

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

Regular Meeting

September 8, 2010

Minutes

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

Mrs. Coppinger called the regular meeting to order at 7:00 P.M.

I. Pledge of Allegiance

Mrs. Coppinger informed the public that there was one change to the agenda. The informal discussion regarding the former Blink Bonnie property, Tax Map 103 Lot 7 had been requested to be withdrawn. Mr. Nelson recused himself from the Board at this time and spoke briefly to the Board regarding this. Mr. Nelson stated he had hoped to have a site plan available for public inspection submitted by today. His surveyor was unable to have the site plan ready on such short notice, but will make the deadline for a hearing on October 13th.

Motion: Mr. King moved to amend the agenda to remove the informal discussion for Keith Nelson (103-7), seconded by Mr. Jensen, passed by a vote of six (6) in favor (Coppinger, King, Ryerson, Maroun, Jensen, Charest), One (1) opposed (Fairchild), and 0 abstentions.

II. Approval of Minutes

Mrs. Coppinger noted a typo error on page 2, paragraph 4, re-change should be re-charge.

Motion: Mr. King moved to approve the Planning Board Minutes of August 25, 2010, as amended, seconded by Mr. Maroun, carried unanimously.

III. New Submissions

1. Camp Tecumseh (212-1)(975 Moultonboro Neck Road)
Site Plan Review

Mrs. Coppinger commented taking into consideration numerous issues with the submission she felt it necessary to call for a motion to not accept the application as complete. Stating it appears the applicant needs to go before the Zoning Board for a Special Exception as the proposed building to be located in the Residential / Agricultural Zone and is greater than 6,000 sq.ft. Mrs. Coppinger noted there were a plethora of other issues related to site plan regulations and zoning.

Dave Dolan, agent for the applicant asked if the Board would consider accepting the application, based on the fact the earliest they could be back to the Planning Board would be October 27th. If the Board were to accept the application, knowing it could not be approved until they receive ZBA approval, they could get feedback from the Planning Board this evening on some of the issues that may be easily addressed so when they come back to the Board they would know the issues.

The Board discussed this, noting they could accept and deliberate but that the regulations state if an application requires two approvals, they must go to the ZBA first. Taking into consideration the information that was missing this evening it was felt the application was substantially incomplete. The board discussed that the applicant must pay to re-notice abutters but not the fees for site plan review.

Motion: Mr. King moved that the Board not accept the application for Camp Tecumseh (212-1) as complete, seconded by Ms. Fairchild, carried unanimously.

Mr. Nelson returned to the Board at this time as an Alternate Member.

IV. Boundary Line Adjustments

V. Hearings

1. Continuation of Public Hearing - Morrill Homes of Wolfeboro (152-18)
(Severance & Caverly Road) Subdivision Amendment

Mrs. Coppinger stated that this was a continuation of the public hearing for a subdivision amendment for Morrill Homes of Wolfeboro. The hearing was continued to allow for the Board to obtain a legal opinion from Town Counsel determining if the application as submitted triggered the Stormwater Management Ordinance. Mr. Merhalski stated he had contacted counsel and that counsel is still researching case law on this as well as statutes. As the legal determination is still outstanding the only item the Board could discuss was the new information that was submitted in the drainage report. Based on the outcome of the legal determination, the report may or may not be pertinent to discussion.

Present in the audience for the public hearing was Peter Morrill, Jennifer Haskell, Esquire, Carl Johnson and Paul Fluet. Ms. Haskell requested the Board move forward with the public hearing. If the legal decision comes back that the subsequent Stormwater plan is not necessary, Mr. Johnson was present to speak to the Lot lines, and Mr. Fluet was present to speak to the drainage. Mr. Morrill had a check in the amount of \$10,000 to satisfy the amended change to the bonding of the road.

Ms. Haskell submitted a request for extension of the 12 month continuance as the approval expires on September 11, 2010. Mr. King questioned what length of time was being requested for the extension. Ms. Haskell stated the statute allows for up to one year, but did not know if that would be necessary as they are only waiting for Counsels opinion. It was Ms. Haskell's sense that the new ordinance does not apply to this application. Mrs. Coppinger noted she had re-visited the RSA and had the opposite opinion. Mrs. Coppinger gave the reasons as to her opinion.

Motion: Mr. King moved to approve the request for extension of subdivision approval for Morrill Homes of Wolfeboro (152-18) for twelve months from September 12, 2010, seconded by Ms. Ryerson, carried unanimously.

The legal decision will determine whether or not the Zoning Ordinance applies. The Board reviewed the original conditions of approval. It was noted that the Board had voted to change three of the conditions which will be reflected in the new Notice of Decision, should the Board approve the amendment as going forward. At this time the Board did not accept the \$10,000 check as they have not granted an approval yet. It appears the major item still to be resolved is the drainage, which was changed by the State for their approval. Mrs. Coppinger stated this was what was to be determined by Counsel. Does the new Stormwater Management Ordinance apply in the situation?

Ms. Haskell stated the Lot lines for Lot 12 had not changed and that lot calculations submitted show the lot meets the unit density calculations.

Mrs. Coppinger asked Mr. Fluet if he had completed groundwater re-charge volume calculations for the Alteration of Terrain Permit. Mr. Fluet stated no. She then asked why those weren't required. Mr. Fluet stated that those rules became effective in January of 2010. Mr. Fluet stated that there will be some groundwater re-charge but that he did not know if it would be equivalent or equal to the predevelopment that the new stormwater rules require. Mrs. Coppinger referred to the Stormwater Management section of the ordinance quoting "The plan shall, at a minimum, include drainage and water quality reports indicating both pre-development, and proposed post-development, conditions, with a statement of comparison between pre-and post-development conditions. The plan shall be in conformance to the greatest extent possible with the design guidelines and principles set forth in the most recent edition of the NH Stormwater Manual". Commenting there were additional requirements, one being that calculations for groundwater recharge volume. Mrs. Coppinger was trying to determine if they had already met the requirements and does not believe the intent of the ordinance was to go beyond that level. Mr. Fluet commented that the ordinance states the pre-development infiltration has to equal the post-development infiltration. He was not certain how to interpret that number. Mrs. Coppinger stated she would research this for the next meeting, noting whether or not they need that information is dependent on Town Counsels opinion.

Mr. Morrill expressed his concerns regarding the fact that there was not an opinion from Town Counsel this evening. Mr. Merhalski explained the time frame for his contact with Town Counsel and noted the Board did not have control over Town Counsels business. Mr. Merhalski stated that he had contacted Ms. Haskell and notified her that he had not received legal opinion at this time and they could request a continuance.

Ms. Haskell referred to Section 9.5 of the Subdivision Regulations, commenting that they could request the Board certified that substantial completion had been done. Since the only improvement to be done is the road she requested certification from the Board that substantial completion of the improvements had been completed. Mr. Merhalski stated this could not be done without either touring the site or holding a public hearing. The Board discussed this and what guarantees the certification would secure for the applicant. Ms. Haskell stated she hoped that it would nail down some of the unknowns in the case. Mr. Merhalski stated if the Board was to sign a certification that it would guarantee vesting status and that the ordinance doesn't apply, which is what Town Counsel is reviewing. After a lengthy discussion and difference of opinion it was the decision of the Board that they would not certify that the project was substantially complete.

Motion: Mr. King moved to continue the hearing for **Morrill Homes of Wolfeboro (152-18)** to September 22, 2010, seconded by Mr. Maroun, carried unanimously.

VI. Informal Discussions

1. Andy Weeks requested to speak to the Board on an informal basis on behalf of property owner **John Dolan, Tax Map 89, Lot 3**, 680 Whittier Highway. Mr. Weeks stated the property was a residential lot located in the commercial zone. Mr. Dolan would like clean up the small under growth on his lot. Mr. Weeks stated that he would be thinning the trees that were three (3) inches and under in diameter, on the entire site (five acres) and will not be removing the stumps.

Motion: Mr. King moved to authorize the cutting of the trees three (3) inches or less on Tax Map 89, Lot 3, seconded by Mr. Maroun, carried unanimously.

2. Ms. Ryerson, Mr. King and Mr. Nelson stepped down from the Board for this informal discussion. Mary Lamprey Bare requested to speak to the Board on an informal basis on behalf of the **Moultonborough Historical Society Tax Map 52, Lot 24**, 953 Whittier Highway. Ms. Bare gave a brief history of the property, noting the removal of smaller trees that were obstructing the view of the museum. It was noted that Stuart Lamprey had come before the Board in 2006 for approval for the removal of the trees and in 2007 Mr. King had presented the Board with a sketch depicting the placement of the stonewall. It was noted that there was no action taken on either of those discussions. Ms. Bare is requesting after the fact Board approval for the tree cutting and placement of the stonewall.

Motion: Ms. Fairchild moved to approve tree cutting and placement of the stonewall for the Moultonborough Historical Society, Tax Map 52, Lot 24 as shown on the sketch submitted by Mr. King, seconded by Ms. Coppinger, carried unanimously.

3. Mr. Merhalski stated he had received a request from **Rich Casella** for a change to his approved Site Plan for **Tax Map 115, Lot 3**. Mr. Merhalski was not certain if the Board would view this request as a major change, noting he would bring it to the Board for their input if it needs to come before them as a Site Plan Amendment or if it could be done as an administrative function based on his previous approval. Mr. Merhalski referred to the approved site plan, noting a "Future Planned Storage Building". Mr. Casella is requesting to move the building approximately four (4) feet off the property line to allow for access and egress to the second level. He would like to move the building inwards which would allow him to build stairs on the rear of the building. The building will be approximately 63 feet from the wetlands and shall be no closer to the wetland to the south than the proposed building which was approximately 47 feet. The Board discussed this, noting the building would be further from the sideline and not encroaching on any other setback. The Board agreed that the request did not warrant a Public Hearing and was minor enough to warrant an administrative approval by the Town Planner to allow for the change. The Board discussed this and questioned if anything would be placed on file or recorded documenting this change. Mr. Merhalski stated he would require the letter of approval be recorded at the Registry of Deeds and that he provided the Town with a copy of the recorded document for the project file.

Motion: Mr. King moved to consider the request of Rich Casella, Tax Map 115, Lot 3 as an Administrative Decision and authorize the Town Planner to send the appropriate documentation to Mr. Casella. Seconded by Mrs. Coppinger, carried unanimously.

VII. Unfinished Business

a. Discussion of Revision of Subdivision Regulations

Mr. Merhalski noted that he still had not received an opinion from Town Counsel regarding whether an easement constituted frontage per RSA 674:41, noting that he had presented the Board with a written opinion from Attorney Paul Sanderson of LGC for Board members to review.

Board Members were provided with an amended draft copy of the Subdivision Regulations. Mr. Merhalski noted the changes that the Board had agreed upon were shown in green, changes shown in red were recommended previously by the Planner, but not yet approved by the Board and changes shown in blue were changes the Board had recommended being put in, but not yet approved.

The Board reviewed and agreed to the proposed changes to Sections 7.1 (C & D). Section 7.1 E is still pending legal opinion. Mr. Merhalski proposed language in Section 7.1 F "Only one (1) dwelling unit shall be permitted on each lot unless the proposed site will contain a two-family, or multi-family structure". Mr. Merhalski commented that our Zoning Ordinance says each lot shall one dwelling unit unless it receives subdivision approval from the Planning Board. He has argued that you cannot have

more than one dwelling on a lot period, without subdividing the lot. The Board in the past has approved two dwelling units on one lot with a subdivision approval which didn't subdivide anything. The proposed language will say that you may only have one dwelling on a lot, unless it is a two-family, i.e. duplex or multi-family structure which will come under Site Plan Review Regulations. With this language there will no longer be a waiver of the regulation to allow two separate dwelling units on a lot. Board members discussed this with some members feeling what was done in the past may have been questionable, while others questioned guest houses and In-law apartments. The Board was not in agreement with this proposed language and would like further information prior to making a decision.

The Board moved onto Section 7.1 (G)(4 & 6), amending the proposed language to include after Home Owners Association documents "or equivalent documentation", Sections 7.2 (D)(18), 7.3 A, 7.3 E. The changes as proposed were approved by the Board.

Proposed changes to Sections 7.1 E and 8.1 (C)(5) are pending legal opinion.

Mr. King questioned if there were standards for requiring guardrails. There are areas which have steep shoulders that may require guardrails. Mr. Merhalski commented that there are frequently requirements for guardrails on steep slopes of roadways being constructed and are usually based on a DOT model. We do not currently have any requirements in our regulations and are done on a case by case basis. If the Board wishes to address this he will speak with Scott Kinmond to see what his standards are, or what DOT standards are, for what slope level and how long it has to run. That could be inserted in Section D. Table of geometric and other standards for roads.

The board wrapped up their discussion at this point and will continue their discussion on them again as time allows at their next regular meeting on September 22nd. Mr. Merhalski will make the changes as approved this evening. Once there is a legal opinion he will revise the Table of Contents then the regulations will be ready for publishing for a Public Hearing. Mr. Merhalski asked if the Board preferred to hold the Public Hearing for the changes to the Subdivision Regulations first before they work on the Site Plan Regulations or start the review of Site Plan Regulations and do both Public Hearings together. It was the decision of the Board to work on the Site Plan Regulations and hold the Public Hearings together.

Ms. Ryerson questioned what ordinance amendments the Board would be working on for 2011. Mr. Merhalski commented the Conservation Commission is forwarding an ordinance for Steep Slopes. The Board will be looking at thresholds for site plan, possibly and an access management ordinance.

b. Discussion of Revision of Site Plan Regulations

VIII. Other Business/Correspondence

1. Zoning Board of Adjustment Draft Minutes of September 1, 2010 were noted.

IX. Committee Reports

X. Adjournment: Mr. King made the motion to adjourn at 8:34 PM, seconded by Mr. Charest, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant