

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

Regular Meeting

June 12, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Paul Punturieri, Josh Bartlett, Bob Goffredo; Russ Wakefield (Selectmen's Representative)
Alternate: Natt King (arrived at 7:10 and was seated in place of Ms. Ryerson)
Excused: Member: Judy Ryerson; Alternate: Keith Nelson
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. Jensen moved to approve the Planning Board Minutes of May 22, 2013, as written, seconded by Mr. Punturieri, carried unanimously.

III. New Submissions

1. Bear's Nest Trail, LLC (64-5)(Bears Nest Trail)
Conditional Use Permit

Mr. Howard stepped down from the board for this new submission.

Mr. Jensen stated that this was an application for a Conditional Use Permit. He noted the board was in receipt of an e-mail received June 6th, 2013, from Attorney Chris Boldt requesting that the hearing be scheduled for June 26th, 2013.

Mr. Jensen noted that the ZBA has scheduled an on-site visit of the site for Saturday, June 15, 2013 at 8:00 AM and that Planning Board members were invited to attend the site visit. Bob Stephens, ZBA Chair, stated that in an effort to consolidate vehicle trips to the top of the hill, members should meet at the Red Hill Outing Club lower parking lot.

Motion: Mr. Punturieri moved to accept the application for Bear's Nest Trail, LLC (64-5) and to schedule the public hearing for June 26, 2013, seconded by Mr. Bartlett, carried unanimously.

Mr. Howard returned to the board at this time.

2. NH Route 25 Storage Realty Trust (141-8)(61 Whittier Highway)
Site Plan Amendment and Conditional Use Permit

This was a request for a Site Plan Amendment and a Conditional Use Permit (CUP). The amendment is to add parking, add an outdoor storage area for landscape materials, and restore disturbed areas. The CUP is to allow accessory structures and a gravel parking area within the 50 foot wetland

setback. Mr. Howard noted the request for waiver dated 12 June 2013 from David M. Dolan Associates, PC.

Motion: Mr. Jensen moved to accept the application of NH Route 25 Storage Realty Trust (141-8), acknowledge the receipt of the waiver for the purposes of acceptance only, and to schedule a hearing for this evening to be Hearing #3, seconded by Mr. Punturieri, carried unanimously.

IV. Boundary Line Adjustments

V. Hearings

1. Continuation of Norway Point Trust (243-28)(Norway Point Road) Major Subdivision

Mr. Howard stated that this was a continued hearing for Norway Point Trust.

Tim Bernier of T.F. Bernier, Inc. gave a brief update of the proposed subdivision, noting the location, lot size, frontage on the lake and frontage on Long Point Road and Rupert Road. He noted that there was a discussion about the status of Norway Point Road, which is a private road. The hearing was continued to allow a site visit to make a determination as to what Life Safety changes were necessary and to be more specific as to what they were or were not meeting in regards to the private road standards. And to coordinate those efforts with the Fire Department and the Road Agent and file a more specific request with the board as far as what they wanted to do and what they were looking for from relief from the board. Mr. Bernier stated they had conducted a site visit with the Town Planner, Fire Chief, Road Agent and himself. They walked the length of the road, looking at the condition and status of the road and the concerns they had in regards to accessing the site with emergency vehicles and maintenance issues, primarily emergency vehicles as the association is going to be responsible for the year round maintenance of the road. They identified trees, rocks and other things that appeared to be too close to the road, things that might interfere with the fire department either getting in or out. Those were noted to be either cut down or removed. There is a section to be flattened out so the fire truck won't bottom out. The stumps of the trees removed will be ground down flush with the road grade. All rocks identified will be removed to a point of at least 4' from the travel surface for a clear zone and branches that hang over the road will be removed to a height of 13'. Mr. Bernier provided the board with reduced size plans of the Road Improvement Plans which shows one additional change. While onsite, they looked for locations for a turn around. They were a few locations they had agreed with the Fire Chief that would work. The members of the Trust had concerns about the proposed location as they were in front of one of the camps. After going back and forth, they came up with a location that was acceptable by the Trust and the Fire Chief.

Mr. Bernier stated that they have provided a new list of waivers from Section 7.2 E of the Subdivision Regulations and the reasons for the request. These included: Design speed of 20 MPH, Centerline Curve Radius of 120', Travelled way Width of 18', Shoulder Width of 2', Sight Distance of 150', and a Clear Zone of 2'. Mr. Bernier noted that there are places that they don't have a clear zone or shoulder's that are 2', and those are environmentally sensitive areas, culvert crossings. There was one that the Fire Chief asked that they put up delineator marker posts to warn people that it is there. On June 3rd they asked for one additional waiver from the requirement of 6" of crushed gravel over 12" of bank-run.

Mr. Howard stated Mr. Bernier had mentioned clearing braches to a height of 13' and asked if all the utility lines met 13' as well. He commented that the utility lines only cross in a couple of spots and didn't notice that they were significantly low, and they did not measure them. He could ask the Fire Chief if he had a problem with them, and if it is, they will get it fixed.

Mr. Howard referred to the list of waivers, noting that Mr. Bernier had mentioned the travelled width of the standard being 18' and the existing width being 12'. He noted that there are locations that are not 12', one being at the culvert. He had measured the travelled surface in that area as only 8', which does not seem enough. Mr. Bernier noted that they stood in that area for a while, and the Fire Chief was more concerned about marking the low shoulder area at the culvert. Mr. Howard noted that at the prior meeting the board realized that there were two ends of the spectrum, one that you meet the road standard, or must grant waivers. His feeling is that as a board, protecting the future liability of the town, it needs to be addressed somehow, whether that be asking that the culvert be widened, a waiver of liability that would be recorded at the Carroll County Registry. Karen McGinley, attorney representing the Trust, stated Mr. Howard's point about the waivers to protect the town for something that the Trust has requested would be fine with her clients. She did not know impact to the wetlands or what the disturbance would be to put in a larger culvert. They would prefer the waivers for environmental purposes. She noted that they had also submitted a Norway Point Road Maintenance Agreement.

Mr. Howard noted that in the above agreement, it does not address the property at the end of Norway Point Road, which has an easement over their roadway. It also states that winter maintenance is optional, which also raises the liability question. Ms. McGinley stated that there is a separate road agreement with the owners of the lot that was put into place with the first subdivision of Norway Point. Those owners are not parties to this application, nor do they have the authority to make them join in. Their current road agreement states that they will pay ¼ of the maintenance of the road. Prior to the construction of that home, the other three houses were not used in the winter, so the agreement would allow them to provide winter maintenance. Mr. Howard stated that as far as the road agreement presented, there is no guarantee that anyone's going to plow the road. This is a liability issue. Ms. McGinley stated that they would be happy to put that in any waiver of liability that they need.

Board members noted their concerns with emergency service regarding the width of the roadway at the location of the culvert and the possibility of no winter maintenance. After further discussion, members were ok with the requests for waivers for the travelled way width and winter maintenance so long as the town was covered with a waiver of liability.

Andy Coppinger, abutter 25 Hauser Estates stated that they have lived 14 years next to this property and have walked their dog, jogged, etc. on Norway Point Road and the property and enjoy the rural area and encouraged the board to grant the waivers as requested. He has requested that a 25' buffer be required on the rear portion of the five lots proposed along Long Point Road to retain a buffer along their abutting property.

Members further discussed the width of the culvert crossing with several members concerned with the environmental, sensitive areas. The question was raised if DES would even approve the widening of the culvert. Mr. Bernier stated that he felt they could get a permit, if the board felt it was important enough to widen it to 12'. After discussing this at length, it was the agreement that it would be a condition of approval that if and when one of the lots were sold or converted to a year round residence, that the area in question (8' at the culvert) would be widened to 12'.

Mr. Howard noted that at the prior hearing they had discussed the cistern and a question was raised regarding the 2 year maintenance, and since that meeting there was a draft policy crafted regarding cisterns. Ms. McGinley had noted her concerns with the liability of the Trust if they were to retain ownership of the cistern for the first two years and if the cistern was to be used by the Town in case of an emergency. For clarity purposes, Mr. Woodruff explained the performance bond requirement.

Joanne Coppinger noted her husband's request for a vegetative buffer on the five proposed lots on Long Point Road. The board discussed this, noting there were three lots that abutted their property. After a brief discussion, the Trust was in agreement to put in a requirement that there be no disturbance to the

existing buffer. A note will be added to the plan and included in the deeds that a 25' natural buffer is to remain on proposed Lots 5, 6 and 7.

Mr. Bernier noted there was one other question/concern regarding the suggested language for a condition of approval shown as Item #3 of the Planners April 4th memo. The Road Agent had requested a turn-around at the end of Rupert Road. The Trust does not want to do a formal easement, and would rather have a written agreement for the town to cut and maintain the turnaround instead of a formal access easement. Members discussed this with Mr. Bernier with Mr. Woodruff suggesting if the board were to require such an agreement in place of a formal easement, that the written agreement be filed with not only the Road Agent, but the Town Clerk.

There being no further questions from the board or the public at this time, Mr. Howard closed the public hearing at this time.

