

NORTH BERWICK, ME 03906

MINUTES OF PLANNING BOARD JANUARY 26, 2017

Present: Chairman Geoffrey Aleva, Anne Whitten, Barry Chase, Matthew Qualls, David Ballard, Roger Frechette, CEO

Absent: Jon Morse

Also Present: Lee Jay Feldman of SMRPDC, Chris Mende of Civil Consultants, Ron Mello, Dwayne Morin, Les Bodwell, Harley Regonini

1. Call To Order:

Chairman Geoffrey Aleva called the meeting to order at 6:30 pm.

2. Review Previous Minutes:

Anne Whitten stated that on the last page where it says that they adjourned, an addendum was then added. She said that they should probably state somewhere in there that everyone, including the Board members and the public, that was at the meeting were still present when we called the meeting back to order. Also in that first sentence of the addendum, it should say "Vice Chairperson" not "Vice Chairman". The beginning of the Addendum was changed to read as follows: Vice Chairperson Whitten called the meeting back to order at 7:42 pm. All Board members and public were still present.

Matthew Qualls motioned to approve the minutes of January 12, 2017 as amended. Anne Whitten seconded the motion. VOTE: 3-0 Abstain: 2

Chairman Aleva moved David Ballard up to full voting status.

3. Current Business:

3.1 Public hearing on Phase II for LRB Multifamily, LLC located on Somersworth Rd. Map 001 Lot 065-1 to build an additional 6 unit multifamily.

Chairman Aleva recused himself for this issue because of a conflict of interest. He works for Civil Consultants and they are the ones that prepared the plans for this project.

Vice Chairperson Anne Whitten will be the Acting Chairperson for this Agenda item.

Chris Mende from Civil Consultants stepped forward to discuss the project. He is here on behalf of Les Bodwell and his company. He stated that a year or so ago, his client owned 2 parcels in the location that they are looking to build on. At that time, they had a successful application for the development of replacing the existing building there with a 6 unit multifamily structure and parking. They are back and looking at developing a 2nd parcel of land that was divided before the primary development took place. They are looking to extend the parking and driveway into the site and to construct a new 6 unit multifamily building with 2 bedroom units. The lot size and frontage meet the Zoning requirements. The majority of the property is located in the Village C Overlay District. There is a part in the corner back of the property that is located in Village A District. There are some wetlands on the property and he has identified them on the map. There is also an abandoned road which is an extension of the Old County Road on the other side of Route 9. It runs up into the woods and it used to come up on Maple Street many years ago. Mr. Mende stated that the Town had discontinued the road from Maple Street up to the boundary of this property. Mr. Mende stated that his client was contacted by the Town Manager and discussed the possibility of Mr. Bodwell granting an easement to the Town for some of the property along the old road. It would allow access by the townspeople to the Town parcel for some walking trails that will be created. Mr. Mende stated that there was also some discussions for an easement area for down in the corner of the property near Route 9 for the Town to build a few parking spaces. This would not be something that his client would be constructing. It would be the Town.

Mr. Mende stated that it would be a 6 unit, 2 bedroom per unit building. The configuration would be a little bit different from the last one built. They are proposing to have 12 parking spaces. They are proposing having extension access through the existing parking lot. There are no new accesses out to Route 9. It will all be through the presently developed access. The present access permit that was acquired at the time of the first development covers an expansion or use without reapplication. The only thing that is required is a Letter of Notification to DOT to let them know that there will be an increase in the number of vehicles.

Mr. Mende stated that it will be very similar to the other development but will have a few variations. They have contacted both the Water District and the Sanitary District to see if it would be possible to provide water and sewer to this project via the existing infrastructure on Nowell Street. They have received favorable letters from both of the Boards with a few provisions. He stated that when they look at these letters they will see something that may be misleading or difficult to understand. It talks about 7 units instead of 6 units. He said that since they submitted their application, Mr. Bodwell has acquired another parcel next door under a different name. The primary goal in doing this was to safeguard the possibility of access for utilities across that property. He stated that the likelihood of Mr. Bodwell developing on that property is pretty slim. However that is why they included it as 7 units just in case they do put in some sort of development at a later time. Mr. Mende stated that if the water lines don't have the capacity then they will probably put in a Cistern System similar to the building that is already there. The only difference is that they would be filled from a public supply rather than a well.

