

Minutes

Planning Board Meeting

September 6, 2018

Members of the Planning Board in attendance were Don Clifford, Terry Hyland, Steve Leighton, Scott Young, ex-officio member, and Donald Coker, Alternate member. Don Clifford served as Acting Chair and opened the meeting at 7:37 PM and announced the members present; Donald Coker was designated to vote in place of the missing regular member. The closing date for applications to appear on the agenda for the October 2018 regular meeting was 5 P.M. Tuesday, September 11 2018. The Acting Chairman advised that the Board has a policy setting time limits for meetings and that the Board will not consider any new business after 10:30 PM and that the meeting will adjourn by 11:00 PM. It was noted that there was no August meeting due a lack of quorum; attendees had been advised that all business would be carried forward to September. Consideration of the minutes was postponed until after the formal business.

The first item of continuing business was the application of CECIL C. ABELS II for Non-Residential Site Plan Review for a Concert and Outdoor Event Venue to be located at his property at 664 First Crown Point Road (Tax Map 19, Lot 73A). There has been no word from Mr. Abels, who had suggested that he would begin meeting with the Board after the summer. Mr. Abels has requested that this item be continued forward to later in the year; new notices will be sent when the application becomes active again.

The next order of continuing business was the application of CALVIN and PENNY SCHROEDER for the 2-lot conservation subdivision of their property located at 138 Perry Road (Tax Map 9, Lot 73). Cal and Scott Schroeders were present; there were no abutters present. Mr. Schroeder brought final copies of his plan, which includes a new note referencing the enabling statutes for the conservation restriction. It was noted at the previous meeting that the plans are all in order; the public hearing was held at the July meeting. The only remaining item was the wording of the conservation restriction deed. The town attorneys have reviewed the deed and have no concerns. Board members had no other questions. Steve Leighton then made a motion to approve the plans for 2-lot conservation subdivision as presented. Scott Young seconded the motion and there was no further discussion. The vote was unanimous in the affirmative.

The second item of continuing business was the application of the MARCY A. WHITCHER REVOCABLE TRUST OF 2002 for the 3-lot subdivision of property located on Drake Hill Road (Tax Map 4, Lot 31). Ashley Rowe of Geometres Blue Hills represented the application; Carol Cooper, an abutter was also present. Mr. Rowe presented revised plans to the Board showing a revised driveway entrance based on conversations with a new engineer at District 6 DOT who would like to see the location for the proposed shared driveway shifted in location. The plans submitted this evening supersede the plans submitted for the August meeting; Mr. Rowe indicated that he had sent the plans out two weeks ago to DOT and thought that they had been electronically forwarded to the Board as well. Mr. Rowe indicated that he would like the Board to give him a conditional approval based on DOT approval of the new plans.

Don Clifford noted that Charlie Moreno had made him aware of the Chadbourn/Heron plan approved by the Planning Board in 1976, which appears to designate the location of the ROW to the abutting property. Steve Leighton and Scott Young both stated that ROWs do not change the ownership of the underlying land, and said that it is not in the power of the Board to determine where the ROW goes. Ashley Rowe said that it is a civil matter for the attorneys and the homeowners. The note regarding the ROW requested at the July meeting is now on the plan, and the pathway shows on the plan, he noted. Scott Young said that it makes no difference to the Board if the ROW was shown on the 1976 plan. Donald Coker asked what would happen if Mr. Whitcher closed off the ROW, and Mr. Young said that it would be problem for the owners. Don Clifford said that he does not want this problem to come back on the Board; Mr. Young said he thought it would be a problem if the Board delayed based on the question. Donald Coker then noted that the plans dated August 23rd show Leighton Logging as an abutter. Steve Leighton advised the Board that he no longer owns the abutting land, saying that the abutting property went back to the Whitchers in June, but acknowledging that the deed was not recorded until July. Donald Coker noted the procedural problem of his participation in the discussion, and Mr. Leighton acknowledged that he may have participated in discussion before the deed was recorded. Donald Coker suggested that the plans should be updated to show the current owners. Scott Young said that he felt that this was unreasonable because it was not required by

law, and Mr. Rowe said that the abutters are shown as owners now or formerly, so that the plans are correct because Leighton Logging was a former owner. There was discussion about how difficult it would be to change the name on the plans, and the importance of public perception. Donald Coker moved that the Board request that the plan be accurate and that the abutter be updated. The motion failed to get a second.

Discussion then returned to the shared driveway. This project does not have a DOT permit at this time; confirmed by NH DOT Access Technician Kerry Locke earlier in the day. Mr. Rowe indicated that the temporary logging access is located where the old access was located, and is not the new driveway location. Mr. Rowe said that in the new plans, they are only moving the proposed driveway location by 8 feet, so he advised Board members that the plan set submitted for August is okay to work from. Board members reviewed the July minutes to determine the various items missing from the plans reviewed in July. Steve Leighton and Scott Young agreed that all items have been addressed. Board members then looked at Mr. Rowe's new plans for the driveway entrance. It was also noted that setback lines needed to be adjusted to account for the wetlands area on the adjacent property, which is part of the drainage for Hall Brook. Don Clifford asked if the intent was to build single family homes. Mr. Rowe said that he could not answer for the owners. The Acting Chairman then reopened the public hearing. Carol Cooper addressed the Board and asked if the cut trees across from her driveway were the new location for the shared driveway. It was not known. She asked if the logging access road would remain open, and there was general agreement that it was assumed that it would be closed off. Martin Mistretta said that the wetlands on his lot adjacent to the property are a stream, and said that he is also concerned about the drainage. Going back to the Chadbourn/Heron plan, he asked if this new plan changes the location of the ROW. Mr. Rowe said that in his opinion, the old plan did not accurately designate the ROW location because it does not show bearings and distances. Scott Young repeated that the Board is taking no stance on the ROW question. Mr. Mistretta then noted the grades on the driveway that would be needed for the lot closest to him, and asked if the Board would look at the land. There was some discussion of whether the Board could control driveways, with Board members reviewing the subdivision regulations and several earlier cases noted where the Board did require engineered driveways due to steep slopes. It was asked if the driveway question should be a Building Inspector issue. Steve Leighton said that he would abstain from voting. Various board members noted that they have seen the land or felt that they have enough information. Alan Williams said that he thinks that the Fire Chief could review the driveway grades as part of his certificate of occupancy review. Donald Coker suggested that the Board make both the Building Inspector and the Fire Chief aware of concerns with driveway grades. Scott Young then made a motion to approve the plans for 3-lot subdivision, conditional upon the receipt of a permit for the shared driveways from NH DOT, and the setback corrections. Donald Coker asked if notifying the Building Inspector and Fire Chief should be part of the motion, but received no support and withdrew the suggestion. Terry Hyland seconded the motion. Carol Cooper asked how the Board could approve the plans if a DOT permit is required. Don Clifford noted that with a conditional approval, the plans cannot be signed until the conditions are met. Don Clifford then asked if the Board needs to see a draft of the shared driveway agreements for these lots. Board members suggested that this would be an issue for the owners, not the Board. Mr. Rowe said the agreements would be drafted when the lots are sold. The Acting Chairman then called the vote. The motion passed by majority vote with one abstention.

The first order of new business was the application of LUANNE CUMMINGS, KAREN KENNEY, and LOUIS J. MUSTO JR. for boundary adjustment between their two properties located at 216 Brown's Pasture Road (Tax Map 33, Lot 32) and Brown's Pasture Road (Tax Map 33, Lot 33). Scott Frankiewicz of Brown Engineering presented the application; Joe Musto was present. The Musto family is proposing a boundary adjustment between their two non-conforming lots; the adjustment will make both lots more conforming but neither will be fully conforming after the adjustment. The adjustment will also ensure that the existing structures on Lot 32 will conform to current setback requirements. As neither lot is increasing in non-conformity, the boundary adjustment can be considered under Article 1.7, Non-conforming use. Lot 32 will increase from .46 to .65 acres in area, and will retain 200 feet of road frontage. The road frontage for Lot 33 will shift from the southwest to the southeast side of Lot 32; Lot 33 will decrease from 7.44 to 7.24 acres in area. Lot 33 will also gain road frontage, going from 20.2 feet to 60 feet along Brown's Pasture Road. The original southwesterly road access crossed an area that appears too wet to travel, so the new road frontage allows better access to the large rear portion of Lot 33. The applicants have submitted a request for a number of waivers to the subdivision regulations, including requirements for soils, topography, and wetlands mapping.

Board members reviewed the plans with the checklist. The only items missing were those items included in the waiver request letter. Steve Leighton made a motion to accept the plans as complete for consideration. Donald Coker seconded the motion; there was no further discussion and the vote was unanimous in the affirmative.

Board members then turned to the waiver requests. Donald Coker asked about the wetlands areas. Mr. Frankiewicz said that they did not have the wetlands delineated, but that there is a runoff stream that cross the property. He said that the new access for Lot 33 is much better than the current access. Board members reviewed the waiver request letter. The first request is for a waiver to the requirement that the plans show water courses, ledge, soils, topography, and building and septic setback lines from these features, as well as the completion of test pits and perc tests. Noting that Lot 32 is already developed and that both lots are increasing in conformity and no new lots are being created nor capacity increased, Steve Leighton made a motion to accept and approve the first waiver as requested. Scott Young seconded the motion, there was no further discussion, and the vote was unanimous in the affirmative. The second waiver request was for the requirement for wetlands delineations and showing the setback lines for those features. Again noting that the boundary adjustment creates no new lots nor increased capacity, Donald Coker made a motion to accept and approve the second waiver as requested. Steve Leighton seconded the motion, there was no further discussion, and the vote was unanimous in the affirmative. The Acting Chairman then opened the public hearing on this application. There were no comments and no abutters were present. The Acting Chairman then closed the public hearing. Steve Leighton then made a motion, seconded by Donald Coker, to approve the plans for boundary adjustment as presented. There were no additional comments and the vote was unanimous in the affirmative. The applicant was advised to bring final copies of the plans to the office for signatures and recording once the monuments have been set.

The next order of new business was the application of SCOTT BARRY for renewal of his permit for Excavation of Earth in accordance with NH RSA 155-E for gravel excavation on land located off Parker Mountain Road (Tax Map 12, Lot 23-1 & 23-3). Mr. Barry's original permit was granted in September of 2013. Brian Lenzi presented the plans; Scott Barry was present. Mr. Lenzi presented the Board with a new color-coded plan that shows the proposed phasing for operation of the pit. He noted that the initially proposed phasing schedule does not meet their current needs because Mr. Barry has only recently begun to excavate gravel here due to market conditions over the past few years. They have now taken out two loads so that they are within the state's 5-year requirements for permit renewals. The state has asked for photographs as part of the renewal of the state's Alteration of Terrain permit. Mr. Lenzi noted that they do have a gate in place but do not have other equipment on the site. He said that he can give the Board a copy of all the information that they are giving the state for renewal of the AoT permit. Donald Coker asked if they had met all the requirements associated with the access road across John Dupère's pallet business lot. Brian Lenzi said that they put in a chip barrier so that there would be no erosion. They have spoken with District 6 and there are no issues with the driveway permit. Mr. Lenzi said that they knew that the road surface was raised up after repaving and that they had addressed that problem last year. He noted that there are some areas that the state wants protected because of Blandings turtles. There were no additional questions from the Board. The Acting Chairman then opened the public hearing on the request for permit renewal. There were no questions. The Chairman then closed the hearing. Donald Coker then made a motion to approve renewal of the permit with the same conditions as the original, conditional upon the Board receiving copies of the letters and photos prepared for the state as part of the AoT renewal package. Scott Young seconded the motion, there were no additional comments and the vote was unanimous in the affirmative. It was noted that the initial term was for 5 years, so the renewal will be for five years.

The final order of new business was the application of CLEAR CREEK PROPERTIES LLC for boundary adjustment between three of their recently approved lots located on Second Crown Point Road (Tax Map 16, Lots 30-5 and 30-6) and Strafford Road/NH Route 202A (Tax Map 16, Lot 30-3) (Please note: Tax Map Lot Numbers will not be official until these lots are separately assessed in April 2019). Ashley Rowe presented the plans; Alan Williams was present. Mr. Rowe said that they are proposing to move the rear boundary of Lots 5 and 6 back 120 feet. This still leaves Lot 3 at over 9 acres, he said. Don Clifford asked why they are proposing to make the change. Mr. Rowe said that they want larger lots. Lots 5 and 6 would both be increased by approximately .55 acres in area; buildable area figures were not updated. Don Clifford noted the building permit for a duplex on Lot 4 (2.6 buildable acres) and noted that it was in the minutes that the applicant builds single-family homes. Mr. Williams said that those statements are not binding. Don Clifford said that the duplex would count as two units, and noted that under the phasing ordinance, they are permitted 5 units this year. Donald Coker said that he wanted to put things into perspective, and said that the goal of the Master Plan is to maintain the rural character of the community, and that zoning is designed to meet the goals of the Master Plan. One important part of that process is the growth management ordinance. Mr. Coker then read the ordinance, which discusses phasing according to dwelling units per year. The Board agreed to go back to Mr. Rowe's presentation. Scott Young noted that the applicant may have an issue with units, but that in his view this is between the Building Inspector, the applicant, and the surveyor. Mr. Rowe concluded his presentation of the proposed adjustment, stating that he feels that the question of units has no

bearing on the application. Donald Coker then read from several state enabling statutes, several passages from the minutes of the review of the Clear Creek Properties development, and then back to Article 1.15, the growth management ordinance. He advised that the issue is dwelling units and building permits. Mr. Coker noted the frequent use of the term dwelling unit in various state statutes. In light of this, Mr. Coker then advised that he would like to have a note added to the plans stating that this development is subject to Article 1.15 Growth Management and that only a total of 5 dwelling units may be issued building permits and a certificate of occupancy by May 3, 2019. Mr. Coker said that it is important to uphold the zoning ordinances, particularly the phasing part. Scott Young said he was concerned with this proposal because the Board's earlier language on phasing used the term building permits. Mr. Coker said that the Board's use of the term 'building permit' in discussions of phasing during the review of the original Clear Creek Properties development was an innocent mistake, and that the ordinance is clear that units are the issue. The innocent error is the usage of the two terms, unit and building permit, as interchangeable. Terry Hyland asked who enforces the ordinance, and it was agreed that the Building Inspector enforces zoning. Mr. Coker said again that the Board needs to enforce the zoning articles that people have voted for. There was some discussion of procedure, and it was noted that appeal of zoning questions goes to the Zoning Board of Adjustment. Don Clifford noted the point of phasing is to give the town time to adjust to growth, especially the school. Steve Leighton said that there are valid points on both sides, noting the mistake made by using the term building permits in the original discussion of how phasing would apply to the Clear Creek Properties development. Mr. Leighton noted that as of now, Lots 5 and 6 cannot be duplexes, but if the boundary adjustment proposed here is approved, they are allowing duplexes, which is a change caused by the approval. Discussion of the Board's role and intent continued. Mr. Williams said that there are two separate legal issues. He noted that they have an approved subdivision and a notice of decision, and it was clear at the meeting that he asked for a sixth lot this year. He said that the current proposal is a simple lot line adjustment so the Board cannot deny the application. Mr. Leighton departed at 9:30 PM due to a previous commitment. Discussion became more heated. Don Clifford suggested that the Board move forward with review and have a third party consultant review the lots for compliance with the regulations, especially wetlands impacts. Ashley Rowe said that he feels that the Board cannot reopen the wetlands delineations because the original plan was already approved. Discussion became even more heated, with all parties participating.

Expressing frustration, the Acting Chairman closed the meeting at 9:40 PM. Board members and applicants began to depart. All additional business will be taken up at the regular October meeting.