



**BARRINGTON PLANNING BOARD
BARRINGTON ELEMENTARY SCHOOL LIBRARY
570 CALEF HIGHWAY
BARRINGTON, NH**

**THURSDAY JUNE 2, 2011
7:00 p.m.**

MEETING MINUTES

**Item #1 to follow Item #6*

PRESENT:

John Huckins, Chair
Alan Kelley, Vice-chair
Michael Clark, Ex-officio
George Calef
Anthony Gaudiello
Edward Lemos, DVM
David Vincent

ABSENT:

Stephen Jeffery- Alternate
Jacqueline Kessler- Alternate
Steve Oles- Alternate

STAFF:

Constance Brawders, Town Planner

GUESTS:

Donald Coker; PO Box 164 Portsmouth, NH 03802
Jason Pohopek; 669 Parker Mountain Road; Barrington
Sara Pollock; 367 Packers Falls Rd; Durham, NH 03824
Libby Feuer; 324 Pond Hill rd; Barrington
Al Souther; 225 Washington St; Dover, NH 03820
Susan Rice; 409 Franklin Pierce Hwy; Barrington
David J. Allain; 374 Pond Hill Rd; Barrington
Robert D. Steele; 7 Crescent Ave; Dover, NH 03820
Christian Smith; 70 Portsmouth Ave; Stratham, NH 03885
James Long; 202 Kent Pl; Newmarket, NH 03857

Melodie Esterberg; 45 Old Dover Rd; Rochester, NH
Art Nickless; P.O. Box 249; Rochester, NH 03866
George Philbrick; 444 Pond Hill Rd; Barrington
Scott Mitchell; 285 Dockham Shore; Guilford, NH 03249

CALL TO ORDER

Chair J. Huckins called the meeting of the Barrington Planning Board to order at 7:00 p.m.

ROLL CALL

Members were introduced by the Chair confirming members and guests present as stated above.

MINUTES REVIEW AND APPROVAL

1. Approval of May 26, 2011 Regular Meeting Minutes.

Planning Board member D. Vincent moved to table the review and approval of the May 26, 2011 meeting minutes to the end of the meeting. Planning Board member E. Lemos seconded the motion, which carried unanimously with a vote of seven (7) - zero (0).

CASES FOR CONTINUANCE

2. **10/528A (Gerrior Lane Trust)** Request by applicant to amend a Site Plan to relocate and construct Detention Pond #2; amend Grading Plan; and review of surety for Phrase 2 of the development located at Gerrior Drive from Route 4 to St. Matthews Drive (Map 268/Lots 1.6 & 1.7) in the General Residential (GR) Zoning District. Applicant: Peter Daigle, Esq. 1550 Falmouth Road, Suite 10; Centerville, Ma 02632

Applicant requests a continuance to July 7, 2011

Planning Board member E. Lemos moved grant the continuance to July 7, 2011. Vice-chair A. Kelley seconded the motion, which carried unanimously with a vote of seven (7) - zero (0).

ACTION ITEMS

3. **11/612 (Harbor Street Limited Partnership - Village Place)** Request by applicant to present an application for a preliminary Design Review for a proposal of a Conservation subdivision on a 133.7 acre site located off Franklin Pierce Highway (a/k/a Route 9 (Map 238/Lots 9.1 & 14 (Lot 14 continues onto Map 235). Applicant; Harbor Street Limited Partnership, Joseph Falzone; 123 Water Street; Unit 4SE; Exeter, NH 03833.

Planning Board members G. Calef and T. Gaudiello were recused. As there were no alternate members present, there were no delegates appointed to serve on the Planning Board for

consideration of this case.

Atty. Malcolm McNeill (McNeill, Taylor & Gallo; 180 Locust Street, P.O. Box 815; Dover, New Hampshire 03820) represented the applicant, Joseph Falzone (Harbor Street Limited Partnership; 123 Water Street Unit 4 SE; Exeter NH 03833), with team members Christian Smith, Project Manager, (Beals Associates, PLLC; 70 Portsmouth Ave; Stratham, NH 03885) and James Long, Wetlands Scientist and Forester (NHSC/GZA GeoEnvironmental, Inc; 202 Kent Place; Newmarket, NH 03857) in the presentation of the first Design Review plan. The team addressed the following seven items of importance which were highlighted at the April 28, 2011 Planning Board meeting:

1. The Board asked that the applicant provide a site plan illustrating proposed dwelling units as sited on each lot to exemplify the feasibility of meeting the density requirements; 2. The applicant is to schedule a meeting with the Barrington Conservation Commission before presenting Design plans for consideration of the BCC's recommendations for the proposed development; 3. The applicant is to provide the Natural Resource Inventory/Wildlife study to the Barrington Conservation Commission for their consideration; 4. Public Open space and availability of parking spaces should be addressed; 5. The condition of Benajah Drive should be considered by the applicant's traffic engineer as part of the traffic study; 6. The applicant is to discuss with Fire Chief Walker recommendations and stipulations; 7. The applicant is to discuss with Police Chief Conway recommendations and stipulations; 7. The Vernal Pool Study should be provided for by the applicant.

C. Smith, Project Manager displayed two preliminary plans for development on this site for comparison: a conventional subdivision yield plan and conservation subdivision plan. As there were no questions from the Board, Atty. McNeill moved on to comment on the May 16, 2011 site walk with the Barrington Conservation Commission. J. Long summarized GZA's survey of this parcel, noting that flagging of the wetlands, boundary of the Prime Wetland, and location of one vernal pool has been pinpointed. Long informed the Board that the wild life analysis and Natural Heritage Inventory concluded finding no Blanding's Turtles on site, as had been previously noted in 1979.

Barrington Conservation Commission Chair John Wallace commented briefly on the May site walk and offered that the Conservation Commission had not finalized deliberation for requirement of submittal of a Natural Resources Inventory; inference points to the adequacy of a natural resource assessment for this site and a decision will be forthcoming from the BCC following the June 13, 2011 BCC meeting.

The presentation continued with Atty. McNeill assuring the Board that Open Space would be available for public's enjoyment with approximately 20 parking spaces adequately available to serve that need. The traffic study is to be performed on June 3, 2011 by transportation planning and engineering firm Vanasse & Associates, Inc., (10 New England Business Center Drive; Andover, MA 01810) with the inclusion of Benajah Drive as part of the report. The attorney assured the Board that Fire Chief Rick Walker and the developer will meet again, in follow up to their preliminary discussions, to finalize cistern requirements, at the conclusion of the Design Review. Additionally, Police Chief Richard Conway has provided written comments for the Land Use Department case file folder relating to traffic safety, and once the traffic study is completed by the consulting firm, issues will be addressed regarding public safety.

Atty. McNeill asked J. Long to comment on the vernal pool. Mr. Long described this vernal pool as a productive pool located inside a larger wetland system. As this total wetland area is not conducive to the amphibian life cycle hydro-period, J. Long opined that species would be sufficiently protected within the delineation of the vernal pool boundary.

The Village Place development team concluded their response to the seven issues of importance raised by the Board and requested a verbal waiver extending the Design Review application period beyond the 60 day or two meeting stipulation under Barrington Subdivision Regulations, 6.2 Design Review, paragraph 3. A written request will be forthcoming from Attorney McNeill in follow up to the oral request stated at this hearing for an extension to the first public hearing in September 2011 to complete due diligence of the application process.

Planning Board member E. Lemos moved grant the verbal request for waiver to extend Design Review to the first public hearing in September 2011. Planning Board member D. Vincent seconded the motion, which carried unanimously with a vote of five (5) - zero (0).

The Chair opened the floor for public comment.

Barrington Conservation Commission Chair J. Wallace asked for affirmation of public use and enjoyment of open space and vernal pool, clarification of the amount of area of designated open space, if designation of Strafford Rivers Conservancy or other agency who may hold the open space in conservancy had been decided, and if the developer might consider shared driveways between home sites.

Members of the development team responded by stating open space would be for the public's enjoyment; the 46-acre open space calculations were just under 50%; conservancy could be stipulated by the Town; and shared driveways may not be conducive to meeting the needs and requirements of individual property owners.

Donald Coker, on behalf of Major Waldron's Sportsmen's Association in Barrington, asked for clarification of the percentage calculation of open space area.

Team members' concurred open space would approximate 50%.

Susan Rice asked for clarification of stage of this preliminary review and reminded the Board of her concerns previously raised regarding open space vs. perimeter buffer.

Concerns were duly noted.

As there were no further issues raised by the public, the Chair closed the public comment period and requested a vote for continuance from the Planning Board.

Planning Board member E. Lemos moved extend Design Review to the first public hearing in September 2011. Planning Board member D. Vincent seconded the motion, which carried unanimously with a vote of five (5) - zero (0).

Planning Board members G. Calef and t. Gaudiello returned to their seats as members of the Board.

4. LL11/235 (Boundary Line Adjustment for City of Rochester & Allain-Feuer)

Request by applicants to adjust the line between Lot 22 (23 acre site) & Lot 37 (25 acre site) adding 21.1 acres to Lot 22 increasing its area to 44.1 acres and leaving 4.69 acres remaining to Lot 37, located at Pond Hill Road & Dry Hill Road (Map 201/Lot 22 & Map 203/Lot 37) in the General Residential (GR) Zoning District.

Applicant: Allain-Feuer Family Revocable Trust of 2009; 374 Pond Hill Road; Barrington, NH 03825.

Arthur Nickless, Jr., PLS, President of Norway Plains Associates, Inc., (2 Continental Boulevard; Rochester, NH 03866) presented the application for lot line adjustment that is for the purpose of protecting the Round Pond Watershed, which is part of the City of Rochester's reservoir system, to the Board.

Planning Board members considered the application which may pose issues of concern for the future of Barrington's water supply. Melodie Esterbrook, P.E., Director of Public Works for Rochester reminded the Board that the State of New Hampshire owns the water in Round Pond, not municipalities, and Mr. Nickless stated that flowage rights will be extinguished for previous property owners, as the City of Rochester will become the rightful landowner. Former Rochester City Manager Robert Steele suggested that meaningful dialogue between the City of Rochester and Town of Barrington Board of Selectmen with input from the local Planning Boards could be of benefit at this juncture for the consideration of creating a shared municipal water supply. As this is an application for lot line adjustment, the Planning Board was bound by the limitations of the request before them this evening.

Barrington Conservation Chair John Wallace asked that the Planning Board consider for the record the BCC memo dated June 2, 2011 which was provided in support of this case submittal for protection of the watershed. Highlighted in the memo were two points: 1. the lot line adjustment would provide greater contiguous open space, fostering an increase for wildlife habitat; and 2. The Planning Board "make clear in its decision regarding the lot line adjustment that it is imperative that Rochester observe both good stewardship, and state and federal law, regarding maintaining minimum Berry River flow" when and if a dam is built.

The Planning Board considered the application for completeness.

Planning Board member T. Gaudiello moved accept the application for Lot Line Adjustment as being substantially complete. Planning Board member G. Calef seconded the motion, which carried unanimously with a vote of seven (7) - zero (0).

As the Town of Barrington lists standard construction notes to be placed on the plan, the applicant presented three waiver requests for the following, which were then considered, as no new construction is to occur:

Check list item number 10. Note the following: "If during construction, it becomes apparent that deficiencies exist in the approved design drawings, the contractor shall be required to correct the deficiencies to meet the requirements of the regulations at no expense to the Town."

Check list item number 11. Note the following: "Required erosion control measures shall be installed prior to any disturbance of the site's surface area and shall be maintained through the completion of all construction activities. If, during construction, it becomes apparent that

additional erosion control measure are required to stop any erosion on the construction site due to actual site conditions, the owner shall be required to install the necessary erosion protection at no expense to the town.”

Check list item number 13. Note the following: “All materials and methods of construction shall conform to Town of Barrington Subdivision Regulations and the latest edition of the New Hampshire Department of Transportation’s Standard Specifications for Road & Bridge Construction.”

Planning Board member D. Vincent moved grant the waiver requests for items 10, 11 and 13 as had been just stated by Board member Vincent. Planning Board member G. Calef seconded the motion, which carried unanimously with a vote of seven (7) - zero (0).

The applicant presented a fourth written waiver request for Check list item 31-Two-foot contour interval topography show over all subject parcels. Under Town of Barrington Subdivision Regulations Article 8-Plan Requirements; 8.3 Specific Plan Information-Existing Site Conditions, paragraph 6 - existing grades and topographic contours, the applicant requested a waiver of requirement of topographic survey of the entire property, as two foot contours have been shown on the plan in support of the minimum lot area. Furthermore, the applicant stated in his written request that the area being conveyed to the City of Rochester will not be used for residential purposes.

Planning Board member D. Vincent moved grant the waiver request for topographic survey of the entire parcel. Planning Board member G. Calef seconded the motion, which carried unanimously with a vote of seven (7) - zero (0).

For clarification, the Town Planner, Connie Brawders, verified with Board members that the waiver request for the topography should be noted on the approved plan. Board members concurred that all waiver requests are to be listed on plans.

The Planner offered her comments from technical review of plans addressing the following: The site plan, which is to be recorded at Strafford County Registry of Deeds, should identify the well and septic location. A legend box should be added to the plans. A note referencing the Barrington Conservation Easement (3326/474) should be noted on plan at lot 203-35 for historical reference.

Additionally, Brawders pointed out a survey discrepancy for the applicants’ benefit at boundary of Susan L. Frankel (203-38) and suggested the applicants’ agent compare Deed 3704/358 (p.2 Frankel-Lawing) with survey along property boundary line. Finally, the Conservation Land boundary at 203-25 (White Crest Developers (3233/638) is not dimensioned on the plan.

Further discussion ensued among Board members. Vice-chair Kelley asked if the Board had any legal concerns they would like addressed. Chair Huckins replied that as this is a lot line adjustment, there were no legal concerns to be considered in the matter before them. Member Guadiello asked Ex-officio member Clark if the Selectmen would be engaged in this decision of the Planning Board by reviewing minutes of this meeting, to which ex-officio member Clark responded that the Board of Selectmen and Town Administrator are to discuss this case at their next meeting.

Before calling for vote, the Planner asked the Board if they consider this submittal a Development of Regional Impact under RSA 36:54-58. Chair Huckins and Member D. Vincent opined that this was not a Development of Regional Impact. With no further discussion, the Board motioned for vote.

Planning Board member E. Lemos moved approve the application for Lot Line Adjustment with granted waiver to be listed on the plan. Planning Board member D. Vincent seconded the motion, which carried unanimously with a vote of seven (7) - zero (0).

5. **LL11/234 & 11/613 (Lot Line Adjustment and Subdivision for Todd Calitri & Jason Pohopek)** Request by applicants to adjust the line between Map 215 and 216/Lot 20 (28 acre site) & Map 216/Lot 20.1 (2.4 acre site), adding 0.99 acres to Lot 20.1 increasing its area to 3.39 acres and to subdivide a 2.59 acre back lot from Lot 20 creating one new lot and leaving 14.2 acres remaining with Lot 20, located at 267 & 269 Parker Mountain Road (Map 215 and 216/Lot 20 & 20.1) in the General Residential (GR), Highway Commercial Overlay (HCO) & Stratified Drift Overlay (SDA) Zoning Districts. Applicant: Pohopek Land Surveyors & Septic System Design, LLC, Jason Pohopek; 42 Flagg Road; Rochester, NH 03867.

And

LL11/236 & 11/614 (Lot Line Adjustment and Subdivision for Todd Calitri & Jason Pohopek) Request by applicants to adjust the line between Map 215 and 216 Lot 20 (28 acre site) & Lot 20.1 (2.4 acre site), adding 0.99 acres to Map 216/Lot 20.1 increasing its area to 3.39 acres and to Subdivide a 3.15 acre back lot from Lot 20 creating one new lot and leaving 23.9+/- acres remaining with Lot 20, located at 267 & 269 Parker Mountain Road (Map 215 & 216/Lot 20 & 20.1) in the General Residential (GR), Highway Commercial Overlay (HCO) & Stratified Drift Overlay (SDA) Zoning Districts. Applicant: Pohopek Land Surveyors & Septic System Design, LLC, Jason Pohopek; 42 Flagg Road; Rochester, NH 03867

Applicant Jason Pohopek came before the Planning Board with a new application for lot line adjustment for a back lot subdivision. The applicants, Pohopek and Calitri, were requesting the approval for abandonment of the previously submitted application and decision for lot line adjustment and subdivision approval that was conditionally approved on May 5, 2011 as applicant T. Calitri is relocating the building envelope for his residential structure. The proposed Lot Line Adjustment and Plan of Land for Todd Calitri and Jason and Allison Pohopek dated May 18, 2011 now moves the southwesterly line of conditionally approved Lot 20.4 to the southwest approximately 75 feet, transferring approximately .052 acres from Lot 20, reducing Lot 20 to 13.7 acres. Land conveyed to Lot 20.4 will increase the parcel size to approximately 3.15 acres. For clarity and continuity, a new application and case submittal number was assigned by the Land Use office and presented at this public hearing.

