

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

Work Session Minutes

September 29, 2010

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

Mrs. Coppinger opened the meeting at 7:00, noting this was a regularly scheduled work session.

I. Pledge of Allegiance

II. New Business

Planning Board FY 2011 Budget Requests

Mr. Merhalski referred to the spread sheet provided showing what had been allocated for in the operating budget for items such as professional third party review and member training and mileage reimbursement expenses. The Board of Selectmen (BoS) has requested a bare bones budget for 2011. Mr. Merhalski recommended dropping the APA and NH APA membership dues as they do not gain anything from there that cannot be gotten through LGC. LGC Seminars are for training sessions and travel and mileage for the trainings. The Board discussed the budget and the recommendations of the Planner.

Motion: Ms. Coppinger moved to remove the APA and NH APA membership dues and keep the remaining items the same. Seconded by Mr. King, carried unanimously.

III. Informal Discussions

IV. Zoning Ordinance

Discussion of Revision to Special Exception Criteria

Mr. Merhalski stated this was an item from last year in which the board had requested be added to their work plan for this year. Initially he had proposed a number of changes to the criteria, and the board had decided to do a repeal of the special exception, which did not get forwarded to Town Meeting for a vote based on input from the public hearings. Mr. Merhalski asked if the board would still like to take this up and if so, do they want to amend the requirements or repealing the special exception.

The Board discussed the options and was in agreement to amend the requirements, trying to tighten up what qualifies for a special exception and not repealing them. Mr. Merhalski stated the changes proposed last year to tighten up was to increase the requirements that were necessary, such as on-site fire protection, defined types of uses that are allowed, a requirement that no additional town infrastructure or services and will not be outside of 1000' feet of another commercial structure if it is located outside of the commercial zone. It was intended to try and make it a little bit more compact as to what qualifies to be outside the commercial zone.

The original draft last year identified uses that would be allowed by special exception. These included things such as a professional office with less than five employees, business office, medical office with

less than five employees, home businesses, vital services such as utilities and municipal service buildings, marinas with less than twenty slips or boat storage capacity, sport and recreational uses with less than five employees and conservation uses.

The board discussed additional uses they may consider to be allowed such as a Bed & Breakfast or a small general construction business. Being very specific on what the uses and limitations are, and tying sizes for all the different uses. The board discussed what methods they could use to set thresholds or limits to things such as noise, number of vehicles, hours of operations, or square footage. It was noted this discussion was regarding allowing the use as a special exception outside of the commercial zone. It would still be a commercial development which would trigger site plan approval where some of these items are addressed. Mr. King questioned if most other communities regulations were exclusionary or inclusionary and requested Mr. Merhalski look at this and include that for further discussion.

The board was in agreement that small businesses are an important part of the community and they should be allowed in the residential / agricultural with limitations that are clearly stated. Mr. King requested additional information on how this may be monitored. It was noted there has been a problem in the past regarding enforcement issues. Board members asked if there was a process in which they could make this process faster. Mr. Merhalski commented this was a BoS and Code Enforcement issue only. The Planning Board may ask the BoS to review and update them on what the current policies are, but the CEO is the only one who can do enforcement, which is why it takes so long. The Board needs the CEO's authority to do anything. Cease and Desists have not been done in the community in a long time and they have just started issuing them again. This is usually a sixty day process between the time you notice someone and the time it goes to court. One of the reasons they stopped issuing Cease and Desists was that on day fifty-nine the offending party would change everything so they are in conformance and the process would need to start over again with a new notice when they go back to non-conformance.

This item was continued to the regular Planning Board meeting of October 13, 2010.

Motion: Mr. King moved to request that Mrs. Coppinger draft correspondence be sent to the BoS asking to meet with them and the CEO for the purpose of discussing our current enforcement procedures, seconded by Mr. Jensen, carried unanimously.

Discussion of Con Com request to Review Steep Slopes Ordinance

Marie Samaha was present from the Conservation Commission requesting that the Planning Board review the Steep Slopes Protection Ordinance and their support that it be included on the Town Warrant in March of 2011. The Conservation Commission presented a draft ordinance last year which met with some opposition. There were two concerns raised at the public hearing which have been addressed for this year Mrs. Samaha referred to the draft ordinance noting the two changes are the addition of a definition of "Extremely Steep Slope", and the prohibition against driveways over 10% (commercial 8%) has been removed.

The Board reviewed the draft ordinance noting the objection was that an extremely steep slope was anything over 25% and there was no way to calculate that. With the addition of this language it defines how to measure a steep slope.

Ms. Fairchild commented that the proposed ordinance would apply to site disturbance areas greater than 20,000 sq.ft. in size, this would basically affect any new lot.

Motion: Mr. King moved that the Board proceed with the request of the Conservation Commission and to hold the required Public Hearing to be included on the Ballot,

seconded by Mr. Jensen, carried 5 to 1 in favor with Ms. Fairchild opposing.

Ms. Fairchild commented on her vote, noting she did not think this was the right direction for the board to proceed. She feels the board should pick their priorities and they should concentrate their time and effort on the special exception and other changes that may come along. She does not want to hold a public hearing where the board is lambasted for all of the things they are trying to accomplish. The board noted this would happen one way or the other as there are always individuals who oppose any type of change to regulations. The Conservation Commission has worked on this in detail and it is a significantly important ordinance for the town. This ordinance will protect the water quality for the Town. After further discussion of this matter Ms. Fairchild requested the minutes show her support for the Steep Slopes Ordinance and holding the required public hearing to be included on the ballot.

Discussion of ZBA request to Revise Article VII (B)(3) of the Zoning Ordinance – Expansion of Non-Conforming Primary Structure

Bob Stephens, Chairman of the Zoning Board, gave a brief history of how this section of the ordinance has been applied in the time he has been on the board. The board has viewed applications for the expansion of non-conforming structures in such that you may expand up to 100% of that portion of the structure that is non-conforming. In the past the board has allowed the non-conforming square footage to be doubled, without further encroachment on any other setbacks. Over the years since the adoption of this article the board evolved to a point where they were allowing the removal of an existing structure and replacement with a new structure, including the additional 100% square footage of non-conformity. This procedure was recently challenged by Mr. Merhalski who did not feel this was an accurate evaluation of how he read the ordinance. There was not a consensus within the board as to how this article should be applied. In an effort to establish consistency, the board approved a policy that states the ZBA will only allow expansions of pre-existing primary structures, as literally interpreted in the Ordinance. The policy states “No new replacement structures shall be permitted by Special Exception under this Article. Therefore proposals to tear down an existing structure and re-build a new structure substantially within the footprint of the old will not be permitted without a Variance from the ZBA” and became effective September 1, 2010. Mr. Stephens noted the need for a clear definition of what is and what is not considered an improvement to the property. The ZBA is looking for clarification.

Mr. Merhalski drew two examples on the white board of non-conforming structures in an effort to illustrate what has been allowed in the past and what is now allowed by policy. The board discussed this at length, with many questioning why they would want to allow any further intrusion into the setbacks. The purpose and intent of the ordinance is to create a buffer from lots that would protect the abutting property and in many cases the lake. It was noted that a property owner would be able to make application for an expansion via a variance. This would be looked at on a case by case basis and an applicant would be required to meet the standards for a variance which are more stringent than a special exception.

Motion: Ms. Fairchild moved to continue working on Article VII (B)(3), not making any decision at this time until the board receives further wording or changes to be reviewed at the next meeting. No second, motion died.

Mr. Merhalski requested specifically what the board would like to be changed. A clarification so that it does not allow teardowns or clarify it so it allows the teardowns, rebuilding and expansion of the non-conforming area? It was the decision of the board to get rid of the allowance to build in the setback. Mr. Stephens presented a scenario of an existing non-conforming structure in which they would be removing only a portion of building. They would not be increasing the non-conformity, but removing a section of the original building, pouring a new foundation and rebuilding on the same footprint. His question was would this be allowed by the ordinance? Would this be considered a tear down? Mr. Stephens commented

that Meredith shows illustrations in their ordinance which makes it clearer to both the applicant and the board. Some communities allow an expansion up to a specific square footage by building permit only. Others consider the addition of a second floor expansion, while some look at on footprint only. Mr. King stated he would support language that prohibits the use of additional encroachment in the setbacks, and if a structure comes down, it should not be rebuilt within the setbacks. The board talked about many different scenario's involving non-conforming structures, what constitutes a tear down, expansion, rebuilding on a existing foundation, removing piers and adding a foundation and structures that are destroyed by fire or natural causes.

Mr. King questioned if eliminating special exceptions and having applicants go through the variance process the cleanest way to address this issue. Mr. Merhalski stated he thinks that would be the easiest way to remove this issue as contentious. It would require a variance for anything within a setback. At this time you may either a special exception or variance, keeping in mind that the special exception criteria is easier to meet than a variance.

Motion: Mr. King moved that the board direct the Planner to draft language to revise Article VII (B)(3) eliminating the Special Exception for expansion and rebuilding of Non-Conforming structures into setbacks, seconded by Mr. Jensen, carried unanimously.

The Board took a short break from 9:11 – 9:15.

V. Subdivision Regulations

Discussion of Revision of Subdivision Regulations

Mr. Merhalski updated the Board regarding additional information requested from Scott Kinmond regarding compaction and guardrails. Mr. Kinmond was not able to meet with him, but had provided a copy of regulations from Grantham, which he would like to discuss first with him, and discuss standards for guardrails. The second item was regarding frontage, noting both Mr. Nelson and Mr. Charest were not present this evening and that they both had a lot of input regarding frontage. Mr. Merhalski recommended the board continue this discussion to the regular Planning Board meeting of October 13, 2010.

VI. Site Plan Regulations

Discussion of Revision of Site Plan Regulations

Board Members were provided with a draft copy of the Site Plan Regulations. Mr. Merhalski noted the changes shown in red were proposed staff changes and the Planning Board member changes are shown in blue.

The Board reviewed and agreed to the proposed changes to Sections 2, 3, 5; B(3), 5; C, 5; D, 8. The board amended (to clarify were measurements are taken from) and agreed to changes to Section 10; A(8). The board made minor grammatical changes to Section 10; C Site Plan Detail, along with changes to Section 10; C (2 & 3). The board moved proposed language from Section 11; A(3) to create Section 10; C (11). Minor changes were approved to Section 10; D (1 & 2) correctly identifying the two state agencies, NH DES & NH DOT.

Next the board started the discussion to Section 11; B(5) regarding signs. They were in agreement to strike proposed language in Sections 11; B(5)(a & c). There was not a consensus amongst the board regarding the design standards for signs in the commercial district. It was the decision of the board to

wrap up their discussion at this point and continue it again as time allows at their next regular meeting on September 13th.

VII. Other

VIII. Adjournment: Mr. King made a motion to adjourn.

Ms. Fairchild asked to speak briefly with the board, noting she would not be present for the public hearing for the Blink Bonnie property on October 13th. She commented that she had been troubled by the negative publicity that has come about over the situation. She would like the Board to take any appropriate action if necessary to show the Board's disapproval if there was any wrong doing found through the investigation. Also that the Board set an ethical standard, if there has been violations of ethical principals in this situation. The Board needs to take responsibility for acting professional and ethical as Board Members.

VIII. Adjournment: Mr. King made the motion to adjourn at 10:06 PM, seconded by Ms. Ryerson, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant