



BARRINGTON PLANNING BOARD MEETING

NEW LOCATION: Barrington Middle School Library

Main Entrance

51 Haley Drive

Barrington, NH 03825

Tuesday August 4, 2015

6:30 p.m.

Meeting Minutes

NOTE: THESE ARE SUMMARY ACTION MINUTES ONLY. A COMPLETE COPY OF THE MEETING AUDIO IS AVAILABLE THROUGH THE LAND USE DEPARTMENT

Members Present

Anthony Gaudiello-Chair
Jason Pohopek Vice-Chair
Joshua Bouchard
George Calef
Bob Williams
Fred Nichols

Member Absent

Fred Bussiere-ex-officio

Alternate Members Present

Daniel Ayer
Richard Spinale
Michael Clark ex-officio

Town Planner: Marcia Gasses

MINUTES REVIEW AND APPROVAL

1. Approval July 7, 2015
2. Approval of the July 21, 2015 Meeting Minutes.

Without objection the minutes were moved to follow item #8

ACTION ITEMS

G. Calef recused himself

A. Gaudiello recused himself

J. Pohopek to sit as chair

3. [238-16.21-V-15-SR \(Barrington Village Place\)](#) Request by applicant for Site Review to construct a well to service a non-community water system with a well easement and waiver from Section 3.2.10 (7) requiring parking lot requirements for the proposed project. This is located on a 29.91 acre lot (Map 238, Lot 16.21) in the Village District.***Reposted due to abutter notification error.** Barry Gier, PE; Jones & Beach Engineers, Inc.; PO Box 219;Stratham, NH 03885

R. Spinale to sit

D. Ayer to sit

M. Gasses explained the application had been heard on July 7th, but unfortunately the abutters in the Deer Ridge Subdivision whose open space abuts this parcel were not notified. The application was being heard as if the first hearing had not occurred.

John Arnold of Hinckley, Allen, & Snyder represented Barrington Village Place and explained the application was for a well that would provide water to the Three Socios, Millo's Pizza, George Calef Fine Foods and The Journey Baptist Church. Barrington Village place had granted an easement for the well to be located on the property; the ZBA had granted a Variance to allow the well in the open space. Mr. Arnold requested that the minutes from the prior hearing be incorporated into the evening record for purposes of reference where the board had spent time reviewing the application at the prior meeting. He had not planned to make a lengthy presentation unless the Board wanted one.

J. Pohopek asked for a complete explanation of the application where there were new people in the audience which needed to be updated.

John Arnold explained the application was for a well in the open space of Barrington Village Place, the underground piping for the well and electric lines, gravel drive and access way.

Barry Gier explained a well would be installed in an eight acre section of the parcel and after the well's exact location was known the easement area would be reduced to four acres. There would be a 3" water line and gravel access way to the well. There would be a 5 space gravel parking area installed for access to the trail system on the entire parcel.

A motion was made by F. Nichols and seconded by B. Williams to accept the application as complete and open the public hearing.

At the request of the chair F. Nichols revised his motion and seconded by B. Williams to only accept the application as complete at this time to allow for further discussion by the board before opening public comment. The motion carried unanimously

J. Pohopek asked the Jae Whitelaw to explain the scope of review by the Planning Board

Jae Whitelaw, counsel to the Planning Board explained the scope of the issues before the Planning Board. Ms. Whitelaw explained the ZBA had granted a variance to allow the placement of the well within the easement held by Three Socios in the open space. The question whether the location of the well was legally granted was not before the Planning Board, the legality of the location of the well in the open space was not before the Board. What was before the board was the installation of the well and applicable lines, access way construction and gravel parking area and whether the construction of the improvements was consistent with the Board's regulations and the Zoning Ordinance.

J. Pohopek explained he would allow everyone to speak but he would limit comment to three minutes each and when the public comment was closed the Board would then continue their discussion. He then opened public comment.

Steven Jeffery read written comment, which he requested be placed in the record of the meeting. See attachment A.

Gregory Wirth representing the Calef Trust did not object to the variance granted by the ZBA in reference to 6.2.2 and 6.2.6. Their concern was Article 19 note 5 allowed for Conservation Subdivisions provided they comply with Article 6 entitled Conservation Subdivision Regulations. Mr. Wirth read from article 6 on what was allowed in open space. 6.3.1.(1) primary uses, and 6.3.1 (2) Accessory Uses. Mr. Wirth went on to read the definition of accessory use, "a structure or use that is subordinate in purpose to the principal use; contributes to the comfort , convenience, or necessity of the principal use; and, is located on the same lot as the principal use". Attorney Wirth expressed the use requested did not comply with Article 18, Article 19, Article 6.3.1 (1) or Article 6.3.1(2) and the Site Plan application should be denied based on the fact variances had not been granted from those articles.

Margaret Mausteller 83 Washington St. wanted to know if the Mitchell group was related to Scott Mitchell.

Jae Whitelaw stated no.

The following people signed in at the podium and or expressed concerns with the application:

Stephen Jeffery
Gregory Wirth
Margaret Mausteller
Chris Vachon
Paul Mausteller
Jerry Cote
Dawn Massuci
Cheryl Drew
Joellen Gallant
Kevin Thacker
Michael Hamrick
George Calef
Don Phillips
Michelle Saccoccia
Jim Sanger
Ken Grant

Ralph Holmes
Bill Cloutier
Beth Beal McMaster
Steve Saunders
Andrew Knapp
Milagros Red Feather

The concerns included the following:

The location and installation of a well on conservation land.
The need for the well easement to be reflected in the deeds of those purchasing property in the Village Place subdivision
Concern with how zoning had evolved over the years.
Concern that Barrington was growing and we needed to grow in a sensitive way
The proposed location of the store would be dangerous with the level of traffic that existed.
It was important when planning to keep in mind what the Town liked.
That anything that negatively affected George Calef's Store was not a good thing.
The danger of spills from the underground tanks and the contamination which could occur for miles
674:21-a states the open space was a conservation restriction which ran with the land and was enforceable by the municipality and a condition of approval.
The definition of structure did not give exemptions to wells or piping
A Town official voted as a member of the Conservation Commission to accept the easement with the well and should have recused themselves.
6.2.2(8) Common open space may be used for individual or community water and sewerage systems required to service the proposed development
6.2.2(9) Common open space may not be used for individual lot areas
The need for another gas station was questioned
The concern private wells would be contaminated by the UST's
Questioned how a well could be moved and placed on conservation land so that an individual could put money in their pocket
The concern that rules were being changed to benefit one or two people
The people in the subdivision should be compensated for water being drawn from the well

Attorney Wirth expressed that 6.2.2, and 6.2.6 was not contested, but that the well was not allowed in the table of uses. Variances had not been granted from 6.3, or 6.3.2, they had not granted the right to place a well there.

A motion was made by F. Nichols and seconded by B. Williams to temporarily suspend the public hearing to allow the board to have a discussion on what they had heard. The motion carried 6-1 Spinale opposed

D. Ayer made a motion to recess to nonpublic for legal consultation, the motion failed for lack of a second.

F. Nichols asked the attorney to restate what the Board was there to review and the Planner to state what the application was for.

M. Gasses read the request by the applicant as stated in the agenda.

F. Nichols asked what properties would be served by the proposed well.

M. Gasses explained that the well is to serve the lot for the gas station, Millo's Pizza, The Journey Baptist Church, and George Calef Fine Foods through their agreement with Millo's Pizza.

J. Whitelaw explained the Board could consider anything that affected the installation of the infrastructure for the community well, which would include the well itself, the piping, access drive and parking area for access to the trails. Those items related to the well on this particular parcel. There were comments and concerns that were made that were not applicable to the application, such as underground tanks and traffic. The Board should look at whether the zoning provision raised by Attorney Wirth was applicable to the Boards review. The review of the well lines on the Millo's property would take place under that application. George Calef's Fine Foods would receive water through a connection on the Millo's property and would not require changes, which was why they did not require site review. Attorney Whitelaw's opinion was that if Mr. Calef felt that Mr. Tsoukalas was infringing upon his property rights by changing the source of the water that it was a personal property rights issue and not a decision for the Board. The issue of the water rights was part of an appeal currently before the court.

A motion was made by F. Nichols and seconded by R. Spinale to reopen the public hearing. The motion carried unanimously

Bill Cloutier expressed concern on who would pick up the tab if there was a leak. He asked if the citizens still had a say in what went on in Town.

J. Pohopek expressed that the citizens had a say through the construction of the ordinance and regulation, which the Board was trying to apply to the application. The Board counted on engineers and reviewing engineers when acting on applications.

Beth Beal McMaster questioned whether the gravel soils would make the spread of contamination easier.

Andrew Knapp questioned how the Board could move forward when there were unresolved civil issues that could negatively affect abutting properties.

Jerry Cote questioned why the Board was looking at the water system in pieces and who would be allowed to hitch into the system.

John Arnold expressed the easement was drafted with provisions to provide water to the four lots; Milo's, The Journey Baptist Church, the gas station and George Calef Fine Foods. It left open the possibility to allow other lots to tie in in the future if suitable arrangements were agreed to and appropriate state and local approvals were granted. He stated only four lots had been proposed at this time.

Jerry Cote questioned who was responsible for the cost of installation.

John Arnold explained that in the easement with Joe Falzone it states that Three Socios was responsible for the construction and maintenance. The individual lots would share proportionally in the expense if repairs were needed in the future; there was not a cost for the water being supplied. The property owners were responsible for maintaining the water lines on their property and Three Socios was responsible for maintaining the rest of the system.

Steven Jeffery expressed the well was a requirement of the construction of the gas station and the Board needed to do whatever was required to protect the health, safety and welfare of the community. The only reason for the well was to facilitate the location of the gas station.

Chris Vachon questioned whether the Calef's water rights went with the land.

John Arnold stated yes.

Chris Vachon asked if the easements would be recorded and run with the land for each property.

John Arnold expressed that the easement between Barrington Village Place and Three Socios runs with the land and was binding on subsequent purchasers. The easements agreed to between Three Socios and Milo's and Three Socios and the Journey Baptist Church provided that the agreement ran with the land and was binding on subsequent purchasers and those documents would be recorded. There was not an agreement between Three Socios and George Calef. There had been an offer by Three Socios to provide water at the current level and for expansion to the extent that permits could be obtained from the State and municipality. Mr. Arnold expressed that George Calef would not accept the agreement unless Three Socios paid him. The agreement between Milo's and George Calef is what now applied and the agreement between Three Socios and Milo's called for Three Socios to provide Milo's with enough water to satisfy Milo's agreement with George Calef.

Jae Whitelaw expressed that part of the Planning Boards approval if that were to occur would require Town Counsel approving of the language and the easements being recorded. The provisions represented would have to be included.

Chris Vachon questioned if Joe Falzone still owned the land.

Jae Whitelaw explained that Joe Falzone still owned the property and the Town through the Conservation Commission held a conservation easement on the property.

Paul Mausteller raised the concern that the Town would not be made aware of potential problems on the site.

M. Gasses expressed that the Town did receive reports from NHDES regarding contamination in wells, although she did not have any information on anything which may have occurred at the Irving Station.

J. Pohopek asked what the testing requirements would be.

Barry Gier explained the testing would be at least quarterly and the State would base testing upon what they found.

Steve Saunders asked if all the homeowners association members had been notified.

M. Gasses expressed that all the current property owners in the Village Place Subdivision had been notified.

John Arnold expressed 6.3.1 & 6.3.2 did not address what was allowed in the open space of a conservation subdivision. He explained that section 6.2.2 addressed what was allowed and that was what the ZBA looked at in order to grant a variance which permitted the well.

Chris Vachon asked what the variance granted by the ZBA was for.

M. Gasses explained the variance was granted to allow a well in the open space which benefited an offsite location.

J. Pohopek closed public comment.

M. Gasses suggest the Board address the parking waiver.

Barry Gier explained the improvements proposed did not require parking. They showed five parking spaces for the trail system, but the use proposed did not require parking.

J. Pohopek explained the waiver could be granted if it would not affect the purpose and intent of the regulations.

A motion was made by F. Nichols and seconded by J. Bouchard to grant the waiver from showing parking requirements as the waiver would not affect the parking requirements. The motion carried unanimously

A motion was made by B. Williams and seconded by D. Ayer to ask Attorney Whitelaw for her opinion on Attorney Wirth's questions. The motion carried unanimously

The Board took a five minute recess.

J. Pohopek expressed that applications, 6, 7, and 8 would be continued to August 18, 2015 6:30 p.m.

Jae Whitelaw explained that she believed the granting of the Variance covered the allowance of the well in the open space.

A motion was made by R. Spinale and seconded by D. Ayer to continue the application to August 18, 2015. The motion carried unanimously

A motion was made by B. Williams and seconded by D. Ayer to continue applications 6, 7, and 8 to August 18, 2015. The motion carried unanimously

A motion was made by D. Ayer and seconded by B. Williams to continue the Millo's application to August 18, 2015. The motion carried unanimously

A motion was made by D. Ayer and seconded by B. Williams to continue the application for The Journey Baptist Church to August 18, 2015. The motion carried unanimously

A motion was made by D. Ayer and seconded by J. Bouchard to continue consideration of the minutes to August 18, 2015. The motion carried unanimously

A motion was made by B. Williams and seconded by F. Nichols to adjourn at 9:55 p.m. The motion carried unanimously

4. [238-7-TC-15-SR \(Millo's Pizza-George Tsoulakas\)](#) Request by applicant for Site Review to construct a water system with associated pump house, waterline, and access across the subject property between Map 238, Lot 4 and Map 238, Lot 16.21 and waiver from Section 3.2.10 (7) requiring parking lot requirements for the proposed project. This is located on 2.26 acre lot (Map 238, Lot 7) in the Town Center. Application accepted as complete July 7, 2015. Barry Gier, PE; Jones & Beach Engineers, Inc.; PO Box 219; Stratham, NH 03885 *This application was accepted as complete on July 7, 2015.*
5. [235-83-TC-15-SR \(Journey Baptist Church\)](#) Request by applicant for Site Review to connect The Journey Baptist Church building to the proposed water system to be constructed on Map 238, Lot 7 and 4 thereby abandoning the existing well on the subject parcel and to connect the subject parcel to Map 238, Lot 4 via a 24' wide roadway and four waivers for 4.9.2 (1) and 4.9.3 (1) to allow eight parking spaces, to remain in front setback. 4.9.7 (1) Interior Landscaping Standards, (5) Perimeter Shade Trees and 4.10.2 and 4.10.4 General Requirements (Landscaping Design and Screening Standards). They will also be expanding parking area on the site to increase the capacity of the building. This lot is located on a 2.93 acre site in the Town Center (TC) Zoning District. Berry Surveying & Engineering; 335 Second Crown Point Road, Barrington, NH 03825*
6. [112-1&3-GR/HCO-15-LL \(David M. & Lisa E. Holt\)](#) Request by applicant for a Lot Line Adjustment to relocate the common lot line between Lots 1 and 3 in order to make Lot 3 a conforming lot and remove the lot line passing through the existing dwelling known as 19 Cricket Lane (Map 112, Lots 1 & 3) located at 1566 Franklin Pierce Highway in the General Residential (GR) and Highway Commercial Overlay (HCO) Zoning District. By: David W. Vincent, LLS, Land Surveying Services; PO Box 7418; Rochester, NH 03839-7418.*
7. [257-3.1&3-GR-15-LL \(John & Elizabeth McMaster\)](#) Request by applicant for a Lot Line Adjustment to revise the line between lot 3 and 3.1, making lot 3.1 approximately 5 acres in size and waiver requests for Boundary Survey of entire parcel, Wetlands Delineation, #31 All setbacks #246 contiguous uplands and Topography on Merry Hill Road (Map 257, Lots 3 & 3.1) in the General Residential (GR) Zoning District. By: Christopher R. Berry, Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825.*
8. [117-47&116-21-GR-15-LL \(David Drubner & Min Yong Lee & Young Ja Lee\)](#) Request by applicant for a Lot Line Adjustment between Map 117 Lot 47, having frontage on Marsh Road and Stuart Drive, and Map 116 Lot 21 having frontage on Young Road. The intent is to transfer .76 acres from Lot 21 to Lot 47 and waivers from Articles 5.3.1 (9), (5) & (6) survey all lines, wetlands and topography to be shown on the entire subject lots (Map 117, Lot 47 & Map 116, Lot 21) in the General Residential Zoning District. By: Jason Pohopek; PO Box 651; Barrington, NH 03825.*

SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT

August 18, 2015 Barrington Middle School 6:30 p.m.

Respectfully submitted,

Marcia J. Gasses

Attachment A
8/4/15 Minutes

#238-16.21-V15 (SR (Barrington Village Place)

I have the following objections to this public hearing:

Given the public endorsements of this project by the Barrington Town Administrator, who officially represents the selectmen, I request the selectman be recused from this hearing.

RSA 676:4 requires the planning board to determine an application is complete and ready to be presented at a meeting at which the board will vote to accept the application as complete. The minutes do not include any such planning board determination authorizing formal submission of this application.

It is apparent the planning board or its designee has engaged in discussions with the applicant beyond conceptual and general discussion without the notice required by 676:4 II (b).

The plan submitted by this applicant is not certified and stamped by a licensed surveyor and cannot be recorded at the Stratford County registry of deeds.

The site plan submitted represents a subdivision of the open space (29 out of 38 acres) and no such subdivision application has been submitted to the planning board. Furthermore, the open space cannot be subdivided.

This site plan application modifies the recorded subdivision approval for Village Place. There is no statutory provision to modify an approved subdivision plat. The proposed transient non-community water system requires the operator to have sole control over the well protection area. The Village Place residents have sole control over the open space. There is no means to resolve this conflict without depriving the residents of Village Place their rights.

This site plan revokes part of the recorded Village Place subdivision and the planning board must proceed with revocation of the recorded approval.

The ZBA variance referred to permitting the well is Ultra Vires.

This proposed well/water system is a commercial use and only a PUD can include residential and commercial uses on the same lot. This open space is not a PUD.