Before the applicant could formally request withdrawal or abandonment of the old application, Town Planner Connie Brawders shared email opinion from Town Counsel regarding the applicant's old application for **LL11/234 & 11/613** which had been given conditional approval on May 5, 2011. After receiving further advice from Town Counsel, Steven Whitley, Esq., (Mitchell Municipal Group, P.A.; 25 Beacon Street East; Laconia, NH 03246) about what the Town of Barrington Zoning Ordinance allows regarding back lots, and if the Planning Board agrees with

the opinion of Counsel, the Planning Board may acknowledge its error by taking corrective action of voiding the prior approval and/or considering the new application under the revised interpretation. Therefore, Counsel opined, because Pohopek's old application was only given conditional approval and it is not yet final because those conditions precedent remain unsatisfied, the Board may void or rescind its prior approval.

Discussion ensued and the Planner read other email opinion from Counsel; (specifically page five) referencing Atty. Laura Spector of the Mitchell Municipal Group's opinion regarding this issue which had been first considered for case submittal in January 2011. Counsel recommends that the applicants go before the Zoning Board of Adjustment (ZBA) for a variance before the Planning Board makes a decision to approve the application.

Vice-chair A. Kelley asked the applicant if he was going to withdraw the application. Mr. Pohopek stated that they would probably go forward on the old application, as conditionally approved, to which Vice-chair Kelley reminded the applicant of advice by the Town's legal counsel that the Planning Board void or rescind the old application. Chair Huckins retorted by stating the Board had considered the opinion of Counsel previously and voted to accept the application for lot line adjustment and subdivision approval. Chairman Huckins referred the Board to Town of Barrington Zoning Ordinance Article 4-Dimensional Requirements, paragraph 3, Back lots. The Chair was of the opinion that the application before them met the ZO; however, it fell outside the stipulations of the Subdivision Regulations Article 14 – General Design Standards, 14.2.4 Back lots Permitted, paragraph 6.

The Planner referred the Board to page six of the email opinion from Town Counsel Jae Whitelaw, agreeing with Atty. Spector's interpretation of the subdivision regulation under 14.2.4, paragraph 5, which prohibits the subdivision of a back lot unless additional lots conform to the current zoning and subdivision regulations. Additionally, Atty. Whitelaw cited 4.1 (3) of the ZO, and in her interpretation, permits two back lots only for new residential subdivisions. The Planner asked the Board to consider the definition of new subdivision of land to mean, the development of raw or unimproved land in understanding the proposal. The applicants were proposing to subdivide, again, a previously approved subdivision without considering road infrastructure.

Three attorneys from one firm concurred in their opinion of this application for back lot subdivision. The Planner reminded the Board approval of this case would be setting precedent; however, if the applicant goes before the ZBA, the Board of Adjustment decides on each application on a case by case basis.

The applicant asked for direction from the Board, as he feels this lot is unique. The Planner referred to page 7 of the email opinion whereby Atty. Spector asks if the applicant had gone before the ZBA for a variance, as the ZBA may authorize a variance from the terms of the zoning ordinance. After further discussion, the Planning Board was of the opinion that the applicant would have to be denied this evening and proceed with application to the ZBA for variance.

The Planning Board considered the conditions of approval from May 5.

1. Waivers shall be noted on Plans; 2. The Driveway Easement is to be reviewed by the Town's attorney, Jae Whitelaw, of the Mitchell Municipal Group, P.A.; 3. The applicant is responsible for third party review reimbursement under RSA 676:4-b; 4. Plan Note #3 - Plan Dimensional Requirements is to read "Minimum frontage for back lots: 50 feet /each; 5. A copy of State Subdivision Approval is to be provided for the Land Use case file folder; 6. Plan Note #18 is to show the permit number for State Subdivision Approval (RSA 485-A:29, I, Water Pollution and Waste Disposal/Submission and Approval of Plans and Specifications); and 7. The applicant is to provide the monumentation certification for the Land Use case file folder.

The Board considered its dilemma of the written language and interpretation of the Zoning Ordinance. Planner Brawders referred the Board to page four of the email correspondence of legal counsel's opinion. Both Attorney Whitely and Spector concur in their opinion that "further subdivision of the back lots by Pohopek and Calitri is not permitted by the Town ZO Sec 4.1(3) or by Town Subdivision Reg 14.2.4. Paragraph 5 of Subd Reg 14.2.4 does not permit or provide a way around this restriction, as the new lot to be created by the subdivision of the back lot would not conform to town zoning and subdivision standards."

The driveway easement had not been reviewed by Town's Attorney, as they were familiar with the history of this case submittal and, "Given our position, we have not expended additional time to review the necessary driveway standards or proposed easement language you mentioned...as those issues are moot if the subdivision does not occur in the first place."

Mr. Pohopek addressed fees he has paid, as well as taxpayer expense, to the Town to process the case submittals. The Planner reminded the applicant that no reimbursement for third party review of the driveway easement had been sought, nor has expense for service been charged by the Town's legal firm for review of the driveway easement as the Mitchell Municipal Group declined to review the driveway easement at this time. Additionally, the applicant has submitted only one fee to the Town to process application **LL11/234 & 11/613**. The applicant acknowledges there are outstanding fees owed to the Town of Barrington.

Chairman Huckins asked for a vote to consider the rescission of the prior approval of application **LL11/234 & 11/613**.

Planning Board member E. Lemos moved rescind the application of the prior approval for Lot Line Adjustment LL11/234 & Subdivision 11/613 upon advice of Town Counsel. Vice-chair A. Kelley seconded the motion, which carried with roll call, Michael Clark, Ex-Officio-yes; Edward Lemos, VMD-yes; Alan A. Kelley, Vice Chair-yes; Anthony Gaudiello-yes; George Calef -yes; John Huckins, Chair- no; David Vincent-no, five (5)- two (2).

The Planning Board next considered the new application for LL11/236 & 11/614 (Lot Line Adjustment and Subdivision for Todd Calitri & Jason Pohopek). The Planning Board concurred the new application does not meet the Zoning Ordinance. Board members referred to RSA 676:5 Appeals to the Board of Adjustment-III referring the applicant to the ZBA and continued the case to first public hearing in August.

Planning Board member D. Vincent moved continue the new application to the first public hearing in August 2011. Planning Board member T. Gaudiello seconded the motion, which carried unanimously with a vote of seven (7) – zero- (0).

The Board recessed for a five minute break.

NON-ACTION ITEMS

Preliminary Conceptual Review

Planning Board members D. Vincent and G. Calef recused.

6. Tropic Star Development, LLC/Jones & Beech conceptual site plan for 356 Route 125 (Calef Highway) Request by applicant to discuss the development of a gas station/convenience store with a drive thru fast food use attached located at 356 Route 125 (Calef Hwy) (Map 238/Lot 4) in the Town Center (TC) and Stratified Drift Aquifer Overlay (SDA) Zoning Districts. Applicant: Scott Mitchell; Tropic Star Development, LLC; 321D Lafayette Rd; Hampton, NH 03842.

Scott Mitchell of Tropic Star Development introduced prospective partner/owner Mr. Rick Green and son James Mitchell to the Board members and introduced the conceptual plan for a six-bay gasoline station and drive-through donut shop to the Planning Board. Before moving forward with the plan, the applicant sought preliminary non-binding input on design guidelines, streetscape and building as it may address Route 125. Mr. Mitchell informed the Board that a scoping planning with NHDOT and traffic study will be completed shortly. The Board offered suggestions to the above and encouraged an application for project submittal.

**The Planning Board moved to table Item #1- May 26, 2011 Regular Meeting Minutes to the June 9, 2011 meeting.*

Planning Board member E. Lemos moved postpone review of minutes to June 9, 2011. Planning Board member T. Gaudiello seconded the motion, which carried unanimously with a vote of six (6) – zero- (0) with one (1) abstain.

ADJOURNMENT

With no further business, Vice-chair A. Kelley made the motion to adjourn at 10:15 p.m. Member T. Gaudiello seconded the motion. The motion carried unanimously, seven (7) in favor to zero (0) against.

Respectfully submitted,
Constance M. Brawders
Town Planner