

**Pittsfield Planning Board  
Town Hall, 85 Main Street  
Pittsfield, NH 03263  
Minutes of Public Meeting**

**DATE:** Thursday, September 1, 2016

**AGENDA ITEM 1:** Call to Order

Chair Clayton Wood called the meeting to order at 7:06 P.M.

**AGENDA ITEM 2:** Roll Call

Planning board members present:

Clayton Wood (chair),

Daren Nielsen (vice-chair),

Jim Pritchard (secretary),

Gerard LeDuc (selectmen's ex officio member),

Paul Nickerson (alternate), and

Carole Richardson (alternate for the selectmen's ex officio member)

Planning board members absent:

Pat Heffernan and

Roland Carter (alternate)

Members of the public appearing before the planning board: James Donini and David Vincent, surveyor for James and Casey Donini.

“Members of the public appearing before the planning board” includes only members of the public who spoke to the board. It does not include members of the public who were present but who did not speak to the board.

**AGENDA ITEM 3:** Public Input

Paul Nickerson sat in place of Pat Heffernan.

No public input.

**AGENDA ITEM 5:** Application by James E. Donini Jr., 43 Locke Road, Pittsfield NH 03263 for a Lot Line Adjustment to increase the area of the land at 43 Locke Road, tax map R-53, lot 15-2, from 4.81 acres to 20.80 acres, and to decrease the area of the land at 186 Webster Mills Road, tax map R-53, lot 16-2, from 18.62 acres to 2.63 acres, both in the Rural zoning district.

1. Review for completeness and acceptance by the board
2. Public hearing if the application is accepted by the board
3. Application review based on merit

Continuance granted from the August 4, 2016 meeting by a vote of 5-0-0.

The board deferred agenda item 4, minutes approval, until after agenda item 5, Donini application.

Completeness review of the Donini application:

Clayton Wood said that the Donini application had been continued from the board's meeting on August 4, 2016. Clayton Wood listed the information that the board had previously found, on July 2, 2016, that the Donini application needed to be complete:

1. The locations of the septic systems are not shown on the plat and must be shown on the plat.
2. The date of the plat is currently stated as February 11, 2015, and must be changed to February 11, 2016.
3. The signature block for the Epsom Planning Board must be changed to eliminate the statement that Epsom approves anything. The statement must say that the town of Epsom abuts the land under consideration but that the Epsom Planning Board has no jurisdiction over the plat because the plat shows no land in Epsom.
4. The waiver requests do not have specific reasons and must be revised to have specific reasons.

David Vincent, surveyor for James and Casey Donini, explained the lot line adjustment as being to increase the area of the land at 43 Locke Road, tax map R-53, lot 15-2, from 4.81 acres to 20.80 acres, and to decrease the area of the land at 186 Webster Mills Road, tax map R-53, lot 16-2, from 18.62 acres to 2.63 acres.

David Vincent said that that the “Merrimack County planner” (Matt Monahan of the Central New Hampshire Regional Planning Commission) had said that the proposed tax map R-53, lot 16-2, on Webster Mills Road, must have state subdivision approval. (RSA 485-A:29, I.) David Vincent said that the Doninis had received state subdivision approval.

David Vincent said that he had corrected the date of the plat to February 11, 2016. (See item 2 of the list of information that the board had previously found, on July 2, 2016, that the Donini application needed to be complete.)

David Vincent said that the New Hampshire Department of Environmental Services had found the plan of the existing septic system on proposed tax map R-53, lot 16-2, and that he had transferred the image of the existing septic system onto the plat for the proposed lot line adjustment. (See item 1 of the list of information that the board had previously found, on July 2, 2016, that the Donini application needed to be complete.)

David Vincent said that he had changed the wording of the Epsom Planning Board signature block so that the wording now says as follows:

“THE TOWN OF EPSOM PLANNING BOARD HAS NO JURISDICTION OVER THIS PITTSFIELD LOT LINE ADJUSTMENT AS THERE IS NO LAND WITHIN EPSOM LOCATED WITHIN THIS LOT LINE ADJUSTMENT”

(See item 3 of the list of information that the board had previously found, on July 2, 2016, that the Donini application needed to be complete.)

David Vincent said that he had rewritten the waiver requests “to add a little more of what we’re looking for.” (See item 3 of the list of information that the board had previously found, on July 2, 2016, that the Donini application needed to be complete.) David Vincent submitted and discussed a written statement of his new reasons for the waiver requests as follows:

**Checklist 14 ,19 & 34 (5.B.2.b.6, 5.B.2.b.1 & 5.B.2.b.10)**

Location of water bodies, streams and wetlands delineated and stamped by a Certified Wetland Scientist. Soils and test pit data stamped by a Certified Soil Scientist.

Since no new building lots are being proposed. Requiring the location of wetlands would pose an unnecessary hardship, or unnecessary and unreasonable expense, to the applicant and granting the waiver would not be contrary to the spirit and intent of the regulations. Lot 16-2 has obtained a NHDES subdivision approval, copy provided.

**Checklist 25 & 26 (5.B.2.b.5)**

Topographic contours data at 5' contour intervals with spot elevations where needed.

Pertaining to the topography and wetlands for proposed Lot 15-2, the purpose of this application is to relocate the common boundary line between the existing developed single family dwellings. Each lot is served by individual NHDES approved septic systems, copies provided, and private wells as depicted on the plan. Since the lot area of Lot 16-2 will be reduced from 18.62 acres to 2.63 acres, which is less than 5 acres, a NHDES subdivision approval has been obtained, copy provided. The lot area for Lot 15-2 will be increased from 4.81 acres to 20.80 acres. Requiring the topography/wetlands for proposed Lot 15-2 would pose an unnecessary hardship, or unnecessary and unreasonable expense, to the applicant and granting the waiver would not be contrary to the spirit and intent of the regulations. No new building lots are being proposed.

**Checklist 27 & 31 (5.B.2.b.6 & 5.B.2.b.7)**

Existing Right-of-Way widths for Locke Road and Webster Mills Road.

Both Webster Mills Road and Locke Road are ancient roads that would require extensive research at the state archives in Concord to determine the right of way width. As is the case with this application, most of the ancient roads in New Hampshire, the road right of ways are defined by old stone walls and old fences. The developable portions of these lots' frontages are based upon those observed edges of right of ways and/or traveled ways. The front setbacks are based upon the limit of the presumptive edge of right of way. Thus granting this waiver may be reviewed in such a fashion as to secure substantially the objectives, standards and requirements of the subdivision regulations. Furthermore, the granting of the waivers will not result in a review that overlooks issues that may address impacts that are detrimental to public safety, health or welfare or injurious to

other property and will carry out the the spirit and intent of the regulations.

\*\*\*\*\*End of David Vincent's statement of his new reasons for his waiver requests.

David Vincent said that he was withdrawing his previous request for a waiver from the requirement for granite monuments (permanent boundary markers) on right-of-way lines (subdivision regulations, section 10, F, 1, a, and section 11, I, 3) because monuments are already present on Webster Mills Road and Locke Road.

David Vincent said that he had addressed all of the deficiencies that the board had found to make the Donini application incomplete, and David Vincent asked the board to accept the application as complete now.

Jim Pritchard referred to Pittsfield's layout records for Webster Mills Road, which Jim Pritchard said that he had sent to the Doninis. Jim Pritchard said that these layout records were available in the office of the selectmen, and Jim Pritchard asked David Vincent whether David Vincent had asked the office of the selectmen for these layout records.

David Vincent said that he had not asked the office of the selectmen for the layout records because, David Vincent said, many times the selectmen do not have this information. David Vincent said that highway width has no practical impact on a simple lot line adjustment such as the Doninis are proposing.

Jim Pritchard said that the layout record for Locke Road specifies the highway right-of-way width as two rods (33 feet), so, Jim Pritchard said, waiving the requirement to state the width of Locke Road should not be necessary.

Jim Pritchard said that the layout record for Webster Mills Road is more complicated because the layout record describes Webster Mills Road in sections. Jim Pritchard read from the layout record for near the Donini lot-line adjustment: "From corner Prescott + Webster Mills Road easterly on Webster Road ... said highway is laid out two rods wide." Jim Pritchard said that David Vincent had talked about stone walls on either side of Webster Mills Road, and Jim Pritchard said that he had talked to Pittsfield highway

agent George Bachelder about the width of Webster Mills Road. Jim Pritchard said that George Bachelder had said that Webster Mills Road has intermittent stone walls and boundary markers showing where the right-of-way lines for Webster Mills Road are. Jim Pritchard said that the intermittent stone walls would supersede the ancient layout record. (*Hoban v. Bucklin*, 88 N.H. 73, 80, 184 A. 362, 366 (1936).) Jim Pritchard said that the width of Webster Mills Road was important because the Doninis were creating a second lot fronting on Webster Mills Road where now only one lot fronts of Webster Mills Road and because the subdivision regulations require the widening of highways on which the subdivision borders if the highway right-of-way width is less than 50 feet. (Subdivision regulations, section 10, A, 2, paragraph 2: “Subdivisions on existing public streets with Right-of-Ways less than 50 feet shall dedicate land of width equal to one-half the difference between the existing right-of-way and 50 feet, the full length of the frontage.”)

James Donini asked Jim Pritchard to explain what Jim Pritchard was saying.

Jim Pritchard said that David Vincent had been asking for a waiver of the regulation to show highway width because determining the highway width would be a large research task at the state archive in Concord.

David Vincent interrupted and said that he would withdraw his request for a waiver of the regulation to show highway width because Jim Pritchard had provided the information via town highway layout records. David Vincent said that he would establish the boundaries of Webster Mills Road and Locke Road by the intermittent stone walls and other evidence on the ground.

Daren Nielsen asked whether Webster Mills Road and Locke Road had stone wall boundaries and whether both highways were two rods (33 feet) wide.

Jim Pritchard said that both his conversation with highway agent George Bachelder and his personal inspection of the area had led him to understand that the boundaries of Webster Mills Road could be determined by intermittent stone walls.

David Vincent agreed and said that he would withdraw his request for a waiver of the regulation to show highway width, that he would cite on the

plat the town's layout records for Webster Mills Road and Locke Road, and that he would determine the actual right-of-way lines from the stone walls and other evidence on the ground. David Vincent said that Webster Mills Road is wider than the two rods (33 feet) that the layout record specifies.

Jim Pritchard said that the board understood that the intermittent stone walls supersede the ancient layout record. (*Hoban v. Bucklin*, 88 N.H. 73, 80, 184 A. 362, 366 (1936).)

David Vincent said that he would withdraw his request for a waiver of the regulation to show highway width because Jim Pritchard had found the layout records for Webster Mills Road and Locke Road. David Vincent said that he would cite on the plat the town's layout records for Webster Mills Road and Locke Road.

Clayton Wood asked David Vincent for confirmation that the Doninis were now asking for only two waivers.

David Vincent said yes, that the Doninis were now asking for only two waivers: one waiver of the regulation to show topography, and one waiver of the regulation to show wetlands.

Jim Pritchard moved to approve the two waivers.

Gerard LeDuc seconded the motion.

Discussion:

No further discussion.

Vote to approve the two waivers: carried 5 - 0 - 0. Voting "yes": Jim Pritchard, Daren Nielsen, Clayton Wood, Paul Nickerson, and Gerard LeDuc. Voting "no": none. Abstaining: none.

Clayton Wood asked Jim Pritchard to confirm that the board had addressed all of the deficiencies that the board had found to make the Donini application incomplete.

Jim Pritchard confirmed that the board had addressed all of the deficiencies that the board had found to make the Donini application incomplete.

Gerard LeDuc moved to accept the Donini application as complete.

Daren Nielsen seconded the motion.

Discussion:

No further discussion.

Vote to accept the Donini application as complete: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, Clayton Wood, Paul Nickerson, and Gerard LeDuc. Voting “no”: none. Abstaining: none.

Merits review of the Donini application:

Jim Pritchard referred to subdivision regulations, section 10, A, 2, paragraph 2:

“Subdivisions on existing public streets with Right-of-Ways less than 50 feet shall dedicate land of width equal to one-half the difference between the existing right-of-way and 50 feet, the full length of the frontage.”

The board and David Vincent discussed this road-widening regulation and its application to the Donini plat, where the right-of-width of Webster Mills Road is currently unknown but thought to be approximately 50 feet according to intermittent stone walls, and where the right-of-way width of Locke Road according to the layout record is two rods (33 feet).

Jim Pritchard suggested that the Doninis consider asking for a waiver of the road-widening regulation in question (subdivision regulations, section 10, A, 2, paragraph 2) on Locke Road because the board does not need to enforce the road-widening regulation on Locke Road, which is true because the Doninis are erasing the current subdivision on Locke Road. Jim Pritchard said that the road-widening regulation would probably not affect Webster Mills Road because Webster Mills Road is probably approximately 50 feet wide already.

David Vincent suggested that the Doninis could ask for a waiver of the road-widening regulation on both Locke Road and Webster Mills Road.

Clayton Wood said that David Vincent had already agreed to withdraw his request for a waiver of the requirement to show highway width.

Jim Pritchard said that the board had granted only two waivers, one for a topography survey and one for a wetlands survey, and had not granted a waiver of the requirement to show highway width. Jim Pritchard said that he was not sure that the Doninis could ask for a waiver of a regulation that they might already satisfy.

David Vincent said that locating both boundaries of Webster Mills Road would be unreasonable.

Daren Nielsen said that dedicating land on Locke Road would not be necessary but that dedicating land on Webster Mills Road was different because tax map R-53, lot 15-2, has potential for further subdivision on Webster Mills Road. Daren Nielsen said that he would feel more comfortable in deciding whether a waiver on Webster Mills Road was necessary if he knew how wide Webster Mills Road actually is.

Clayton Wood said that the Doninis would have to show the width of Webster Mills Road because they had withdrawn their request for a waiver of the requirement to show highway width.

David Vincent asked for a recess to talk to the Doninis about what the Doninis wanted to do.

Clayton Wood called a brief recess from 7:56 PM to 8:00 PM.

David Vincent said that he would show the width of Webster Mills Road by the “presumptive right-of-way lines,” that he would request a waiver of the road-widening regulation on Locke Road, and that he was now asking for a continuance of the case to the board’s next regular meeting. David Vincent asked whether there were any other problems with the Donini application.

Jim Pritchard said that septic systems meet the zoning definition of “structure”:

**STRUCTURE:** “STRUCTURE” means something constructed or built that has a fixed location on or in the ground or that is permanently attached to something that has a fixed location on or in the ground.

Jim Pritchard said that the Donini plat shows the septic system in a side-setback yard.

David Vincent said that he would move the lot line to put the septic system outside the side-setback yard.

David Vincent said that he would ask for conditional approval on the locations of the survey monuments (permanent boundary markers).

Jim Pritchard moved to continue consideration of the Donini lot line adjustment to October 6, 2016.

Daren Nielsen seconded the motion.

Vote to continue consideration of the Donini lot line adjustment to October 6, 2016: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, Clayton Wood, Paul Nickerson, and Gerard LeDuc. Voting “no”: none. Abstaining: none.

**AGENDA ITEM 4:** Approval of the Minutes of the August 4, 2016 Meeting

Gerard LeDuc moved to approve the minutes of August 4, 2016, as written in draft.

Paul Nickerson seconded the motion.

Discussion:

No board member stated any problems in the draft minutes.

Vote to approve the minutes of August 4, 2016, as written in draft: carried 4 - 0 - 1. Voting “yes”: Daren Nielsen, Clayton Wood, Paul Nickerson, and Gerard LeDuc. Voting “no”: none. Abstaining: Jim Pritchard.

Jim Pritchard said that he abstained from voting on the minutes because he had not had a chance to proofread the minutes since he released them in draft to the public.

After the meeting, Jim Pritchard noticed an error in agenda item 6, page 9: “legible table” should be “legible diagram”. Jim Pritchard corrected this error.

### **AGENDA ITEM 6: Subdivision Regulations Discussion**

Jim Pritchard said that Jennifer Gilbert, of the New Hampshire Office of Energy and Planning, had reviewed those parts of the draft subdivision regulations that related to development in a floodplain. Jim Pritchard said that Jennifer Gilbert had said that the draft floodplain regulations exceeded federal requirements, and, Jim Pritchard said, the way that the draft floodplain regulations exceeded federal requirements was bad because it could cause a subdivider to have to do more work than necessary in zone A of the special flood hazard areas. Jim Pritchard said that he had rewritten the floodplain regulations so that they meet but do not exceed federal requirements, and Jim Pritchard said that he had resubmitted the draft to Jennifer Gilbert.

Jim Pritchard said that he was now proofreading the document and that he had found quite a few corrections to make in his last proofread.

Jim Pritchard said that he had been able to reconstruct the lettering on the street cross section diagram, taken from appendix 4 of the 1998 subdivision regulations. Jim Pritchard said that he had used the comparable (but somewhat different) diagram in the Southwest Region Planning Commission’s model subdivision regulations for help in reconstructing the lettering in appendix 4 of the 1998 subdivision regulations.

Jim Pritchard said that he would have a draft of the proposed subdivision regulations for the board’s consideration at the meeting on October 6, 2016.

### **AGENDA ITEM 7: Proposed Amendments to the Zoning Ordinance**

Jim Pritchard discussed four zoning amendments that he wanted to propose:

#### Amendment 1:

Jim Pritchard wanted to add the following three permitting conditions for accessory apartments:

1. The ACCESSORY APARTMENT shall have an interior door between the PRINCIPAL DWELLING UNIT and the ACCESSORY APARTMENT, but this door is not required to remain unlocked. (RSA 674:72, III.)
2. The ACCESSORY APARTMENT shall have a floor area that is less than or equal to 75 percent of the floor area of the PRINCIPAL DWELLING UNIT unless 75 percent of the floor area of the PRINCIPAL DWELLING UNIT is less than 750 square feet. If 75 percent of the floor area of the PRINCIPAL DWELLING UNIT is less than 750 square feet, then the ACCESSORY APARTMENT shall have a floor area that is less than or equal to 750 square feet. (See RSA 674:72, VII.) In this condition, “floor area” of a DWELLING UNIT means the sum of the areas of all floors of the DWELLING UNIT, as measured from the exterior faces of the walls or from the center line of a wall separating the two DWELLING UNITS.
3. The ACCESSORY APARTMENT shall be in a DWELLING that the owner of the DWELLING occupies. The owner may occupy either the PRINCIPAL DWELLING UNIT or the ACCESSORY DWELLING UNIT. (See RSA 674:72, VI.)

Jim Pritchard said that Paul Nickerson had proposed permitting condition 2 as a result of a recent case before the zoning board of adjustment, where the supposed accessory apartment had been bigger than the supposed principal dwelling unit.

Paul Nickerson asked whether the current prohibition against renting an accessory apartment were lawful.

Jim Pritchard said that any person who holds that prohibiting the rental of an accessory apartment is unlawful should present the law to the board.

Amendment 2:

Jim Pritchard wanted to change the current definition of “open space”

**OPEN SPACE:** “OPEN SPACE” means land where no STRUCTURES are on or in the land.

to say

**OPEN SPACE:** “OPEN SPACE” means land where no STRUCTURES other than fences more than 50 years old and permanent boundary markers are on or in the land.

Jim Pritchard said that this change was to make the “open space” definition in the zoning ordinance the same as the “open space” definition proposed in the subdivision regulations.

Amendment 3:

Jim Pritchard wanted add a New Hampshire Supreme Court citation to the definition of “street” saying, “A sidewalk is a component part of the highway...”

**STREET:** “STREET” means either

(a) a highway as defined in RSA 229:1 or

(b) a road dedicated to the public use but not accepted by the city or town in which the road is located.

(See *Holbrook v. Dow*, 116 N.H. 701, 366 A.2d 476 (1976) (“We are of the opinion that in their usual meaning the words ‘the Northerly sideline of said Route 107’ refer to the northerly sideline of the highway layout or right of way and not to the edge of the pavement.”); *Gossler v. Miller*, 107 N.H. 303, 221 A.2d 249 (1966) (“A sidewalk is a component part of the highway...”); *Hersh v. Plonski*, 156 N.H. 511, 938 A.2d 98 (2007) (“If the intent to dedicate ‘is to be gathered from writings, they must clearly manifest the intent to dedicate.’”); *Polizzo v. Hampton*, 126 N.H. 398, 494 A.2d 254 (1985) (“An offer of dedication of a street may be made in several ways, among them by the filing of a subdivision plan with a planning board.”); *State v. Atherton*, 16 N.H. 203 (1844).)

Jim Pritchard said that the zoning code enforcement officer (Jesse Pacheco) had had two cases that showed that some people are confused about whether the sidewalk is part of the highway.

Amendment 4:

Jim Pritchard wanted to add the following permitting condition to article 4, for building on a nonconforming lot:

“The subject LOT has not been CONTIGUOUS to any other LOT under common ownership since the date when the subject LOT was first a NONCONFORMING LOT or since the effective date of adoption of this condition (March 14, 2017), whichever date is later.”

Jim Pritchard said that this permitting condition is intended to close the loophole in the current regulation requiring that contiguous nonconforming lots under common ownership must be merged as a condition of building. Jim Pritchard said that the loophole in the current regulation is that the lot owner could convey the lot to a sympathetic buyer, who would build on the lot and then convey it back to the original owner.

Jim Pritchard wanted to add the following regulation to article 4, in relation to merging any lot whatsoever:

“Every LOT created by merging two or more LOTS shall be exempt from the requirements of article 3, section 4, (b), (1), and article 3, section 4, (c), (1).”

Article 3, section 4, (b), (1), is the zoning requirement for minimum area to create a lot, and article 3, section 4, (c), (1), the zoning requirement for minimum frontage to create a lot.

**AGENDA ITEM 8: Members Concerns**

No board member stated any concern.

**AGENDA ITEM 9: Public Input**

No public input.

**AGENDA ITEM ADDED: Selectmen’s Report**

Gerard LeDuc and Carole Richardson described the sale of town properties at 33 Main Street and 37 Main Street. Bill Miskoe bought these properties. Bill Miskoe will do a lot line adjustment to donate some of the land at 37 Main Street to the library, and he will demolish the building at 33 Main Street, and then he will convey both properties back to the town.

Gerard LeDuc described the sale of town property at 114 Main Street.

Carole Richardson described the sale of town property at 33 Berry Avenue to Ray Webber.

The board discussed the need to have abandoned cellar holes, such as the cellar hole at 34 Main Street, filled.

**AGENDA ITEM 10: Adjournment**

Jim Pritchard moved to adjourn the meeting.

Clayton Wood seconded the motion.

Vote to adjourn the planning board meeting of September 1, 2016: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, Clayton Wood, Paul Nickerson, and Gerard LeDuc. Voting “no”: none. Abstaining: none. The planning board meeting of September 1, 2016, is adjourned at 8:48 P.M.

Minutes approved: October 6, 2016

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Clayton Wood, Chairman

Date

I transcribed these minutes (not verbatim) on September 3, 2016, from notes that I made during the planning board meeting on September 1, 2016, and from the digital audio recording that Chairman Clayton Wood made during the meeting and uploaded to the Internet.

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Jim Pritchard, planning board recorder and secretary