

TOWN OF JAFFREY
Jaffrey, New Hampshire
PLANNING BOARD
Meeting Minutes
June 9, 2009

Present: Chairman Merrell, Members Deschenes, Grodin, Kresge, Moore and Selectmen's Representative MacIsaac

Absent: Members Doane and Foley

Staff: Recording Secretary Lemire, Building Inspector Baron, Town Counsel Kelly Dowd

MEETING MINUTES APPROVAL

On a motion by MacIsaac, seconded by McCarthy the minutes from the April 14, 2009 public hearing were approved. (6-0)

PRELIMINARY HEARING

Mike Coutu & Richard Olson – Live Free or Die Rally

Prior to Mr. Coutu's presentation Chairman Merrell gave a brief run down as to the chronology of events as they occurred. Mr. Coutu first came to the board for a preliminary hearing in February of 2009 to inquire about holding the rally at the Grand View Inn. At that time Mr. Coutu was asked if he would return to the board in March for another preliminary allowing the board sufficient time to review past site plan documentation for the subject parcel which is a non-conforming use in the Mountain Zone at this point. Mr. Coutu agreed to return in March. Last year the rally was held between the downtown common and Sawyer's field and at that time it was stated by the board that a change in venue may require an application for a site plan review. This was understood by Mr. Coutu.

Following the March discussion the Planning Board decided that Mr. Coutu needed to address the Selectmen with his request before proceeding any further. Mr. Coutu met with the Board of Selectmen on May 18, 2009 and because there seemed to be an expansion of the rally from what was presented last year it was the decision of the Board of Selectmen that Mr. Coutu should return to the Planning Board and make an application for site plan review.

Mr. Coutu is now before the board in a preliminary fashion to determine how he should move forward. Chairman Merrell reminded Mr. Coutu that a preliminary meeting is a non-binding discussion between the board and the presenter. It is not binding for either party. Mr. Coutu replied "Okay".

Chairman Merrell addressed the issue of site plan review and Mr. Coutu's reference to site plan being a commercial site plan application. Chairman Merrell stated that site plan does not apply to commercial but it does apply to a variety of activities in the town. Chairman Merrell read the purpose of the site plan from the Zoning Ordinance which states "The general purpose of these regulations is to promote the health, safety and prosperity of the town and to preserve and enhance the quality of life, including protection of the community's environment." Chairman Merrell stated to Mr. Coutu that it has nothing to do with commercial although it is obvious that Mr. Coutu doesn't feel that the rally falls under the purview of the planning board for site plan review.

Mr. Coutu stated that nothing was found in any of the mountain zone ordinances or on the Grand View Inn site plan that implies or indicates that they would be subject to a site plan review. "Everything that is on and in the regulations for the mountain zone are all for commercial applications. The reason that you have a site plan review is for the reasons that you just stated; for the benefit and the well being of the town for a site plan review. In other words, for people that are putting additions on their homes, residential additions, anything." Chairman Merrell informed Mr. Coutu that his interpretation was not

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correct. Mr. Coutu responded that there is nothing in the mountain zone that says you cannot hunt, shoot a gun, have a range or have an open air gathering in or on private property. Everything being offered at this event is free of charge.

Member Deschenes explained that the Grand View Inn has a site plan associated with their property and this is their property. Member McCarthy stated that the only reason the board will conduct conversations about use of the property with Mr. Coutu is because he has written authorization from the owner of the Inn to speak on their behalf.

Member Grodin stated to Mr. Coutu that he understands his situation however he has to look carefully at what the ordinance says and it does not talk about commercial or shooting. It does talk about health, safety and prosperity of the town. Mr. Coutu agreed.

Mr. Richard Olson stated for the record that he believes that the packet distributed to the board in March and April of 2009 was inclusive and covered all of the events that were going to be included. Mr. Olson added that this is a one time event which is basically a function, an extension of the functions at the Grand View Inn.

Chairman Merrell explained that the events that The Grand View Inn puts on are all done within certain restrictions such as no music after dark and liquor consumption is within the Inn. The problem is that a lot of the events being proposed for the rally are outside the restrictions; such as outdoor music and music until 10 or 11 at night. These are things not permitted to Grand View and they are things that must be considered as part of the site plan approval for the rally.

Mr. Coutu asked if the ordinance for music was until 10:00. Chairman Merrell reiterated that the site plan that exists does not permit music outside. Therefore, if the planning board proceeds with the request and allows the music then it would seem that a special exception or a variance to allow it would be needed from the Zoning Board of Adjustment. The same is true for shooting a rifle, shooting the cannons, and having the beer tent. Mr. Coutu stated that the beer tent has been cancelled. Chairman Merrell stated that the board was unaware of this and asked if there were other changes that needed to be considered.

Mr. Coutu asked that the original notification submitted in February still be considered with permission to include the revolutionary battle, permission to accept donations for non-profit causes within the mountain zone and permission to have one time instructional all free shoot course for participants as allowed in the state statute. If the board determines that a site plan is required then a second application has also been submitted with the town for moving the event back to the town common. Under this plan only camping and music within sound ordinances or the Grand View site plan would be taking place on their property.

Member Grodin asked what the first application was. Mr. Coutu corrected his statement to say a second notification has been submitted with the town.

Chairman Merrell stated that there are some issues seen by the Planning Board that are not allowed in the mountain zone or to the Grand View Inn and which may need to be addressed by the Zoning Board of Adjustment for variance or special exception approval prior to applying to the Planning Board for site plan review. Some of the issues are camping, the hours of operation which greatly exceed the hours of the outdoor operation that were permitted to the Grand View, the music and the hours of the music. A variance was previously requested by the Grand View for The Festival of Fireworks and it was denied by the Zoning Board of Adjustment.

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Mr. Coutu was unclear as to the process and asked if it made any difference who was applying – be it him or the Grand View. Member McCarthy explained that the board is not deciding on any of the issues relating to the content of the rally; it is the activities being proposed. If his event was being held as it was last year or on a property without restrictions there would be no issue.

Mr. Coutu understood and stated that filing a site plan is charging a fee for a first amendment assembly and gathering. Mr. Coutu asked if they would be willing to waive any fees. Member Grodin stated that he does not believe that the planning board has the authority to waive the fees.

Attorney Dowd addressed the issue of camping by stating that in the mountain zone public recreation is permitted only by special exception. A special exception is obtained from the Zoning Board of Adjustment and an application for public hearing must be filed. Sawyer's Field however is in the rural district and not in mountain zone. Attorney Dowd felt camping at Sawyer's Field would be allowed. If site plan is required then a site plan application must be filed with the planning board and a public hearing would be held.

Mr. Coutu asked when they would be notified of the board's decision. Member Grodin suggested that the board act expeditiously. Chairman Merrell agreed and suggested that the issue be discussed at the end of the meeting.

Selectmen's Representative MacIsaac asked Mr. Coutu and Mr. Olson if they would stay for the deliberation in case the board had further questions. Mr. Coutu and Mr. Olson agreed.

Board discussion

Mr. Coutu asked the board if a special exception can be granted for one night or does it carry over to the Grand View since it is their property. Chairman Merrell feels it would be up to the Zoning Board and the conditions they place on an approval.

With respect to Plan A (using The Grand View Inn for the entire event) the board asked the following questions and arrived at the following answers:

Is the proposed use (1) an accessory use to the existing use, (2) an expansion of the existing use, or (3) an unrelated non-accessory use?

The proposed use is an expansion of the existing use therefore The Grand View will need a use variance from the Mountain Zone Table of Uses to conduct the rally.

Does providing overnight accommodations in the form of tent and RV camping constitute public recreation, or is it a non-permitted use?

It is public recreation therefore a special exception is required to permit public recreation in the Mountain Zone.

Does operation of a rifle range and/or battlefield reenactments [with cannon fire] constitute public recreation, or is it a non-permitted use?

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It is public recreation therefore a special exception is required to permit public recreation in the Mountain Zone.

Does the proposed use constitute a change or expansion of use of the property or modification of the prior site plan?

Following the discussion Chairman Merrell asked the board if they were in agreement that the proposed rally would be an expansion of an existing use. All members agreed.

Yes, therefore a use variance from the ZBA and site plan review is required.

Member Grodin asked if a vote of the board was necessary. Attorney Dowd felt not since this was a non-binding discussion.

Member Moore stated that what was presented tonight was a substantial deviation from what was originally asked for and he feels that an exact list of what is being asked for should be submitted. Member Grodin agreed stating that if they seek relief from the ZBA it cannot be done with a notice. A Zoning Board application must be filed and it must be finite.

Member Moore asked when does sleeping become camping. Attorney Dowd commented that if a child wants to camp out back of the residential house then that is accessory. It is incidental and customary to the residential use. If the child wants to camp out with 300 friends with campers then that would not seem customary and incidental.

Chairman Merrell addressed the shooting range and felt that it would be considered public recreation. If it were considered public recreation then it too would require a special exception.

Member McCarthy asked about the vendors and the food concessions and the selling of goods. Chairman Merrell stated that everything has been presented as by donation as opposed to selling. Mr. Olson stated that according to the statutes if it is under \$25.00 it is not retail sales, it is a donation. Member McCarthy asked what type of items will be available. Mr. Olson replied it would be the same as last year with items such as t-shirts, buttons and tapes.

Chairman Merrell asked about music and the hours. The current site plan restrictions do not allow it and the current agreement by the Grand View is that all outdoor activities would cease as of sundown. This puts the outdoor music and the hours of operation in jeopardy.

Member Grodin stated that a firm application to the ZBA stating everything to be considered needs to be submitted. Building Inspector Baron stated that when the application is brought to him for review by the applicant he will ensure that it is a firm application.

Selectmen's Representative MacIsaac summarized that the process will be that Mr. Coutu will complete an application with everything in it. He will then proceed to a joint meeting with the ZBA and Planning Board. The ZBA will go over and vote on each item requested. In the end Mr. Coutu will have a list of everything that has or has not been granted.

Plan B would be to replicate last year's rally downtown with the exception that the camping would be at the Grand View Inn along with the revolutionary enactment and music.

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Member Kresge stated that plan B doesn't change anything procedurally. At minimum a special exception will still be required for the camping. The only change may be the number of things to be considered by the ZBA.

Mr. Coutu was instructed that he must complete a ZBA application listing the specific variances or special exceptions being requested and a Planning Board application for site plan. It was suggested that the applications be brought in to the Building Inspector prior to June 19th to ensure completeness and to allow time for amendments. The completed applications must be turned in to the clerk no later than the morning of Friday, June 19, 2009 in order to meet advertising deadlines. The boards will meet simultaneously on Tuesday, July 7th. At this time the Planning Board did not take a vote on the issue of regional impact however it will be treated as such with proper notification being made.

Attorney Dowd explained the ZBA 30 day appeal process and added that should the ZBA decision run through the 30 days without appeal then it's a final decision.

Jim O'Neil – 37 Stratton Rd.

Mr. O'Neil is the Superintendent of Schools and is before the board to notify them that the school district has entered into an offer to buy a piece of property located at 37 Stratton Rd. Over the past few years one of the major directives that the school district has been given is that they should acquire property as it becomes available. The parcel is a 1 acre lot with a structure which does abut the middle / high school property. At this time the plan for the property is unclear however there is no plan to build any major structure. What is clear is that the current school property is in need of more land and this property would be of benefit. Site testing still needs to take place. If the testing is positive then the district will move forward towards the purchase.

Chairman Merrell asked if the lot was vacant. Mr. O'Neil stated that the property has a house with an attached barn and a detached livery stable. At this time it is undecided whether or not the house will remain. When transforming from a private to a public use there are issues to consider such as being ADA compliant. It will have to be evaluated.

Member Moore asked who would have the final head nod to move forward. Mr. O'Neil replied that it would be up to the school board. The subject of expending money for the purchase of abutting property to either the grade school or the middle/high school has already been brought before the voters. There will be a meeting on the 22nd of June to gather input from the community.

Chairman Merrell asked if there was a house on lot 113 which abuts 37 Stratton Rd. Mr. O'Neil stated that there is a home there and he has spoken with the resident and made her aware of the purchase and that she will be surrounded by school district property.

CALL TO ORDER

Chairman Merrell called the public hearing to order at 7:01. On a motion by Grodin, seconded by Deschenes the board adjourned to an executive session. Chairman Merrell reconvened the meeting at 7:30 p.m.

APPLICATION ACCEPTANCE

None

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PUBLIC HEARING – NEW

None

PUBLIC HEARING – CONTINUED

None

OTHER BUSINESS

- Wind Turbines – review/amend draft ordinance –
The board began reviewing the ordinance drafted by Jim DuMont with the hope of taking it to a public hearing at the July meeting. Due to a number of questions raised the board agreed that the document needed further vetting. Member Kresge and Mr. DuMont will meet to iron out the differences.
- Voluntary Merger – Hope Alliance (map 239 / lots 107 & 108 – signed
- Voluntary Merger – Aho (map 245 / lots 96 & 97) - signed
- The CIP committee will meet on Wednesday, June 10, 2009 at 5:00 p.m. at the Town Office
- The Downtown Master Plan committee will meet on Wednesday at 7:00 p.m. at the Town Office.
- Building Inspector Baron approached the board with a question brought to him by an applicant submitting an application for a technical subdivision. The applicant was asking for clarification to Section II (X) of the Subdivision Regulations (definition of a subdivision (technical)). The definition reads “shall mean a boundary or lot line adjustment that does not create a buildable lot or any increased potential for further subdivision. Following a brief discussion the board agreed that they were not prepared, at this time, to make a decision on whether or not the wording was correct.
- Master Plan Review – Member Moore volunteered.

ADJOURNMENT

The meeting adjourned at 9:45 p.m.

Submitted:

Erlene R. Lemire
Recording Secretary

Attest:

Edward Merrell
Chairman, Jaffrey Planning Board