

**TOWN OF FARMINGTON
PLANNING BOARD MEETING
Tuesday, October 21, 2014
356 Main Street, Farmington, NH**

Board Members Present: Paul Parker, Charles Doke, Glen Demers, Martin Laferte

Selectmen's Representative: Charlie King

Board Members Absent/Excused: David Kestner

Town Staff Present: Director of Planning and Community Development Kathy Menici,
Department Secretary Bette Anne Gallagher

Public Present: KJ Cardinal, Darlene Cardinal, Kim Cardinal, Terri Lewis, Cash
Whittemore, Wanda Duryea

BUSINESS BEFORE THE BOARD:

- **Pledge of Allegiance**

At 6:00 pm Chairman Parker called the meeting to order and all present stood for the Pledge of Allegiance.

- **Review and approve Meeting Minutes of October 7, 2014**

Martin Laferte motioned to approve the minutes of October 7, 2014 as written; 2nd Charlie King. Motion carried with 4 in favor and 1 abstention.

- **Continued discussion of Eben Dorr Conditions of Approval**

Paul Parker motioned to postpone this agenda item to the end of the meeting; 2nd Charlie King. Motion carried with all in favor.

- **Any other business to come before the Board**

Chairman Parker read an email of thanks from Liz Durfee of Strafford Regional Planning Commission for allowing her some time to speak at the Board's last meeting. She was also looking for a volunteer from the Planning Board to include in the letter of support for the grant application. Ms. Durfee provided two draft letters of support that Planner Menici gave to the members.

The Planner reviewed that this is a grant opportunity available to the Town through the New Hampshire Department of Environmental Services and it relates to ground water protection including a review of the current Aquifer Protection Ordinance. She said SRPC will be the grantee/applicant for the grant and they are proposing to work with the Town if awarded the grant funds. Liz Durfee, the contact person for the Town who made the presentation, has already reviewed the Overlay Ordinance and found that there are gaps between what the Town requires and what DES recommends. However, there is no obligation on the Town's part to accept and adopt what the SRPC ultimately recommends.

Planner Menici said the meetings involved with the project will be held at a location and time that is convenient to the committee members. Martin Laferte said this area is what he used to do as a living and he would like to volunteer as the Planning Board representative.

Charlie King nominated Martin Laferte as the Planning Board representative for the project committee that

will be formed if the grant is awarded; 2nd Charles Doke. Motion carried with all in favor.

The members agreed they liked the first sample letter provided. Planner Menici said she will prepare it on Planning Board letterhead and Chairman Parker can sign on behalf of the Board.

The Planner explained to Charlie King, as the BOS representative, that the same request for a letter of support is being made to the Selectmen at their next meeting. She said that participation only with no funding commitment is required from the Town and that the Conservation Commission has also agreed to have one of their members serve on the committee and they will also provide a letter of support. She said that hopefully the Selectmen will also provide a letter.

Planner Menici reminded the members that the Aquifer Overlay is part of the zoning ordinance and would require the Board to go through the same notification and public hearing notice as any other amendment. She added that the ground well head and ground water fall under Town regulations and are under the Board of Selectmen's authority and she does not think that portion would need to go to Town meeting.

The Planner said that Dwain Perillo's approval included a condition to phase the paving of the parking lot and driveway at the new location and he had until 2018 to complete both phases. She said all paving has already been completed and looks beautiful as does the grass in the drainage and detention areas. She said she just wanted to make the Board aware that Mr. Perillo has met the condition. The Planner added that the Board was very gracious to allow the phasing. The first phase was the upper delivery area and the second phase was the lower driveway leading to Route 11. During the hearing, Mr. Perillo said if business allowed he would complete the paving as soon as possible and he has done this.

Planner said her final topic was that at the Board's last meeting the members discussed very briefly about having a joint meeting with the Economic Development Committee to talk about TIF and answer questions and concerns on both sides including whether or not to submit a joint request to the Selectmen to place the TIF on the Town Warrant for 2015. Martin Laferte said at the EDC's meeting last week they talked about this and every member is eager to participate in a joint meeting.

Planner Menici said she sent an email to Chairman Gail Ellis Young who responded that this is a good idea and the timing works because the EDC needed to change their November meeting date as it falls on Veterans Day. She said November 4th works for them so would like to schedule on that date and then the EDC will go upstairs to finish their meeting.

All the members agreed and Planner Menici said she would schedule it.

At 6:20 pm Paul Parker motioned for a recess until 6:30 pm; 2nd Charlie King. Motion carried with all in favor. Meeting reconvened at 6:31 pm.

PUBLIC HEARING - 6:30 pm

CONTINUED CASES:

Application for Special Use Permit by: Kim Cardinal, Sr., Applicant and Property Owner (Tax Map R32 Lot 019): for property located at 78 Main Street. The applicant proposes to replace the previously existing above-ground swimming pool and deck and install a 12 foot by 12 foot movable pergola that fall within the buffer of fifty (50) feet outward from the boundaries of a Class Two wetland. The parcel is located in the Industrial Business (IB) Zoning District. (Continued from September 16, 2014)

Chairman Parker read the application and asked the applicant to come forward and make his presentation.

Mr. Cardinal said they are replacing the pool that has been there forever and that they replace it every 10 to 12 years. They are adding a Pergola that is mounted to the existing concrete but can be moved. Mr. Cardinal said

his son is in the process of purchasing the house and Mrs. Cardinal said they are doing the improvements for the grandchildren.

Planner Menici explained that this request is for a pre-existing, non-conforming lot and came up because the owner built an addition and when CEO Roseberry did an inspection there were materials that did not come under the addition but were for the replacement of the pool and the new pergola. She said the applicant applied for a variance that was heard and granted at the September 4, 2014 ZBA meeting. The Planner pointed out that this is a 6-acre parcel however a very significant portion – approximately 5 acres – is impacted by wetlands. She said the depth of the buildable land ranges from 20 feet to 140 feet with a required front setback of 50 feet and a required wetlands buffer of 50 feet leaving approximately 40 feet. The house was built in 1946 and this is an accessory, recreational use to a typical residential use.

Charlie King said this involves replacement and appears to be more of a housekeeping issue and noted the variance granted by the ZBA had no conditions.

Chairman Parker asked what section of the Special Use guidelines this fell under. Mr. King said the variance referenced Article 4.02 Section G. Glen Demers asked if the pool was on the tax card. The Planner said it was not and that is why the owners are here and she clarified that this is not an expansion but basically a replacement.

Chairman Parker opened the hearing to public comment but hearing nothing closed the public portion.

Planner Menici said she had no concerns, that this is a reasonable request which has no negative impact on the wetlands and that this is a pre-existing, non-conforming property that is severely constrained by wetlands.

Charlie King motioned to accept the application as substantially complete; 2nd Glen Demers. Motion carried with all in favor.

Charlie King said there did not seem to be any conditions to place as he did not hear any in the discussion and there were none from the ZBA. Chairman Parker said best management practices to protect the wetlands could be included. Planner Menici said she had no conditions.

Charlie King motioned to approve the application for a Special Use Permit to replace the previously existing above-ground swimming pool and deck and install a 12 foot by 12 foot movable pergola as submitted; 2nd Glen Demers. Motion carried with all in favor.

NEW CASES:

Application for Minor Site Plan Review By: Terri Lewis for property owned by Cash Whittemore (Tax Map R56, Lot 007): To allow use of the premises for a home occupation as a Day Care Center for a maximum of 12 children. The parcel is located at 1145 Meaderboro Road in the Agricultural Residential Zoning District.

Chairman Parker read the application and said that home occupation should be home business. He said by the definition a home occupation is used and run by a single owner in the household and a home business allows for several employees. This application calls for three employees.

The Chairman asked Terri Lewis and Cash Whittemore to come forward to present the application.

Terri Lewis said she wanted to operate a day care and the number of employees and children will vary by the license issued. As an example she explained that if there are five children under the age of two she must have a second adult. She added that she did not have any intention to have five children under the age of two. The State licensing board will determine the number of employees after their review and Ms. Lewis said she has met with them but not yet applied so the review has not been done. Mr. Whittemore said the State has visited the site but explained the applicant must obtain Planning Board approval before they would consider her application.

He said the area that will be used is the finished walkout basement. He added that there are two driveways on the property.

Chairman Parker said in the regulations a home business allows child care of five or less. Planner Menici said this is a conflict in the Zoning Ordinance. This would normally be an application handled by the Minor Site Plan Committee but because of the conflict it has to come to the full Board. The regulations allow a home business for five children or under with a license and less than twelve are permitted in all zones except AR and that is why the CEO wanted the application to come to the Board.

Charlie King said if the Table of Permitted Uses is in conflict with the Zoning Ordinance the Zoning Ordinance takes precedence and that is why it is here under Site Plan Review. Planner Menici said she relied on Dennis Roseberry as CEO because he is the first stop in the chain and she expects that he has reviewed all of these issues and has instructed the applicants to come to her as the next step. The Chairman commented that the Board must find a solution.

Terri Lewis said the application specifies up to twelve because licensing will allow that number according to square footage and she doubts she will go to twelve but wanted to leave the option open.

