

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

Organizational Meeting and Regular Meeting

March 28, 2012

Minutes

Present: Members: Tom Howard, Peter Jensen, Paul Punturieri, Josh Bartlett
Ed Charest (Selectmen's Representative); Town Planner, Bruce W. Woodruff
Alternate: Keith Nelson, Natt King
Excused: Member: Chris Maroun, Judy Ryerson

I. Pledge of Allegiance

As senior member, Mr. Jensen called the annual organizational meeting to order at 7:02 P.M, and appointed Natt King and Keith Nelson to sit on the board with full voting privileges in place of Judy Ryerson and Chris Maroun.

II. 2012 Board Organization – Election of Officers and Review of Policies and By-Laws

Mr. Jensen noted the need to elect their Officers and review their Policies and By-laws. Mr. Jensen called for nominations for Chairman.

Motion: Mr. Charest moved to nominate Peter Jensen as Chairperson, seconded by Mr. Nelson.

Motion: Mr. King moved to nominate Tom Howard as Chairperson, seconded by Mr. Punturieri.

There was a brief discussion on each of the members nominated for Chair, with each candidate briefly stating their interest to serve as Chair, along with their prior experiences in chairing other boards, committees, etc. After a brief discussion, with all members in agreement that either member nominated was qualified. The motion to elect Mr. Howard as Chair was passed by a vote of three (3) in favor (King, Punturieri, Bartlett), and two (2) opposed (Charest, Nelson). As Chair, Mr. Howard continued the organizational meeting and called for nominations for Vice Chairman.

Motion: Mr. King moved to nominate Peter Jensen as Vice Chair, seconded by Mr. Nelson, carried unanimously.

Mr. Charest noted that his appointment as the Selectmen's Representative was ending, and he informed the board that he would not be accepting another term as the BoS representative. He indicated that he no longer had the time to commit to the Planning Board due to time required for other Boards and committees, health issues and the fact that the Planning Board meetings adjourn later and later. Mr. Howard thanked Mr. Charest for his years of service on the Planning Board as the BoS representative.

Mr. Jensen stated that the Planning Board needed to appoint a representative of the Planning Board to the Capital Improvements Program Committee. Mr. Jensen's noted his term has expired and would be willing to serve on the CIPC again. Mr. Bartlett noted that he was currently serving as an alternate member until June 2014 and would be willing to serve on the CIPC as a Planning Board representative.

Motion: Mr. King moved to nominate Peter Jensen as a Planning Board representative on the CIPC, seconded by Mr. Charest.

Motion: Mr. Punturieri moved to nominate Josh Bartlett as a Planning Board representative on the CIPC, seconded by Mr. King.

The question was raised regarding the number of Planning Board members that could serve on other Boards and/or committees. After a brief discussion Mr. Punturieri withdrew his motion as he misunderstood that this nomination was to appoint a second member to the CIPC, he thought that it was a second nomination for one member. Mr. Howard called for a vote on the motion on the floor, motion carried unanimously.

Mr. Howard suggested the Board table the review of the Policies and By-laws to end of the meeting.

Motion: Mr. King moved to table the review of the Policies and By-laws to end of the meeting, seconded by Mr. Charest, carried unanimously.

III. Approval of Minutes

Motion: Mr. Jensen moved to approve the Planning Board Minutes of March 14, 2012, as written, seconded by Mr. Nelson, carried unanimously with Mr. King, Mr. Bartlett and Mr. Punturieri abstaining.

IV. New Submissions

1. Jennifer Correia (76-3)(822 Whittier Highway)
Site Plan Review & Conditional Use Permit

Mr. Nelson abstained from any vote on the acceptance of this application.

This was a request for a site plan review and a conditional use permit. The applicant is requesting a change of use of the property for retail, catalog and wholesale jewelry sales, with product stored on-site. Mr. Howard noted the request for waivers dated March 27, 2012, from Advanced Land Surveying Consultants, PLLC.

