

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

Organizational Meeting and Regular Meeting

March 27, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Paul Punturieri,
Josh Bartlett, Bob Goffredo; Russ Wakefield (Selectmen's Representative)
Alternate: Keith Nelson

Excused: Member: Judy Ryerson; Alternate: Natt King

Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

I. Pledge of Allegiance

As senior member, Mr. Jensen called the annual organizational meeting to order at 7:00 P.M, and appointed Keith Nelson to sit on the board with full voting privileges in place of Judy Ryerson.

II. 2013 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. Wakefield moved to nominate Tom Howard as Chairperson, seconded by Mr. Punturieri.

There was no other nomination(s) or discussion. Motion carried unanimously

As Chair, Mr. Howard continued the organizational meeting and called for nominations for Vice Chairman.

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

Board members had been provided with a copy of the policies approved in 2012. The Board reviewed the policies, with Mr. Howard asking for any comments or questions. Mr. Howard had a comment regarding the second paragraph in Section IX. There has been a change in the statute that allows any application that requires approval by both boards to be filed to either board first or concurrently. Noting approvals may be subject to a condition upon receipt of any other necessary approvals. After a brief discussion, members felt that the language was not needed any they should strike the entire paragraph.

Motion: Mr. Bartlett moved to strike the paragraph 2 of Section IX, seconded by Mr. Jensen, carried unanimously.

Motion: Mr. Punturieri moved to accept the Policies of the Planning Board as amended this evening, seconded by Mr. Bartlett, carried unanimously.

Mr. Woodruff stated that the Planning Board needed to appoint a Planning Board member to be the representative to the Master Plan Implementation Committee and also to appoint a Planning Board member to be the representative to the Capital Improvements Program Committee.

Motion: Mr. Jensen moved to reappoint Paul Punturieri as a Planning Board representative on the MPIC, seconded by Mr. Bartlett, carried unanimously.

Mr. Howard called for nominations for a representative to the CIPC. Mr. Bartlett commented that both he and Mr. Jensen currently serve as a Member at Large and the Planning Board representative respectfully.

Motion: Mr. Nelson moved to appoint Peter Jensen as a Planning Board representative on the CIPC, seconded by Mr. Bartlett, carried unanimously.

III. Approval of Minutes

Motion: Mr. Punturieri moved to approve the Planning Board Minutes of February 13, 2013, as written, seconded by Mr. Jensen, carried unanimously with Mr. Nelson abstaining.

IV. New Submissions

1. Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) Site Plan Review

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

Mr. Howard stated that this was a new submission from Rock Pile Real Estate, LLC (44-13) for a site plan review. Mr. Howard noted the application was complete and asked the board if they had any questions.

Mr. Punturieri asked if the new owners of 88 Whittier Highway had been notified as an abutter. He stated that the abutters list was not the same as the owner today. Attorney Nadeau stated that they have been noticed.

Mr. Woodruff spoke of his review of the site plan and the check list which revealed the following, in regards to zoning issues and site review issues. He noted the following: Zoning Ordinance Issues - 1. Special Exception Amendment with several variances granted by the Zoning Board during meetings of May 2nd and May 16th, 2012. 2. An Abutter has appealed the ZBA decisions with the Superior Court. At this point, the Abutter has exhausted the municipal appeal process and is now seeking civil court reversals. This should not curtail the planning process for the applicant because it would be at the applicant's own risk should they proceed with any physical improvements and/or operation of use resulting from Planning Board site plan approvals, if they so do. He commented that the Town is not exposed to any liability by moving forward with their statutorily mandated site plan review process because if the Superior Court rules against the town, and the applicant, the site plan approval would be moot. Site Review Regulation Issues - 1. One waiver is requested by the Applicant; refer to the staff recommendations below and the applicant's Waiver letter dated March 5, 2013. 2. The traffic study memorandum submitted has been reviewed, by Mr. Woodruff, and appears to meet the Board's policy and generally accepted practice for studies of this type. 3. The Fire Chief and Police Chief reviewed the application and had no objections or concerns. 4. After revision to the parking and traffic flow layout, the Road Agent was satisfied that adequate backing and maneuvering space (traffic flow) on this very tight site had been provided for. 5. The Conservation Commission had a response of "No Comment" after their review of the application. 6. No response was received from the Heritage Commission as of the date of

this memo.

Motion: Mr. Jensen moved to accept the application of **Rock Pile Real Estate, LLC (44-13)**, grant the waiver for the purposes of acceptance only and to schedule a hearing for this evening to be Hearing #1, seconded by Mr. Wakefield.

Mr. Punturieri questioned for clarification that whatever the board decides this evening in terms of site plan review is not going to have any impact on the civil suit? Mr. Howard stated that was his understanding. Mr. Woodruff stated that he had submitted his staff memo to Town Counsel, who indicated to him that he agreed and what he had written was okay. The Board has a statutory obligation to review site plans and either approve them or deny them. That responsibility is not stopped by an appeal to the Superior Court under RSA 677:9.

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

V. **Boundary Line Adjustments**

VI. **Hearings**

1. Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) Site Plan Review

Joanne Coppinger presented on behalf of the applicant. Ms. Coppinger briefly reviewed what the proposal was noting the existing footprint will remain the same with the exception of a handi-capped ramp on the front of the building, an enclosed trash bin on a concrete pad on the back of the building, and an electric generator on the left of the building. Those are the only changes to the building itself. She noted the location of the septic, there are eight (8) parking spaces on a gravel lot, two (2) spaces behind the building, and six (6) customer spaces to the front. Ms. Coppinger referred to the Notes on the plan which include the Intent of the plan, which is to show the proposed changes to the site plan that was approved in 1993. Also noted was that there were three variances and a special exception for the use granted for the project. Other notes were lighting is to be full-cut off types fixtures, no change to the existing topography, the proposed use is a retail bakery with seating for 12, and the hours of operation are 6:30 a.m. to 6 p.m. 7 days per week, year-round. The signage shall consist of a single building-mounted sign, which has been approved. As this is a gravel parking lot, the parking spaces will be delineated with paint, chalk line, or wheel stops, or a combination thereof. Ms. Coppinger pointed to the plantings along Old Route 109 and Route 109, and those are to consist of salt resistant, native low growing vegetation. Excessive snow will be removed from the site.

Mr. Jensen asked if Ms. Coppinger would specifically itemize the changes from the originally approved site plan. Ms. Coppinger stated that the parking has changed and the use. Attorney Regina Nadeau stated the earlier plan was a very bare bones plan. A portion of the right-of-way (ROW) has been added to this property, which has enabled the applicant to propose this layout. There is no re-grading and very minor additions to the building. It is really just a matter of the parking layout.

Mr. Howard made a comment regarding the parking, stating Note 15 is an "or" situation. He does not feel the curb stops would do the trick by themselves and requested the note be changed to ensure that there are lines to go along with the curb stops. In regards to lighting, he only saw lighting on the building and asked if there was any other lighting than the four (4) exterior lights, and the two (2) on the porch.

Mr. Bartlett commented that it was obvious that this was a very tight site and in looking at the parking plan, if someone were parked in the handi-capped spot, he doesn't see how anybody could get in or out of the employee parking spaces, nor can they get to the loading area. He stated that he had done a

site walk and had concerns regarding the location of the leach field, and edge of pavement. He felt that it would be very useful for the board to conduct a site visit where the parking spaces and the edge of the property have been staked out. Mr. Bartlett questioned the ROW's lines on the other three corners of the intersection. Ms. Coppinger identified the ROW line on the plan for Mr. Bartlett. Mr. Bartlett requested a copy of the approval that was granted to them upon which this is an amendment (Archibald - Carroll). Ms. Coppinger stated the leach field was surveyed in, and she was confident that the parking space is useable without parking on the leach field. The ROW lines as shown on the plan and are accurate and what was agreed upon with the Town for the exchange of property that occurred. Mr. Bartlett noted his concern with proposed parking space #3 over the ROW line and questioned the access to the back parking spaces and the loading dock, over the handi-capped access parking space. Ms. Coppinger stated this was laid out so that a car could get by, in an emergency, if necessary. There is eight (8) feet +/- Ms. Nadeau responded to the question regarding the prior approval, asking if he was referring to the 1994 Special Exception. He stated yes, or whatever other documents they were basing the amendment on. Ms. Nadeau stated that they had called this an amendment to the special exception. The original special exception was not limited to hours, wasn't limited to anything else. They called it an amendment, but brought in essentially brought in this site plan when they got the amendment. So the amendment that they got was based on this project. Mr. Bartlett questioned what was the original? Did it state what business and how much activity and that sort of thing? Ms. Nadeau stated there was a craft antique shop with no serving of food or beverages. After that there was an amendment that allowed the selling of ice cream there. He questioned if ice cream was ever sold there. She replied not that their aware of, but that was the reason why they went back and got a special exception that specifically addressed this being used as a twelve (12) seat bakery, specifically addressed the screening and all the current provisions of the ordinance. So the standing special exception is specifically for this use, this number of seats and the hours of operation that they are proposing. It is specific to this plan. Mr. Bartlett spoke to the hours of operation, asking if there would not be anyone there before 6:30. Ms. Nadeau stated it will be open to the public at 6:30. He noted there have been concerns on other plans about what the headlights of cars do to the neighbors. What provision is being made here? Ms. Coppinger stated that they were granted three (3) variances, specifically for screening and the entranceway has been shifted away from being directed across the street at the neighbor's house. Mr. Bartlett noted his concerns with the time that there may be someone on site prior to and after the hours of operation shown on the plan. Ms. Coppinger stated the hours of operation are when they will be open to the public and it is understood that there may be people there at other times. Ms. Nadeau again stated that that was the use and the hours that were approve by the ZBA.

Mr. Punturieri noted his concerns with parking spaces 7 and 8, asking if the abutter had a concern with them on the property line. Head lights, people talking early in the morning and night. Ms. Coppinger stated there is a new stockade fence proposed along the entire property line. Ms. Nadeau stated that the applicant has received a variance and that the then owner of the property was noticed.

Mr. Punturieri commented that he was not in agreement that an advanced traffic analysis was not needed. He gave his reasons for such and feels that something more advanced is needed. He would like a peer review completed. Mr. Woodruff stated that he had reviewed the traffic analysis that was submitted, and he applied generally accepted transportation planning and engineering principals to it, and the board's policies and gave his recommendation. The board could ask for a peer review, but he noted that in his former position he has completed peer reviews for more than two decades.

Mr. Bartlett noted his concerns about trucks stopping along Route 109. He has suggested that there be a no parking zone along both sides of Governor Wentworth Highway.

Mr. Howard referred the NH DOT excavation permit, noting that it appears the dates for completing the work has passed. Ms. Prause noted the date for completing the work has not passed. There is attached addendum to the permit which states the work to end June 15, 2013.

Mr. Howard opened the public portion of the hearing to the abutter's at this time (7:46).

Eric Taussig, attorney representing abutter's Robert and Gabriele Wallace spoke to the application. Mr. Taussig provided board members with a lengthy multi-page document (see attached) in which he summarized for the record. Mr. Taussig noted that the Zoning Boards granting of the special exception and three variances is currently being challenged. Mr. Taussig gave a brief location and history of the Wallace property. He went on to state if the Site Plan were to be approved, his clients would be subject to a multi-use commercial bakery – café that will be open seven days a week for 11.5 hours a day year round, and will have staff present some 90 hours a week. They do not believe that such an intensive use belongs in the Residential Zone and should be more properly located in the village or commercial zones along Route 25. They believe the proposed bakery-café had inadequate parking, and therefore will lead to a serious problem. The current plan appears to have parking spaces that will block sight lines. There will be headlights shining in the Wallace's residence from the exiting traffic and the parking lot. The proposal would result in increased traffic, noise and an increased likelihood of accidents.

Mr. Taussig went on to describe what he felt were deficiencies in the application. Mr. Taussig commented that the application has been submitted as a Site Plan Amendment of a 20 year old Site Plan from the former antique shop, which had limited hours and day of operation; no nighttime hours; no truck deliveries and parking; limited traffic impact and no parking issues and a defined separate entrance and exit protocol. Mr. Taussig commented that the applicant has filed three times for a site plan, starting in 2011. He states that the Special Exception and variances were new and a different "use" and requires a new Site Plan. Another factor is that the prior two applications were for a "Retail Bakery" but applications to the Department of Environmental Services (DES) and other State agencies, it is described as a Café and Bakery, which is very different than from a retail bakery. Thus, the Planning Board should require a totally new Site Plan application, and not an amendment of a 20-year old plan.

Mr. Taussig briefly spoke to the Staff Memorandum for this application, noting what he stated to be inaccuracies.

Mr. Taussig commented that they had a number of suggestions which they feel should be considered. First he requested the board review the first couple of pages of his letter regarding the appropriateness of the site plan. There were a number of questions he raised that they would like addressed. First, they would like to have the opening on Route 109 reinstated, having traffic enter on Old Route 109 and exiting on Route 109, which would prevent the problem of headlights shining into their residence. Second, they would like to request that the Planning Board, as a condition, impose a requirement that the Town establishes a no parking zone along both sides of Old Route 109 from a point 300 yards west of the intersection of Old Route 109 and Governor Wentworth Highway. Third, a traffic impact study. Fourth, an independent consultant review of the parking plan. Fifth, address the questions relating to the septic system and parking. Mr. Taussig closed stating he feels that there are a number of issues that need to be examined carefully.

Mr. Howard asked if there were any other abutter's who wished to speak to the site plan. There were none. He then asked if there were any members of the public who would like to speak to the site plan or ask questions.

James Cahill, Lee Road, commented that the use has gone from an Antique Shop to a full service restaurant and asked if there was anything to preclude McDonalds, Burger King, anybody from buying this in the future? It is a full service restaurant, where do you go from here?

Tom Randall spoke in favor of the bakery. He noted that he is also a local owner and will bike to the bakery. He felt this has been missing in the town.

Cristina Ashjian agreed with Mr. Randall, but noted that the location is not appropriate for this. Ms. Ashjian had submitted a letter for the record (see attached) and read it into the record.

Attorney Nadeau commented on several of the comments starting first with the use. She stated that this was not the appropriate forum. The applicant was granted a Special Exception and three variances and any attempts to get the Planning Board to reverse a decision made by the ZBA are clearly out of the Planning Board's jurisdiction. The applicant does not have the ability to post no parking signs, but noted that they would have no objections to the postings outside of their lot. Ms. Nadeau spoke to the issue raised as to whether or not this is a Site Plan Amendment or a new Site Plan application. It is six of one, a half dozen of another. The point is there was an existing site plan approval. They had the option of going in with a brand new site plan or saying it's an amendment. The Statutes are very clear that if it's a technical matter of procedure, a Planning Board's decision is not going to be reversed if they call it a Site Plan Amendment versus and new Site Plan application as the applicant still needs to go through the same process they would if it were a new application. In regards to the request that they reopen the entryway on Route 109, it was a condition of the grant, by the Town of Moultonborough, to the applicant, that it be closed and they do not have the power to change that. The site itself and its volume will dictate the parking. Any discussion limiting the hours of operation are not the purview of the Planning Board.

Mr. Bartlett commented that he was surprised that there is parking in the ROW. He then requested a site walk of the property, with the parking spaces taped and staked out and the ROW staked out. He commented that the property is far too small to put in 6 parking spaces and a 1,000 SF building.

Mr. Wakefield questioned the number and size of the parking spaces and if they were to scale. It was noted the spaces are 10'x20' per Town regulations and they were to scale. Mr. Wakefield made one additional comment, noting the Planning Board cannot change what the ZBA did.

There was additional discussion regarding if the board could impose conditions, appropriate location for the building, concerns with screening and parking. Mr. Howard commented if the applicant received the necessary Planning Board approvals and chose to move forward with the project, it would be at their own risk, subject to the court outcome.

Motion: Mr. Punturieri moved continue the public hearing until such time that they conduct an on-site visit with a date to be determined by the board, seconded by Mr. Jensen.

Mr. Bartlett stated that he would like to see the corners of the parking spaces staked with surveyors taped delineated on those stakes, he would also like the ROW lines staked and taped so that it is very clear to everybody how tight things are. Mr. Bartlett added that the septic tank and field be located as well.

There was discussion with the applicant and agent to determine the date and time for the scheduling of the on-site visit.

Motion: Mr. Punturieri moved to continue the hearing for Rock Pile Real Estate, LLC (44-13) to May 8, 2013 and to schedule an on-site visit for Wednesday, April 17th at 4:30 P.M. Seconded by Mr. Jensen, carried unanimously.

VII. Informal Discussions

Mr. Howard noted there were two requests for informal discussions. The Planner gave the background on these requests, noting as a condition of approval of the multi-tenant building, they are required to return to the board informally to seek approval for a change in tenants.

Debra Morgan, owner of the property located at 61 Whittier Highway (141-8) stated she was there to request a change in tenants to her building. The new tenants will be Stephens Landscaping, who will be going in where Dion's Landscaping was, for storage and equipment repair. She also noted that Stephens will be utilizing 63 Whittier Highway (141-9) for their aggregates. 63 Whittier Highway was the retail location for Dion's Landscaping. The usage is not changing, only the tenants. It was noted that 61 Whittier Highway cannot have outside storage and 63 Whittier Highway can have outside storage. Ms. Morgan stated that there had already been a change in tenants without board approval. She was not aware of this condition of approval and had learned of it since the passing of her husband. Currently the food pantry is located in one of the units at 61 Whittier Highway. It was the consensus of the board to allow the uses a requested this evening for 61 & 63 Whittier Highway.

Ms. Morgan noted she has another multi-tenant building located at 1070 Whittier Highway (44-33) with the same requirement needing board approval for a change in tenants. One unit was previously occupied by an interior decorator and now by an Oriental rug distributor. She has been approached by a gentleman who is a welder that would like to rent the unit. The board discussed these uses, noting the change from interior decorating to oriental rugs was a benign change of use. They would need more information regarding the welder, asking if this was for a welding and fabrication shop? Ms. Morgan did not have the information at this time. Mr. Woodruff stated that use would require a special exception from the ZBA.

Keith Nelson requested to speak to the board regarding his multi-tenant building located at 512 Whittier Highway (103-7). He has leased 1/3 of the building to Edward Jones. The board briefly discussed the property and it was their consensus to allow the use as requested.

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

VIII. Unfinished Business

1. Finalize 2013 Work Plan. Board Members had been provided with a 2013 Work Plan in which Mr. Woodruff had revised to reflect the items which were discussed at the last meeting. There were no changes made to the 2013 Work Plan.

Motion: Mr. Bartlett moved to accept the 2013 Work Plan as presented this evening, seconded by Mr. Punturieri, carried unanimously.

2. Update on Whitley Discussion re: expansion of non-conforming residential structure. Mr. Woodruff stated that he had contacted Town Counsel regarding this, giving him the facts and history. Mr. Minkow noted that applying for an application or building permit was the key for vesting and this did not occur. Mr. Woodruff has since met with the Whitley's and they are preparing a variance application.

3. Mr. Woodruff noted the need to set a Public Hearing date for the previously approved Site Plan Review Regulation amendments that have received the necessary approval at Town Meeting vote.

Motion: Mr. Punturieri moved to schedule a Public Hearing for April 10, 2013 for the Site Plan Review Regulation amendments. Seconded by Mr. Jensen, carried unanimously.

4. Nelson Dion, 7 Myrtle Drive, requested direction regarding what appears to be a code violation on a property located on Myrtle Drive. The owner (Madison) has a building permit and it appears the home is within the setbacks. Mr. Dion had two letters from abutter's at 11 Myrtle Drive and 19 Myrtle Drive. They have contacted the Code Enforcement Officer (CEO) regarding the site. Mr. Madison will stop

working on the project for a while, and has now added a deck located within the setback. The board briefly discussed this, noting that this was not their jurisdiction and the proper route is through the CEO.

IX. Other Business/Correspondence

Discussion of Town Owned Tax Deeded Parcels for Possible Sale

Mr. Woodruff stated that the Town Administrator requested if the Board has any input into the potential offering for sale of certain Tax Deeded properties, and the acquisition of one parcel. Board members were provided with a letter from the Town Administrator explaining the three parcels for review. One parcel is a proposed acquisition of 3,600 +/- SF of land for highway purposes on Clark's Landing. The second parcel is a proposed disposition of a Tax Deed property of 10,000 +/- SF on Oslo Street and a third parcel is a proposed disposition of a Tax Deed property of 34,000 +/- SF on Evergreen Road. Mr. Terenzini requested input from the Board on these parcels, asking if they should acquire or retain the subject parcels for public purpose. The Board discussed each lot and the following motion was made:

Motion: Mr. Punturieri moved that the Planning Board approve all three of the recommendations as requested/submitted in the Town Administrator's letter of March 25, 2013, Seconded by Mr. Jensen, carried unanimously.

Finalize Master Plan Chapter or sections to prepare

Mr. Woodruff commented the need for the board to finalize what chapters they would like to schedule to work on. He noted the two sections they must do are the Vision and Land Use Chapters. Another chapter that has risen to the top is Transportation, and a second is the Natural Resources. Mr. Woodruff feels that four chapters would be too much to bite off. The board discussed the chapters in question, with them asking which chapter sidewalks would fall under. Sidewalks would be under transportation. Mr. Wakefield stated the Board of Selectmen would like to know how far the Town would like them to proceed with the sidewalks without input from the Planning Board. Mr. Jensen commented that the sidewalks were a petition article that was approved by the voters and that they have to move forward with what opportunities there are. Mr. Wakefield commented that DOT will not alter their 10-year plan just because Moultonborough wants to put in sidewalks. Mr. Woodruff recommended they work on the preparation of new chapters for both the Land Use and Transportation Chapters together.

Motion: Mr. Bartlett moved that the Board prepare new chapters for the Vision, Land Use and Transportation Chapters, seconded by Mr. Punturieri, carried unanimously.

Mr. Woodruff commented at a prior meeting the question had been raised asking what authority the board had to seek comments/input from the Heritage Commission (HC) on applications. Mr. Woodruff noted the Chair of the HC had submitted a letter to the board at the meeting of 11/24/09 in which the board made the decision to include the HC for input via comment sheets on PB applications. This was then added into the HC bylaws.

Mr. Woodruff commented that he is working on the changes to the Subdivision Regulations as a result of the zoning changes approved by the voters.

Mr. Woodruff is working on the creation of the Master Plan Survey questions. He has contacted the UNH Survey Center for input as well.

X. Committee Reports

XI. Adjournment: Mr. Punturieri made the motion to adjourn at 9:44 PM, seconded by Mr. Bartlett, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

Attachment 3/27/13

Law Office of Eric Taussig

Attorneys at Law &
Arbitrator

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March 27, 2013

By Hand

Mr. Thomas Howard, Chair and Members of the
Moultonborough Planning Board
PO Box 139
6 Holland Street
Moultonborough, NH 03254-0139

**Re. Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) Site Plan
Amendment**

Dear Mr. Howard and Members of the Board:

I represent Robert and Gabriele Wallace, abutters to the above captioned property. As you are likely aware, Mr. and Mrs. Wallace have appealed the approval of the three variances and a Special Exception for that property, which were granted by the Zoning Board of Adjustment (ZBA) by a 3 to 2 vote on May 16, 2012. Thereafter, a request for a rehearing before the ZBA was also denied by an identical vote. Subsequently, a Petition was filed in Carroll County Superior Court appealing the granting of the variances and Special Exception. The Court denied a motion by the Town to dismiss the Petition and scheduled a trial for July 9, 2013. The case is entitled *Robert Wallace, et al. v. Town of Moultonborough, et al.*, Docket #212-2012-CV-00133.

My clients own and live in the historic home located exactly opposite the Applicant's miniscule 0.19-acre property. If this Site Plan as proposed is approved, my clients will be subject to a multi use commercial bakery – café that will be open seven days a week for 11.5 hours a day year round, and will have staff present some 90 hours a week (assuming baking starts one hour before opening and clean takes a like amount of

Attachment 3/27/13

time) all in the Residential/Agricultural zone. Such an intensive use does not belong in the Residential Zone, but would be properly placed in Moultonborough Village or in the extensive commercial zone on Route 25. The property in question has been unused for at least 5 years and had a prior history as an antique shop, swap shop and storage depot. It was never a food service facility.

The Applicant's proposed bakery-café has seating for 12 and parking for only 6 patrons as two of the 8 requested parking spaces are reserved for the staff. The limited parking is inadequate for a high turnover bakery, much less for a bakery-café where patrons stay on premises. Since it can be anticipated that take-out and in-house customers would frequent the facility, the inadequate parking will be a serious problem, which will encourage off-site parking at all hours. Even the current plan appears to have parking spaces that abut the State's Right of Way (ROW) that will block intersection sight lines, provide no room for maneuvering and for some six months a year headlights will be shining in the Wallace's residence windows from exiting traffic and the facility's parking lot. In addition, this proposal would result in significant increased turning traffic at the intersection, noise from cars and trucks and traffic impairment caused by the additional traffic and an increased likelihood of accidents.

Application Deficiencies

I have reviewed the application, which from a legal perspective is deficient in many respects, above and beyond the fact that the variances and Special Exception upon which it relies remain in litigation.

First, the Applicant is now asserting that the application is for a Site Plan Amendment of a 20 year old Site Plan from the former antique shop, which had limited hours and days of operation; no nighttime hours; no truck deliveries and parking; limited traffic impact and no parking issues and a defined separate entrance and exit protocol.

When this application was originally filed in 2011, the Applicant came to this Board pending ZBA approval for a Special Exception for the "use" as a Retail Bakery. The Applicant did not know or advise either the ZBA or this Board of a previously granted special exception. On the scheduled hearing date of September 14, 2011 this Board rejected the Application due to a multitude of deficiencies.

When the Applicant filed a second request for a site plan application/amendment, which was withdrawn before the scheduled hearing date of September 12, 2012, it would have required a revised Special Exception predicated upon the change of "use" from the previously granted 1993 exception.

Now the Applicant has filed what is characterized as an Application for a Site Plan Amendment, relating back to the 20 year old Site Plan for the antique shop. The problem is that the May 16, 2012 Special Exception and variances that Applicant relies upon are based upon a totally new and different "use" and requires a new Site Plan. Thus, this Site Plan Amendment application should be rejected.

Attachment³ 3/27/13

Second, the latest two applications to the Planning Board reference a “Retail Bakery”, but in applications to the Department of Environmental Services (DES) and other State agencies, it is described as a Café and Bakery (The Cup and Crumb Cafe), a very different entity from a retail bakery. In fact, an examination of the filings before this Board do not reflect anything more than a retail bakery, yet the applicant is asking for seating for 12 and 8 parking spaces, double the number of spaces approved in the 1993 Site Plan, that suddenly the Applicant wants amended, even though she sought a new and different use, with a new Special Exception. It would be one thing, if the Applicant were to operate an antique shop, she could request an amended site plan, but that is not her request. Thus, the Planning Board should require a totally new Site Plan application, not an amendment of a 20-year old outdated plan that does not reflect the totally different and intensive use that the Applicant is requesting for this postage stamp-sized property.

The Staff Memorandum

A review of the Staff Memorandum for this latest application, which is similar to the undated memorandum in the file for the August 22, 2012 application (withdrawn prior to the September 12, 2012 hearing), contains numerous inaccuracies.

For instance, it describes the “Proposed Land Use” as “bakery with seating for 12”. There is a big difference between a bakery and café, which is the description provided to the State agencies, but not to the Town Planning or Zoning boards.

In the “Surrounding Land Use” category, it references the Lions Club, which is not an abutter to the property. Only single family residences abut the property.

It also should be noted that two parking spaces will be used by employees as per the proposed staffing. This will leave only 6 spaces for customers, one for handicapped only.

Finally, the description provided in the “Reason for Staff Recommendation” to the effect that

“the layout of the lot is very different than other lots in the neighborhood, owing to the odd shape resulting from the sweeping turn layout of the old Route 109 prior to the construction of the new NH Route 109, severely limiting front yard space and therefore parking and traffic flow space.”

is misleading as the description fails to indicate that the lot is just 0.19 acres in an area zoned for one acre minimum.

Issues the Planning Board Should Consider

While this letter is not intended to be a full-scale recital of all that is defective in the application, just a few of the issues that the Planning Board needs to consider are:

1. Whether the application for a “Retail Bakery” is not a material misrepresentation as the actual intention of the Applicant is to operate a coffee shop café with seating for 12, in addition to a retail bakery. In fact the Department of Environmental Services approved

Attachment 3/27/13⁴

this facility under the name "Cup & Crumb Café", a very different entity from the retail bakery being applied for in this application.

2. Whether a 20-year old Site Plan that related to an Antique Shop with far more limited hours, less traffic, etc., is relevant to what the Applicant is now proposing.

3. Have the significant questions with regard to the existing septic system and the well been properly vetted? Does the Applicant's well, which requires a 75 - foot sanitary protected radius, been properly addressed, based upon the abutter's intention to construct a new septic system that would encroach on that radius? Please see letter from Chip Bollinger, dated May 16, 2012, attached hereto.

4. Whether the current parking plan complies with the N.H. Department of Transportation (DOT) requirements related to parking, egress and number of spaces contained in letters that were either submitted after the ZBA hearing, or not submitted by the Applicant to the ZBA that require vetting by the Planning Board. The current application appears to have parking spaces at the cusp of the ROW. Most certainly, at least two and possibly three of the spaces would require maneuvering vehicles within the ROW, a request that was denied by the DOT in their letters to the Applicant dated, April 5, and May 16, 2012, the latter of which, was not considered by the ZBA as it was received after the hearings were closed, copies of which are attached hereto. It also appears that one of the parking spaces is within 10 feet of the Septic, which is also impermissible.

5. My clients request that the Board have an independent consultant review the parking plan, as the current iteration appears unworkable and excessive for the size of the property.

6. My clients strenuously object to the proposed traffic flow that requires vehicles to exit at a point directly opposite their home, which will result in vehicle headlamps shining into their residence. Prior to this application every other use of this property has had vehicles exiting on Governor Wentworth Highway, which is the address of the Applicant's property. Any site plan should require that traffic exit on Governor Wentworth Highway and enter on Old Route 109.

7. For safety reasons my clients request that no left turns be permitted from Old Route 109 into the Applicant's property and that exiting traffic on Governor Wentworth Highway be limited to right hand turns only, and if egress is permitted on Old Route 109, that no left turns be permitted from the exit onto Old Route 109.

8. My clients also request that the Planning Board require that the Town establish a no parking zone (and enforce such zone) on either side of Old Route 109 from a point 300 yards west of the intersection of Old Route 109 and Governor Wentworth Highway to the intersection for both safety and aesthetic reasons, as the road is too narrow to allow for parking and two way traffic, plus parking will impede access to the Wallace residence driveway and create sight line issues at the intersection.

Attachment⁵ 3/27/13

9. My clients request that a professional independent Traffic Impact Assessment be submitted to the Board to determine the impact of a 12 seat café and retail bakery as compared to the prior antique shop, which had far more limited sales, hours and days of operation. A café and retail bakery is an intensive multi-use entity that is a much more intensive commercial operation within the Residential Agricultural zone, which contrary to the representations of the Applicant's Site Plan Amendment is not replicated in any way within one mile of the proposed facility within this zoning district.

10. My clients request that the hours of operation should be substantially reduced as the prior site plan presumably did not operate 11.5 hours per day, seven days a week, with an expectation that there will be employees in the facility baking at least one hour before the proposed opening hour of 6:30 AM and cleaning up for a like period after the proposed closing time of 6:00 PM.

Miscellaneous Comments

In documents related to the Carroll era antique shop, the Health Department permit limits the toilet/restroom use to only one person, who must be an employee and thus there would be no public restrooms on site. It would be hoped that the solution to this issue would not be the portable potty/ outhouse, as authorized for Skelley's Market. Snow storage appears misplaced as it is within 10 feet of the septic. Also, the type of business at paragraph 31 of the application is misstated as it denominates the use as a "retail bakery", which may not even be the primary use, as the business appears to be a café/coffee shop which sells baked goods to customers.

While the above are but a few of the problems related to this latest Application, it is respectfully requested that the Application be deferred until such time as the Court has determined the validity of the associated variances and Special Exception.

Very truly yours,



Eric Taussig

Attachments

cc. Peter J. Minkow, Esq.
Regina A. Nadeau, Esq.
R. Wallace
Bruce Woodruff, Town Planner

ET:ms

Attachment 3/27/13

Charles Bollinger

399 Governor Wentworth Hwy
Moultonboro, NH 03254

E chip@ba-ecodesigns.com

May 16, 2012

Zoning Board of Adjustment
Town of Moultonborough
PO Box 139
6 Holland Street
Moultonborough, NH 03254

Subject: Change of use on Tax Lot 44-13 located on the corner of Old Route 109 and Governor Wentworth Highway.

Dear Chairman Stephens and Board Members,

This letter is an F.Y.I. so that you can make an informed decision on the use of the above reference property.

I am a certified septic system designer hired by prospective buyers of the abutting lot, Tax Lot 44-12, to determine its suitability for a replacement leaching system; approvable by the N.H.D.E.S. Subsurface Systems Bureau.

Do to the minimum setback constraints of the nearby brook and potential wetland soils, I will be forced to locate the new system somewhere near the stockade fence that exits between these two lots. **It is entirely possible that this new system would have to be designed 40'± away from the existing drilled well on the subject lot, Tax Lot 44-13 and, if that turns out to be the case, the state would approve it.**

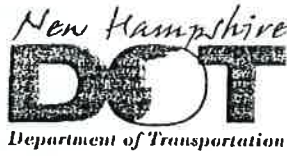
The well on Tax Lot 44-13, the subject lot, was drilled in 1997 and has no grandfathered rights as far as I can tell. As I see it, the only way its protective radius would have to be respected is if it were drilled prior to 1989 or there are deeded easements rights to that portion of the protective radius that overlap onto Tax Lot 44-12. As far as I know, none exists. In talking with the woman who grew up in the house next door, Tax Lot 44-14, it seems Harold Moores ice cream shop of the fifty's closed its doors before the state regulatory agencies came into effect in late sixties; and it was left vacant for many year thereafter.

Thought you should know so that my potential future septic design submission won't be a shock.

Respectfully yours,



Charles Bollinger



CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

April 5, 2012

Rock Pile Real Estate, LLC
Attn: Kimberly Prause
111 Lee Road
Moultonborough, NH 03254

Re: Excavation Permit Application received December 21, 2012
NH Route 109, Moultonborough

Ref: Plan "Old Route 109 Right of Way Easement Release from Town of Moultonborough to Rock Pile Real Estate, LLC (Tax Map 44 Lot 13) Intersection of Old Route 109 and NH Route 109 Moultonborough Carroll County, NH" dated November 30, 2011 by Gerard Land Surveying Co..

Dear Ms. Prause,

We have reviewed the above referenced plan and application regarding the closure of the driveway on NH Route 109. The District 3 office will allow an earth berm 10 feet from the edge of pavement with plantings / hedges provided they are low growing. The District does not want anything planted along the berm that would block sight distance along NH Route 109 in the future.

District 3 has also reviewed your request to use a portion of the State's Right of Way for parking. District 3 will not give permission to use any part of the Right of Way, for any use, except for traveling on NH Route 109. District 3 requests that configure your site without relying on a portion of the State's Right of Way.

Please submit an updated plan that shows no use of the State Right of Way for onsite vehicular movement and that shows the earth berm with plantings that will grow no taller than 3 feet high from grade. If you have any further questions, feel free to contact this office anytime.

Sincerely,

Susan K. Soucie, P.E.
Assistant District Engineer

DMS/
cc: 311, 333, Town



CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

May 16, 2012

Rock Pile Real Estate, LLC
Attn: Kimberly Prause
111 Lee Road
Moultonborough, NH 03254

Re: Excavation Permit Application received December 21, 2012
NH Route 109, Moultonborough

Ref: Plan "Old Route 109 Right of Way Easement Release from Town of Moultonborough to Rock Pile Real Estate, LLC (Tax Map 44 Lot 13) Intersection of Old Route 109 and NH Route 109 Moultonborough Carroll County, NH" dated April 19, 2012 by Gerard Land Surveying Co..

Ref: Letter from Susan Soucie to Kimberly Prause, dated April 5, 2012

Dear Ms. Prause,

We have reviewed the above referenced plan and District 3 is unclear on how a vehicle would use parking space number 6 without entering state owned land. This site as stated in the above referenced letter must be designed such that the state owned right-of-way will not be used for travel other than along the state highway, NH Route 109.

A couple of suggestions are to install curbing along the right-of-way line or plant grass in the right-of-way area up to the right-of-way line. If you have any further questions, feel free to contact this office anytime.

Sincerely,

Susan K. Soucie, P.E.
Assistant District Engineer

DMS/
cc: 311, 333, Town

CRISTINA M. ASHJIAN
361 OLD MOUNTAIN ROAD, MOULTONBOROUGH, NH 03254
TEL. 603-476-8446

27 March 2013
Moultonborough Planning Board (by hand)

RE: Rock Pile Real Estate, LLC site plan amendment application

Dear Members of the Planning Board,

I am writing with regard to the newest site plan application for the Rock Pile Real Estate venture. Previous versions were submitted to you on August 22, 2012 (withdrawn on September 12, 2012), and before that in September 2011, when the applicant was also seeking Zoning Board approvals for the new use of the Route 109 site (acceptance of that application was denied by the PB on September 14, 2011). You will note that the ZBA approvals for the applicant's requests for a special exception for the new use of the site and associated variances are now being challenged in Superior Court with a trial date set for July 2013. It would be improvident for the PB to accept and act on this application.

In this latest iteration, the applicant identifies that the 'intent' of the site plan is "to amend [the] 1993 site plan to operate a retail bakery." Throughout the series of ZBA hearings on the applicant's requests for a special exception and variances held in 2011-2012, the applicant presented the desired new use as a 'retail bakery'. However, since a 'retail bakery' does not typically require seating for 12, unless the counter service is inept, it has been clear for some time that the real objective is to gain town approvals for a bakery and cafe operation, while attempting to downplay the potential impact of that intensive new use by characterizing it merely as a 'retail bakery'. The reason that this matters is that the parking (and likely septic) demands for a bakery/cafe with seating for 12, where patrons will gather and linger on the premises, are quite different than those for a 'retail bakery' operation. As stated in my 2012 letters to the ZBA (attached), the corner site does not have adequate parking for a high turnover cafe/bakery operation; town approvals of such an intensive commercial use would create parking/traffic/safety problems at that location.

It is interesting to note that while the documents submitted to the Town describe the desired operation as a 'retail bakery', State of NH documents properly recognize that this is a cafe operation, not just a 'retail bakery' (see DES 3/26/12, 5/2/12 with application). The applicant misrepresents the proposed use for the site (structure) as simply a 'retail bakery' in section #31 of the application, where a more specific use or second use such as 'cafe or coffee shop' should appear. Before acting on this proposal, the PB should require an independent peer review of the Traffic Impact Assessment submitted by the applicant's agent, and carefully consider the negative impacts of the extended hours and days of operation, lighting, and noise on nearby residential properties.

Yours very sincerely, Cristina Ashjian



Attachment 3/27/13

Attachment 3/27/13

CRISTINA M. ASHJIAN

361 OLD MOUNTAIN ROAD, MOULTONBOROUGH, NH 03254

TEL. 603-476-8446

May 2, 2012

Moultonborough Zoning Board (by hand)

Re: Rock Pile Real Estate, LLC (44-13) 84 Gov. Wentworth Hwy (Route 109)

Dear Members of the Zoning Board,

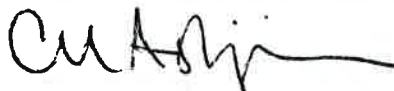
Please find attached my January 18th letter regarding the prior application for multiple variances submitted by Rock Pile RE, LLC, which was withdrawn by the applicant on that same date. All of the points I made in that letter are pertinent to this latest, and now third, attempt to gain approvals for an intensive use – a bakery/café - at this location.

Once again, I ask that you carefully consider the traffic and safety impacts of a high-turnover commercial operation on the immediate site, on the residential cluster at the intersection of Old Route 109 and present Route 109, and on affected area roadways. There is an existing and unresolved problem with off-route tractor trailer trucks at that location, where the quality of life for neighboring homes is adversely impacted by large trucks cutting through and turning at the same location proposed for the bakery/café. It is obvious that the proposed bakery/café would draw customers in for take-out; at this substandard corner site, which cannot even accommodate normal automobile parking, let alone the large truck traffic potentially stopping along Route 109, this is a potential disaster. I have attached some recent photos of problem trucks at that location.

The Zoning Ordinance states that the commercial zone on Route 25 'is intended to provide an area for businesses which rely on automobiles and delivery trucks in day to day operation' in order to 'keep intact the "strong desires of Moultonborough residents to preserve the town's rural attributes" consistent with the goals of the Master Plan'. Once again, there is no adequate parking at the proposed bakery/café site for employees, for delivery trucks, or for patrons; blocked parking spaces on the property would create additional safety hazards, especially in the event of an emergency. There is no public parking available off site, and there is a very real risk that customers will park on adjacent roadways and on private properties, creating nuisance and safety hazards for neighbors over 12 hours a day, 7 days a week. There is also no reliable enforcement.

This application for a high-intensity commercial use, for a retail bakery/café, is inappropriate for this location; there is no opportunity here to try this situation out and see how it works, or not. It is the responsibility of the Zoning Board to assess the real impacts of proposed commercial uses in the residential/agricultural zone.

Yours sincerely,
Cristina Ashjian



Attachment 3/27/13

CRISTINA M. ASHJIAN

361 OLD MOUNTAIN ROAD, MOULTONBOROUGH, NH 03254
TEL. 603-476-8446

January 18, 2012

Moultonborough Zoning Board
6 Holland Street
Moultonborough, NH 03254

Re: Rock Pile Real Estate, LLC (44-13) 84 Gov. Wentworth Hwy (variances)

Dear Members of the Zoning Board,

As you review the multiple variance requests before you from Rock Pile Real Estate, LLC, I ask that you carefully consider the traffic and safety impacts of a high-turnover commercial operation on the immediate site, on the residential cluster at the intersection of Old Route 109 and present Route 109, and on affected area roadways. While historically there was a general store on the corner site under discussion, and more recently a low-volume antique shop before the lapse in the commercial status of the property, it is abundantly clear that the daily reality on the Route 109 thoroughfare has changed dramatically in recent years. It is the responsibility of the Zoning Board to assess the real impacts of proposed commercial uses in the residential/agricultural zone.

The property under discussion is utterly inappropriate for any intensive commercial use such as the high-volume retail bakery being proposed, precisely because it is a substandard site. There is no adequate parking on the site for employees, delivery trucks, or customers; blocked parking spaces on the property would create additional safety hazards, especially in the event of an emergency. There is no public parking available off site, and there is a very real risk that customers will park on adjacent roadways and on private properties, creating nuisance and safety hazards potentially 12 hours a day, 7 days a week. There are numerous elderly citizens driving to and from the Lions Club on Old Route 109 for senior lunches four days a week; vehicles parked around the Route 109 corner intersection would create a severe impediment to sight distance at that location.

Aside from the seasonal increase in oversized traffic on Route 109, such as landscapers with trailers, there is significant large truck traffic traveling to and from the CG Roxane bottling plant (up to an average of 40 trucks per day over a monthly period). Area residents already experience the negative impact of such traffic at Skelley's Market, where despite recent signage oversized vehicles continue to park illegally along the roadway and create safety hazards. Any high-turnover bakery and coffee shop would draw customers to its site for take-out; at this substandard corner site, which cannot even accommodate normal automobile parking, let alone the large truck traffic along Route 109, this is a potential disaster. I urge the Board to deny this ill-advised proposition.

Yours sincerely, Cristina Ashjian.

