

Town of Windham


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MEMO

DATE: October 19, 2016

TO: Windham Planning Board
FROM: Amanda Lessard, Planner 
Cc: Ben Smith, Planning Director
Mathew Ek, Sebago Technics

RE: 16-18 – Otterbrook Estates, 3rd Amended Subdivision
Planning Board Meeting: October 24, 2016

Overview –

This application is to amend an existing subdivision to adjust lots lines to swap 5,658 square feet of land between Lot 26 and Lot 27 and for an easement on Lot 26 to benefit Lot 23 so that no building may be placed within the easement. The amendment would also relocate the building envelope to the front of Lot 26, remove the restriction that Lot 26 constructs a peat filtration septic system, add a requirement for a 25 foot vegetated buffer on Lot 26 along Lot 25, and apply the current ordinance setback requirements to Lot 26, excepting for the front setback.

Otterbrook Estates Subdivision was approved as a 42 lot cluster subdivision in 1989. The 1st Amendment, to split Lot 15, was approved by the Planning Board in 2012. The 2nd Amendment, to apply the current ordinance setback requirements to Lot 13, was approved by the Planning Board on June 9, 2014.

Notes on the 1989 subdivision plan lists the cluster space and bulk standards in place at the time of approval and a restriction for certain lots to construct a peat filtration septic system (Notes 3 and 10 on the Cover Sheet for Otterbrook Estates, signed by the Planning Board January 23, 1989, included with July 11 packet). The current dimensional requirements in the Farm District for cluster subdivision have less stringent standards for the front yard, side yard and rear yard setbacks.

Note that 5 Rocklinn Drive is shown as one lot on the tax map (Lot 27), but technically it is two lots of record at the registry and on the subdivision plan (Lots 26 and 27 in the subdivision). The lots were combined for tax purposes in 2000 following construction of the detached garage. (See letter from the contractor, William Tompson, in the July 11 packet). While this letter was

acceptable to Code Enforcement at the time, it was not an official combination of the lots; that would have required Planning Board approval to amend the subdivision plan. This proposed amendment would fully locate the garage on Lot 27.

This project appeared at the Board meeting on September 26, 2016. At that meeting the applicant presented a revised plan based on discussion with the abutter, that would retain the 40 foot front setback and include a 25 foot vegetated buffer on Lot 26 along Lot 25. The Board discussed the letters that had been provided by the applicant's attorney and the opinion from the Town Attorney Kevin Haskins that the Planning Board did not have the authority to approve the application as the re-drawn lot lines will cause the lots to lose their grandfathered non-conforming status. Since that meeting the applicant has submitted additional supporting documentation related to the prior amendments of the subdivision. Staff has also drafted language that proposes amending the ordinance to allow some alteration of nonconforming lots. Considering that this amendment, if approved by the Council, will codify past practice, staff has worked with the Town Attorney to draft language included in the Findings that would allow the Board to approve this application as the proposed amended lot configuration does not increase the lot area nonconformity and in fact eliminates the nonconformity of the garage that is located on the property line between Lot 26 and Lot 27.

The subdivision ordinance states that revisions to approved subdivision plans that do not involve the creation of additional lots or dwelling units, the procedures for Final Plan approval shall be followed (§913.B.2, page 9-78).

Staff comments below relate to the 3rd Amendment of this subdivision only. New comments from the staff memo dated September 22, 2016, appear as underlined text below

Tax Map: 11B; Lots 27 and 23. Zoning District: Farm (F).

SUBDIVISION REVIEW

Staff Comments:

1. Waivers: None requested.
2. Complete Application: N/A with Amended Subdivision Plan.

MOTION: ~~The application for project 16-18 Otterbrook Estates Subdivision, 3rd Amended Subdivision 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.~~

3. Public Hearing: A public hearing was held at the Planning Board meeting on September 12, 2016.
4. Site Walk: A site walk has not been scheduled for this project.

Findings of Fact and conclusions for the

Windham Planning Board,

MOTION: The application for 16-18 Otterbrook Estates Subdivision, 3rd Amended Subdivision on Tax Map: 11B, Lot: 27 is to be (**approved with conditions/denied**) with the following findings of fact and conclusions.

FINDINGS OF FACT

A. POLLUTION

- No portion of this subdivision amendment is within the mapped 100 year floodplain.
- The proposed amendment will not result in an increase in air or water pollution.

B. WATER

- All lots in Otterbrook Estates are served by public water for domestic use. The proposed amendment will not result in additional demand for water.

C. SOIL EROSION

- The proposed amendment to reduce the front yard setback will not result in undue soil erosion or change the current stormwater drainage.

D. TRAFFIC

- The proposed amendment will not have an impact on traffic, as there is no new development proposed.

E. SEWERAGE

- Lots will be served by private subsurface wastewater disposal (septic) systems.
- A soil test pit log dated May 19, 2016, prepared by Gary M. Fullerton was provided in the July 1, 2016, submission. The test pit location is shown on the Third Amended Subdivision Plan.
- When Otterbrook Estates was approved in 1989, Note 10 stated that Lots 1, 7, 11, 22, 23 and 26 shall use a peat filtration system constructed to the standards of the Maine State Subsurface Wastewater Disposal Rules.
- Note 11 on the Third Amended Subdivision Plan states that Lot 26 shall use a standard septic disposal system and shall not be restricted to a peat filtration system.

- An amended DEP Site Location of Development Act Permit #L-14900-L3-P-B dated September 1, 2016 has been submitted. The amended permit approves a conventional wastewater disposal system installed at the location shown on the plan with a last revision date of August 11, 2016.

F. SOLID WASTE

- The proposed amendment will not have an impact on the Town's ability to collect and dispose of waste, as no additional development is proposed.

G. AESTHETICS

- A portion of the detached garage and driveway belonging to Lot 27 are currently located on Lot 26. The garage was permitted in this location by the Town in 2000.
- There are no documented rare botanical features for significant wildlife habitat documented on the site.
- The Third Amended Subdivision Plan with a last revision date of September 23, 2016 shows a proposed 25 foot wide natural vegetated state buffer on Lot 26 along Lot 25.

H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
 - The plan does meet the goals of the 2003 Comprehensive Plan.
- Land Use Ordinances:
 - The amendment proposal meets the frontage (100 feet) and setback requirements (25 feet front, 10 feet side and rear) of the F zoning district for cluster subdivisions.
 - Otterbrook Estates was approved as a cluster subdivision. At the time of approval (1989), the cluster subdivision standards allowed smaller lot sizes in exchange for the provision of common open space, as they do today, but there was no maximum lot size in place. The current cluster subdivision standards state that lots connected to public water must be between 30,000 and 50,000 square feet, with only one lot in the subdivision over 60,000 square feet. As approved in 1989, every lot in the subdivision was over 50,000 square feet.
 - At the public hearing on September 12, 2016, Attorney Mark Bower of Jensen Baird Gardner & Henry, representing residents of Rocklinn Drive, commented that the Town ordinance does not have specific language that allows for changes to nonconforming lots so long as the lot is made more conforming, and without that language the lots must be brought into compliance with the ordinance.
 - In letters dated September 19, 2016 and September 22, 2016 Alan E. Wolf, Esq., of S&W Associates, LLC, provides an opinion that the proposed revision to the lot lines does not affect the grandfather status of the subdivision or the lots.
 - In an email dated September 26, 2016 Town Attorney Kevin Haskins, of Preti Flaherty, stated that neither the September 19 nor the September 22 letters from Mr. Wolf give the

Planning Board the authority to approve the application, as the re-drawn lot lines will cause the lots to lose their grandfathered non-conforming status.

- In an email dated September 28, 2016 Attorney Wolf provided documentation on the past amendments to the Otterbrook Subdivision.
- Although the Land Use Ordinance technically prohibits the creation of new non-conforming lots, it is believed that the proposed amendment nonetheless satisfies the conformance requirements of the ordinance to the extent that the amendment does not increase the non-conformity of Lots 26 and 27 and eliminates the non-conformity created by the structure that is currently located on the existing property line of Lot 26 and Lot 27. Given the specific circumstances of this proposed amendment, which involves an equal area land swap between two legally non-conforming lots so as to eliminate the non-conformity of an existing structure on the lots, the proposal complies with the intent of the conformance requirements of the ordinance, which is to eliminate nonconformities whenever possible.
- Subdivision Ordinance
 - The proposal meets the other provisions of the subdivision ordinance.

• Others:

I. FINANCIAL AND TECHNICAL CAPACITY

- Evidence of financial capacity and technical capacity are not required for the proposed amendment.

J. RIVER, STREAM OR BROOK IMPACTS

- No impacts are anticipated as a result of the proposed amendment.

CONCLUSIONS

1. The proposed subdivision **will not** result in undue water or air pollution.
2. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed subdivision **will not** cause an unreasonable burden on an existing water supply.
4. The proposed 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.
5. The proposed subdivision **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed subdivision **will** provide for adequate sewage waste disposal.
7. The proposed subdivision **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.

8. The proposed subdivision **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed subdivision **conforms** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed subdivision **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed subdivision **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed subdivision **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands within the proposed subdivision **have** been identified on the plan.
15. Any river, stream, or brook within or abutting the subdivision **has** been identified on any maps submitted as part of the application.
16. The proposed subdivision **will** provide for adequate storm water management.
- ~~17. 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, section 480-B, none of the lots created within the subdivision **have/do not have** a lot depth to shore frontage ratio greater than 5 to 1. (N/A)~~
18. The long-term cumulative effects of the proposed subdivision **will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
- ~~19. 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. (N/A)~~
20. Timber on the parcel being subdivided **has not** been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.

CONDITIONS OF APPROVAL

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated July 1, 2016, as amended September 23, 2016 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 913 of the Subdivision Ordinance.