

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD OCTOBER 25, 2018

Present: Chairman Geoffrey Aleva, Jon Morse, Matthew Qualls, David Ballard, Annette Hume, Scott Strynar, Roger Frechette, CEO

Absent: Anne Whitten

Also Present: Morgan Harper, Robert Harper, Jeremy Baron, Mike Gaudette, Carol Hill, Kenneth Hill, Larry Litvinchyk, S. Litvinchyk, Penny Eastman, Jim Dowe, Don Andersen, Judy Andersen

1. Call To Order:

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

2. Review Previous Minutes:

Jon Morse stated that on Page 3 in the first sentence of the last paragraph, it currently reads, "Roger Frechette stated that he and the Mr. Bergendahl...". It should read, "Roger Frechette stated that he and Mr. Bergendahl...". David Ballard stated that on Page 3 in the second paragraph, the 4th paragraph has the abbreviation ADA. He asked if they should spell out what it stands for. The Board agreed to change it to American Disabilities Act.

Jon Morse motioned to approve the minutes of October 11, 2018 as amended. David Ballard seconded the motion. VOTE: 4-0 Abstain: 1

Chairman Aleva moved Annette Hume up to a full voting member.

3 Current Business:

3.1 Public Hearing of a Conditional Use Application submitted by DJ Realty LLC Located at 22 Elm Street (Map 021 Lot 041). Applicant proposes to add 8 additional parking spaces to be located in the back right hand side of the property.

Chairman Aleva stated that they had a site walk for this project on October 11th and had discussions at the October 11th meeting as well. He asked the applicant to let the public know what the project entailed.

Donald Andersen stated that they are trying to extend the parking lot at Bubba Frye's by adding 8 additional parking spots. He stated that he squared it off now so that is new to the plan. He

made sure that he had the 28 feet behind each space so people can get in and out easily. He also put in a return so they can turn around at the end.

Chairman Aleva opened up the Public Hearing at 6:35 pm. There was no public comments. Chairman Aleva closed the Public Hearing at 6:35 pm.

David Ballard stated that the plan is actually for 9 spaces not 8. Roger Frechette asked Mr. Andersen how many spaces he was planning on doing. Mr. Andersen said he would do 9 spaces. Scott Strynar asked if they were planning to pave the parking area. Mr. Andersen that they were not planning on it at this time. It would be a gravel lot.

Jon Morse motioned to approve the application for DJ Realty LLC at 22 Elm Street Map 021 Lot 041 to add 9 additional parking spaces on the back right hand side of the property. David Ballard seconded the motion. VOTE: 5-0

3.2 Continued review of a Conditional Use Application submitted by Penny Eastman located at 31 Sid Hall Drive Map 005 Lot 029-3 Applicant is proposing an in home daycare.

Chairman Aleva stated that Roger, Scott and himself had a site walk of the property tonight. They were able to go and see the areas that will be used for the daycare. He stated that there were no questions that came out of the site walk. He said that the Board has a revised layout of the area and property as well as some pictures of the location. These all addressed the questions that they had at the previous meeting.

Penny Eastman stated that she lives at 31 Sid Hall Drive and she is looking to have an in home daycare for before and after school kids as well as a few all day kids. Matthew Qualls said that he appreciated the photos because it showed the layout of the area. David Ballard asked the applicant if she was CPR trained and if it was a requirement. Ms. Eastman stated that it was a requirement and she is certified. Chairman Aleva asked if she had all of her Fire Marshall approvals and she said that she did. Jon Morse asked if she had any playground equipment in the backyard and if it was fenced in. Ms. Eastman said that she did have some equipment and she was not planning on fencing it in. Chairman Aleva said that the equipment is in the back and the house sits pretty far off the road.

Jon Morse motioned to approve the Conditional Use Application for Penny Eastman located at 31 Sid Hall Drive Map 005 Lot 029-3 for an in home daycare. Matthew Qualls seconded the motion. VOTE: 5-0

3.3 Conditional Use Application submitted by Kennebunk Savings located at 8 Main Street (Map 019 Lot 029). Applicant is proposing to remove one light pole and add 4 new light poles.

Chairman Aleva asked Roger Frechette if he had any issues or comments regarding the application. Roger said that he had no issues.

Jon Morse motioned to accept the application as complete for the addition of 4 light poles at Kennebunk Savings Bank located at 8 Main Street (Map 019 Lot 029). David Ballard seconded the motion. VOTE: 5-0

Jim Dowe from Kennebunk Savings Bank stepped forward to discuss the project. They want to remove the small old household pole and place 4 new poles around the edge of the parking lot. It is merely for safety and security. He does have big spotlights on the side of the building but he wants to get rid of those and just add down lights on the condensing units that are there. Jon Morse asked where the old pole that he wants to remove was located because he couldn't see it on his map. Mr. Dowe said that it is hard to see but if they look on the Canal Street side, it is right in the middle. It is on a base that is about a foot off the ground. It is just a small brass looking pole and it doesn't really give out much light.

Chairman Aleva asked if the lights were going to stay on all night. Mr. Dowe said that they would. Jon Morse asked if the lights were going to shine in a particular location or would it be 360°. Mr. Dowe said that they would be similar to the lights in the park. They will be 10 foot poles with an acorn top. He said that they tried to match them but that pole is not available but it will be similar.

Chairman Aleva said that they need to set up a site walk and an escrow account. They will also need to set up a Public Hearing because it is a site plan amendment. Chairman Aleva asked the applicant to have a cut sheet of the down lit light that he is replacing on the building at the next submission. This was probably on the original plan so it will just keep it all consistent.

The Board agreed to do the site walk at 6:15 before the next meeting on November 8, 2018.

Matthew Qualls asked if they were going to have to cut any trees down and Mr. Dowe said that they would not. David Ballard asked if they were going to be connected to a generator or back up supply. Mr. Dowe said that they would not be connected to a permanent generator. He said that he has Gen sets on all of his buildings. If this building went down and he needed to use the generator for lights, security or heat, the lights may come on then.

The Board agreed to set up an escrow amount of \$700.00 and the applicant agreed to this. They will do the site walk and the Public Hearing at the 11/8/18 meeting.

3.4 Conditional Use Application submitted by Natural Rocks Spring Water Ice to be located at 503 High Street (Map 004 Lot 080). Applicant is proposing 12' x 15' building to fill tanker truck for bulk water.

Chairman Aleva asked Roger if he had any issues or comments regarding the project. Roger said that the building looks okay and the location is fine.

Jon Morse motioned to accept the application as complete for Natural Rocks Spring Water Ice located at 503 High Street (Map 004 Lot 080) for a proposed 12' x 15' building to fill tanker truck for bulk water. David Ballard seconded the motion. VOTE: 5-0

Mike Gaudette, the Superintendent of the North Berwick Water District stepped forward to discuss the project. Steve Tischner, the President of Natural Rocks Ice Company couldn't be here so Mike will explain what he wants to do. Mr. Tischner would like to pull some bulk water from the district to make ice.

David Ballard stated that he doesn't know how the process works but he is wondering why it is needed. Matthew Qualls stated that they have existing structures already. Mr. Gaudette stated that it was going to be a load out building just for tankers. It will be a specific line going there so they can back up, fill up and pull out of it. Natural Rocks has to be pulled from a spring and our Well 3 is spring water. Chairman Aleva stated that it is just another source that they can use.

Chairman Aleva asked if this has to go to the DEP for approval. Mr. Gaudette stated that it has gone to the DEP, the Drinking Water Program and the PUC. They have all been approved. They are just waiting for the hard copies to get to them. Chairman Aleva asked how many trucks a day will be going in and out. Mr. Gaudette said there will be 2 for now but could eventually be 3. Chairman Aleva asked how many gallons are in the truck. Mr. Gaudette said that there are 8,000 gallons in a tank. Chairman Aleva asked if there was a limit by the PUC, DEP or Drinking Water Program that says how much water they can take. Mr. Gaudette stated that they have a permit to pull out 144,000 gallons per day. Chairman Aleva asked if this was just for this well and Mr. Gaudette said that it was. He asked how many gallons are pulled out a day right now. Mr. Gaudette stated that there were 110,000 gallons pulled out right now.

Matthew Qualls stated that when people put in a new well they have to check to see if it will impact the neighbors. He asked Mr. Gaudette if there were things they were already doing where they monitor the flow of the water to see how it would impact the area. Do they do a yearly process to test and check the flow rates and if it is impacting anyone. Mr. Gaudette said that they top the main well every month and have a status and draw down. They determine the flow of influences. They also have test wells that are outside the wells and this is where they get the cone of influence and determine if they are dropping down. Mr. Qualls asked if there was a certain threshold so if they hit it they would stop. Mr. Gaudette stated that they do monitor all of this. He said that even with the past couple droughts, they have been fine. Mr. Qualls asked what they would do if they did hit critical. Mr. Gaudette said that if they do go too low they notify the Drinking Water Program. They would then have a voluntary slowdown of usage and then it would be a mandatory reduction in uses.

Jon Morse asked where they will be taking the water. Mr. Gaudette said that they are taking it to the Natural Rocks building on Route 236 in Eliot. Chairman Aleva asked what time of the day would the trucks be coming in. Mr. Gaudette said it would be during regular business hours 7 days a week. Chairman Aleva asked if they have a lock on the gate and if so, would the truckers have a key. Mr. Gaudette said that they do have a lock and the drivers would have a key. Chairman Aleva asked how they monitor the comings and goings of the trucks. Mr. Gaudette said that it will show up on the computer that they drew some water. David Ballard asked how many gallons per minute do they pump into the trucks. Mr. Gaudette said that it is 240 gallons per minute and will take about 40 minutes to fill the truck. David Ballard asked what the times were that they will be filling up. Mr. Gaudette said that it would be 7 to 5. They don't want to impact the neighbors around them.

Chairman Aleva stated that they need to have a site walk and set up a Public Hearing. They also need to set up an escrow of \$800. The applicant agreed to the \$800 escrow amount. The Board agreed to have the site walk on 11/8 at 6:00 pm prior to the next meeting.

3.5 Conditional Use Application submitted by HCJ Limited Family Partnership located at 381 High Street (Map 004 Lot 061). Applicant is proposing to create 4 pastures with shelters to raise no more than 45 head of cattle for beef products.

Chairman Aleva asked Roger if he had any comments or questions regarding the project. Roger stated that they can't exceed more than 3 cattle per acre. He has not received any of the plans for the shelters yet. Other than that, everything seems to be in line. David Ballard asked if they were going to be enclosed shelters. Robert Harper stated that they will be 3 sided, open in the front, 8 feet in height and 20 feet long. It will be 6 feet in the back so there will be a 2 foot pitch with metal roof construction for easy snow removal. It will be pressure treated timber for the frame and some rough cut wood for the siding. It will not be insulated.

Chairman Aleva asked Roger if he felt the application was complete right now. Roger said it was not. Chairman Aleva stated that the Board had a copy of the plan that shows the areas with the different pastures. He asked Mr. Harper to go over the plan. Mr. Harper said that the property that they have is 22 acres but they would take 15 of those acres and turn it into a cattle ranch. They would like to make 4 different pastures. They will use round 4 to 5 inch diameter stakes driven into the ground with a high electric fence. They will have it clearly marked so no one runs into it or touches it. The property is surrounded by trees on all sides and there is not a lot of public access to it so the chance of anyone accidentally touching the fence is slim. Mr. Harper stated that the gray marks on the plan are gates. They would have the gates on either end so they wouldn't have to worry about the power line company having access to it.

Mr. Harper said that they would be starting off small and working their way up to the 45 head of cattle. They are looking at starting with about 7 to 10 to get a sustainable breeding program going. Chairman Aleva asked if they would be starting with Pasture 1. Mr. Harper said that they would start with Pasture 1 and 2. They would use Pastures 3 and 4 later on when the herd

expands. Chairman Aleva asked if the gates will have cattle guards on them. Mr. Harper said that if they are moving cattle from one pasture to another, they can have an extra set of stops. Chairman Aleva stated that he wasn't sure if they were going to have a removable wire gate on one point or do the cattle guard coming into Pasture 1. Jeremy Baron, who is the owner of Willow Brook Farms, stated that the power lines will be completely open so there will be no cattle in that corridor. David Ballard asked them if they were going to be in ground cattle guards. Mr. Harper said that they would be.

David Ballard asked what type of cattle they would be raising. Mr. Harper said that they are looking into a couple of different types right now. They have looked at Simmental which are a great dual breed. They are great for beef and dairy. They are not looking to doing dairy but they are more readily available. They are also looking at short legged Black Angus and Red Angus. Jon Morse asked if the Birthing and Quarantine shelter would be the same kind of building as the other shelters. Mr. Harper said that it is basically the same thing but they may have a couple extra gates in there to be able to separate them easier. He stated that the shelters that are out in the pastures would just be 1 open bay but the birthing one would have stalls with movable panels to adjust to what they need.

Chairman Aleva asked what they were going to do with the cow patties. Mr. Harper said that Jeremy Baron also sells landscaping material. On the upper northwest corner of Pasture 4, they use this as a manure cooking area. They pile it up and let it break down for people to use in their gardens. Jon Morse asked if they would take a wheelbarrow out every day to collect it. Jeremy Baron said he would use a tractor and pick it up whenever there is a scoopable amount. Roger stated that they will need to be careful of the smell. Matthew Qualls asked what zone this was in. Roger stated that it was in Residential II so it is allowed. Mr. Qualls stated that the smell is to be expected in Farm and Forest. Mr. Baron stated that they are trying to keep it as far away from any abutters and water source as possible. Roger stated that this is where his dilemma will be. He doesn't think that they can just leave it piled. They may have to pen it up. Mr. Baron said that he will be using blocks to pen it up. Roger stated that it can't sit there forever so the Board may set a time limit for how long it can sit there. David Ballard asked if they were going to have any lighting out there and Mr. Harper said that there was no need for any. Mr. Ballard stated that it was because he was concerned about the electrical fence and what was on the other side of it. Chairman Aleva stated that there was nothing back there.

Jon Morse asked if they were going to be butchering on the property. Mr. Harper said that they were going to ship the cattle to be butchered elsewhere. They will not get any carcass back. They will only get meat products back. Mr. Morse asked if they were going to be building a place to sell the products. Jeremy Baron stated that he already sells meat at the store. He owns Willow Brook Farms which used to be the old Natures Acres. He will sell it there by the package. People will also be able to buy a quarter or half a cow.

David Ballard stated that he read where they were going to have a vet service on call. Mr. Harper stated that they will have a vet service lined up. He said that there is a gentleman in town

that just moved back from California and did a lot of ranching out there with cows. If there is ever a loose animal or something, they do have resources available to corral and contain.

Roger Frechette stated that they will have to calculate so much land for the other business. He is not sure if that has already been done with what they are showing them tonight. Roger said that Mr. Baron needs so many acres for what he is doing and for the pastures. Chairman Aleva stated that their revised information will need to include that. It will need to include showing where the shelters are going to be for the individual pastures. They will need to give a little bit more information about the manure and how it will be contained and what happens with it when it gets old. Roger stated that if they can send pictures to him regarding the containment, fencing, and shelters, it might be helpful. They should also show the rough square footage for each of the pastures.

Roger asked if they were going to be breeding for somebody else or just for themselves. Mr. Harper said it was just for themselves. He said that his plans right now does not include a bull. Chairman Aleva stated that if they had a picture of the cattle, they could also include that.

Chairman Aleva stated that they needed to set up a site walk. They are also asking for an escrow amount of \$800.00 for this project. The Board agreed to this amount.

Jon Morse motioned to accept the application as complete for HCJ Limited Family Partnership located at 381 High Street (Map 004 Lot 061) to create 4 pastures to raise no more than 45 head of cattle. David Ballard seconded the motion. VOTE: 5-0

Roger Frechette stated that he needed to make a correction to the escrow amount. He said that because it is commercial, he needs to send 2 publications to the newspaper. Chairman Aleva asked what the cost is for a publication. Roger said that they are around \$400 for each time. Chairman Aleva told the applicant that the escrow would be \$1200. The applicant agreed to this. Mr. Harper asked if the previous applicant for Kennebunk Savings would need to have 2 publications as well. Roger said that they will so he will need to contact them tomorrow to let them know.

Chairman Aleva said that they will have the site walk on 11/8/18 at 5:15 pm.

3.6 Conditional Use Application submitted by Melanie Bisson located at 12 White Pine Way (Map 003 Lot 072). Applicant is proposing a new garage with an in-law apartment to be located along side of the garage.

Chairman Aleva said that this item is being tabled. Roger stated that the applicant could not attend this meeting.

4. Other Business

Chairman Aleva stated that there is a letter from Dwayne Morin that had been emailed to all of them regarding the Bergendahl Accessories Shop. Matthew Qualls said that whenever they go through the process of giving someone a conditional permit and then come back days later and our lawyer has given us different wording for the permit, how does this work. He said that they already signed off on it so how can they come back later after they have already told the applicant one thing and say that we will change it on them. He is wondering what the regular procedure was to handle a situation like this. He doesn't feel that they can go back and change something they already approved. He asked if they can go back and reject a previous approval. Chairman Aleva stated that they can reject it only if there is new information that was not brought up substantive to the discussion at the time. If there wasn't anything, then the conditions that were voted on by the Board are the conditions that apply unless the Board did something wrong legally. Chairman Aleva stated that they worded it that way because they were going to let the attorneys discuss it and they would have to come back before the Board to have it reviewed if it was deemed that it was acceptable. Chairman Aleva said that it was pretty clear in their discussions that the book was not allowed so he is not worried about it.

Jon Morse stated that it is in the minutes that they can't have the book. The applicant's attorney agreed to it and said she would discuss it with the town attorney. Matthew Qualls stated that he doesn't think that it is fair for the Board to talk about the applicant without the applicant being present. Chairman Aleva feels that it is pretty clear that they can't have the book. He thinks that it is fine the way it was originally approved. If the applicant wants to come back with some legal opinion to have it reviewed, he can do so.

Roger stated that Dwayne and the attorney do not want the Planning Board to sign the original conditional use permit. It was approved at the last meeting but the form was not completed for the Board to sign then. The stenographer brought the conditional use permit with the new verbiage on it and didn't bring the one with the original wording which should have been signed at the last meeting. Chairman Aleva asked for the new wording to be read to the Board. It reads:

No caregiver or employee of the business, while working on the premises, may offer or advertise the sale of medical marijuana or medical marijuana products to customers, including but not limited to use of a medical marijuana catalog.

Roger stated that the town attorney does not want them to sign the original permit. The original condition stated, "There will be no medical marijuana catalog distributed in the store.". Roger stated that the distributing part is what is concerning the attorney. This statement would not stop people from looking at the catalog while in the store because this is not actually distributing it. They should not even have the catalog in the store at all.

Matthew Qualls asked about the procedural aspects of it all. The attorney is telling them not to sign the original permit because there is something legal wise that is an issue. He stated that the

attorney is trying to protect us from the legal side of things. Mr. Qualls stated that they haven't signed anything yet so can they just withdraw the condition that they put forth last time because of the legal issues. Mr. Qualls asked if the new information is what the new language that the town attorney gave them. Chairman Aleva said that it is a fine line because it really should be new information that is either from the applicant or was hidden from us. He stated that this is something that was changed and modified by the recommendation of the town attorney. Chairman Aleva said that if they sign the permit with the new language and the applicant comes to pick it up and if they want to, they could then take us to court because we have implied conditions that were not discussed. He stated that the minutes say that they did not want the book in the shop but the condition does not specifically state this. Chairman Aleva said that they should have the applicant come back for a discussion and he feels that our town attorney should be at the meeting too. This way they can legally explain to the Board how they can legally make the change to the condition.

Chairman Aleva said that they should table it until further notice.

Chairman Aleva stated that he reached out to Lee Jay Feldman. He will do a presentation for the Board on rules and how a Planning Board works. Chairman Aleva will let the Board know when he gets more information.

5. Adjournment:

Jon Morse motioned to adjourn the 7:48 pm. Matthew Qualls seconded the motion. VOTE: 5-0

Roger Frechette
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

Matthew Qualls

David Ballard

Annette Hume

Scott Strynar