

**Moultonborough Planning Board  
P.O. Box 139  
Moultonborough, NH 03254**

**Regular Meeting**

**June 9, 2010**

**Minutes**

Present: Members: Joanne Coppinger, Natt King, Judy Ryerson, Jane Fairchild, Peter Jensen, Chris Maroun (arrived at 7:06) Ed Charest (Selectmen's Representative); Alternates: Keith Nelson; Town Planner: Dan Merhalski

Mrs. Coppinger called the regular meeting to order at 7:00 P.M and appointed Peter Jensen and Keith Nelson to sit on the board with full voting privileges to fill the vacant seat of former member Jim Bakas and Chris Maroun.

**I. Pledge of Allegiance**

**II. Approval of Minutes**

**Motion:** Mr. Nelson moved to approve the Planning Board Minutes of May 26, 2010, as amended, seconded by Mr. Charest, carried unanimously with Mr. King abstaining.

Mr. Maroun arrived at this time and Mr. Nelson stepped down from the board.

**III. New Submissions**

**IV. Boundary Line Adjustments**

**V. Hearings**

**1. Continuation of Public Hearing - Ambrose Bros., Inc. (24-4.3, 4.4, 4.5, 4.6, 4.7)  
(Holland Street) Subdivision Amendment**

Ed Ambrose, representing Ambrose Bros., Inc., stated he had met with the Town Planner and his engineer on-site to discuss the issues with the site and what would be required on the revised plans. Mr. Ambrose had provided the board with revised plans and noted the changes to the plan relating to drainage, detention pond, culvert crossings, hammer head, slope easements and fill with organic materials in it. Mr. Ambrose provided the board with a revised Site Drainage Report. Mr. Ambrose answered any questions from the board.

Mr. Merhalski stated after his review of the revised plan there were only a few issues remaining. Mr. Merhalski noted the drainage report submitted this evening still only provided calculations for a 25-Year storm and not for a 50-Year storm as required by the subdivision regulations. Other issues remaining are relating to the infiltration basin, the location of the stone check dams and the fill with organic materials in it.

The Board discussed what was labeled as the infiltration basin on the plan, questioning if it was a detention pond. Mr. Merhalski stated the Drainage Report needs to be revised to reflect the infiltration

basin. There was no indication of what the soils are in the basin, or of its infiltration capacity. If this is an infiltration basin it will require test pits to be completed in the area of the detention pond indicating the type of soils so that it may perk right. If it is just a detention pond it probably will not require test pits. Once the revised Drainage Report is provided this would be addressed.

Mr. Ambrose stated the check dams would be removed once the grass had stabilized the swales. Mr. Merhalski noted the plan called for the check dams to remain and that they should be located within the Right of Way (ROW), or within the drainage and maintenance easement.

A question was raised regarding the stone wall shown on the plan to the left side of the driveway accessing Lot #3. It was noted that there is a notation on the plan stating “existing stone retaining wall for private driveway to be removed: or moved out of the ROW and designed by third party engineer and permitted by Code Enforcement Officer” If the slope of the roadway ends up leading to having to have a retaining wall, they would permit it later through the driveway permitting process through code enforcement. The CEO stated there was no permit required for the wall, only if there was to be a walkway. Mr. Ambrose stated the wall may not be necessary once they remove the existing retaining wall and construct the hammer head.

Mr. Merhalski referred to fill material that has been trucked onto the site. Mr. Ambrose stated there were no stumps in it and was put in for use for access on Lot 4. Mr. Merhalski stated on a visit to the site he found there were organics, stumps with roots in the fill, that it was not clean fill. Mr. Ambrose stated the fill came off an area they had stumped, they had stripped off the top foot of material and that there may be a few roots left in the material. The fill is located outside of the traveled way, in the fill slope. Mr. Merhalski stated there would be no issues so long as it was cleaned and there were no organics in the compaction for the fill. A condition will be included in the Notice of Decision that the applicant will clean and screen the fill prior to being used for fill material.

The board continued the hearing to allow time for a revised Drainage Report with calculations for a 50-Year storm.

**Motion:** Mr. King moved to continue the hearing for **Ambrose Bros., Inc. (24-4.3, 4.4, 4.5, 4.6, 4.7)** to June 23, 2010, seconded by Mr. Maroun, carried unanimously.

## **VI. Informal Discussions**

## **VII. Unfinished Business**

## **VIII. Other Business/Correspondence**

### **Zoning Ordinance Enforcement and Violation Issues**

The Board moved onto Zoning Ordinance Enforcement and Violation Issues. The Code Enforcement Officer, Don Cahoon was present for this discussion. Mr. Merhalski referred the Board to his memo dated June 7<sup>th</sup>, Status of Zoning Violation Issues. Mr. Merhalski noted the board should make a determination of the board if they wish to proceed with enforcement action, and what that action is. One of the confusing things is what is the difference between what is a compliance hearing and what's a zoning ordinance issue where someone would be required to come back for a new site plan approval. The board referred to the memo and addressed each of them one by one discussing the roles and responsibilities of each body and what the status of the violations are, as well as how to proceed toward bringing them into compliance. These issues have been ongoing, some have received letters and some have been resolved.

Planning Board Zoning Violations – Memo of Sept. 24, 2009:

- 1) Richter Repair – Items appear to be outside the areas for storage and display. *Status: A letter was sent in late 2009. There was no response. A site inspection should be carried out to determine the current status of the site and its non-compliance. This item will likely be a Planning Board issue for a compliance hearing if the area for storage and display was indicated in either the Site Plan or the conditions of the Notice of Decision. If not indicated, it would either be permitted, or would be a Zoning Violation that the Code Enforcement Officer (CEO) would have to pursue. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is, whether it is compliance verses non-compliance with the original plan and make a determination if it is a site plan issue or a zoning issue.*
- 2) Ferrante Plumbing and Heating – Exceeding the display area by the road. *Status: A letter was sent and the site appears to be in compliance, though the CEO said this may be an annual occurrence. No action required at this time.*
- 3) Red Hill Storage – Canvas temporary sheds are not on the approved site plan. *Status: Still non-compliant. If the sheds are not on the approved Site Plan this is a new/expanded use requiring Site Plan approval. The CEO should notify the owner that they are in violation of the Zoning Ordinance and are required to either take down the shed(s) or apply for Site Plan approval from the Planning Board. Keith and Joanne recused themselves from this discussion. It was noted that this would be an expansion of their approval and would be considered a zoning violation. It was the decision of the board to have the CEO send a letter to the owner and notify them they need to come in for site plan approval.*
- 4) White Mountain Woodworks - Canvas temporary shed is not on the approved site plan. *Status: Still non-compliant. If the sheds are not on the approved Site Plan this is a new/expanded use requiring Site Plan approval. The CEO should notify the owner that they are in violation of the Zoning Ordinance and are required to either take down the shed(s) or apply for Site Plan approval from the Planning Board. It was noted that this would be an expansion of their approval and would be considered a zoning violation. It was the decision of the board to have the CEO send a letter to the owner and notify them they need to come in for site plan approval.*
- 5) DaSilva Motorsports – Exceeding the display area at showroom, grassy area(s), and warehouse/garage. *Status: Still non-compliant. Letter sent in late 2009. Depending on what is on the approved Site Plan, and how old the approval is, this is either a compliance issue with the Planning Board, or a new/expanded use that requires a new Site Plan approval from the Planning Board. If the expansion(s) are into the setbacks/buffers, this is also a Zoning Violation. In either case, the Board's first course of action should be to verify the extent of the areas out of compliance with a site inspection, and what kind of violation this constitutes, and proceed with either a second letter, or more to the point, notification of either court action in the event of a Zoning infraction, and/or a compliance hearing if in the Planning Board's jurisdiction. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is, whether it is compliance verses non-compliance with the original plan and make a determination if it is a site plan issue or a zoning issue.*
- 6) Bentley Road Subdivision – The detention pond has become overgrown and water is not being directed into the pond. *Status: Still non-compliant. A site inspection should be carried out to*

*determine the current status of the site and its non-compliance. If a letter to the owner(s) has not been sent, a site inspection should be conducted and notice sent to the owners of the non-compliant/failure status of this feature. Following this, the Planning Board may hold a compliance hearing and/or take the owners to court for repair of the structure. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection and see if there are violations beyond this, detail them in a memo to the board and most likely send a letter to the Applicant saying that they're required to maintain the facility as part of their subdivision approval, giving them a certain period of time to complete it.*

- 7) Richard and Mardee Boone – Tow trucks are parked off the pavement next to the road – this storage/use area does not appear to be in the approved Site Plan. *Status: Still non-compliant. A site inspection should be carried out to determine the current status of the site and its non-compliance. This is most likely a Zoning Violation, rather than a PB Compliance Issue, unless the storage area(s) were on the Site Plan. It sounds as if this is a violation of setbacks and would be pursued by the CEO through notice and court action, if necessary.* Keith recused himself from this discussion. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection and see what the violations are, detail them in a memo to the board and send a letter to the applicant giving them a certain period of time to complete it.
- 8) Ambrose Cove Marina – The fence along the side of the roadway is falling down and one section by the dumpster is missing. Other issues may require inspection of the site. *Status: Still non-compliant. A site inspection should be carried out to determine the current status of the site and its non-compliance. This is most likely a Zoning Violation, rather than a PB Compliance Issue, as the site is fairly old and the fence was originally constructed. The fence should be repaired to operate as a buffer and extended to the dumpster, if not previously. Due to the length of time that the site has been operating, and the lack of compliance to date, this is most likely going to be a court matter, if the owner will not voluntarily correct the site.* It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is, whether it is compliance verses non-compliance with the original plan and make a determination if it is a site plan issue or a zoning issue and send a letter to the applicant.
- 9) Wally's Boat Repair – Boats are being stored in unapproved areas, such as the entryway, from time to time. *Status: From the CEO's memo, and the Planning Board's action, this issue appears to have been resolved.* It appears that once again boats are being stored/displayed in unapproved areas and may be in the ROW. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is. If there are boats being stored in unapproved areas it would be a compliance issue and the board would handle this. The Planner will verify the file and depending on the results the board may either send an application for site plan review or call a compliance hearing.
- 10) Goodhue Marina – Boats and trailers are being parked on the edge of the ROW of Whittier Highway. *Status: From CEO's memo, this issue appears to have been resolved for the time being. If located within the ROW, this is a Zoning and/or Law violation and should be handled by either the CEO or the Police Dept.* Keith recused himself from this discussion. It was noted this would be a violation of setbacks and would require a letter from the CEO identifying them of a violation of the setbacks.
- 11) Brian Leighton – Trucks were bringing in fill on August 1<sup>st</sup> – was there an approved construction permit for this activity? *Status: Still non-compliant. Site requires a Site Plan from the Board. This*

*should be handled by the CEO through Zoning Violation procedures and either additional notification of the requirement for a Site Plan permit, or court action with a Cease and Desist order issued. It was noted that this would be an expansion of their approval and would be considered a zoning violation. It was the decision of the board to have the CEO send a letter to the owner and notify them they need to come in for site plan approval.*

- 12) Quayside Yacht Club – A stone-lined path accessing boats from the neighboring Trexler property was constructed without Planning Board approval, and was to be grass on the Trexler Site Plan Approval. *Status: Still non-compliant. Again, the site requires a Site Plan from the Board to allow for this expansion of the impervious area. The CSPA may also be triggered, depending on the amount of work done. This should be handled by the CEO through Zoning Violation procedures and/or notification of the requirement for a Site Plan permit, or court action with a Cease and Desist order issued.* It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is, whether it is compliance verses non-compliance with the original plan and make a determination if it is a site plan issue or a zoning issue and send a letter to the applicant.
- 13) Wild Meadow Canoe – Outside display of boats on both lots is not respecting the lot lines or setbacks for the sites - not in compliance with the approved Site Plan. *Status: Still non-compliant. Letter sent in late 2009. A site inspection should be carried out to determine the current status of the site and its non-compliance. As with DaSilva's, depending on what is on the approved Site Plan, and how old the approval is, this is either a compliance issue with the Planning Board, or a new/expanded use that requires a new Site Plan approval from the Planning Board. If the expansion(s) are into the setbacks/buffers, this is also a Zoning Violation. In either case, the Board's first course of action should be to verify the extent of the areas out of compliance with a site inspection, and what kind of violation this constitutes, and proceed with either a second letter, or notification of either court action in the event of a Zoning infraction, and/or a compliance hearing if in the Planning Board's jurisdiction.* It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is, whether it is compliance verses non-compliance with the original plan and make a determination if it is a site plan issue or a zoning issue and send a letter to the applicant. If they are in violation of setbacks this would be a compliance issue.
- 14) Glass Knob – Display of items for sale in front garden/buffer area is not permitted. *Status: According to the CEO, the use of this area pre-existed the zoning ordinance change and the Planning Board in 2007 met with and allowed the use. The site is therefore in compliance.* It appears that the display area may have expanded again. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. At that time they both will review the site plan, locate everything on-site, what the status of it is, whether it is compliance verses non-compliance with the original plan and make a determination if it is a site plan issue or a zoning issue and send a letter to the applicant. If they have expanded the display area of merchandise then it would be a violation of site plan.
- 15) Pinewoods Campground – Dixon Campground – Issues being addressed in Court action? *Status: According to the CEO, the court action was stopped upon a determination by the Planning Board to hold a compliance hearing. This hearing has not been called. The site should be inspected to take into consideration any additional work done in the interim period, and notice sent to the owner that a compliance hearing will be called if the violations are not corrected within a certain period of time. The Board would then have to hold a compliance hearing,*

possibly resulting in revocation of the subdivision permit, depending on what the plans and conditions of the Notice of Decision show were approved. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection, see what has been cut, what were the requirements of their approval, and if it is in violation they will have to hold a Public Hearing for compliance which may result in the revocation of the subdivision. The Planner will report back to the board regarding the violations.

- 16) Aubuchons – Display areas to side and rear of structure by wrought iron fence are exceeding that approved in Site Plan. *Status:* A letter was sent in late 2009. A site inspection should be carried out to determine the current status of the site and its non-compliance. If the site is not following the Site Plan, a compliance hearing should be called. If the site is violating setbacks, it is a Zoning Violation and action should be taken by the CEO up to and including court action and a Cease and Desist Order. Joanne recused herself from this discussion. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. It was noted that this would be an expansion of their approval and would be considered a zoning violation. It was the decision of the board to have the CEO send a letter to the owner and notify them they need to come in for site plan approval.
  
- 17) North End Parking Lot – Storage of construction and other related vehicles in restaurant dedicated parking lot. *Status:* A letter was sent in late 2009. The area of the storage of vehicles is not within the required area for overflow parking, however, the storage of the boat and excavator on this commercial lot are not permitted in the original Site Plan Approval. The owner must obtain a Site Plan Permit from the Planning Board for storage on this commercial lot as an expansion of the use on the site, and obtain a Special Exception from the ZBA for the use of the site as the ordinance only permits an accessory storage facility if it is in relation to a retail or other sales use on the site. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection. It was noted that this would be an expansion of their approval and would be considered a zoning violation. The site is located within the commercial zone and storage is not an allowed use in the zone and an addition of what the previous condition of the lot was, it will require either a site plan permit and or special exception for storage. Storage is only allowed if it is an accessory to a retail or sales usage. A letter will be sent to the applicant notifying them of their requirements.
  
- 18) Townsend Grocery Store and Log Cabin- Table out by the road selling fruit from time to time and possible use violation with tires, etc. *Status:* A letter was sent in late 2009. The selling of food by the road has been discontinued as the property has since closed, and re-opened with a new operator. The log cabin was inspected by the CEO in the last month and found to be in compliance with the terms of the Planning Board's Notice of Decision and plans. The CEO is working with the owner to remove the tires and trucks, which have been reduced from the four previous to two currently. If this process is accomplishing what the Board/CEO want, it should be allowed to continue. If not, the tire storage is a Zoning Violation for the use and requires a new Site Plan permit for the expansion/added uses are required. It was the decision of the board to have the Planner and CEO call to directly schedule an inspection and send a letter to the applicant.
  
- 19) Historical Society - I have not seen any replanting done in the area that was cleared a year or two ago? *Status:* No Board approval for removing trees from the commercial zone. The Board met with the owner in informal session, but should act to either formally allow the cutting (no Intent to Cut was required due to the small scale of the cut), or to deny the cutting and require replanting of the buffer, etc. Keith, Judy, and Ed recused themselves from this discussion. The Planner will review the file for any written authorization for the work that was done. If there is,

the Planner will notify the board of it and this will be a dead issue. If there isn't any written authorization they should send a letter to the Historical Society letting them know this is an issue that has come up. For the purpose of resolving it they should come back to the board on an informal basis and discuss what was done and the board will then decide if there is any further action. If there is not, there will be something in writing to be put in the file.

20) Mike Dion's Landscaping - Trees and supplies outside of display areas, lined up on pavement area? Status: *This was approved through a new Site Plan approval in late 2009.*

**Motion:** Mr. King moved to authorize the Code Enforcement Officer and Town Planner to take action on each item as instructed and discussed this evening and report back to the board, seconded by Mr. Jensen, carried unanimously.

2. Zoning Board of Adjustment Draft Minutes of June 2, 2010 were noted.

3. Selectmen's Draft Minutes of June 3, 2010 were noted.

**IX. Committee Reports**

**X. Adjournment:** Mr. Charest made the motion to adjourn at 8:30 PM, seconded by Mr. Jensen, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant