

Planning Board Meeting 5/6/2010

Planning Board Meeting
May 6, 2010 - 7:00 PM
Library, Elementary School
Public hearings with applicants

Members present: Chairman John Huckins
Selectwoman Jackie Kessler
Alan Kelley
Edward Lemos
David Mott
Dawn Hatch (Alt)

Town Planner: Connie Brawders

Chairman Huckins opened the meeting at 7:05 PM. He introduced the members and the Planner. The first hearing was opened.

File # 10/607 – Merl L. Bartels Living Trust – Continued from March 4 4 lots Canaan Back Road - Map 244, Lot 15

The plan was represented by Joel Runnals, Norway Plains Association. He said he had been before the Board in March and had several items to complete. He said he had filed a driveway crossing application, attended a Conservation Commission meeting for location on a scenic road and to go over the wetlands permit, received a variance from the Zoning Board for locating the driveways off the neck of the back lots.

Runnals said that he had put a note from Fire Chief Rick Walker on the plan. Two waivers were requested for monumentation in the neck and soils mapping. He said he had received a waiver in March for not paving the driveway as it was located off a graveled scenic road.

Runnals said that he did not want to put rebar in the road bed. He was setting monuments at the beginning of the driveway and rebar and drill holes would be installed. Huckins asked about the points to be set. Runnals said that the Master Plan was used in the requirement of setting monuments. He said there would not be any effect on the official map.

Huckins asked if anyone wanted to speak for or against the plan. There was no response. Lemos made a motion to accept the waivers, seconded by Mott, all in favor. Mott made a motion to accept the application, seconded by Kelley, all in favor.

Planner Brawders said for the final plan there should be a breakout of the upland soils. Runnals said that the wetlands had been delineated for the subdivision. She said the plan should include a revision block. These items should be on the final plan. Runnals said he put a revision block on a plan if there were revisions. Brawders said she wanted to see one on the plan as it was easier to see if revisions had been made.

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The members were satisfied with the note from the Fire Chief. Brawders asked about the road design. Runnals said this was just a driveway to 2 backlots. He said there was a cross-section on the plan. Kessler asked about the turnouts. Huckins said they were not needed as the road would be 20 feet wide. Walker agreed as the road would have a 20 foot traveled lane.

Walker said NFDA-1 stated that a fire lane was needed if the road was less than 20 feet. He said this was needed to support fire apparatus. He said this design was for commercial operations to make it so the fire and emergency vehicles would not have to back all the way out of the road. Walker said there that this was a requirement for schools and the safety of people. Runnals said if the road was 20 feet wide there would be no need of turnouts. Walker said that was right. Runnals will remove the wording addressing turnouts for the plan.

Brawders said the revision block needed to be on the plan for ease of clarification, stipulate what waivers were granted, ZBA variance/date, monumentation shown on plan, driveway note revised along with all notes, dredge and fill permit number, and state subdivision number on plan. Mott made a motion to grant conditional approval, seconded by Lemos, all in favor.

File # SR 10/377 - A.W. & Jules D'Antilio – Continued from April 1, 2010 Rte. 125 - Map 238, Lot 42 Construct a 4-room bed and breakfast with owner/operator living quarters

Mike Sievert, MJS Engineering represented the plan with the applicant, Walter D'Antilio. Sievert said the drainage report had been revised to eliminate the rain garden as the drainage on the lot was excessively dry so it would not work. He said all other landscaping stayed.

Sievert addressed the waiver requests. **Section 4.9.4 – Parking Space and Aisle Requirements** – He said the requirement was to provide a 24 foot aisle and the present one was 22 feet. This width was approved on the original site review. He represented the points that had to be proven in order for the waiver to be granted.

Walker said the traffic was slow and he was comfortable with the width. He said 22 feet of traveled way gave enough room for safety. Huckins said that a new application would need to be 24 feet as required. Mott said we needed to be careful not to set a precedent. Huckins said the original site review was heard under the old requirements. He said Fire Chief Walker said it was sufficient for him.

Kessler said the former regulations were 22 feet. Sievert said that the back portion of the parking lot was 30 feet. Dante said that the lot was flat and easy to grade. He said that the road would be covered with ground asphalt. He would label the road to be 24 feet +.

Lemos said the road would service a 4 room country inn with living space. Dante said the tables in the back would be removed so it would be easier to open the area up. He said that he had removed 27 seats from the restaurant. He said he and his son played music on some nights and wanted to keep it at one level so anyone could move to the area to listen. He said that this would create a better

flow.

Dante said that he had darts and foosball that could be played also. Dante said there was no parking in this area but he wanted to install an area for handicapped parking. He said that the door only opens from the inside. Sievert said that there were no new parking spaces proposed.

Huckins asked the members if they were ready to vote on the waiver. Lemos made a motion to grant the waiver as all of the points had been met, seconded by Kelley, all in favor.

Sievert addressed the second waiver – **Landscaping in Parking Lots - Section 4.9.7**

Dante said the landscaping on the site would stay as is. He said he was planting trees along the buffer line for privacy to the inn. He said as the site was in the edge of the Town Center which required 8% of the parking lot to be landscaped.

Sievert said that when the site received approval landscaping was not required in the parking lot. He said the owner did not want to disturb the existing parking lot. Sievert said that there were mature trees on the property line which helped provide shading and provide no negative impact on winter maintenance. He addressed the points that had to be proven. Sievert said the front portion of the lot was landscaped over 8%. Kelley made motion to grant the waiver as all points were proven in his opinion, seconded by Lemos, all in favor.

Sievert addressed the third waiver request - **Section 4.9.11 – Parking Surfaces - Landscaping in Parking.** He said that 60% of the driveway was asphalt with the remaining portion recycled asphalt and crushed gravel. Dante said that the area was dust free and plowed well. Sievert said that part of the parking lot was crushed gravel. He said that the lot was well drained.

Mott asked about the flat site and erosion. Sievert said that there was no erosion that went on any abutting property. He said that it was a graded at grade level with the loam removed and gravel put in. Sievert said any runoff would be toward Route 125 as there were no slopes on the site. A drainage analysis and report was presented and was part of the record.

Planner Brawders said there had been neither reply back from Berger nor any authorization to start the review given. Hatch said this was the estimate that the Board reviewed and felt was not needed. We had re-notified Joe Lowry and told him that we wanted the drainage looked at only as the other items did not need review. Sievert said he had sent a revised plan eliminating the rain garden and the reasons why on April 14.

Huckins asked about whether Berger Group had replied back to the Board. Hatch said she had not heard from Berger with a new estimate. Sievert said he had not heard anything. Brawders said she would check with Berger Group to see what happened.

Huckins said as it had been a month since we had looked at the plan and as there were very few changes he did not support having the review done. He said that member Steve Oles who was a professional had stated that he did not think that we needed a re-review as the lot was sandy and well drained. He said this would add a month to the site review at no fault of the applicant.

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Mott said the drainage plan was done by an engineer and he too did not think that a re-review was needed. Kelley said that he did not see enough changes from the original plan to require a re-review. Huckins asked Hatch for her opinion. She said as there was a full board and no need of an alternate so she wondered why. Huckins said he would like to hear her opinion. Hatch said that she too did not see enough change from what the Board had reviewed both at the original hearing and for the additions to warrant a re-review.

Lemos said we had required others to do a re-review. Huckins said this would hold Dante up another month. Sievert said they could get conditional approval. Brawders said that the Town's Engineers look out for the Town and we need to utilize their expertise. A vote was taken on the re-review – Mott – no, Kelley – yes, Lemos – yes, Kessler – yes, and Huckins – no. Brawders said Berger should have a stamped copy to review. Sievert read the letter that he included with the new drainage report to Berger.

Kessler said the drainage was over the aquifer and we have had extreme problems with drainage on other properties. She said there was no need to re-review all of the information on the site. Sievert said that the rain garden was gone and the infiltration basins would be expanded to collect any runoff from the parking lot.

Sievert said the existing well was 830 feet deep. Dante said the well produced 5 gallons a minute. Hatch asked about the static level. Dante said it was good. Mott said this did not speak well of the aquifer that was under the site. Sievert said that the front well was 210 feet deep. He said that the drainage basins would be less than 1 foot deep, a shallow swale. Sievert said that the wells and septic systems were already in place.

Brawders said we needed documentation on whether the septic system and well were sufficient for the added use. Sievert said at the time the septic system was designed it required 250 gallons per day, now it was 60 gallons per day.

Walker said the site could require sprinklers or a cistern. He said it was based on the use of the building. He said that the State Fire Engineer would determine the requirements as it was now in the state statute of the Life Safety Code. Walker said that something needed to be done to keep the radius of the turning area open. He said as the lot was not stripped there needed to be something that would work.

The plan could be given conditional approval pending the review of Berger, 1 space eliminated in the parking lot, and the fire protection added. Hatch said Dante might want to continue his hearing so he and his engineers could find out what the Berger report stated. She said if conditional approval was given and something was questioned by him he would need to re-notify all abutters and repost the hearing. Sievert suggested that the hearing be continued to June 3. Huckins said Dante would not lose anything as it would be within the month when we heard back from Berger. Kelley made a motion to continue the hearing to June 3, seconded by Mott, all in favor. The waiver requests are part of the record and the minutes.

SR 10/378 – Cheryl & Terry Hill

6 James Henry Drive - Map 250, Lot 102

**The applicant wants to increase the number of children
at her pre-school on James Henry Drive to 24**

Attorney Frances Bruton represented the site review with the applicant, Cheryl Hill. He said that over 2 years ago they had received approval for day care for 12 children, located on James Henry Drive. An as-built plan was presented that showed the pull offs in the driveway and the fence.

Bruton said that the center could become a 24 child facility as long as the square footage was enough. He said that the license for the center had been changed to a family center which allowed 24. Bruton said Hill had changed her request to 14 children at this time. He said they knew that if in the future they wanted to increase the numbers they would need to return to the Board.

Bruton said that parking was 1 spot per child, 1 for an employee and 4 for parents. He said that the parking exceeded this as they wanted to err on the side of caution. Bruton said they were reducing their request to 14 as they could use what existed with the 2 additional children.

Bruton said that the pull out spots might be used 5 times a week. He said the stockade fencing was installed for 36 feet instead of the 12 feet required. He said that it provided greater buffers for the neighbors.

Bruton said that the abutters had taken Hill to Superior Court and after reading the information and plans presented along with the minutes it was determined that the Planning Board's decision was reasonable and legal. It was also determined that the conditional use permit was legal and reasonable.

Bruton presented some history of the plan. He presented a letter from the Police Chief dated May 6, 2010 which stated that there had been no concerns for safety or accidents. There were 2 documents presented, 1 from the Fire Chief and 1 from Ted Buczek, Code Enforcement. The Fire chief and Code Enforcement had signed off on 14 children.

Fire Chief said his position had not changed from 12 to 14; he was concerned about traffic and the common driveway. He said he had understood that the request was for 24 and now changed to 14. The cul-de-sac had not changed. It was an internal operation. He said he realized that there had been confrontations between the abutters and the applicant and the parents and abutters. There had been one incident that a person went to the center and had words with a teacher.

Hill had called the Police and no further action had been taken. He presented the Parent Handbook of the Facility for the record. He read from the Book concerning what was expected of parents bringing children to the center.

Attorney Shawn O'Connell from Shaheen & Gordon represented abutters, Paul and Michelle Saccoccia and Colleen Fenton. He said that there was excessive speed by some parents and rudeness. He said there had been traffic problems since 2008. Bruton said he was not aware of the problems. O'Connell said his clients had represented that there were traffic problems. He said that to add 2 more children would change the numbers of trips per day from 48 to 56. This increase would also devalue the properties. He said the road was small and

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compatible to the residential neighborhood.

O'Connell said that in 2008 the applicant had represented that she would keep the number at 12 to be compatible with the neighborhood. He said the applicant represented that the parents sign an agreement to drive slowly in the development but there were consistent problems with traffic and speed.

Bruton said that there were others running businesses in the development. P. Saccoccia said that he parked his pickup and his son's in his yard but no work was done from the site. He said he was a builder who worked away from his home. Bruton turned the discussion over to applicant Hill.

Hill said she tried to work with the neighbors. She said if parents did not watch their speed she gave them 2 chances and then they had to find somewhere else to locate their children. Hill said she felt harassed and called the police because of this.

Hill said she had signed the paperwork for the state to go from 12 to 14. Both the Fire Chief and State had signed on the square footage. Fire Chief Walker said that there was a disclaimer to protect the Town on life and safety issues. He said the square footage met the requirements but that did not mean that it was safe. He said the septic system was not his problem or responsibility.

Aaron Cleaver, parent said there was a need for child care and his child went to this daycare. He said this was a quality program. He said at no times had he had any problems with the parents or neighbors. He said he had heard that it was a hostile situation and speed of the drivers was a problem. He said he had never seen any of this.

Cleaver said he understood that the neighbors did not want more children and there could be 14 vehicles at one time and he could also win the lottery sometime. He said the road had some type of speed bumps caused by culverts which dropped speed. He said he had never seen any problems. He said it was a safe place for children and plenty of parking provided.

Colleen Fenton said that any expansion would create more problems with safety and traffic. She said that the abutters were concerned about the fire apparatus having room as the homes were in a small area. She said speed and rudeness goes on constantly. She said that Hill could be belligerent if confronted with a problem. She said she did not speak for all but it was a problem. Fenton said no one questioned the quality of program Hill ran but it should be located elsewhere.

Parent, Laurie Jones said she had a child that attended the center and had seen one other parent once at the same time she was dropping off her child. She said she was unaware of any issues and wondered where the documentation was as far as Cheryl Hill being belligerent. She said this was a surprise to her. Jones said in some childcare facilities there is a high turnover. She said she was in education herself and found Hill meets the emotional needs of the children.

Jeff Scott said that no one denied the quality of the daycare. He said that he lived on Lee Road and was the first house to view the traffic. He said that everyone does his thing to be safe. He said the daycare was for 12, asking for 14, next would it be 24; where would it stop. When does it become commercial? He asked the Board to explain where it would stop.

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Walker said that 12 children could be under the family day care, a center base day care could also be in a residential area. He said the State could be different than our requirements. Walker said that NFPA – Fire Code with certain exceptions would be involved. He said that the Fire Code allowed family day care in residential areas. Bruton said the commercial use was why they were before the Board.

Hill said to operate the center based day care she needed a director and a teacher. She said that it was an educational type of service. Tina Colbath said that we needed quality daycare and had heard that Hill provided this. She said she tried to stay out of the hostile environment. Hill said Tina Colbath had kept out of the hostility. She said she had talked with the Police as abutters were talking to the parents. Hill said she had emailed the abutters stating that she needed information so she could solve the problems. Hill said not once in 2 years has anyone come to her.

Jeremiah Colbath said he had emailed the speeding problem. He said he gave the color and model of the vehicle. Colbath said Hill emailed back saying not to contact her again. He asked if there was a process for someone that was breaking the rules or should complaints be logged. He asked who determined the process, who enforces the speed limits? Fenton said she had added to this same email and got the same response.

Hill said she had contacted the Police as she felt that the emails were threatening. She told the abutters to contact her. She said she had spoken to someone on James Henry Drive and Lee Road.

Fenton said the parents should adhere to the speed limits which Hill had supported. She said Hill does not back up the statements in the Handbook. She said the Police said that they could not enforce the speed limits set for the road. A resident stated that his 14 year old child had almost been hit on Monday riding his bike.

Bruton said Hill was happy to receive the emails and tried to address them. He said it was fair to say that in the future Hill would address all emails. Hill stated that she would address the communications from the abutters.

Michelle Saccoccia said she was not a direct abutter but she looked out her slider to the Hill site. She said she did not think that she would ever be able to go to Hill with a problem. She said that Hill did a good job and the parents were good people too.

Saccoccia said that the road could not take the amount of traffic. It was not wide enough. She said she did not have a problem with Hill and the children. She said that she had witnessed people coming in and out of the driveway without stopping. It did not matter whether the road was covered with snow or not.

Saccoccia said both sides were upset. She said the road was private and maintained by the association. She would fully admit that daycare was needed but not in this small development. We all need to think of safety and fire safety, and traffic needed to be controlled. She said Hill had other sites that she could expand in.

Huckins said that safety was a great concern of the Board. Brenda Leonard said the 2 children that would be added were siblings of ones that were

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already at the center. The trips per day would not change from what exists. She said she would like her second child to be in the same place as her first.

Becky Santos worked at the daycare and said it was unfortunate and sad to be on the opposite side of the issue. She said when the abutter came to the center she was yelling at her. She said the person wanted to speak to Hill but she was not available. Carol Doucette said she had had 2 children at the center, one had moved up. She said the center was a safe quality facility. She said the same concerns for safety traffic, or access for fire trucks would be everywhere. She said there were speed bumps and the road ended in a cul-de-sac so speed was limited. Doucette said that there might be 2 or 3 parents at one time but no one backs out. She explained the driveway use. She said Hill was very vigilant. She said that what is legal has to be taken in to consideration.

Scott asked what happened if the values of the surrounding properties were reduced. Bruton said that the proposal met all the criteria of the application. Walker said in defense of Hill she was good to work with and very supportive of the life safety issues. She operated a safe operation and provided a good service. Walker said it might be a better design to allow right turn only out of the driveway and around the cul-de-sac. Bruton said Hill had no problem with this.

Bruton said it would be a good idea for all parents to turn right. Fenton said that she had monitored the site early morning and early evening. She said she shared the driveway which was blind and people came around the circle at a good clip.

Hill said she had done all of the research and asked how to communicate. She said she would like to keep it civil and not receive threatening emails. Hill said it should not be a hostile environment. There was lack of communication and signs stolen from the site.

Huckins said in his opinion to increase from 12 to 14 would not increase the speed so he did not see this as an issue. He said the Handbook stated for parents to drive slowly. The parents were surprised that the letter from the Chief did not substantiate their opinions. They said that they disagreed with the Fire Chief. Hill said she had a 15 passenger van which she could back out without any problems.

Hill said all she wanted to do was increase from 12 to 14 children. She said she was in the process with Ted, Rick and the State. Brawdors asked which the operation fell under, a home business or a home occupation. Mott said with a home business a person could have 2 employees. He said we needed to clarify the type of business and net space needed for 14 children. Bruton said 560 square feet was needed per child. He said the dwelling had 1800 square feet. T Brawdors read the definition of daycare which was 7 to 12 children.

Hill said she wanted to be a center based operation which included a director and teacher. She said as the children have grown she wanted to operate a preschool program. Brawdors said Hill needed to provide a plan that showed that the septic system could handle the additional children. Bruton said that they would get a design for a system that would only have to be installed if the existing one failed. He said the surveyor they used was also a septic designer.

Walker said that family daycare went by the number of children. He said it

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did not define whether it was out of a house or not. He said there were requirement changes that could become more stringent. He said every change required more hoops to jump through. Walker said life safety had many levels.

Kessler asked if 40 square feet per child was more than 30% of the living space. Hill said the center base program requires 1 teacher per 8 children and she has 1 per 6 with 2 employees. She said she had 1 teacher from 7:30 AM to 2:30 PM, then she leaves and a second teacher comes in from 2:30 PM to 5:30 PM.

Hill said that it was a gravel area for parking for 4 cars. She said that there was also a van on site which transported children. Bruton said that the operation was not detrimental to the neighborhood which was a specific part of the conditional use permit. The daycare was in existence and Hill wanted to move up to a preschool center. Hill said the children had been with her for 2 years. It would be a mixed age group. She said there was a high need for kindergarten which was at her second location. The center base program would be for 14 children.

Hill said that the Town was changing to kindergarten to 2 ½ days a week. She said this adds to the problem for working parents and shows the need for child care. Hill said when the neighbors challenged the daycare there were other businesses on the road. She said her husband keeps their home up so the business is not seen.

Mott said the court record could be valuable and have a bearing on this proposal. Fenton said the court decision was based on whether the Board did due diligence in their decision not the effect on the development.

Saccoccia said that appraiser Roger Dionne said the business did have an effect on the home values. He said that he could have an appraisal done within 3 weeks. Huckins said if he got this in writing it could be part of the record. Saccoccia said the covenants did not prohibit this type of use. This could be a civil matter between the applicant and the abutters.

Huckins said that we should talk with the Attorney for what type of business this would fall under. Kessler said we should continue the hearing to June 3 so we can review the material. Hatch said any new material needed to be in the office by May 19. Lemos made a motion to continue the hearing to June 3, seconded by Mott, all in favor.

Conference with Michael Davis

Michael Davis had attended the meeting to have a conference with the Board. Due to the late hour he left as the Board does not start hearings after 10:00 PM.

Business Meeting

The Board moved to a short business meeting. Huckins went over the procedure for reviewing plans. He said in some communities a review committee called a TRC meets with the applicants and prepares the application for the Board. This would include Connie, and department heads.

Mott said he thought that the plan review session held by the Board was

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valuable. This could include Connie. Mott said that he would not want to give this up as it helps prepare the Board for the hearings. Huckins agreed that we need to keep the review process.

Connie said she had met with Peter Cook concerning impact fees. She said that she had viewed some of the roads with Cook. They will meet again to further this project.

The next meeting of the Board will be a joint meeting with the Conservation Commission. The meeting adjourned at 10:45 PM, motion by Kelley, seconded by Mott, all in favor.

Dawn Hatch, Clerk