Chairman Parker explained that her application falls under home business and part of the regulations reads five children or less and another part reads twelve children or less and so there is a conflict. He added that the Table of Permitted Uses is a reflection of the written ordinance which takes precedence and that is what the Board must go by. Planner Menici clarified that the Chairman is stating that the approval, if granted, would be for five children or less. She said the Board can then put together a zoning amendment to remove the conflict. It would be presented to the voters at Town meeting and if approved Ms. Lewis could come back to obtain approval to increase the Day Care to twelve children or less if she chose to do so.

Charlie King said at this point the Board cannot approve for twelve but can for five. Glen Demers said it was unfortunate but it would have to be the lower number of children.

Chairman Parker opened the hearing to public comment.

Wanda Duryea said she lives at 1137 Meaderboro Road and had never before opposed an application for anything. She explained that her son is a Tier 3 registered sex offender and lives with her and therefore she opposes this application. She asked for permission to read a statement from her son and the Chairman agreed if it would be brief. In summary her son said he did not want the Day Care next door because he feared the exposure it might bring to him.

Mrs. Duryea said she understands the obligation to meet the State's requirements but it is also her responsibility to protect her son. She asked the Board to research and think about what they are doing and all the parties involved.

Chairman Parker said this is something the Board has never before faced. Mrs. Duryea said it has to be considered.

Mr. Whittemore said he and Ms. Lewis became aware of this only two days ago. Charles Doke said he would be concerned with what the state would allow. Planner Menici said she contacted the State and checking offender registration is not part of their review process.

Mr. Whittemore said when he discussed this situation with the State he was asked to put up a privacy fence. Mrs. Duryea said that would make her feel better.

Terri Lewis said she did not want to appear unconcerned, but she has a right to make a living and she has worked at other day care facilities but can no longer travel because of back problems. The Chairman asked if they would be able to put up a privacy fence. Both Ms. Lewis and Mr. Whittemore said they would do so.

There was a discussion about Leary Lane. Mr. Whittemore said the driveway is a ROW for the neighbor to pull into their own driveway and he owns to the deeded ROW. The Planner said Leary Lane according to the tax map is part of a very large parcel behind Mrs. Duryea's lot. Mrs. Duryea said to the best of her knowledge that is a deeded ROW that has never been used and has trees growing down the center of the ROW.

Mrs. Duryea said as the application reads right now she is opposed to it.

Planner Menici said that looking at the tax map she can see that Mrs. Duryea's lot has a very clear boundary line that does not include Leary Lane. She said that there could be an easement on her property that is not delineated on the Town's map and she will review the deed.

Mr. Whittemore said there is approximately 60 feet composed of 30 feet of woods and another 30 feet to the privacy fence that will be put up. He said due to the woods the neighbors cannot see each others house very well. He added that State licensing does not allow the children to ever be left unattended. The play area will be fenced and the privacy part will shield any view of the children from the road or the neighbor.

Charlie King asked what, if any, special facilities will be added to the home to accommodate the children. Mr. Whittemore said they meet all State requirements and will only be adding the fencing for the play area and the privacy portion of fencing.

Ms. Lewis said she is a Level 6 day care provider and must complete 18 continuing education credits each year to retain her certification and this applies to any employees as well.

Martin Laferte said he was in a quandary and did not know what to do on this application so he would abstain from voting.

Charlie King said that privacy fencing was not part of the application but the Planner said it can be a condition of approval. He added that any approval would be for five children or less. Mr. King thanked Mrs. Duryea for being candid and said he had some concerns and would like professional review before making a decision.

Planner Menici said she had consulted Town Counsel after speaking with Mrs. Duryea and gave the email response from Town Counsel to Mr. King. He asked if this was a privileged communication and the Planner said it was not. Town Counsel recommended that a condition of approval should be that the applicant must obtain a license from the State.

Planner Menici said Town Counsel is trying to convey that the Board's responsibility is limited to site plan review which relates only to the use of the land. Another condition of approval that would make all comfortable is that fencing is required. Items such as any additional bathrooms or interior changes fall under DCYFS. Chairman Parker asked about periodic inspections. The Planner said that also falls under State authority. She also spoke with the State and received exactly the same answers as Ms. Lewis received.

Mrs. Duryea said that based upon all of that she can withdraw her objections. She said she is not trying to hurt her neighbors and knows they are not trying to hurt her.

Charlie King suggested adding the obtaining of all required State or Federal permits as a condition of approval. Also, that the applicant will provide copies of permits such as copies of renewals when issued to be placed on file with the Town on an annual basis. Planner Menici explained that as long as the licensee met requirements and there were no findings upon inspection such as the lack of continuing education then the license remains in effect without the State issuing an actual renewal.

Charles Doke said the approval would be limited to five and the applicant can apply again for an increase when the conflict in the zoning ordinance is corrected. He said the Board must look at this as a business and not allow personal feelings to be a part. Glen Demers asked if it was the applicant's responsibility to inform parents of the situation. Ms. Lewis said her experience is that parents check it out on their own but it is not her responsibility.

Mr. Whittemore said that Ms. Lewis has had her own children and now her grandchildren at home and there have never been any issues. Mrs. Duryea said she has cameras and alarms on her own property for security.

Chairman Parker asked if the play area fence would be connected to the basement walkout. Mr. Whittemore said it would be and that it would be a six-foot fence.

Chairman Parker closed the public portion of the meeting.

Charlie King went through the proposed conditions of approval:

1. Applicant to obtain all State and Federal permits;
2. Applicant to furnish copies of all permits to be placed on file at the Town offices;
3. Five (5) children or less to be permitted;
4. Minimum six (6) foot privacy fence between this property and the neighboring property (Map R56 Lot 8) to be adjacent or connected to the fenced in play area; and
5. Fenced in play area

Glen Demers clarified that only the privacy portion of the fence would be six-feet high. Chairman Parker asked if the applicant intended to install security cameras. Ms. Lewis said there was no requirement for cameras but she would consider them. Mr. King said that would not be a condition and the Planner reminded the Chairman that the children cannot be left alone outside.

Charlie King motioned to approve the application for Minor Site Plan Review by Terri Lewis for property owned by Cash Whittemore (Tax Map R56, Lot 007) to allow use of the premises for a Day Care Center with the following conditions:

- 1. Applicant to obtain all State and Federal permits;***
- 2. Applicant to furnish copies of all permits to be placed on file at the Town offices;***
- 3. Five (5) children or less to be permitted;***
- 4. Minimum six (6) foot privacy fence between this property and the neighboring property (Map R56 Lot 008) to be adjacent or connected to the fenced in play area; and***
- 5. Fenced in play area***

Discussion: Mr. Whittemore clarified that the fence was not along the entire property line but just surrounding the play area.

2nd Glen Demers. Motion carried with 4 in favor and 1 abstention.

Terri Lewis asked if there was anything she needed to do for Town meeting in March. Charlie King explained how the zoning amendment process worked and Glen Demers said if the amendment is approved then she can come back for her change. Planner Menici said at that time public notice would be required but the application would be heard before Code Enforcement Officer Roseberry and herself not the full Board.

Wanda Duryea asked for a copy of the draft minutes when they are ready.

- **Continued discussion of Eben Dorr Conditions of Approval**

Chairman Parker said this discussion was continued from the last meeting so Planner Menici would have an opportunity to review the DVD of the meeting. He said he also reviewed it again and both the minutes and the Notice of Decision are correct and everything is in agreement. However, he said that during the review process the Planner came upon a separate issue and contacted Town Counsel for the best way to resolve a flaw in the motion regarding the culvert and bridge.

Chairman Parker said his motion for 14 feet up to the bridge and culvert was clear but what was not clear in the motion was that the culvert bridge was to remain as it exists. The Chairman said he had made a statement that the intention was to reduce impact on the wetlands and that was the reason behind the waiver to 14 feet and to leave the bridge and culvert at the existing condition only ascertaining that it that would be adequate for fire apparatus.

Both Planner Menici and Chairman Parker asked Town Counsel how to best address the omission since all agreed that the Board stated several times that the culvert bridge was to remain as it existed and the roadway was to be 14 feet.

Planner Menici said Town Counsel called her today and after further consideration what she needs from the Board tonight to correct the ambiguity is for the members that were present at the public hearing to acknowledge that the culvert will remain at the current width. As long as the majority of Board members from that meeting acknowledge that is the understanding and that acknowledgement is put in the file then any questions that come up in the future can be answered. Chairman Parker said this will hopefully take care of the issue.

Planner Menici said no motion was necessary just an acknowledgement as to the members' understanding.

Charlie King said his understanding was that the waiver was intended to keep the existing width of the bridge to limit the impact on the wetlands.

Charles Doke said his recollection was that this was the only area not to be touched.

Glen Demers said the width of the wetlands crossing in the area of the culvert was not to be altered.

Chairman Parker said these approved minutes will be put in the Dorr file.

Planner Menici said she wanted to clarify that although she has been accused of trying to sabotage this application her only intention was to make sure there were no issues down the road for either the applicant or the Town. Chairman Parker said Planner Menici does her best to do her job for both applicant and Town as does Bette Gallagher and they were proven to be correct.

There was no further business before the Board.

At 7:45 pm Martin Laferte motioned to adjourn the meeting; 2nd Charlie King. Motion carried will all in favor.

Planner Menici reminded the members that the next meeting on November 4th is Election Day and she will remind the EDC as well.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Chairman, Paul Parker