

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

Regular Meeting

May 8, 2013

Minutes

Present: Members: Tom Howard, Chair; Judy Ryerson, Peter Jensen, Paul Punturieri,
Josh Bartlett, Bob Goffredo; Russ Wakefield (Selectmen's Representative)
Alternate: Natt King , Keith Nelson (left at 8:15)
Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

I. Pledge of Allegiance

Mr. Howard called the regular meeting to order at 7:00 P.M.

II. Approval of Minutes

Motion: Mr. Punturieri moved to approve the Planning Board Minutes of April 24, 2013, as amended, seconded by Mr. Wakefield, carried unanimously with Mr. Jensen and Mr. Goffredo abstaining.

III. New Submissions

IV. Boundary Line Adjustments

V. Hearings

1. Continuation of Norway Point Trust (243-28)(Norway Point Road)
Major Subdivision and Conditional Use Permit

Mr. Howard noted the Board was in receipt of a request from Tim Bernier, T.F. Bernier, Inc. , agent for Norway Point Trust. The applicants for the Norway Point Trust subdivision are requesting the Planning Board continued the Public hearing on their application until the June 12th meeting. The Trust also understands this will likely push them beyond the statutory clock for the Planning Board to take action. Therefor the Trust waived their right to a decision prior to the meeting on June 12, 2013.

Motion: Mr. Bartlett moved to continue the hearing for **Norway Point Trust (243-28)** to June 12, 2013, with this being the public notice, seconded by Mr. Jensen, carried unanimously.

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

Mr. King and Mr. Nelson stepped down from the board table at this time.

Mr. Howard stated that this was a continuation of the public hearing. There was a site visit held on April 17th, the minutes were reviewed at the last meeting of the Planning Board. Mr. Howard noted that they were in receipt of a revised plan and asked the applicant to present the revisions to the plan.

Joanne Coppinger presented on behalf of the applicant. Ms. Coppinger asked if there were any board members who would like a general recap, or if she could just go into the changes since the last meeting. Members indicated that they were all up to speed. Ms. Coppinger stated since the last meeting they listened to some of the comments that they got and revised the parking. So now there is no parking in the right-of-way (ROW). They changed the employee parking a little bit to preserve some trees, especially a nice clump of birch that is in between the two spaces as they are laid out now. They have moved the handicapped space over to the right of the building as you look at it from Old 109. They have made all of the spaces 9x18, since the requirement for 200 SF was removed from the zoning ordinance in March. Those are all of the changes made since the board last saw it. She answered any questions from the board or public.

Mr. Punturieri questioned if parking space #2 has been changed, just a little bit smaller? Ms. Coppinger stated correct. The location hasn't changed. Mr. Howard said the big change is the change in the location of the handicapped spot and the revision to the ramp location. Ms. Coppinger stated to go along with the change in the handicapped spot, the ramp location also changed. She pointed out that there was some concern about when the handicapped spot was in what is now space #6, that there wasn't enough room for the employees to get out. By moving the handicapped spot they've increased that area to 13' wide, and that addresses that concern.

Mr. Wakefield commented that generally handicapped spaces are drive-in with access to the right and the rear, and if this is drive-in, the access to the right will be into the leach field, the rear into the parking area. Is there any plan to put a sign that is back in parking only so that when they do open up the doors into the parking lot? Ms. Coppinger commented that there is no reason that the stripped area can't go on the other side of the space. There is more than enough room to do that. That space is 10x20 with a two foot stripped area, totaling twelve feet in width.

Mr. Howard commented on the parking. He said not only did he try out every space of the original plan after the site visit, he has returned to re-try what is no labeled as space #1. He found it to be unworkable. He was unable to easily get out of that space, and it is a little difficult to go into that space forward because of the angle and the swing. He had to back up, pull forward and back up again, in order to get out of the entrance. Mr. Bartlett questioned if he needed to back out onto 109. Mr. Howard stated he did not. He was trying to stay on the property. He thinks that spaces 3, 4, & 5 are ok, he was able to do in one move. Space 6, he couldn't get turned enough because of the close proximity to the porch, he had to go twice. His question to the board members was if that was what they would consider a workable space in a site plan for someone trying to get in and out of a bakery. The employee parking likewise was very difficult on the old plan and is a very tight spot, but he was not concerned about the employee parking. If they have to back and fill, back and fill then that's okay. His only solution that he sees is eliminating one space to get the room, which would then require a reduction in seating. He did not know if that was something that the applicants were willing to entertain as an option. For instance, in one of the initial iterations of the plan, there were two spaces out in front of the deck. If you moved the handicapped space at a different angle and left it in front of the deck, it would answer Russ's question about having the space to the side of the van in order to get access to that ramp, and if you eliminated space #2 you could actually make that a turning spot.

Mr. Punturieri noted that they had received an email about the propane tank and asked where that was going to end up. Mr. Howard noted it needs to be 10 feet from the property line and 10 feet from the building, so it will need to be relocated on the plan to a suitable location and that would be a condition the board would want to add if they were to approve the plan with conditions.

Mr. Punturieri asked if there were any plans for outdoor seating, no benches or tables. Ms. Prause stated that they would maintain the number of seats that they are approved for. Mr. Punturieri asked if

there could be tables and chairs outside. Ms. Prause commented on a nice day if there are people outside there will only be ten seats.

Ms. Coppinger gave her thoughts on the handicapped space. She knows it is not conventional to have to back up, go forward and back up again, but she doesn't think there are any rules against it and she doesn't know if they really need to eliminate a space as much as maybe angle that space a little so that it might be easier to simply back up towards space #3 and go out. She doesn't think that eliminating it is necessarily the answer, but she thinks they could come up with a solution that is agreeable.

Mr. Bartlett had questions regarding parking on Route 109 and Old Route 109. He is not sure where they are with parking on Old 109. He asked the Planner if the board has any right to say that tractor trailer cannot be parked on Route 109, because if they are, it is going to be very difficult to see around them when pulling out of Old 109 taking a right turn. If they have the jurisdiction he thinks that it will be a good idea to make sure there is no parking on Route 109. Mr. Howard commented that in prior conversations, an offsite condition such as that, the board would have the authority to recommend to the SelectBoard with regard to Old 109 that it be posted. Mr. Woodruff stated the Town does have jurisdiction with regards to Old 109 and the Board of Selectmen could make that restriction of parking on both sides of Old 109 from the corner back to some reasonable distance that could be determined. With regards to New Route 109, in his discussion with the district engineer and assistance district engineer onsite, they were very concerned about any type of vehicle parking that would impede the sight distance coming around on New 109. That is not to say that they would put some kind of regulation on there. The only thing they could do with regards to that is to send them a recommendation letter talking about having that changed so that the State Police could make that type of enforcement.

Regina Nadeau, council for the applicant, stated that she went on record at the last hearing, indicating that her client would support any local action to post both sides of Old 109. She saw an email from the Planner suggesting that they make it a condition of approval that her client works with administration and the Selectmen to prepare and approve an ordinance that restricts that kind of parking. From a legal stand point, she was concerned because that could be construed as open ended and if it doesn't succeed it would look like a condition of approval that they didn't meet. She is also concerned that it might put the onus on the land owner when it is a towns concern. In order to offer up their good faith, they would be happy to agree to a condition that says they will support any endeavor to post that by the town and will place on record a statement of no objection. Mr. Woodruff stated that he had meet onsite with DOT and he brought up the issues further down 109 and they said it was non-issue for them, which is why there is no enforcement. This is a different animal as it is at an intersection where they need to have the sight distance for safety. They would be very adamant about no parking where it would infringe on safe sight distance. The town cannot post a sign on new 109.

Mr. Bartlett questioned where the propane tank would be located. Ms. Coppinger had scaled a location on the plan, near the septic tank, that will meet the setback requirements.

Ms. Coppinger went back to the handicapped space, describing an area and angle that it would allow a vehicle to be pulled straight in and be able to back up and out in one shot. Board members still were concerned with the workability of the handicapped space and space #2. Mr. Bartlett asked if the applicant was willing to reducing the parking to five patron spaces. Ms. Nadeau stated they would like to hear all of the comments from the board and public before making any decision in reducing that number.

Mr. Jensen noted his concerns about this turning into a commercial parking lot off the site. It sounds like there is nothing really they are able to do to prevent that. Having been on the site, the parking is difficult at best and he is certain there will be people coming in and not paying attention to where they park. He does not know how the parking will work. His concerns are with both onsite and offsite parking.

Mr. Howard opened the public portion of the hearing to the abutter's at this time.

Eric Taussig, attorney representing abutter's Robert and Gabriele Wallace was present this evening and spoke to the application. Mr. Taussig said that he had taken that the board had received his letter dated today (May 8, 2013). Mr. Howard commented: received yes, read no, since they only received it this evening at the beginning of the meeting. Mr. Taussig apologized stating he had been flat out and that the letter was sent in before 4 PM today (3:58). He referred to his letter (see attached) which he summarized for the record, hitting the issues. The first was parking, the whole issue of suitability of the site, both onsite parking and offsite parking. Then as a procedural matter he wanted to discuss what the powers were of the Planning Board as opposed to the Zoning Board, as he feels that there is some misconstrued understanding as to whether or not the Planning Board can alter anything which has been submitted to the Zoning Board previously. He suggested that the Board review 647:43 [sic] of the RSA's and look at what the powers are of the Zoning Board (ZBA) and what the powers are of the Planning Board (PB). The ZBA issued a number of variances related to the buffer zone, to the setbacks, changed the use, as far as the special exception is concerned, and it provided for relief with regard to certain conditions that are imposed under the zoning ordinance. He went onto to summarize the remaining issues in his letter which were regarding access, the right-of-way, the use, capacity, seating & parking. He noted that his client, Mr. Wallace would speak to the board regarding the Septic System and Water Source. He then went onto note what he felt were deficiencies in the application including that the application has been submitted as a site plan amendment, when actually it is a site plan. Next was his review of the Staff Memo in which he alleged contained numerous inaccuracies. In closing, his letter of May 8, 2013 contained some ten additional issues he feels the Planning Board should consider. Mr. Taussig closed stating he feels that there are a number of issues that need to be examined carefully.

Abutter Robert Wallace briefly commented on the septic system. He stated the property has been sitting there for quite a few years unused. It has never been a high turnover business there before. It was his understanding that the lot was too small to put a septic system and well in. One day, someone put a septic system in. There were no test holes dug, it was just put in. He came into the Town and asked about it. They said the State approved it, there's nothing they could do about it. It was a replacement septic system. He was just asking why it was put in. Shortly afterwards the well was put in. It hasn't been hooked up since the day it was put in. The whole piece of property just sort of morphs into different things as it goes around. When you talk about the parking, they keep talking about the number of seats they have inside the restaurant. What about the people that are going to stop to buy baked goods? If the parking spaces are full of people that are inside sitting down there is no room for anybody to stop to buy something. He does not think that the site is appropriate for a high impact business in a residential area.

Mr. Howard asked if there were any other abutter's or member of the public who wished to speak to the site plan. There were none.

Attorney Nadeau commented that she had just received a copy of Mr. Taussig's letter and had not had the time to review it. Many of his issues go well beyond the Planning Board's jurisdiction. They have a variances and a special exception that were granted. Those approvals were granted based on the proposal that is before the board for a twelve seat bakery. They proposed the number of parking spaces that they did, because under the parameter of the guidelines for approval in front of the ZBA, they had to assess what their impact would be on the neighborhood. That was their purview at the ZBA. The number of parking spaces was critical, the hours of operation were critical. She begs to differ that there was any misrepresentation ever made as to what the use of the site is going to be. It is a bakery, a retail bakery. Attorney Nadeau stated that the applicant was willing to reduce the number of spaces.

Ms. Nadeau spoke to the question regarding abutter notification. The staff had done research into this and noted that there is a time lapse between when one office knew of the transfer and the Planning Office knows varies by a matter of days. If this is a future litigation issue it remains to be decided. If need

be, the office came come up with the timeline. Ms. Nadeau conferred briefly with her client, and stated given the fact that this case is already in litigation her client did check the town computer in assessing the day that the application was filed. The correct abutter of record was noticed, but to the extent that this could just cost them a year in court Ms. Nadeau asked that the board continue this, re-post the hearing so that this particular new abutter could be heard. The time frame for notification for a new submittal was discussed, noting this would be for a notice the paper and abutter notifications. Ms. Nadeau asked through the Chair whether or not Mr. Taussig had personal knowledge as to whether or not this abutter has actual knowledge of this application. Mr. Taussig said that he could not say for certain whether he does or doesn't. He believes that he may, but he didn't know for absolute certainty. They believe that he may know that there is something is going on, but they don't know whether he knew whether the hearing was today. They believe that he does know that there is an application, but not know the particular time. They are fairly certain that he did not know that there was a hearing previously. Mr. Woodruff stated that the new owner has been into the office and is aware of the application. The notification time frame was discussed, noting the next deadline would be May 22nd, for proper notification for the June 12th meeting date. Mr. Howard questioned who would be noticed? The newspaper and a certified letter to the one abutter in question? Ms. Nadeau stated they would send notices to everybody at the applicant's expense.

Mr. Punturieri asked if there was a time deadline the applicant had in sometime in June for the DOT permit. Ms. Prause stated that it is June 15th. Ms. Nadeau stated that they will have to address that.

Mr. Howard asked prior to continuing this this evening, was there anything else the board would like, such as a revision to the plan showing the offer to reduce the seating and parking, locate the propane tank, realignment of the handicapped spot. Mr. Bartlett commented that at the last meeting he had asked to see a copy of the original septic design that is now being approved under this approval for operation dated 1995. He would like to see the design and the application. Mr. Howard asked Ms. Prause if she had that available to provide to the board. Ms. Prause stated she could look, and if not, she was sure the town has that on record when that was applied for. Ms. Whitney commented that records for septic provided to the town, by DES for that time period are spotty at best, and that it may not be on record in the town.

Other items noted was the recommendation that the applicant approach the SelectBoard regarding the posting of No Parking along Old Route 109. Mr. Woodruff stated that he will amend his staff memo which contained 7 conditions, suggested language, to be 9 conditions. One of them being that the Planning Board and applicant request that the Board of Selectmen enact a No Parking restriction on both sides of Old Route 109 for a distance of 290 feet from the corner of NH 109 to the first utility pole on both the north and south sides of the roadway (pole numbers to be added later, as he didn't have them at this time). The reason behind that is that the police need to be able to know what that distance is. The other condition would be the siting of the propane tank. Mr. Howard stated one point of condition relative to Parking on Old 109. Their condition would be a request it may not be the outcome. The applicant will work with staff to firm up on the language to present to the Selectboard.

Mr. Taussig commented that he still wants to raise the issue of hours of operation, days of operation, access and egress as it relates to the re-opening of the exit onto Route 109. He would like a condition imposed by the board to re-open that entry.

Members noted their concern with traffic safety and the traffic study presented. Some have requested that a further analysis be completed. Mr. Howard raised the issue of the distance of the driveway to the intersection. Ms. Nadeau stated that they would be willing to speak with the Road Agent and the Planner to see if they think that would be reasonable for a full blown traffic study for five/seven parking spaces. Mr. Woodruff reminded the board that they have a policy in place and the traffic study submitted met the threshold and doesn't need a further study.

Mr. Woodruff stated that the 65 day statutory clock for the Planning Board to take action will end on May 30th. Ms. Nadeau waived their right to a decision prior to the requested continuance to June 12th.

Motion: Mr. Jensen moved to table the site plan review for Rock Pile Real Estate, LLC (44-13) to continue the public hearing to June 12, 2013, and ask that the applicant revise the plan to include changes discussed this evening regarding the removal of one parking space, relocation of the propane tank, discussion with the Road Agent relative to the access and possible intersection issue, seconded by Mr. Bartlett, carried unanimously.

Mr. King returned to the board table at this time.

VI. Informal Discussions

VII. Unfinished Business

1. Master Plan Survey Questions – Mr. Woodruff handed out a revised survey, again noting that it is a work in progress. He gave the Board an update on the status of the Master Plan Survey, noting that it has been revised at least four times since the last meeting. He reminded the Board that he has asked that Planning Board members either email him or stop in to discuss their ideas for questions on issues that have been missed and any gross omissions or errors. Woodruff noted that he had received three sets of comments so far, but also that he had taken the draft survey to the MPIC on Monday where they indicated they wanted other land use boards to also review the survey. To that end, Planner Woodruff indicated he invited the Con Com and Heritage Com chairs to the meeting tonight, noting that Chair Cristina Ashjian was present. The planner explained that the timeline was tight for going public with the survey so that it could be used as a tool to help cement policy direction for the Town Meeting approved citizen petition regarding the Village Sidewalk Project. That this part of the Master Plan data-gathering process was intended to run in parallel with that effort. He directed the Board's attention to the two parallel schedules in the packets to reference this. He indicated that this data-gathering effort would assist in where and how much money would be spent on the Sidewalk project by doing this so we would not be planning in a vacuum. There ensued much discussion on the schedule, on the survey use and intention and on individual questions.

2. Mr. Howard noted a Memo, dated April 30, 2013, from the Town Administrator regarding the Dry Hydrant Fund. The Town Administrator has asked if the Board would be willing to amend its various rules and regulations in a manner to be supportive of a policy desired by the SelectBoard relative to cisterns and dry hydrants. The Planner gave a short history on the subject of cisterns and dry hydrants, including his work with the GIS consultant to locate and obtain data on them and add them to a layer for staff use. He indicated that the issues of who owned and maintained them when they were used as public fire-fighting infrastructure came up when this work was done. The memo from the Town Administrator asking the Board to amend its subdivision and site review regulations to address the surety requirements, proper installation, operational period, turn over, maintenance, access and ownership would be a two-step process, with a policy of BoS also being developed that would work in tandem with the Planning Board regulation changes. The Board discussed this and asked the planner questions. Then they moved to agree to work on their regs and be supportive of a policy for the BoS.

Motion: Mr. Bartlett moved that the Board advances towards amending its site plan and subdivision regulations in order to support the proposal of a policy desired by the SelectBoard relative to cisterns and dry hydrants. Seconded by Mr. Jensen, carried unanimously.

3. Board Members were provided with a copy of the Town Planner's letter dated May 7th to Mr. Ed Ambrose regarding the Letter of Credit (LOC) for the subdivision development known as Stonewall Acres. Mr. Ambrose requested an inspection in order to reduce or eliminate the LOC. Mr. Woodruff briefly provided a status update to the board as the outstanding issue as of the inspection date, what must be completed and the procedures for Mr. Ambrose. This was to provide a status update to the board.

4. Mr. Woodruff noted that there were five Wednesday's this month, and that the Board generally conducts a work session on those extra Wednesdays. There is nothing scheduled for that work session. At this time they are working on the questions for the master plan survey which will be available before this date. They were provided with a schedule for this and noted that there will be extra meetings in July for listening sessions etc., and asked if members wanted to meet on the 29th. Members were in agreement to cancel the work session of May 29, 2013.

VII. Other Business/Correspondence

IX. Committee Reports

X. Adjournment: Mr. Wakefield made the motion to adjourn at 9:54 PM, seconded by Mr. Punturieri, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

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May 8, 2013

VIA E-MAIL

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

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

Dear Mr. Howard and Members of the Board:

As you know, I represent Robert and Gabriele Wallace, abutters to the above captioned property. Both Mr. Wallace and I were on the site walk and noticed some significant issues that need to be addressed by the Planning Board.¹ In addition, I have examined the latest site plan, recommendation from the Town Planner, which appears unchanged and set forth below issues that the Planning Board should address before considering approval of any amended Site Plan for a new and different use.

¹ Although the Planning Board minutes for the site walk indicate the Board members present, the Town Planner, the two applicants, myself and abutters Bob & Gabriele Wallace, they fails to indicate that the Applicant's attorney and engineer were present as well as 10 other members of the public.

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Procedural Issues

Before I address the above, I want to reiterate the statutory powers and authority that a Planning Board has with reference to a site plan. A Planning Board has authority to establish and regulate the hours, days of operation, entry, traffic control, seating, etc., for the type of facility the Applicant is requesting site plan approval. There is nothing in the Town's Zoning Ordinance or applicable RSA's to authorize the Zoning Board of Adjustment (ZBA) to establish hours / days of operation, parking, traffic control, etc. The Applicant requested variances on (1) waivers of side line distances, (2) vegetative buffers and berm, (3) fencing and (4) a Special Exception for a "change in use" from an antique shop to a "retail bakery." Those variances and the Special Exception were granted, primarily by 3 to 2 votes.

While the ZBA has authority to grant variances and a Special Exception (which are being appealed in the Carroll County Superior Court with a trial scheduled for July 9th), the Planning Board has exclusive jurisdiction, pursuant to RSA 647:43, to approve either a new or amended site plan for a "retail bakery" as approved by the ZBA. It also has the authority to modify it, if it deems appropriate, with regard to the (1) days and hours of operation; (2) the egress and ingress to the property; (3) number of seats; (4) parking – both with regard to the number of spaces and location; (5) request an independent review of the anticipated traffic; and an independent engineering study of the traffic pattern and parking configuration; (6) condition approval on the enactment of a 150 yard no parking zone on both sides of Old Route 109, as well as (7) review the permitting for the septic system and well locations to insure safety for both the applicant, abutters and public that will patronize the facility.

This Board should make sure to have its ducks in a row with a competent unbiased legal opinion before approving a site plan, otherwise it will only result in more litigation and unnecessary cost.

At the last meeting, it was represented that the Plan submitted was the same one submitted on May 2, 2012 to the ZBA; such was not the case. It is incorrect and confusing for different plans to be submitted and then denominated by the applicant as being the same plan. Such a submission warrants a resubmission as a new plan with proper notice to abutters.

On the subject of abutter notice, it has also been determined that the Applicant failed to notify the current abutter on the South Side of the property, even though title in that property passed to the current owners, Leona and Robert Maher, on February 22, 2013, some 14 days before the filing of the current application by the Applicant for a site plan review on March 6, 2013.

Substantive Issues

1. Access: Among the issues that remain most troubling and significant to my

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clients is the permanent closure of the Route 109 access and narrowing of the old Route 109 access that will now be both the entrance and exit under this proposed site plan. The result of this change will be to have both entering and exiting traffic stalled on Old Route 109 westbound in front of the Wallace's home, waiting for exiting traffic. The closure of the Route 109 access precludes an orderly one way traffic pattern that would avoid (1) the stacking of vehicles awaiting entry to the property, and (2) the headlight glare of exiting vehicles shining into the Wallace's property half of the year in early morning and evening. By requiring all traffic to exit on Route 109, this issue can be easily alleviated.

As a result of discovery in the related case in Superior Court, I can unequivocally advise this Board that the closure of the route 109 access **is not a requirement of the N.H. Department of Transportation (DOT)**. It was a condition imposed contractually by the Town. This provision can simply be addressed by requiring the Applicant to renegotiate their agreement with the Town as a condition of this Board's approval of a Site Plan. I can also advise this Board that when it appeared that the State DOT would not agree to the closure of the Route 109 access point, the Town administration was prepared to waive that condition in August of 2012.

2. Right-of-Way: Another important issue, that was usurped from the Planning Board by the Town's Board of Selectmen related to the sale of the Town's portion of the Right-of-Way (ROW). The manner in which the Town transferred the ROW violated State law. In 2012, when the Town took it upon itself to sell the ROW to Rock Pile, it failed to follow RSA 41:14-a as well as Town Policy Statement No. 19, which, among other requirements, obligated the Town, as a condition of the proposed property sale, to first submit to the Planning Board and Conservation Commission for consideration the sale and transfer holding two public hearings, before submitting it for approval at the Town Meeting. Had the required submissions and public hearings been followed as per RSA 41:14-a and Town Policy No 19, this Board would have known why the Town Board of Selectmen was planning to sell the property to Rock Pile in derogation of State law and the Town's ordinances. At this point, at a minimum, this Board should remand this matter back to the Zoning Board to hold a joint meeting to address the deficiencies of the approvals by the ZBA and current site plan application, where the ZBA overstepped its authority.

3. Use, Capacity, Seating & Parking: The Applicant's proposed "retail bakery", as applied for to both the ZBA and the Planning Board (paragraph 31, Planning Board Application) is for a retail bakery that should not require any seating, much less seating for 12. 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 facility², 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 encroach on both the State's and Town's Right of Way (ROW) that will block intersection sight lines, provide no room for maneuvering, and for some six plus months a year, will result in headlights shining in the Wallace's

² For instance, if customers have access to the internet through wi-fi, one could expect to see patrons staying to use that benefit, increasing the likelihood of overflow parking if there is really a café.

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residence windows from exiting traffic. 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 with an increased likelihood of accidents.

4. Septic System and Water Source: The waivers applied for by the Applicant for a septic system, contain requests to (1) allow a 2:1 ratio side slope taper due to the inability to have a normal taper due to the small size of the lot, and (2) to allow the system to be within four (4) feet of the property line. On the approval by the Department of Environmental Services (DES), dated 5/2/12, the date of the ZBA hearing, the waivers granted are not defined and only allow for the “improvement of the existing system,” which limits the use of the toilet to one person, denominated as an employee of the establishment. If this entity is to be more than a retail bakery, it requires public rest rooms.

As to the existing well, unfortunately the distance from the well, which shows a 75 - foot protective radius, extends to the abutting lot (tax map 44, lot 12). That property appears now to be installing a new septic system, which will be within the 75 - foot radius. There is no easement on Lot 44-12 to protect the well. This means water used for baking, other food production and beverages could be compromised by any failure of the septic system. As a result, a new well should be dug out side of the 75 - foot radius of the neighboring septic, or a potable water supply should be obtained from other sources as a condition of approval of any site plan for a food establishment such as a cafe.

Further Application Deficiencies

As previously mentioned, this Site Plan is nothing more than an amended 20 year old 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. It may have been valid for an antique shop, but not for the planned bakery / café. 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 totally new Site Plan. Thus, this Site Plan Amendment application should be rejected as an incomplete application pursuant to RSA 676:4 I (b).

The latest two applications to the Planning Board, and the April 2012 Plan to the ZBA, reference a “Retail Bakery”, but in applications to the DES and other State agencies, describe the facility 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. It would be one thing, if the Applicant was to operate an antique shop, but that is not her request. Thus, the Planning Board should require a totally new Site Plan application with a full and specific disclosure of the actual use, not an amendment of a 20-year old outdated site plan that does not reflect the totally different and intensive use that the Applicant is requesting for this postage stamp-sized property.

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The Staff Memorandum

A review of the Staff Memorandum for this latest application, which appears virtually identical 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”. As previously noted, there is a big difference between a bakery and a 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 and happens to be Town owned. Only residential properties abut the property.

It also should be noted that two parking spaces are to 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.

Further 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 DES approved this facility under the name “Cup & Crumb Café”, a very different entity from the retail bakery being applied for in this application as Rock Pile Real Estate, LLC.
2. Whether a 20-year old Site Plan that related to an Antique Shop with far more limited hours, less traffic, etc., is even relevant to what the Applicant is now proposing.
3. Whether the existing septic system and the well have been properly vetted? Has the Applicant’s well, which requires a 75 - foot sanitary protective radius, been properly addressed, based upon the abutter’s apparent construction of a new septic system that will encroach on that protective radius and whether the well water will remain potable?

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4. Whether the current parking plan complies with the 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 State ROW and Town's 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 were attached to my April 27th letter. It also appears that one of the parking spaces is within 10 feet of the septic. On the Site Walk, it appeared that the space closest to the corner, now denominated as space # 3, encroaches on the Town ROW and blocks site lines for stopped traffic on Old Route 109 and should be removed as a space for safe visibility.

5. Again, my clients reiterate their request that the Board retain an independent consultant to review the parking plan, ingress and egress, and the understated traffic estimates, as the current iteration appears unworkable and excessive for the size of the property.

6. My clients continue to 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 for more than 25 years 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. As it now has been determined that the closure of the Route 109 access was a requirement of the Town and not the NH DOT, the Planning Board can condition any Site Plan approval on reinstatement of the access on Route 109.

8. My clients request that the Planning Board require that as a precondition for approval, the Town (a) notice for public hearing, and (b) enact an ordinance establishing a 150 yard (to be enforced) on either side of Old Route 109 from a point 150 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 on street parking will impede access to the Wallace's residence and driveway and create sight line issues at the intersection.

9. If the Applicant properly amends the Site Plan for a 12-seat café and retail bakery, my clients request that a professional independent Traffic Impact Assessment be submitted to the Board to determine the impact 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.

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10. My clients request that the hours and days of operation 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. Hours of this type of establishment should reflect the residential neighborhood, the proximity to disturb neighbors and the fact that the Applicant elected to establish this entity in a residential rather than a commercial zone.

Miscellaneous Comments

In documents related to the antique shop, the Health Department permit limits the toilet/restroom use to only one person, who must be an employee. Thus, there would be no public restrooms on site. Snow storage appears misplaced as it is within 10 feet of the septic system.

Very truly yours,



Eric Taussig

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

ET:ms