Motion: Mr. Jensen moved to accept the application of **Jennifer Correia (76-3)**, grant the waivers for the purposes of acceptance only and to schedule a hearing for this evening to be Hearing #2, seconded by Mr. Charest, carried unanimously.

V. Boundary Line Adjustments

VI. Hearings

1. Continuation of Public Hearing - Erris 2, LLC (52-27)(967 Whittier Highway)
Site Plan

Mr. Bartlett stepped down from the Board at this time.

Mr. Woodruff noted that this was a continued hearing for a revision to an approved site plan for a change of use for the existing commercial structure, located behind the convenience store, to auto service and repair. At the previous hearing the Board had concerns with regards to two issues. Issue number one

had to deal with the fact that the site is located in the Ground Water Protection Overlay District and that there are certain rules and regulations that the applicant must comply with in regards to the portion of the property that is subject to the change of use. The second issue is the fact that the applicant was proposing to connect the two buildings, which would then put the “one” building over the 6, 000 square foot threshold. Both of the issued have been addressed by Hambrook Land Surveying, with Mr. Hambrook presenting to the board.

Jim Hambrook was present representing Erris 2, LLC. Richard Murphy, owner, was present in the audience for the hearing. Mr. Hambrook briefly described the revisions to the plan. The proposed connector was changed from a 24’ x 31’ to a 24’ x 28’ addition, meeting code requirements. There will be approximately 7’ between the buildings, which will allow for pedestrian access, but doesn’t allow for vehicular pass through. The second item was the Ground Water Protection Overlay District, which was reviewed. Mr. Hambrook reviewed the criteria and made the necessary changes. Mr. Hambrook pointed out Note #4, stating “... will not store or handle regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time on the site.” Mr. Hambrook noted the remaining notes titled Ground Water Protection Overlay District Notes. Other changes to the plan included paving the proposed holding area for vehicles pending service. The lot coverage has been revised to reflect the changes and is shown at 59.7%. Mr. Hambrook noted the Heritage Commissions concern regarding the encroachment of gravel on the Historical Society property. Mr. Murphy agreed to relocate the boulders on the property line to eliminate any encroachment and prevent any further encroachment.

Mr. Howard asked if the board had any questions. Mr. Howard stated in acknowledging that the new 1,000 gallon propane tank was for the heating purposes of the front building, the ground water protection ordinance requires setbacks from wells and drain structures. He questioned if it was possible to locate the 1,000 gallon tank, such that it meets the setbacks. Mr. Hambrook stated that the catch basin Mr. Howard pointed to was only a “sump” basin and does not have an outlet drain. They could place the tank under the slope and get it 75’ from the well. Mr. Woodruff noted that the section Mr. Howard was referring to was exempt, and therefore at best, the board could ask the applicant to split the difference, as it is not a requirement. Mr. Hambrook stated they would try to tuck the tank under the edge of the slope.

Mr. Howard opened the hearing for public input.

Attorney Christopher Meier, representing the abutters, Linda and Ingrid Ratsep, stated that at the prior hearing he had objected to the proposal. Attorney Meier noted he had sent Mr. Woodruff an email, but was not sure whether he had had the time to review. He then reviewed the contents of the email to the board, again noting their objections which claim the Application was not complete, nor approvable by the board as it did not properly account for the abutters’ deeded right of way (ROW) under the Site Plan Regulations or Subdivision Regulations. Attorney Meier went on to claim that based on the new plan he received today, the proposed site plan was not in compliance with the Zoning Ordinance and would require a variance or special exception from the Zoning Board of Adjustment. Attorney Meier stated he believes the change of use, or expansion of use requires the applicant to go to the ZBA first, and disagrees with the statement that only the new portion of the site is subject to ZBA, and based on case law the board must look at the entire lot. Attorney Meier went on to list several reason that he believes the plan cannot be approved as submitted.

Mr. Meier stated that the Abutters’ had offered to work with the Applicant as to where they could locate the ROW, but have had no contact from Mr. Murphy. He believes that if this plan is approved by the board, it will cause further problems for the Town and the Applicant as it will approve improvements to the site in the only area in which there could be a 50’ ROW to the abutting property.

In conclusion, Attorney Meier objected to the site plan and requested that the Planning Board deny the Application as incomplete and contrary to the Regulations.

Mr. King stated that it appeared that all of the concerns the board had at the prior meeting had been addressed this evening.

Mr. Woodruff stated again that this is a revision to an approved site plan, and that the board is looking at putting a different business in the rear building, which has had a business, and the intent for the building has always been a commercial use. The use of the front building is grandfathered and non-conforming and was not part of what was being reviewed and approved by this board this evening. The application for the use does meet zoning, which is why it is before the board and was accepted by the board.

Motion: Mr. King moved to close the Public Hearing, seconded by Mr. Jensen, carried unanimously.

Motion: Mr. King moved to approve Revision to the Approved Site Plan for **Erris 2, LLC Tax Map 52, Lot 27** presented with the following conditions: 1. The applicant shall submit a copy of the approved NH DOT Driveway Permit to the Development Services Office prior to the recording of the plan. 2. The Applicant shall submit a copy of the approved septic design permit to the Development Services Office prior to the recording of the plan. 3. The Applicant shall submit the design for the proposed wall sign for the auto service and repair use. 4. The final plat to be submitted to the Development Services Office in electronic format to include both a pdf and a cadd file format such as .dwg or .dxf. 5. The location of the proposed propane tank to best possible location, and Reserve the right to amend, seconded by Mr. Charest.

Discussion on Motion: Mr. Nelson wanted to make certain that everyone was sure, that in this Application and Approval, that there had been an allegation that the Board was not following their Site Plan Regulations with respect to Section 10.A.4, Location and names of approved roadways and right-of-ways and any easements. Mr. Nelson suggested the following Motion:

Motion: Mr. Nelson moved that the Board waive the condition of the Site Plan Regulation to actually show the location of the right-of-way, as it is not spelled out, and it is impossible to show the location of the right-of-way

Mr. Howard stated that there was already a motion on the floor, and if the maker and the second of the motion would be willing to add that to their motion, it would be included. Mr. King and Mr. Charest were both in agreement to add the language as suggested by Mr. Nelson.

Attorney Meier questioned if the board would take public input on the motion, and the Chair stated no. Mr. Howard called for a vote on the motion as amended, motion carried unanimously.

Mr. Bartlett returned to the board at this time with full voting privileges.

2. Jennifer Correia (76-3)(822 Whittier Highway)
Site Plan Review & Conditional Use Permit

Mr. Nelson stepped down from the Board at this time.

Jennifer Correia presented her application for Site Plan and Conditional Use. Ms. Correia briefly described the property, noting the property was an existing residence and she was proposing a change of use of the property for retail, catalog and wholesale jewelry sales, with product stored on-site. Ms. Correia has met onsite with NH DOT regarding a driveway permit. NH DOT has required the driveway be

widened to 20' at the road, and the remainder will be widened to 14 ft. Parking spaces are shown on the plan with proposed curb stopping. There will be no change to the size of the building, and they will be adding a sign. They would like to keep the character of the home as an 1800's cape. Ms. Correia answered any questions from the board.

Mr. Woodruff stated that this plan had been before the TRC and there were no zoning issues. He reviewed his memo dated March 28, 2012, which listed several recommendations. Mr. Woodruff noted that the request was for a Site Plan Review and a Conditional Use Permit.

Mr. Howard questioned why Mr. Woodruff recommended the waiver of the finish contours for the parking lot. Mr. Howard stated he had visited the site and it appeared there will need to be changes made to the grade. Board members discussed this briefly. Mr. King questioned if the Board thought that an onsite visit would be advantageous. Some board members stated they were familiar with the site and did not feel that an onsite visit was necessary, and were in general agreement to waive the finish contours as requested.

Mr. Howard opened the hearing for public input.

Abutter Robert Goffredo stated that he had no objection to the project.

Mr. King stated that based on the TRC review he was okay with the recommendations made.

Motion: Mr. King moved to close the Public Hearing, seconded by Mr. Charest, carried unanimously.

Mr. Howard commented that in the upper northeast portion of the site, there were markings for two parking spaces which appear to be for the abutting lot. Mr. Howard questioned what was the impact for those parking spaces? Ms. Correia stated she had spoken with the abutter, Mark Richter, and if okay with the Planning Board, he would like to continue to use the spaces. Mr. Woodruff stated that the spaces would be okay, but that the area must be calculated in the lot coverage for the site. Ms. Correia noted that the gravel area was calculated in the lot coverage.

Motion: Mr. Jensen moved to grant the Conditional Use Permit to reduce the 25 ft. vegetated buffer to 0 ft. for this site review application. Approve the requested waivers: a) To not show finish /construction contours for parking lot; b) To not show reference benchmark for vertical datum; c) To not show existing features 100' back from ROW; d) To not show proposed and existing surface drainage; e) and a landscaping and screening waiver. And to approve the Site Plan for **Jennifer Correia (76-3)** as presented with the following conditions: 1. Comply with NH DOT requirement to widen driveway at curb cut with Highway to ensure a vehicle may safely enter when an exiting vehicle is waiting to leave; 2. Submit the NH DOT Division III Driveway Permit to Office of Development Services prior to signing of the plan; 3. Submit Sign application to appropriate Department; 4. NH DES Approved Septic for commercial use; permit to be submitted to Office of Development Services prior to signing of the plan; 5. The final plat to be submitted to the Development Services Office in electronic format to include both a pdf and a cadd file format such as .dwg or .dxf., and Reserve the right to amend, seconded by Mr. Bartlett, carried unanimously.

Mr. Nelson returned to the board at this time with full voting privileges.

VII. Informal Discussions

VIII. Unfinished Business

IX. Other Business/Correspondence

1. Izzy Atlixco, LLC d/b/a El Mariachi Restaurant (44-25)(1094 Whittier Highway) Mr. Woodruff stated the Board was in receipt of a request to amend Note #8 of the approved site plan for Tax Map 44, Lot 25 to increase from seasonal to year round operation. Board members discussed this request, with a few having different recollections of the requirements and conditions of the site and the abutting site, which is the over flow parking for the restaurant. Board members would like to have more information regarding the approval prior to making a decision if the request could be acted upon as a minor site plan revision, with the letter to serve as the change, or if this would require an application for site plan amendment.

Motion: Mr. Nelson moved to continue the deliberation of the request submitted by **Izzy Atlixco, LLC d/b/a El Mariachi Restaurant (44-25)** to April 11, 2012, to allow the board the opportunity to review the minutes and Notice of Decision for the original approval, seconded by Mr. King

Discussion on Motion: Mr. Woodruff stated one of the reasons the owners of El Mariachi were before the Board requesting the minor amendment to their approved site plan, by letter, or if necessary, a full application for the revision of the site plan, was that they are operating now, which is not in compliance with their approval. Mr. Woodruff requested guidance from the Board as to what they would like to do in the two weeks before their next meeting. Mr. Woodruff had advised El Mariachi that they could continue with the hours they are now operating, until the Planning Board ruled one way or the other. As the Board did not come to a decision this evening, they could continue to be open.

Mr. Howard called for a vote on the motion on the floor. Motion carried unanimously.

2. 2012 Board Organization –Review of Policies and By-Laws

Motion: Mr. Howard moved the take off the table the review of the Policies and By-laws, seconded by Mr. Jensen, carried unanimously.

Board members had been provided with a copy of the policies approved in 2011. The Board reviewed the policies, with Mr. Howard asking for any comments or questions. Mr. Howard had a comment regarding Section IV, A, suggesting additional language to the end of the last sentence “unless otherwise agreed in advance” This was suggested as on evenings when there are no hearings scheduled on the agenda, it has been the practice of the board to set an adjournment time, allowing time to work on various items.

Motion: Mr. King moved to add the language “unless otherwise agreed in advance,” seconded by Mr. Bartlett, carried unanimously.

Mr. Howard made a second suggestion, this time regarding Section IV, B, striking the sentence “No business shall be acted upon at the Special Meeting unless four members are present” as it is required by statute four members be present for a quorum, and to add the language “of such request” to the end of the first sentence.

Motion: Mr. King moved to strike the sentence as discussed and to add the language “of such request” as discussed, seconded by Mr. Bartlett, carried unanimously.

Motion: Mr. Jensen moved to approve the Policies of the Planning Board as amended this evening, seconded by Mr. King, carried unanimously.

Ms. Whitney noted there were references to the Land Use Office in the policies, and that the correct name of the office is now the Office of Development Services, and noted the need to change any references to that in the document. It was the consensus of the board to change all references to the Land Use Office to the Office of Development Services.

There was a discussion regarding Section IX Denial of Applications and Procedures to Follow, if an applicant could or could not file concurrently with both the Zoning Board of Adjustment and the Planning Board. Mr. Woodruff will review the statues and report back to the board. It was noted that the Board could approve the policies as amended this evening (no changes to Section IX) and if and when they find a need to change Section IX, it could be done at any time in the future with a properly noticed public hearing.

Motion: Mr. Jensen moved to approve the Policies of the Planning Board as amended this evening, seconded by Mr. King, carried unanimously.

3. Housekeeping of Site Plan Regulations

Mr. Howard noted the next item on the agenda was “Housekeeping of Site Plan Regulations”. Mr. Howard asked if the Board wished to set a time for adjournment. Members agreed to work on the changes until 9:30 pm.

Board members were provided with a “Working Draft” copy of the Site Plan Review Regulations which were dated **June 2012 Proposed (working draft)**. Mr. Woodruff stated that at the last meeting the Board had agreed upon changes to Sections 1- 6, and had raised questions with Section 7, Performance Bond. Members had asked Mr. Woodruff to re-work the wording for the proposed language for Section 7. Members reviewed the proposed language as presented for Section 7. A & B.

Motion: Mr. Jensen moved that the Board accept the changes to Section 7. A & B of the Site Plan Regulations as written and move them forward to Public Hearing, seconded by Mr. Punturieri, carried unanimously.

The Board next reviewed Section 8, Statute of Limitations, with a lengthy discussion regarding this section. After several members expressed their thoughts and concerns as to the length of time and the number of extensions that may be granted, it will remain as proposed, two years from the date of approval, and if requested, the Board may extend the valid time period of the Site Plan Approval for one (1) year, one (1) time only.

Motion: Mr. King moved that the Board accept the changes to Section 8 of the Site Plan Regulations as presented and move them forward to Public Hearing, seconded by Mr. Nelson, passed by a vote of three (3) in favor (King, Nelson Bartlett), and two (2) opposed (Jensen, Punturieri).

The Board will continue working on the remainder of the changes at the next meeting as time allows.

4. Housekeeping Zoning Ordinance – No discussion this evening.

5. Mr. Woodruff noted the NH Local Government Center is conducting their “2012 Local Officials Workshop” on various dates and locations in April and May. He pointed out that a workshop will be held on Tuesday, May 1st at the Moultonborough Public Safety Building and another on Saturday, May 19th at LGC. Those interested should register following the instructions on the pamphlet handed out this evening.

6. Selectmen’s Draft Minutes of March 15, 2012 were noted.

X. Committee Reports

- XI. Adjournment:** Mr. King made the motion to adjourn at 9:37 PM, seconded by Mr. Bartlett, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant