

Minutes

**Town of Orford Planning Board**

**Meeting Minutes – October 8th, 2024, Meeting**

*Board members & staff present:* Mark Adamczyk-Chair; Paul Goundrey-Vice Chair; Martha Rose-Secretary; Caleb Day-Member; Ruth Hook-member; Tom Thomson-member; Ann Green-alternate; Chase Kling-Selectboard Member; Renee Theall, UVLSRPC; C. Christine Johnston, Orford Town Counsel

*Public attending in-person:* Rober S. Carey-Orr and Reno and Andy Schwaegler

*Public attending virtually:* Mark Miller-Mountain View Hideaway LLC; Nick Golan-TFM Civil Engineer

Mark Adamczyk- Chair, called the meeting to order at 5:30PM and stated that we have a quorum.

**Item 1: Review minutes from the previous meeting:** Corrections were made. Tom T. made a motion to accept with corrections. Ruth H. seconded. All in favor.

Mark Adamczyk-Chair, called the public hearing open at this time, 5:40PM.

**Item 2: Mountain View Hideaway, LLC, Mark Miller, Member, application for Street Plat: Street Plat Lot 1-91-049, ROW lot1-91-053**

Robert C. Carey presented an overview of what they are proposing to do. Because Mark Millers property is not on a Class IV or better road, they are requesting a Street Plat so that he can build on his property. They have resolved the disputes with Mr. Gould who owns the property that the Right of Way (ROW) goes through, and the documents are part of the application packet. They also have the Street Plat prepared by Nick Golan's colleague, Mike Dahlberg, a NH licensed surveyor. They reviewed the question of whether the ROW is adequate for the proposed use of lot 1-91-049, and the question of whether the requested waivers from several of the road standards in Subdivision Regulations were appropriate. Robert C. said there are two ways of looking at the use of waivers in this situation. If you are looking for approval for a subdivision, then waivers will be needed because those road standards should apply, but this is not a subdivision, so they do not think that they need waivers because those road standards only apply to subdivision. In addition, he said if the waivers are required then the applicant can demonstrate that the waivers should be granted due to an undue hardship on Mr. Miller. Robert C. then laid out the qualifications for a Street Plat as it relates to a subdivision. He pointed out the letter in our packet, written by Nick Golon outlining that the requested waivers from the road standards are appropriate and should be granted on the condition of the ROW and the proposed use of the ROW as access to Mr. Miller's property.

Chase K., as a point of order, asked Christine J. if we should all agree that the application is complete. She said we should vote on whether the application is complete. Mark A. reviewed the checklist on the application line by line to make sure we had everything, or if the line was not applicable due to this being a Street Plat not a subdivision. Chase K. then said that he believed we have a complete application and made a motion that the Planning Board should vote to approve. Tom T. seconded. Any discussion, no. All in favor.

Chase K. asked Robert C. to continue, but added, what we are being asked to do is decide how Mark M. gets from the Class VI Prettyman Road to his property via a Street Plat, ROW. And pointed out that each Planning Board member has been up to the property for a site visit. Robert C. reiterated that they do not think waivers are needed because this is not a subdivision, not a new road being constructed and there is no property being divided. He then asked Nick G. to review the waivers they are requesting, if waivers are ultimately needed and why granting them would be appropriate under the waiver standard in the Subdivision Regulations. Nick G. then went over each waiver being requested in the context of proposed use of up to 2 single family residents, up to 2 guest houses, garages and/or barn.

-minimum right of way width: 50 ft. A 50-foot ROW is not needed or required for the intended use, and the existing width of the ROW is sufficient.

-minimum travel surface width, 18 feet. 18 feet is intended for two-way traffic and emergency services, which is not necessary for or applicable to the intended use, and it is his understanding that the fire department did not take issue with this. Existing travel surface width is sufficient for the intended use.

-minimum horizontal centerline curve radii: 100 feet. This regulation is a function of speed; the ROW would not be used at regular through-road speeds so the 100 feet isn't necessary and this requirement is not applicable to the intended use. Existing horizontal centerline curve radii are sufficient for the intended use.

-minimum vertical curve radii: 100 feet. This regulation is a function of speed; the ROW would not be used at regular through-road speeds so the 100 feet isn't necessary and this requirement is not applicable to the intended use. Existing vertical curve radii are sufficient for the intended use.

-maximum grade: 12%. This regulation is a function of speed; the ROW would not be used at regular through-road speeds so the lower grades aren't required and the 12% maximum is not applicable to the intended use. Existing grades are not a problem for intended use.

-minimum grade 0.5%. This regulation is a function of speed; the ROW would not be used at regular through-road speeds so the grade limitation is not applicable to the intended use. Existing grades are not a problem for intended use.

-minimum sight distance: 200 feet. This regulation is a function of speed; the ROW would not be used at regular through-road speeds so the 200 foot sight distances aren't required for the intended use. Existing sight distances are sufficient for the intended use.

Chase K. then put up the map of the proposed Street Plat. Nick G. then shared photos taken and included in the engineering report.

Robert C. then added that as we review the conditions of waivers and the undue hardship of the ROW, that we consider its previous use for years as a logging road with heavy trucks and that the hardship that this is a ROW and cannot be modified or changed. He again pointed out that this will function as a driveway with no public traffic and that denying the waivers would put undue hardship on Mr. Miller because he would not be able to build a private home and in 25 years another home. In the spirit and intent of the subdivision regulations, this is not a subdivision, but Mark M. building a home.

Chase K. as a point of order, we are in the presentation portion part, and he asked Christine J. when are we in the public hearing part. She responded that all of this is the public hearing. This is now the time for all Planning Board members to ask all the questions we have for the applicant Mark M., his attorney Robert C. or Nick G, the engineer.

Robert C. said that he believes that waivers are not needed, but if the Planning Board believes waivers are needed they need to consider each of the 7 waivers and why they should be waived. He also added that as of August 2024, there is no opposition to this project from Mr. Gould, the owner of the ROW. And that Ms. Furstenberg who was representing him in the prior dispute is not here to oppose.

Mark A. asked Christine J. if we should first vote on whether waivers are indeed necessary. She said we can do that if we want to but before we vote we must give everyone a chance to speak and added that it was important before we vote that we give anyone a chance to speak and ask any questions they might have of the applicant and his representatives about the waivers. Ruth H. asked if Gregory Gould is the single owner of the ROW property? He replied yes and he was the one who opposed it last time and since Ms. Furstenberg was only representing Mr. Gould at the time of the first application. He also said that Mr. Gould's attorney said that her non-appearance at this hearing could be taken as acceptance.

Tom T. would like the record to show that the previous Planning Board did not record the events in detail this is not the same Planning Board. The current Planning Board has all new members since the last application. He also added that he visited the road in question and has also built many roads on his own tree farm and he does not see any reason for any waivers and from his experience the waivers are not needed. He did ask Robert C. if the ROW was in place prior to Mark M. purchasing the property with the ROW that would transfer to him. He said yes.

Mark A. asked for clarification on the fact that in the settlement agreement it says there can be up to 120 days of short term rentals and that is of no consideration to the Street Plat they are asking for. Robert C. said that was correct. Mark A. then added that he felt similarly that the waivers are not needed.

Caleb D. said since there is no subdivision and that's what would bring in the waivers and that he's driven the road in his own car and there are no problems with it, he supported that no waivers were needed.

Ruth H. said she felt the same, that no waivers were needed.

Martha R. also supported the idea that no waivers were needed also having been up there to see it.

Mark A. restarted the zoom at this time (necessary because the 45-minute limit had been reached).

Paul G. said he thought the waivers were needed. He asked the question, "why are we here then?". He asked, doesn't he need a Street Plat to build a house, and if he needs a Street Plat should he also need the waivers? He also added that he cannot get past the agreement which allows for a single-family home, a guest house and short-term rentals. He also pointed out that they keep referring to the agreement as a single-family home and no commercial use but it's two homes now and two homes in 25 years with short term rentals. He stated that he does not have a problem with it except for a Street Plat possibly being used by nonresidents. He asked Robert C. if this was correct, in which he answered, correct. In lieu of this information, he feels the waiver request should remain. He is concerned about the public safety aspect. Chase K. asked Paul G. if there was any particular waiver that concerned him more. Paul G. said it was not the physical aspect of this, but whether this was consistent with the spirit of the regulations. He also asked if Mark M. bought the land locked property, thinking he would build a home(s) and found out he could not, is that the town responsibility? Chase K. added that anyone that wants to build off a Class VI road they are already responsible for themselves. We have no zoning.

Robert C. again said since this is not a subdivision, they felt the waivers were not needed.

Paul G. then asked Christine J. why are we here? She said he needs a Street Plat to build anything regardless of what it is because the lot does not have frontage on one of the categories of roads that the law allows building on. So, to turn it into one of those roads he needs a Street Plat which there is no legal definition of what this is. She added that if you look at the court settlement, that the Planning Board in granting the waivers had not looked at the engineering report and considered it. Christine J. went on to reiterate much of what the judge stated in the court document and how the town has authority to grant a Street Plat under the law. She also said that in order to grant any waivers from the street standards in the regulations, the regulations say not only does the Planning Board have to grant those waivers, the Selectboard also has to agree. If the Planning Board decides that the waivers from the street standards are not necessary because the street standards don't apply, then the Selectboard would not have to say anything.

Paul G. said that he still thinks the if the Planning Board is going to approve a Street Plat in some way that does not meet any of our standards, then we should have waivers. He feels that it should be on record that the waivers were granted and why.

Nick G. asked if we were looking for more from him this evening. Caleb D. asked for clarification on a statement he made that the fire department had come out to the property. Was it when the engineering evaluation was done in 2022 or more recently? Robert C. said that Terry Straight was part of the previous Planning Board (when he was also the Fire Chief), and Terry said at the time that he did not have any problem with the use of the ROW access for emergency vehicles. He went on to say that nothing with the road has changed since then and that Mark M. is not expecting it and the town is not providing it. Robert C. asked if there were any more questions for Nick G. There were no more questions.

Chase K. made a motion that the Planning Board consider the application without waivers (i.e., that the waivers were not necessary). Ruth H. seconded the motion. Mark A. asked if there are any comments. Tom T. asked if Mark M. had filled out the limitation of liability and it was recorded at the registry of deeds (as part of the previous application and Selectboard approval), both Christine J. and Robert C. said yes. A vote was taken on the motion: all in favor except Paul G. voted nay. Mark A. said the motion passed to consider the application without waivers.

Christine J. suggested the Planning Board ask the public if they have anything to add on the rest of the application. Ann G. acting in her individual capacity (not at a Board alternate) said she supports this application without waivers because she drove up the ROW and commented that it was better than the Class VI Road used to get to it. She also added that she has felt that this should have been looked at as a Country Lane and all the standards should have been waived to

have it become a Country Lane. Paul G. clarified that if this is an approved Street Plat that Mark M. would not need to come back in 25 years when he wants to build another house. Christine J. said that was correct at this time, but did not know what other regulations would be in place in 25 years.

Mark M. said he hoped we can resolve this after 3 years and appreciated all that came up to see the property and said he was also available if any of us had questions.

Chase K. made the motion to close the public hearing at 6:36PM. Paul G. seconded the motion. All in favor.

Deliberations are next and zoom is closed. Christine J. counseled us that each of us must state findings of fact. These would be facts that we find in the information and the application that we've heard that helped to make our decision.

It was pointed out that we did not need to close the zoom as the public meeting is still in progress.. Mark A. opened the zoom back and contacted Mark M. to re-enter the zoom and he did, at which time the meeting continued.

Mark A. The application is for a Street Plat, the application is complete and because it's for a Street Plat and not a Subdivision they do not need the waivers. And he views the application and the spirit of the use of the ROW as a Street Plat that he does not see a reason to stop someone from building a house if they understand the risk they are taking.

Caleb D. said that he agreed with everything Mark A. said and added that it was confirmed that he has waived emergency, school bus and fire services and that the road is in good condition as Caleb D. also drove it. The application is complete.

Ruth H. said she also agreed with what Mark A. said because it is not a subdivision and that Mark Miller has done everything that he's supposed to have done for a Street Plat.

Martha R. said she had been thinking about this for some time and agreed that the waivers do not apply because this is not a subdivision, and she too had been up the road and it's better than Prettyman Road and we should not keep him from building on his property.

Mark A. also said the objection by Mr. Gould has also been remedied. And no objection now exists.

Tom T. said he understands where Paul G. is coming from and that looking at the road with his knowledge of roads, that the road is better than some of our town roads and that is why he voted against the need for waivers. He said we should go forward with approval but added a caution that when this is documented that we ask our attorney to make sure everything is there so we don't get hung up again.

Chase K. said that as the representative for the Selectboard he is in favor of this and as he understands the other Selectboard members are also in favor. He thinks this should be granted.

Paul G. said he thinks everyone knows where he stands and it is not that he does not want Mark M. to do what he wants up there, but that it's procedural and he thinks the board is making a mistake by not going through the process granting and recording the waivers. He disagrees and will abstain from voting.

Mark A. asked for any other comments and there are none. Chase K. made a motion to approve the application from Mark Miller for a Street Plat Lot 1-91-049, ROW lot1-91-053, Mountain View Hideaway, LLC, mailing address 11 Camp Road, Orford, NH 03777, physical address 48 Upper Baker Pond Road, Orford, NH 03777. Mark A. seconded, asked for comments, there are none, all in favor, Paul G. abstained. The motion is approved.

**-Review any invoices/mail:** No new invoices or mail.

**-New Business:**

Paul G. talked to Stacey Thomson and he with Caleb D. will visit the gravel pit on Saturday at 2:30PM.

Paul G. asked if the non-public minutes from 10.3.2024 should be done and Martha R. said she has not been able to meet with Renee T. to confirm the process.

Paul G. asked about how to get a zoom that works, and Renee T. will confirm that we can use the UVLSRPC zoom link for our meetings. Chase K. stated that our contract with UVLSRPC was us in July 2024 and that we contract for 10 hours per month, could Renee T. let us know when we are getting close to that. She would let us know.

Paul G. brought up the 2025 budget and did we all have a chance to review it. He is suggesting a level budget, and we have to get this to the Selectboard by Oct. 15, 2024. Ruth H. asked about the line item and several items were discussed.

Mark A. asked if before we go should we set up a standing workshop date. It was decided to discuss it at another meeting.

Renee T. said there might be one more informal discussion at the November meeting, but she would confirm that.

Paul G. said he would not be attending the November meeting.

Caleb D. made a motion to adjourn the meeting and Chase K. seconded. All in favor.

Respectfully submitted, Martha Rose, Orford Planning Board Secretary

**Tentative Meeting Agenda for November 12, 2024, 5:30 PM Town Offices'**

- Andy Schwaegler, informal discussion
- Nick Weinberg, informal discussion
- Gravel Pit discussion
- Telecommunications Ordinance mailing
- Discuss the recording and filing of future meetings
- Invoices and mail