

# **APPROVED**

**Planning Board Meeting  
7:00 p.m. New Castle Town Hall  
WedNEsday, December 26, 2018**

**Public Hearing for a proposed Subdivision of land for applicant Thomas Shippee, 171 Pickpocket Road, Brentwood, NH for the property owned by Edmund C. Tarbell at 148 Portsmouth Ave, Map 16, Lot Number 9.**

**Members Present:** Kate Murray, Rich Landry, Tom Hammer

**Others Present:** John Chagnon, Thomas Shippee, John Myles, Melisa Syracuse, Edmund C. Tarbell

**Members Absent:** Darcy Horgan, Margaret Sofio, Bill Stewart, Lorne Jones

Acting Chair Kate Murray opened the meeting at 7:01 p.m. and acknowledged that with only three members present: 1) all present members will be voting, 2) three constitutes a quorum, and 3) that with only three voters, approval will require a unanimous vote. Mr. John Chagnon of Ambit Engineering, representing the applicant Thomas Shippee, for the meeting's only scheduled hearing, agreed to the conditions.

**1. Public Hearing for a proposed Subdivision of land for applicant Thomas Shippee, 171 Pickpocket Road, Brentwood, NH for the property owned by Edmund C. Tarbell at 148 Portsmouth Ave, Map 16, Lot Number 9.**

Acting Chair Murray indicated her understanding that the application paperwork was complete. Mr. Chagnon informed the Board of the subject property's updated tax map identity to reflect the merger of the lots (previously Lots 8 and 9). The merged lot is now Map 16, Lot 9, with the address of 148 Portsmouth Avenue.

Mr. Chagnon's presentation picked up from his November 2018 Planning Board presentation by addressing key concerns voiced by the Board. Updated drawings show the addition of a new, 30'-wide private right of way (ROW) on the westerly side of the property to access—and provide frontage for—the back lot, proposed Lot 2. The new ROW slopes gently from Portsmouth Avenue, then at 125 feet ± from the road, the existing elevation tapers off more significantly at which point it will require fill as well as an approximately 5' retaining wall. While the 30' width of the ROW meets the ordinance requirement, Mr. Chagnon believed the requirement for a paved width of 20' was excessive for a road that is intended to serve one or two lots. In order to lessen the impervious surface area, the proposal is for a 12'-wide

pavement flanked on both sides by 4', structurally supported, driveable, grass-paved shoulders to total 20' in width for emergency vehicle accessibility. The applicant, Mr. Thomas Shippee, reported that he spoke with Fire Chief Blanding who indicated that his only concern is that the structure supports a fire truck.

Pursuant to Section 9, Waivers and Modifications, of the New Castle Subdivision regulations, Mr. Shippee has included an application for a waiver to Section 7.2.1 part 2 to allow for the less than 20' paved width of the proposed westerly ROW.

The new ROW will be a 6,725 sf area separate from the two lots. Mr. Chagnon believed it would be most appropriately owned by Lot 2. Because it isn't a buildable lot, it is not subject to the impervious surface lot coverage requirement.

Responding to Acting Chair Murray, Mr. Shippee described the existing easterly ROW as a 15' ROW, with a 10"-wide pavement, that service two properties—Map 16, Lot 11 and Map 16, Lot 10. In acknowledgement of the Board's November 2018 request to increase the easterly side setback so that future building does not abut the 15' wide ROW, Mr. Chagnon indicated that the applicant agreed to increase the easterly side setback to 20', to allow for a 5' separation between the ROW and the future building to remain as grass. This commitment is formalized in Note 12 on the plan set.

Mr. Chagnon read through the plan set notes for the benefit of the public in attendance, noting that the description of the new ROW in Note 7 should be corrected to reflect that there is not a utility easement in the subject ROW.

Note 9 refers to an existing pedestrian ROW granted to Julia Tarbell. Mr. Chagnon explained that the applicant is contemplating granting the same pedestrian access to the new Lot 1. Neighbors voiced concern about whether a vehicle ROW would be granted to Lot 1; Mr. Chagnon believed that to be the applicant's decision.

Note 10 refers to an agreement to use a shared pier and dock.

Acting Chair Murray opened the public hearing at 7:31 p.m.

Mr. John Myles, an abutter at 36 Tarbell Lane, Map 16, Lot 10, is concerned about use of the easterly ROW, which currently accommodates wider vehicle passage because it is abutted by open field, which might limit access if the buildings encroach into the now-open space. Mr. Rich Landry noted that the 5' voluntary setback for the ROW could cause difficulty for emergency vehicle access, especially when snow is present. Mr. Tom Hammer added that the existing building, the Julia Tarbell house, Map 16, Lot 11 is sited close to the easterly ROW which could result in the the two buildings being only 30' apart.

Mr. Landry asked whether there is the potential for water that currently drains into the field from the existing check dam to be problematically diverted as a consequence of development. Mr. Shippee indicated that drainage will need to be considered when the house is sited.

Mr. Myles also requested that the plan set clearly specify to which of the two proposed lots the dock use would be assigned. Acting Chair Murray responded that the dock agreement on the deed is not an issue for the Planning Board.

At 7:49 p.m. Mr. Chagnon requested, and Acting Chair Murray granted, a short recess in order to discuss Mr. Myles' concern about the width of the access via the easterly ROW with the applicant and the property's neighbors.

Members reviewed and discussed the plan set during the recess.

The meeting reconvened at 7:58 p.m. at which time Mr. Chagnon announced that the applicant, at the request of Mr. Myles and Ms. Melisa Syracuse, owners of the abutting property at 36 Tarbell Lane, agreed to extend the setback to 10' from the edge of the ROW and will make the change to Note 12 on the plan set. The change increases the side setback to 25'.

