

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

**Regular Meeting**

**September 22, 2010**

**Minutes**

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

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

**I. Pledge of Allegiance**

**II. Approval of Minutes**

**Motion:** Mr. King moved to approve the Planning Board Minutes of September 8, 2010,  
seconded by Mr. Jensen, carried unanimously.

**III. New Submissions**

1. The Pepper Mill, LLC (170-17)(5 Whittier Highway)  
Site Plan Review

Mrs. Coppinger stated this was a new submission for site plan review. This application was originally submitted to the Board on June 23<sup>rd</sup> at which time the application was withdrawn by the agent Jim Hambrook. Mr. Hambrook stated they were reapplying for site plan review, noted the change in the parking dimensions and a few other minor changes.

The Board was in the process of determining if the application was complete when Mr. Merhalski arrived. Mrs. Coppinger stated that Mr. King had noted the need for the applicant to obtain approval from the Zoning Board, and asked if that would prevent them from accepting the application as complete. Mr. Merhalski noted SB 328 was passed by the legislative and became effective on July 17, 2010. The amended RSA 676:4, I(b), basically states that the board cannot say an application is not complete just because it has to get other approvals, which is different than the board's current policy. If there was something besides the need for ZBA approval that was holding the application up, the board may wish to find it not complete, otherwise the board may want to move forward accepting the application.

**Motion:** Mr. King moved to accept the application for **The Pepper Mill, LLC (170-17)**  
for site plan review and to schedule a hearing for this evening to be Hearing #3,  
seconded by Mr. Maroun, carried unanimously.

**IV. Boundary Line Adjustments**

1. Continuation of Public Hearing - The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22 & 254-24)(23 Davis Lane & 29 Long Island Road)  
Boundary Line Adjustment

This was a continued hearing for a Boundary Line Adjustment. The Board had continued the hearing in July in order for the applicant to obtain a variance from the Zoning Board as the density would be increasing on Lot 24.

Dave Dolan of David M. Dolan Associates, PC presented the application for a Boundary Line Adjustment (BLA). The proposal is to transfer 2.96 acres from Tax Map 247 Lot 22 to Tax Map 254 Lot 24. Mr. Dolan briefly recapped the proposal, stating they had addressed each of the issues in the Town Planners memo at the prior hearing and have received a variance from the ZBA.

Ms. Fairchild questioned if this was a seasonal campground. Mr. Dolan stated yes, it is open from approximately mid May through mid October.

Mr. Jensen questioned the Planners comment regarding the need for access easements for the gravel drives from Lot 22 to Lot 24. Mr. Dolan stated that the properties are under the same ownership and are not needed at this time.

There were no additional questions from the Board at this time. Mrs. Coppinger asked for questions or comments from the public. It was noted there were none.

Mr. Merhalski had prepared a draft Notice of Decision for the boundary line adjustment. Mr. Merhalski reviewed the Notice with the applicant and board.

**Motion:** Mr. King moved to approve the boundary line adjustment for **The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22 & 254-24)**, subject to compliance with the Draft Notice of Decision as set forth this evening, seconded by Mr. Jensen, carried unanimously.

## V. Hearings

### 1. Continuation of Public Hearing - The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22)(23 Davis Lane) Major 2-Lot Subdivision

Dave Dolan of David M. Dolan Associates, PC presented the application for a Major 2-Lot Subdivision. The proposal is to subdivide one lot (2.45 ac) from the existing Lot 22 from the above Boundary Line Adjustment, leaving a residual lot of 7.12 ac. They have received approval from the Town to access the new lot from Winaukee Road. The residual parcel will be accessed off Davis Lane. The wetlands were delineated by Peter Shauer and they have received State Subdivision approval. Unit Density calculations were noted for the two lots, 1.38 units for the new lot and 2.82 for the residual lot.

It was noted the well location was not shown on the plan. Mr. Dolan stated that he had located the approximate location of the well and will add that to the plan.

There were no additional questions from the Board at this time. Mrs. Coppinger asked for questions or comments from the public. It was noted there were none.

Mr. Merhalski had prepared a draft Notice of Decision for the subdivision. Mr. Merhalski reviewed the Notice with the applicant and board.

**Motion:** Mr. King moved to approve the subdivision for **The Daniel W. Watson Trust & The Eda Ann Watson Trust (247-22)(23 Davis Lane)** subject to compliance with

the Draft Notice of Decision as set forth this evening, seconded by Mr. Charest, carried unanimously.

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

Present in the audience for the public hearing was Peter Morrill, Jennifer Haskell, Esquire, and Kath Blake.

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 provided the Board with a copy of Mr. Minkow's legal opinion. It was the decision of the Board to make the document public.

**Motion:** Mr. Charest moved to make the Town Attorney's legal opinion document public, seconded by Ms. Ryerson, carried unanimously.

The Board took a seven (7) minute recess to allow time for the applicant and their attorney, Ms. Haskell to read the legal opinion from Mr. Minkow.

Mr. Merhalski stated this was a two-fold issue, first if this was a new application and second has substantial completion occurred. The Board reviewed Counsel's opinion, discussing it at length. It was the opinion of Town Counsel that the application is a new application and the Stormwater Ordinance is in effect for the Board's review. Questions were raised regarding the road. Was built to the plans approved by the Board or plans approved by the State? And how complete was the drainage to the plan approved by the Board. The applicant was not certain which plans were used for the construction, and the drainage was completed to the plan approved by the State with the exception of the rain gardens.

Board members noted their concerns regarding their decision. If they were to determine this was not a new application or that substantial completion had occurred, would they be setting a precedent for other applications.

Mrs. Coppinger noted the Board must decide whether the request was an amendment to an approved subdivision or a new application. They may accept Counsel's opinion that the request is a substantial change and that this is a new application, subject to the Stormwater Ordinance or that the changes are not substantial and they may treat the application as an amendment and the Stormwater Ordinance does not apply. It was noted if the application is considered to be a new application that the applicant would need to meet the requirements of the Stormwater Ordinance or they make seek relief through a variance from the Zoning Board of Adjustment.

**Motion:** Mr. King moved that the Board find this to be a new application, seconded by Mr. Jensen.

There was an additional discussion regarding this issue with Board members expressing their opinions. Mr. King felt the drainage represented a significant change and is very substantial. He believes that the stormwater ordinance is significant and should be met. Mr. Charest disagreed with Mr. King, and does not think it is substantial or that the Board is setting a precedent. Mr. Maroun was in agreement with Mr. Charest. Mr. Jensen noted his concerns, questioning if this was setting a precedent. Mr. King called for a vote on the motion. Mrs. Coppinger polled the Board.

**Vote:** passed by a vote of four (4) in favor (Ryerson, Jensen, King, Fairchild),

three (3) opposed (Charest, Maroun, Coppinger), and 0 abstentions.

By a vote of four (4) to three (3) the Board determined this was a new application and that the Zoning Ordinance applies.

Ms. Haskell stated the applicant would like to proceed forward with the public hearing this evening to see what other items are outstanding and may need to be addressed. Mr. Merhalski reviewed his memo dated September 15<sup>th</sup> noting the Zoning Ordinance Issues relate to the Stormwater Management Plan (SMP) and should be addressed in the SMP.

Minor changes needed on the plan included the correction to the acreage shown on Lot 12. Note #4 should be Caverly Road, not Severance Road. Mrs. Coppinger requested the Lot numbers be added to the overview sheet of the Drainage plan, areas to remain unaltered need to be shown on the plans and language for such included in the deeds. Mrs. Coppinger suggested signage be placed on the lots indicating the areas to remain unaltered and that no cutting may take place. Soils names shown on Lot Calculations on the plan in addition to numbers, and verification that the locations for the rain gardens are flexible.

Ms. Ryerson referred to Lot 13 and questioned if the 50' setback buffer to the wetlands would apply. It was noted if the wetland was less than 20,000 sq. ft. it would not apply. The area of the wetland on Lot 13 was not shown, if the entire wetland, both on and off site, is greater than 20,000 sq. ft. they will need to include the 50' buffer to the wetland.

**Motion:** Mr. King moved to continue the hearing for **Morrill Homes of Wolfeboro (152-18)** to October 13, 2010, seconded by Mr. Jensen, carried unanimously.

3. The Pepper Mill, LLC (170-17)(5 Whittier Highway)  
Site Plan Review

Mr. Maroun stepped down from the Board for this hearing.

Jim Hambrook, agent for the applicant presented the application for site plan review. Mr. Hambrook briefly described the site, noting it was a fully developed site and that there were no substantial changes proposed. The parking spaces have been redesigned to meet the 10' x 20' requirement in the ordinance. There are 19 parking spaces, 12 for patrons, 6 for employees and 1 handi-capped. This is a pre-existing non-conforming site and the existing lot coverage is 85%. Mr. Hambrook answered any questions from the board.

The Board noted the request for waivers dated August 30, 2010. Mr. Hambrook noted the NHDOT driveway permit application has been submitted to the State and is pending. He has been in contact with them and they indicated they were waiting for board approval prior to issuing the permit. There was a lengthy discussion regarding the traffic flow, pattern and parking on the site. It was noted that this was a developed site with some questioning if this was an appropriate location for a restaurant that could have a high volume of traffic. Ms. Fairchild requested a traffic study for feedback regarding the impact onsite as well as the impact on Route 25.

The Board reviewed Mr. Merhalski' memo of Site Plan Issues/Deficiencies dated August 31, 2010. It was the consensus of the Board to waive the required 25' vegetative buffer in the front setback.

It was noted the location of the parking spaces are within the setbacks which is prohibited. Mr. Merhalski stated he had conferred with the Town Attorney regarding this issue. It was determined the use on the site was changing after a period of longer than one year, therefore the parking, as a use, is no

longer grandfathered as it is a new use which generates the amount of parking, and the use in the setbacks is prohibited. The applicant must obtain a variance from the ZBA for the parking as shown on the plan.

It was noted there is no proposed or existing loading areas shown on the plan and no request for waiver was submitted. Mr. Hambrook stated he would address this for the next meeting. It was noted there was no area designated on the plan for snow storage. Mr. Hambrook will address this also.

**Motion:** Mrs. Coppinger moved to grant the waivers as requested, seconded by Mr. Charest, carried unanimously.

Mr. Hambrook requested a continuance to allow time to make application to the ZBA for a variance for the parking.

Ms. Fairchild questioned if the board wanted to request a traffic study. She would like an expert opinion. Ms. Fairchild noted her concerns regarding traffic, noting this proposal could be creating a bottle neck and a great amount of congestion on a Friday or Saturday night. This has the potential to be dangerous and an expert could tell the board if this proposal would be a hazard. Mr. Merhalski noted the board could request a standard traffic study which would be an additional expense to the applicant and would provide limited information. The site is small and fully developed. There is not access for a fire truck to go around the rear of the building. The NHDOT has required a berm be installed, limiting the access entering the site and have required only right hand turn for exiting. It was the decision of a majority of the board not to require the traffic study.

**Motion:** Mr. King moved to continue the hearing for **The PepperMill, LLC (170-17)** to October 27, 2010, seconded by Mrs. Coppinger, carried unanimously.

Mr. Maroun returned to the Board at this time with full voting privileges.

## **VI. Informal Discussions**

## **VII. Unfinished Business**

**Motion:** Mrs. Coppinger moved to suspend the remainder of the Agenda to September 22, 2010, seconded by Mr. King, carried unanimously.

- a. Discussion of Revision of Subdivision Regulations
- b. Discussion of Revision of Site Plan Regulations

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

FY 2011 Planning Board Budget Discussion

## **IX. Committee Reports**

**X. Adjournment:** Mr. Maroun made the motion to adjourn at 10:20 PM, seconded by Ms. Ryerson, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant