on the third amended Otterbrook Estates subdivision as described herein.

ARTICLE 4 ZONING DISTRICTS

- As shown on the Town of Windham [Land Use Map](#) approved by the Town Council, Tax Map: 11B; Lot: 15-1; Zone: Farm Residential (FR) zoning district and located in the Presumpscot River via Otter Brook watershed.
- The existing use is a residential subdivision where single family lots are developed.
- The applicants are pursuing an amendment to adjust the record property boundary lines by swapping a portion of the applicants property with the abutting property identified as Tax Map: 50; Lot 20 to construct a garage for personal use.

THE FOLLOWING FINDINGS FROM THE AMENDED SUBDIVISION REVIEW OF RELATIVE CRITERIA IN [§120-911](#) SUBDIVISION PERFORMANCE STANDARDS.

§120-911A – Basic Subdivision layout

- The layout of the subdivision will not change with this amendment, only the applicants' property boundary lines.
- The amendment is to provide a suitable location near the applicants' residents to construct a detached garage.

§120-911E – Impact on wildlife habitat

- The parcel modification to the boundary lines will not impact any natural habitats.

§120-911F – Conformance with Land Use Ordinances

Comprehensive Plan:

- The plan does meet the goals of the 2017 Comprehensive Plan.

Subdivision Ordinance:

- Digital transfer of the subdivision plan data must be submitted with an electronic copy to the Town and as well for the Town's GIS data transfer, after the amended plan is recorded at the Cumberland County Registry of Deeds.

Maine Subdivision Law, per [30-A M.R.S. Sec. 4401](#): Town Attorney comment regarding the removal of a parcel created by the Planning Board.

1. There is nothing in State law that allows a numbered lot in a subdivision to be removed from the subdivision. While there is a subdivision revocation process, it only applies prior to the sale of any lots in the subdivision, which clearly is not the case here. This would not have been allowed in 2012. As stated in the property deed, the subdivision received approval from the DEP in 1988 and was subject to all of the conditions of that approval, including that any divisions of lots requires DEP approval. Even if the Town had the authority to remove it from the approved subdivision, it would still be subject to the DEP requirements. In addition, the deed refers to various conditions of record on the subdivision plan, so removal could create title issues for the owner.

30-A M.R.S. Sec. 4401 contains the definition of subdivision and it covers specified divisions of land that were under the same ownership within the five years immediately preceding any division that triggered subdivision review. That definition does not change over time.

2. If the hammerhead question remains after the above answer, the hammerhead may be left in place and counted towards the frontage requirement if it was the first hammerhead created after March 12, 2012. If it does not meet that requirement, it must be removed if the road is to be extended (although that doesn't appear on the plan). If this is the existing condition and it was approved as part of the lot split in 2012, then presumably it was reviewed at that time under the then applicable standards.

§120-911G – Financial and Technical Capacity

- The applicants are self-funding the amended subdivision application.

§120-911J – Stormwater Management

- No changes in the existing stormwater management plan are required.

CONCLUSIONS *(Final Plan Review)*

1. The amended subdivision **reflects** the natural capacities of the site to support development.
2. **Not Applicable:** Buildings, lots, and support facilities **will/will not** be clustered in those portions of the site that have the most suitable conditions for development.
3. **Not Applicable:** Environmentally sensitive areas, including but not limited to wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and sand and gravel aquifers **will/will not** be maintained and protected to the maximum extent.
4. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the site plan.
5. The proposed amended subdivision **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
6. The proposed use and layout **will not** be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
7. The proposed amended subdivision **will** provide adequate sewage waste disposal.
8. The proposed amended subdivision **conforms/does not conform** to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The property owner **has** the adequate financial capacity to meet the standards of this section.
10. The proposed amended subdivision **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
11. The proposed s amended subdivision **will** provide for adequate stormwater management.
12. **Not Applicable:** The proposed location and height of buildings or structure walls and fences, parking, loading, and landscaping shall be such that it **will/will not** interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.

13. **Not Applicable:** On-site landscaping **does/does not** provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.
14. **Not Applicable:** All freshwater wetlands within the proposed subdivision **have/have not** been identified on the plan.
15. **Not Applicable:** Any river, stream, or brook within or abutting the subdivision **has/has not** been identified on any maps submitted as part of the application.
16. **Not Applicable:** The proposed subdivision **will/will not** provide for adequate stormwater management.
17. **Not Applicable:** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in [Title 38, §480-B](#), none of the lots created within the subdivision **has/does not have** a lot-depth to shore frontage ratio greater than 5 to 1.
18. **Not Applicable:** The long-term cumulative effects of the proposed subdivision **will/will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
19. **Not Applicable:** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision **will/will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
20. **Not Applicable:** The timber on the parcel being subdivided **has/has not** been harvested in violation of rules adopted pursuant to [Title 12, §8869, sub§14](#).

CONDITIONS OF APPROVAL (REQUIRED)

1. Approval is dependent upon and limited to the proposals and plans contained in the application dated October 7, 2024 and as amended October 28, 2024, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board. Any variation from such plans, proposals, supporting documents, and representations is subject to review and approval by the Planning Board or the Town Planner in accordance with [§120-912](#) of the Land Use Ordinance.
2. Prior issuing the building permits, the applicant shall record the approved plan in the Cumberland County Registry of Deeds (CCRD), per [§120-915B](#), to the Director of Planning.