

**TOWN OF TUFTONBORO
PLANNING BOARD
April 4, 2019
MINUTES**

Members Present: Matt Young, Chairman, Tony Triolo, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Jack Parsons, Kate Nesbit, Members, Gary Qua, Alternate.

Members Absent: John Cameron, Laureen Hadley, Members, Russ Steensma, Alternate.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Chairman Young opened the meeting at 7:00 PM.

Chairman Young appointed Gary Qua, Alternate, to sit in for Laureen Hadley, Member.

I. Public Comment

None.

II. Consideration of Minutes

March 21, 2019

Correction: Page 2, 18th paragraph; add to the end of the sentence "with the proper procedure."

It was moved by Tony Triolo and seconded by Kate Nesbit to approve the March 21, 2019 Tuftonboro Planning Board minutes as amended. All members voted in favor. The motion passed.

III. Scheduled Appointments/Public Hearings

Mary Ann Stockman

Pre-application Discussion; 2-Lot Subdivision

Tax Map #65-3-2

Dale McConkey submitted a letter of agent authorization. He stated the property is located at 15 Middle Road, includes 60.61 acres with 600' of frontage on Middle Road. He stated the property has an approved septic system and the owner would like to subdivide 12 acres.

Matt Young stated three house lots are permitted on one driveway.

Scott Urquhart stated there is also an additional 36 acres located in Wolfeboro however, there is no access to it; noting he'd like a right-of-way to the acreage.

Matt Young stated there is no need to subdivide the property if the intent is to only place two houses on the lot. He recommended meeting with Jack Parsons to discuss the matter.

Jack Parsons stated if more than three lots are proposed, a road would have to be built to Town specifications and a NHDOT Driveway permit would be required.

Mary Ann Stockman stated the State has restricted the property to one driveway.

Jack Parsons stated frontage can be on a driveway and include an easement.

Scott Urquhart asked if he could access the property from the bridge.

Jack Parsons stated it would depend on the language of the easement.

Matt Young questioned the owner of the dominant parcel and recommended speaking with that owner regarding access; noting the easement may need to be modified and an option could include assuming financial responsibility for the modification.

Jack Parsons noted a new driveway permit may be required.

Matt Young stated that if the easement is written properly, the land should be able to be subdivided.

Scott Urquhart stated he thought frontage was necessary.

Jack Parsons stated that frontage can be on a common driveway.

Scott Urquhart asked if there would be an issue with Tuftonboro to access land in Wolfeboro.

Matt Young replied no. He asked if the land is in Current Use.

Scott Urquhart replied yes.

Matt Young advised Mr. Urquhart that when acreage is removed from Current Use it is taxed (the penalty being 10% of the value).

Mary Beth Hertel
Tax Map #55-3-3
20-Lot Subdivision

Scott Lawler stated the proposal includes a 20-lot subdivision on Federal Corner Road. He stated the Board issued a conditional approval in 2009 for a 19-lot subdivision; noting the subdivision was approved with an 18' road with 2' paved shoulders. He stated all State permits had been approved (Alteration of Terrain, Subdivision, NHDES) however, those permits have expired. He stated in 2018 they engaged in a preliminary discussion with the Board and reviewed the proposal; noting such would account for current standards, including road standards and the re-approval of expired permits. He noted a lot line revision was also done in 2018; noting the acreage of the parcel is now 54 acres. He stated the proposal includes a 20-lot subdivision for single family dwellings with a lot size of 1 to 6 acres and the creation of 3300' of roadway (22' wide paved and 2' gravel shoulders on either side). He stated wetland crossings have been designed so that water is captured, collected and discharged in treatment swales. He stated such has been developed to address current stormwater regulations; noting a system of infiltration, detention basins and treatment swales has been designed. He stated the State has reviewed the stormwater management plan as part of the Alteration of Terrain permit; noting such was approved by the State in January 2019. He stated State Subdivision approval has also been granted. He stated he has met with the Fire Chief to discuss the location of turn-offs; noting four turn-offs for emergency vehicles have been designed within the right-of-way. With regard to fire protection, he stated the Fire Chief is acceptable to either the installation of a 30,000 gallon cistern or that each of the single family dwellings be constructed with individual residential sprinkler systems. He noted a waiver request has been submitted.

Matt Young noted the application is complete.

It was moved by Tony Triolo and seconded by Kate Nesbit to accept the application as complete. All members voted in favor. The motion passed.

Gary Qua questioned the phasing of the project.

Scott Lawler stated two phases are proposed to adhere to the State's Alteration of Terrain regulations; noting a portion of the road will be constructed and slopes stabilized prior to further construction. He stated

it is the owner's intent to complete the construction of the road prior to the sale and construction of the homes.

Gary Qua questioned paving, specifically the laying of the top coat.

Scott Lawler stated such would be done following the construction of the majority of the homes.

Matt Young questioned the location of the cistern.

Scott Lawler stated a suitable area for such would be midway in the subdivision and noted that at this time the owner is considering residential sprinkler systems for the homes.

Gary Qua confirmed lots 2-10 would include rain gardens.

Scott Lawler stated that due to the proximity and topography of the land, rain gardens are proposed to address runoff from the houses and garages. He stated the size of such would account for the impervious coverage and noted the deeds would include a noted that rain gardens are required.

Gary Qua confirmed the owner of the lot is responsible for such.

Jack Parsons asked who would oversee the construction of the rain gardens.

Scott Lawler replied the Homeowners Association.

Gary Qua stated that prior to a Certificate of Occupancy being issued, the rain gardens should be inspected to ensure that they have been constructed.

Matt Young questioned utilities.

Scott Lawler replied overhead however, underground utilities may be considered.

Jack Parsons stated the regulations require underground utilities.

Gary Qua questioned the lot loading capacity for the lots.

Scott Lawler replied 150 gallons per bedroom, total of 600 gallons.

Kate Nesbit questioned the expiration of the wetland permit; noting such expired in 2018.

Scott Lawler stated the conditions of the permit were executed prior to the expiration of the permit.

Matt Young questioned covenants.

Mary Beth Hertel stated such would be standard covenants such as no mobile homes, unregistered vehicles, etc.; noting she may revise the covenants prepared in 2009. She stated she would have the covenants in place prior to the sale of the lots.

Gary Qua noted the power lines may be challenging and asked if it is known what the lines generate and if that can be explained to potential buyers.

Mary Beth Hertel replied yes.

Gary Qua asked if there is any concern for safety issues.

Mary Beth Hertel replied no. She noted that she has received a Joint Use Agreement from Eversource.

Gary Qua questioned potential issues with radiation.

Mary Beth Hertel stated she understands that the price of those lots will be affected.

Matt Young stated he feels a third party review will be necessary.

Tony Triolo asked who would do the third party review.

Matt Young replied White Mountain Surveying & Engineering.

Scott Lawler stated the proposed stormwater management exceeds the Town's standards and has received the Alteration of Terrain permit.

The Board discussed and agreed to a third party review.

Scott Lawler questioned the scope of the review; noting the drainage has already been reviewed by the State.

The Board agreed the scope would include an overview of the application submittal.

It was moved by Kate Nesbit and seconded by Tony Triolo to open the public hearing. All members voted in favor. The motion passed.

Dave Hager, 20 Federal Corner Road, expressed concern for the impact on his well and septic system.

Matt Young stated the septic systems are approved through NHDES and noted that he does not know what the impact to his well would be.

Jean Nasi, abutter to Lot 1, asked if the road location has changed from the previous submittal.

Scott Lawler replied no and noted better visibility is provided in this submittal.

Jean Nasi confirmed the original subdivision included 19 lots.

Scott Lawler noted the current proposal reduces the number of lots near Mr. Neuberger's property; noting the previously approved subdivision proposed two lots abutting his property however, the current proposal has one lot abutting the property. He noted the second lot was added at the other end of the subdivision.

Steve Hunter questioned the zoning district and lot size requirement.

Scott Lawler replied MDR and one acre.

Ed Meier, 51 Federal Corner Road, stated eight or nine lots border his property and expressed concern for impact to his well. He stated he is opposed to 20 lots; noting he moved to the area because of the decrease in density. He stated he feels twenty lots is too dense for that area.

Tony Triolo asked if there is any information on the aquifer in that area; noting the information would be a good indicator of potential impact.

Matt Young asked if there is any repercussion if a well is added and a well on an abutting property goes dry.

Ed Meier asked at what point the Town takes over the road.

Matt Young replied at Town Meeting.

Tony Triolo replied a warrant article would be presented at Town Meeting.

Jack Parsons noted the road and drainage construction has to be completed before the Town can take over the road.

It was moved by Tony Triolo and seconded by Kate Nesbit to continue the Mary Beth Hertel Subdivision application and public hearing to May 16, 2019, to allow for a general review of the application with the exception of the NHDES Alteration of Terrain Permit aspects. All members voted in favor. The motion passed.

IV. Action Items

N/A

V. Discussion Items

Steve Hunter; Site Plan Review Compliance (Self-Storage Facility)

Matt Young stated people have spoken to him about the project, specifically that it appears that it has gone into use. He stated if a property goes into use a Certificate of Occupancy would be issued. He stated the Planning Board and ZBA approvals included a condition of gated access (limiting access to only tenants). He read the conditions and noted the minutes make quite a few notations of a key pad access/electric gate. He noted the Planning Board approval included the ZBA conditions and a final inspection of the screening (Notice of Decision reflects that the Code Officer would perform the final inspection). He stated the berm was replaced with a fence and questioned the use of the area where the berm was originally located; noting there could be an issue depending upon the use relative to lot coverage. He stated when Steve Hunter was asked questions regarding the property, Mr. Hunter requested Jack Parsons be present and the meeting be taped; noting the matter was continued to this evening so that Mr. Parsons could be present and the meeting could be videotaped.

Jack Parsons stated the condition of approval does not state the type/kind of gate to be installed however, noted that he interprets the type of gate that would prohibit access to the general public.

Tony Triolo stated the gate has to be locked to prohibit access.

Jack Parsons stated the gate could be latched. He stated the construction was phased and the fence should be installed on the same line as the berm.

Matt Young noted an additional condition of approval includes screening as needed and required by final inspection. He stated if the building has been put into use then such would trigger compliance with the conditions of approval. He questioned the intent of the ZBA's condition relative to the gate.

Mark Howard stated the intent was to limit general public access to the site when the business is in operation. He stated the ZBA denied the Zimmerman application because he refused to install a gate. He stated the gate would restrict access to the tenants and prohibit access by the public. He stated the ZBA discussed an electronic gate however, did not require a specific type of gate.

Bill Marcussen stated that in order to prevent access there needs to be more than a latch on the gate.

Matt Young agreed.

Bill Marcussen stated he doesn't recall any discussion that suggested a window dressing gate.

Matt Young asked Mr. Hunter if he intends to install an electronic gate.

Steve Hunter stated he purchased a different gate; a gate with a remote control key pad.

Matt Young questioned the precedent being set if the Board allows a property to go into use without the conditions being met.

Jack Parsons stated some screening has been done but, is not completed.

Tony Triolo asked if the property is being used.

Steve Hunter stated a Certificate of Occupancy was issued for the garages.

Jack Parsons stated such was issued for the completion of the construction of the garages.

Steve Hunter stated the project is not finished (fencing, screening, paving and trench work). He stated it's a service to the community.

Matt Young stated none of it matters if the property is not in use however, if the property is in use then the conditions need to be met.

Steve Hunter stated everything has been built to proper standards.

Matt Young asked Mr. Hunter if he is renting the property.

Steve Hunter replied yes.

Matt Young questioned the area below the fence.

Steve Hunter stated he is fully aware of the coverage.

Tony Triolo stated the conditions require a copy of the contract.

Jack Parsons stated the Board has received the contract. He asked Mr. Hunter if there is a timeline for the paving.

Steve Hunter replied no.

Matt Young stated the Planning Board is not an enforcement board and the goal is compliance by the applicants. He requested a motion that the Codes Officer and Mr. Hunter discuss a resolution to the matter. He stated that following review of the ZBA and Planning Board minutes, it is determined that Steve Hunter is out of compliance with the Site Plan approval of the self-storage facility.

It was moved by Tony Triolo and seconded by Gary Qua to recommend the applicant, Steve Hunter, meet with Jack Parsons, Codes Officer, to develop a plan to bring the Site Plan approval for the self-storage facility into compliance in the near future so that no further action is necessary. Matt Young, Tony Triolo, Kate Nesbit, Bill Marcussen, Gary Qua voted in favor. Jack Parsons abstained. The motion passed.