Mr. Mende stated that one of the benefits of having public water and public sewer is being able to leave most of the property undisturbed in regards to deforesting the site. He stated that disturbance on the buildings are being kept to a minimal. There will be a small strip along the edge of the parking, a small strip around the back of the building and a small area in the front of the building for some detention drainage basin.

Lee Jay Feldman stated that there are a few things that Mr. Mende mentioned that he wants to make sure get on the final plan. This includes the easements for the sewer and water lines. Although the property is owned by the same developer it is under a different name. The easement between parcel #1 and parcel #2 should be on the plan or at least noted as an easement for access. Mr. Mende stated that they did have a note for this one on the plan. Acting Chairperson Whitten stated that she would like them to submit copies of these legal easements to the Board.

Chris Mende stated that in the application paperwork submitted there is a letter dated January 13th from him to the Planning Board that shows what waiver requests they are asking for. He stated that these are the same waivers that were asked for on the first project. The first waiver that they have asked for is as follows:

7.2 Submission:

- b.18 Provide Soil Erosion & Sediment Control Plan endorsed by YCS&WD
 - a) This is a very minor project impacting less than 24% of the lot.
 - b) E&SCP will be signed off by a Certified Professional in Erosion & Sediment Control.
- b.19 Surface Drainage Disposal Plan endorsed by YCS&WCD
 - a) Project has a net increase of 23.6% in developed area (buildings, grass & pavement) from 0 s.f. to 24,393 s.f. on a 2.37 acre site with substantial wetland storage capacity and a minimum 15' wooded buffer between proposed undisturbed clearing and edge of wetland. Earthwork on the project will be conducted in accordance with standard erosion control measures. Silt fences and other barriers will be maintained until disturbed areas are re-vegetated.
 - b) Project will meet MDEP Chapter 500 standards.

Mr. Mende stated that they have submitted a Sedimentation and Erosion Control Plan, but it is of a different sort than what is required for a more significant sort of development. It is the same as they did on the last project. Regarding the Surface Drainage Disposal Plan endorsed by YCS&WCD, what they submitted on the last project was a similar study done to the standard required by Maine Department of Environmental Protection. This is what they have included for this project as well.

Acting Chairperson Whitten opened the Public Hearing at 6:55 pm.

Dwayne Morin stepped forward to make a few comments. One of the requirements under our Subdivision Ordinance in the Town Ordinance, states the developer has to provide for recreational opportunity. He stated that the site really doesn't lend itself to setting aside land for public recreation. The Town is currently in the process of developing what they call the Maple Street Town Forest. It is a project that they started working on about 3 years ago and it will come to fruition this year. The property on Maple Street is about 60 acres of land that we will be combining with Great Works Land Trust land to create about 5 to 7 miles of hiking trails. He stated that when the Town or Great Works Land Trust buys land or easements now, they are trying to be more efficient with their selection. Instead of having properties spread out all over the town, they are trying to create blocks or groups of properties so they can make them contiguous based on fragmented areas of town. This is one of those cases. Our original goal for the trails was to go from the Community Center to Hannaford. The missing piece was actually across Mr. Bodwell's property. Dwayne stated that they approached Mr. Bodwell about obtaining an easement across his portion of the Old County Road roadbed. He stated that it was abandoned many years ago but the town would like to have access so we could have trail access from Route 9. Mr. Bodwell has accepted the Town's request to create a 25 foot easement. Mr. Bodwell also told him that he would have no problem with given the Town an easement to build a parking lot. It would be an area that could have 4 or 5 cars with a turnaround. This will satisfy Mr. Bodwell's recreational aspect for the subdivision review.

Harley Regonini asked to see where exactly the building would be located. Mr. Mende showed him on the site plan.

Acting Chairperson Whitten closed the Public Hearing at 6:58 pm.

Lee Jay Feldman stated that they will need to act on the waiver requests. Barry Chase stated that we waived both of these waivers on the previous project. He believes that what they are doing on this project is no less strict than it was for the previous one. Mr. Mende said that it was not. He stated that Jay Stephens told him that what they are submitting is typically what they would submit for this kind of project. It meets the DEP requirements. They just don't want to have to do two of them. The goal for both is no increase in runoff and no change in time of runoff. Matthew Qualls stated that he likes how they are leaving a lot of the trees. This will help with drainage and erosion.

Acting Chairperson Whitten stated that the first waiver was for 7.2.b.18 which reads, "A Soil Erosion and Sediment Control Plan endorsed by the York County Soil & Water Conservation District."

Barry Chase motioned to grant the waiver for 7.2.b.18. Matthew Qualls seconded the motion.
VOTE: 4-0 Abstain: 1

Acting Chairperson Whitten stated that the second waiver request is for 7.2.b.19 which reads, “A Plan for the disposal of surface drainage waters prepared by a registered professional engineer and endorsed by the York County Soil and Water Conservation District.”.

Barry Chase motioned to grant the waiver for 7.2.b.19. David Ballard seconded the motion.
VOTE: 4-0 Abstain: 1

Barry Chase motioned to accept the preliminary application for a subdivision for LRB Investments, LLC located on Somersworth Road. Matthew Qualls seconded the motion.

Dwayne Morin asked the Planning Board to make sure that they determine that there is sufficient water in the water system for fire protection whether it is through public water source or private water source. Also, they should make sure that there is a Knox Box on the building. Mr. Bodwell stated that if reservoir tanks are required, the utility building on the side of the building are designed to hold them. Mr. Feldman stated that they will just need to add a note on the plan stating this. Mr. Mende stated that their biggest concern is weighing the cost between bringing in a line large enough for fire suppression as opposed to bringing in a smaller line and having reservoirs in the building.

VOTE: 4-0 Abstain: 1

Acting Chairperson Whitten stated that they needed to schedule a date for the final plan. They brought up doing it at the 2/23 meeting. Several of the members will not be present for that meeting so they spoke about moving it to 2/16.

Barry Chase motioned to move the 2/23/17 meeting to 2/16/17. Matthew Qualls seconded the motion. VOTE: 5-0

3.2 Country Estates Mobile Park Conditional Use Extension

Chairman Aleva joined the meeting again. He stated that there was a letter dated January 13, 2017 sent to the Code Enforcement Officer from Tom Harmon of Civil Consultants. He read it into the minutes:

Dear Sir:

I am writing to inform you that our final submittal for Country Estates Mobile Home Park is being held up waiting for final ME DEP approval of the storm water permit.

If a time extension is required, we would appreciate that being granted.

Chairman Aleva asked for a motion for the time extension.

Barry Chase motioned to approve the time extension for Country Estates Mobile Home Park. Anne Whitten seconded the motion

David Ballard asked if there was a time limit for these extensions. Dwayne said that they should make it open ended. Under our Ordinance, they have 6 months after the Board gives preliminary plan approval to come back or they have to start over. This is at the Board's discretion. He stated that the best thing to do in this case would be to state that time is extended until such time that Maine DEP grants the approval.

Anne Whitten redid the motion. She motioned to approve the request for an open ended extension until the DEP approval is granted or until the Board feels that it has been long enough and close it. David Ballard seconded the motion. VOTE: 4-0 Abstain: 1

3.3 Zoning changes workshop

Dwayne stated that there were 2 issues that he wanted to bring before the Planning Board for their consideration. He stated that at the last meeting, the Board of Selectmen sent to the Planning Board for their consideration, a building permit exemption change to our Ordinance. The Planning Board was okay with the change. The Board of Selectmen have decided to withdraw that request from the Planning Board. The reason for the original request was because MUBEC was changing from exempting 120 sf building to 200 sf buildings. Under our Ordinance, it says that every building in town needs a permit. After discussing it further with our Attorney and the Board of Selectmen, they felt that the better approach would be to require building permits for those structures at no permit cost. At the last Selectmen's meeting, they voted to require building permits for structures 120 sf with no foundation at no permit cost.

The second thing that Dwayne wanted to discuss is the changes that the Planning Board did at their last meeting with the Domesticated Chicken Ordinance proposal. He said that they would like the Board to reconsider the removal of the word "domesticated" from the proposal. The impetus for the change was for domesticated chickens and not for guinea hens or other types of fowl but strictly for chickens. He said that he understands that one of the discussions that the Planning Board had was that the word "domesticated" was felt to be a duplicate or redundant. The Selectmen actually disagree. He stated that when you put together an Ordinance and create a definition, the definition is now the rule of law. He stated that our definition could actually say, "A dog is a cat". What we might say is a cat, our Ordinance says that it is a dog. It is the rule of law and not what we commonly think. Matthew Qualls stated that they had not removed the word "domesticated" from the definition. He stated that their intent was that it was redundant and they left it in the definition. They felt that having it in the definition was clarification enough and it didn't need to be included everywhere else in the Ordinance. Dwayne did not think that they had kept it in. He was under the assumption that they had removed it from the whole proposal. He stated that if they keep it in the definition than we are fine. The concern was that if it only stated fowl, it opens it up to other animals. Dwayne stated that they would also like to keep the Latin meaning "Gallus domesticus) in there as well.

The second thing that the Selectmen would like the Planning Board to reconsider is the removal of having the enclosures located on the site to the rear of the property. Dwayne stated that there are a few reasons for wanting this back in. He said that the way the Planning Board set it up to read is “Facilities shall be designed, constructed, and shall not be located within ten (10) feet of the rear or side property line.”. Dwayne stated that if you put a shed on your front lawn it will not meet zoning setbacks under our Ordinance and it creates a conflict. He said that the only time you can go within 10 feet of the side and rear lines is if the structure is in the rear of the property. It has to be 1 inch behind the halfway point of the structure. Anne Whitten said that it states in the previous minutes, “She stated that the third sentence under Enclosures reads, Facilities shall be designed, constructed and located on the site in the rear of the property and shall not be located within ten (10) feet of the rear or side property line.”. She then stated, “It will now read, Facilities shall be designed, constructed, and shall not be located within ten (10) feet of the rear or side property line.”. She stated that she had asked about taking it out but the Board agreed to not take it out.

Dwayne said that one thing that did come up while they were discussing it, is if someone has property that has their home to the rear of the property and have no room to add a structure in the rear can they place it somewhere else. The Board of Selectmen would like to have the Planning Board consider adding this language, “In those instances where there is insufficient area to the rear of the property for enclosures, the Code Enforcement Officer may issue a permit for the enclosures to be located in the front of the property provided all applicable zoning setbacks for the Zoning District are met.”. This would affect about 1% of our houses in town.

The stenographer asked for clarification on what Anne Whitten stated about not removing anything regarding where the structure could be located on the property. She said that she thought they had removed, “located on the site in the rear of the property”. Matthew Qualls said that they had removed this. Dwayne said that this is the part that the Selectmen want them to keep in. They are concerned with the property owners not meeting setbacks and also for the aesthetics of the town. They also are concerned of chickens getting out of the enclosures, getting in the road and causing traffic issues. These concerns are greater if the structures are not in the rear of the property.

Chairman Aleva read what the addition to the proposal will now be:

Article 5.2.22 Domesticated Chickens

B. Enclosures

In those instances where there is insufficient area to the rear of the property for enclosures, the Code Enforcement Officer may issue a permit for the enclosures to be located in the front of the property provide all applicable zoning setbacks for the Zoning District are met.

Barry Chase motioned to approve the addition to the proposal as read above. Anne Whitten seconded the motion. VOTE: 5-0

Matthew Qualls stated that the last two sentences under A should be switched. He stated that #4 refers to "requirement listed above". This should be the last sentence. Dwayne agreed.

Matthew Qualls motioned to reverse #4 and #5 under Section A. It will now read:

4. Only female chickens are permitted. No male chickens (roosters) are permitted.
5. All properties zoned Farm and Forest, do not have to meet the requirements listed above.

Barry Chase seconded the motion. VOTE: 5-0

4. Other Business:

Anne Whitten stated that our Bylaws say that the Chairman and Vice Chairman should be voted on every year.

Anne Whitten motioned to nominate Geoffrey Aleva as Chairman. Matthew Qualls seconded the motion. VOTE: 4-0 Abstain: 1

Roger stated that they should probably discuss the Category 3 issue. He said that apparently most surveyors say there is no Category 3 survey. Dwayne said that there is because our Ordinance actually defines it. He said that he reached out to the Maine Surveyors Association and asked them to give him the proper term. He has not heard back from them. Chairman Aleva stated that they don't have a term for it. Dwayne stated that under our Ordinance, we created our own definition. Even though in the surveying world it isn't there, we have defined it in the Ordinance. He said that New Hampshire calls it a Mortgage Inspection Survey. Chairman Aleva's concern is that our Ordinance states Category 3 and some surveyors will say that they can't do that because it doesn't exist anymore. Chairman Aleva stated that he spoke to Chris Mende about it before the meeting and Chris made a suggestion. He said that they should put it as, "The CEO would receive written documentation from a certified land surveyor stating that the structure meets the setbacks.". Dwayne said that it sounds good. He would just like it to be consistent.

5. Adjournment:

Barry Chase motioned to adjourn the meeting at 7:51 pm. Anne Whitten seconded the motion. VOTE: 5-0

Roger Frechette
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Barry Chase

Jon Morse

Anne Whitten

Matthew Qualls

David Ballard