Hearing no further comment, the public hearing closed at 8:05 p.m.

Mr. Hammer expressed concern that the allowance of a 12' -wide pavement might set an unwanted precedent for future proposals. Mr. Landry countered that the disadvantage of precedent needs to be weighed against the benefit of decreased runoff derived from a reduced pavement area. Mr. Chagnon believed that the rationale for a reduced paved width may be based on the number of properties served by the private road. In this case, it is only one or two.

Mr. Landry believed that the source of the Board's pushback is that there is a general dislike for this type of subdivision, with a ROW that serves only one lot. It is legal, but members would prefer that it not be done. For that reason, leniency from the regulations may be challenging. Believing that the proposed westerly ROW, which substitutes 8 feet of required pavement width with 8 feet of grass pavers, addresses the Board's concern for emergency access vehicles, Mr. Chagnon asked for further comment about the westerly ROW pavement width from the Board.

Mr. Landry indicated that he found the waiver proposal to be satisfactory. Acting Chair Murray indicated her preference for grass pavers to better handle the runoff. Mr. Chagnon suggested that the applicant might add assurance that the grade remain unchanged within the 10' setback from the easterly pavement.

Mr. Landry was concerned about where the runoff that now flows and dissipates across the open field will be redirected so as not to become channelized. Mr. Chagnon noted any channelized runoff must be re-spread at the 100' Tidal Buffer Zone boundary, and Lot 2 site work will be subject to NH Department of Environmental Services (NHDES) Shoreland Permitting. Any proposed building within the 100' Tidal Buffer Zone Board would require a Conditional Use Permit (CUP) from the Planning Board as well as an NH Wetlands Permit. Any building within 250' of the Mean High Water Line requires a Shoreland Permit from NHDES, a requirement of which is the drainage considerations. Mr. Hammer was concerned that past NHDES rulings have not always been consistent with the Board's or Town's interest.

Mr. Landry was comfortable having a 10' easterly pavement setback as adequate space to handle any potential, unforeseen drainage problems. He would want the note to specify that the grading be kept substantially as is within the 10' setback.

Board members remained concerned about the future development impact of drainage on neighbors and erosion. Controls exist in the Subdivision Ordinance 7.2.5 which states that "...post-development surface water runoff rate(s) shall be equal to pre-development runoff rate(s)" and in the NHDES Shoreland Permit requirement whose purpose is "to protect surface water quality by controlling soil erosion and reducing nutrient and pollutant loading through limitations on impervious surfaces and the maintenance of vegetated buffers." The plans will only require Planning Board approval if the proposed building is within the 100' Tidal Buffer Zone.

Mr. Hammer asked whether a potential subdivision applicant for the neighboring property, Map 15, Lot 9, is restricted from utilizing the new ROW as access to a riverside lot. Mr. Chagnon responded that a potential subdivision would require approval from the Planning Board and that Mr. Shippee is not inclined to grant use to the neighboring lot. Since owners and inclinations can change, Mr. Hammer requested that the approval include a provision that the new ROW serve the subject property only.

Mr. Chagnon satisfied the Board's concern about the installation of septic on Lot 2 by indicating that the plan set reflects the applicant's decision to connect to sewer.

In consideration of the waiver for an exception to the paved road width, the Board debated if and how to restrict usage. Were a restriction stated in the waiver, an application for an additional waiver to serve the added properties could be sought in the future. Were it to be added as a condition to Subdivision Approval, there could be no opportunity to change it at a later date. While the restriction is valued for its potential to deter added construction on the neighboring site, it would be injurious if it caused unnecessary paving in the future to access the abutting lot(s).

Mr. Hammer asserted, and Members agreed, that the restriction should be made as a condition of Subdivision approval.

**Mr. Landry made a MOTION to approve the waiver for applicant Thomas Shippee, 171 Pickpocket Road, Brentwood, NH, for the property owned by Edmund C. Tarbell, 148 Portsmouth Ave. Map 16, Lot 9, from Subdivision Section 7.2.1 part 2, Rights-of-Way, to allow 12 feet of paved surface where 20 feet is required by the regulations, with 4 feet of drivable grass surface on each side, as shown on Plan C2 on the application plan set dated December 5, 2018.**

**Mr. Hammer SECONDED the motion. Motion CARRIED by unanimous vote.**

**Mr. Landry MOVED to approve the application for subdivision of land for applicant Thomas Shippee, 171 Pickpocket Road, Brentwood, NH, for the property owned by Edmund C. Tarbell located at 148 Portsmouth Ave, Map 16, Lot 9 with the following conditions of approval:**

- 1. Applicant receives all state permits and approvals.**
- 2. Building setback to be 25 feet from the east property line for both proposed Lots 1 and 2.**
- 3. Grades adjacent to the existing Right of Way, known as Tarbell Lane, shall remain substantially unchanged within 10 feet of the existing edge of pavement, as of the date of approvals.**
- 4. The proposed Right of Way will only be used by proposed Lot 1 and 2 as shown on plans dated December 5, 2018.**

**Mr. Hammer SECONDED the motion. Motion CARRIED, unanimously.**

**2. Approval of minutes of the November 28, 2018 meeting of the Planning Board.**

**Acting Chair Murray MOVED to approved the minutes of the November 28, 2018 meeting of the Planning Board as amended. Mr. Hammer SECONDED the motion. Motion CARRIED, unanimously.**

**3. Adjourn**

**Mr. Hammer MOVED to adjourn the meeting and Mr. Landry SECONDED. Motion CARRIED by unanimous vote.**

The meeting adjourned at 8:52 p.m.

Respectfully submitted by,

Anne Miller, Secretary