Referencing Tax Map 46-3-8, Mountain Road, Steve Hunter stated there is a 6-bay storage building that is being used and is owned by Matt Young Revocable Trust and Thomas Young Revocable Trust. He noted the property was purchased in 2014 and asked if there is a storage building on the lot.

Matt Young confirmed that a shed is located on the lot.

Steve Hunter stated to the best of his knowledge never went to the ZBA for a Special Exception; noting the lot is located in the LDR District and a shed is permitted by Special Exception. He stated the shed is being used.

Jack Parsons stated the property isn't being used as a business.

Steve Hunter stated it is a storage building on a separate lot. He stated the Town regulations that are enforced by the Planning Board state that a Special Exception is needed to have a storage building on a lot.

Matt Young stated that if it were a commercial storage building then yes, it would absolutely require a Special Exception.

Steve Hunter stated Justin Tetherly stated he was storing his own stuff in his building.

Jack Parsons stated it is in under commercial uses in the zoning.

Steve Hunter stated Justin Tetherly's lot is located in the MDR District.

Jack Parsons replied yes, but he (Justin Tetherly) came in for a commercial use to store his commercial equipment. He referenced F. Commercial Use and noted that under residential use a garage can be used to store personal items however, if the garage is going to be used commercially then it would require Site Plan Review approval.

Member of the public asked what type of regulations require a gate and fence.

Matt Young replied none however, it is a condition of approval it is required.

Jack Parsons stated the ZBA placed the condition on the applicant.

Member of the public asked what type of business requires a gate and what type of business doesn't require a gate.

Mark Howard stated there is nothing in the zoning specifically related to gating and where and when it would be applied. He stated that when Zimmerman came before the Board the majority of the Board felt strongly that it set a bad precedent to allow a new business to open that would potentially be accessed 24/7 particularly in the area of the property. He stated the ZBA interpreted that such would not be suitable for the Town; noting the vote was 4:1.

Member of the public stated he takes issue to the 24/7 comment and asked how many people would be moving their stuff at midnight or 2 AM and only one or two people at a time. He stated it seems like such a low impact business.

Mike Carleton stated a gate would not keep the renters out and they could be there 24/7.

Steve Hunter stated there is no definition or requirement for screening; noting such is an arbitrary decision by the Board.

Justin Tetherly asked why some people have to submit for Site Plan Review however, others do not like the person down by the General Store. He stated it took him three months to get approval and he couldn't put his building up.

Matt Young stated they are in violation; noting the BOS and Jack Parsons address enforcement.

Justin Tetherly asked if it's going to be enforced.

Jack Parsons stated he has brought it to the attention of the owner.

Member of the public asked if a zoning decision can be appealed.

Matt Young replied yes.

Steve Hunter stated the Board is hindering him from going forward.

Matt Young asked how the Board has hindered him.

Steve Hunter stated he said he was going to build it in phases and he came back to the Board the first year to change things so he could progress and now he has another stumbling block.

Matt Young stated it is not a stumbling block rather, it is a condition that needs to be met.

Bill Marcussen stated some of the things were supposed to be done before you occupied the first phase hasn't been done yet.

Steve Hunter disagreed stating it never said that one phase had to be done before another phase.

Matt Young stated there is no time frame but, as soon as it is put into use the conditions have to be met. He provided an example of another applicant that hasn't completed the conditions of approval. He stated the conditions have to be met otherwise precedent is set.

Tony Triolo stated the Board treats everyone fairly.

Justin Tetherly stated he did his role in three months however, the other guy is getting away with not having to do the steps.

Matt Young stated he doesn't have the authority to make that person come before the Board however, when they do come before the Board they will have to meet the conditions.

Justin Tetherly asked who penalizes them.

Matt Young replied the Codes Officer and BOS.

Mike Carleton asked how many excavation operations were conditionally approved in the last month.

Bill Marcussen replied five.

Mike Carleton asked what will happen when those people come in to get their Intent to Excavate.

Bill Marcussen stated they cannot receive it until the conditions are met.

Mike Carleton stated he can only think of one storage facility between Alton and Ossipee that has a gate.

Tony Triolo asked if Mr. Hunter could appeal.

Matt Howard replied yes.

Tony Triolo asked if he could still appeal.

Mark Howard replied no and stated from the ZBA's perspective, Mr. Hunter is in compliance.

Ed Meier stated he feels the issue of the gate is a business decision and in the future maybe the Board shouldn't dictate business decisions.

Member of the public stated the Town should encourage businesses.

Excavation Operation Site Plan Review Submittal Deadline (letters to Bean & Holmberg)

Matt Young stated Jim Bean submitted a Site Plan Review application for an Excavation Operation at the Board's 3/21/19 meeting however, following review of the submittal deadline for such, it was determined that the application was submitted following the deadline of March 14th. He stated Staff has sent a letter to Mr. Bean notifying him of such. He noted the Board did not receive an application from Gerald Holmberg prior to the application deadline and Staff will be sending him a letter as well.

Planning Board Counsel

Staff informed the Board that she has contacted several attorneys and will forward their information and website links to the Board for discussion at a future meeting.

The Board requested Staff to contact Attorney Bruce Marshall and Tyler Phillips, Horizon's Engineering, for a referral.

Master Plan

Staff requested guidance with regard to addressing LRPC's lack of contact and follow through of the contract; noting she has emailed Susan Slack numerous times regarding the status of the contracted work to be done on the Master Plan update however, there has been no response from Ms. Slack. She stated Jeff Hayes, LRPC, contacted Karen Koch this week asking for the signed contract from the BOS for an extension because he had not received it from the note. She informed the Board the contract was mailed to LRPC following the signing of such by the BOS (December 2018). She also noted that Jeff Hayes stated the following in an email to Karen Koch: "The work that we have completed on this supplemental contract to date includes: 1) development of a future land use map, 2) review and comments on the Ch. 3 Natural and Scenic and Ch. 5 Facilities and Services, and 3) we have attended 1 of 2 planning board workshops." She informed the Board that the land use map has never been received.

The Board agreed to send a letter to LRPC that would include the following information; timeline, dates of emails sent to Ms. Slack regarding the status of the update and outstanding items that need to be done to hold the existing contract timeline.

VI. Informational Items

N/A

VII. Other Business

Scott & Christine Bailey Site Plan Approval

Jack Parsons requested guidance from the Board re: noncompliance with the conditions of site plan approval. He stated the conditions included screening be installed/constructed within six months of the date of approval and a NHDOT Driveway permit for Change of Use; noting today marked six months and neither condition has been met.

Staff read the conditions of approval noted on the Notice of Decision for October 4, 2018.

Matt Young recommended the Codes Officer meet with Mr. & Mrs. Bailey and work on a resolution to bring them into compliance.

It was moved by Kate Nesbit and seconded by Tony Triolo to recommend the applicant, Scott and Christine Bailey, meet with Jack Parsons, Codes Officer, to discuss the resolution of the Site Plan approval of a Home Occupation to bring the matter into compliance and failure of such will result in the revocation of the October 4, 2018 Site Plan approval. Matt Young, Tony Triolo, Kate Nesbit, Bill Marcussen, Gary Qua voted in favor. Jack Parsons abstained. The motion passed.

Steve Hunter Excavation Site Plan Review Final Approval

Steve Hunter requested final approval of such.

The Board reviewed the conditions of site plan approval and agreed to grant Mr. Hunter final approval.

Matt Young signed the Notice of Decision and a copy was provided to Mr. Hunter.

Library Site Plan Review Application

Staff distributed the Library's Site Plan Review application for an expansion and renovation of the Library; noting the application will be presented on April 18th.

VIII. Public Comment

Joe Kowalski asked if the Board has found a replacement for the chairman position.

Matt Young replied no.

Kate Nesbit asked Mr. Young if he would remain as a member on the Board.

Matt Young replied yes.

It was moved by Kate Nesbit and seconded by Tony Triolo to adjourn the April 4, 2019 Tuftonboro Planning Board meeting. All members voted in favor.

There being no further business before the Board, the meeting adjourned at 9:07 PM.

Respectfully Submitted,

Lee Ann Hendrickson

Lee Ann Hendrickson