Motion: Mr. King moved to approve the Norway Point Trust (243-28) (Long Point Road and Norway Point Road) Major Subdivision of an existing 46.036 acre parcel of land into eight lots; three shore front lots of 12.347, 12.728 and 12.229 acres and five lots with 1.612, 1.610, 1.619, 1.578 and 1.621 acres, located entirely in the Residential/ Agricultural zone; to grant a Conditional Use Permit to construct a fire cistern and gravel access in the 50 ft. wetland buffer; and to grant the waivers for not depicting or providing; a. off-site geographic facts within 200 ft. pertaining to the application, other than what is shown on the plat, b. roadway frontage that exceed 600 ft. creating the need for a service road or internal street, c. required road improvements to Norway Point Road, with the following conditions: 1. Verify that all monumentation has been set by the surveyor prior to the Chair signing the plat. 2. Submit the entire plan set for the file, to include sheets S1.0 and S3.0-Cistern installation detail sheets. 3. The applicant shall grant written permission for a 50 ft. x 50 ft. access agreement for a turn around, to be filed with the Town Clerk, for Town plow trucks at the end of Ruppert Road prior to recording the plat. 4. The applicant shall post a performance bond or other acceptable surety in the amount of 110% of an engineer's estimate to ensure that the construction of the fire cistern system is both completed within one year of recording of this plat and that after a successful inspection and certificate of completion at which time the performance bond shall be released; a maintenance bond or acceptable surety in the amount of 15% of the performance bond shall be posted that ensures the system remain in good repair and operational for a period of not less than two years, at which time a final inspection shall occur that may lead to release of the maintenance surety and a recommendation to the BoS for final acceptance of the fire cistern system. 5. That the final plat be submitted to the Development Services Office in electronic format to include both a pdf and an approved cadd file format. 6. Require statement of limits of liability to the town, per NH RSA 674:41.I.(d)(2) 7. That the final plat reflects actual Map/Lot numbers (from Assessor). 8. Requirement that proposed Lots 5, 6, 7 & 8 maintain the existing 25' vegetative buffer on their western boundary, and that it is noted on the final plat and in the respective deeds. 9. The Road Maintenance Agreement is amended to include language that the upgrade of any lot will require that Norway Point Road, at the culvert, be widened to a specified width of 12 feet. In addition, I move to grant the waivers relating to Design Speed of 20 MPH, Centerline Curve Radius of 120', Travelled way width of 18', Shoulder Width of 2', Sight Distance of 150', and the requirement of 6" crushed gravel over 12" bank-run gravel. seconded by Mr. Punturieri, carried unanimously.

The board took a five minute break at this time. Once back in session, Mr. King stepped down from the board for the continued hearing for Rock Pile Real Estate, LLC.

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

Mr. Howard stated that this was a continued hearing for Rock Pile Real Estate.

Joanne Coppinger, agent for the applicant stated since the last meeting on May 8th they have taken the comments of the board to heart. The plan has been revised as noted in the revision box on the plan dated 5-28-13. They have reduced the parking by one space, from eight to seven. They revised the seating by two, from twelve to ten. Based on the Fire Chiefs comments they moved the propane tank so that it is located 10' from any property line and 10' from the building. The lot coverage was revised to reflect the reduction of the one parking space. Ms. Coppinger answered any questions from the board.

Mr. Goffredo stated that there had been some work done on the berm and questioned if the other side of the drive was going to be completed after. Ms. Prause stated the berm has been shifted a little and is longer than shown on the plan. The small area to the west will be installed and the remainder will be shortened and installed according to the plan.

Mr. Punturieri noted at the last hearing it was mentioned that people would sit outside and questioned where the outside seating would be located. Ms. Prause replied depending on the space on the deck once the handi-capped ramp is completed, they could be on the deck and there is a lawn area. She stated that it is not an extensive outside seating area. They have no outside area that is planned, other than the existing deck. She said she would never say that someone would never sit on the lawn, but they aren't planning any seating area there. Mr. Howard asked if there any regulation with regard to ADA, that requires demarcation across the deck so if there were a table set out that it wouldn't be in the pathway. Ms. Prause noted that there are ADA rules about demarcation. Depending on the actual grade and the length of the ramp they may need to put up a railing. If it is in the middle they may not put people out there.

Mr. Punturieri asked the applicant to explain their day to day operations. Ms. Prause stated that it is a retail bakery. They would be selling baked goods and beverages from the time they open until the time they close. Mr. Punturieri asked if they would be selling any alcoholic beverages. Ms. Prause stated no, and she felt uncomfortable stating her menu on the record and then later having to come to the board to change her menu.

Mr. Bartlett commented that we keep referring to this as a retail bakery, but it's a café. It's got seating for people to sit down and eat baked goods and drink coffee. Mr. Howard stated that he believed that the issue of the use has been determined by the Zoning Board at they don't have that purview.

Mr. Bartlett stated that he had an issue with the bathrooms. The septic design, as he reads it, states no public use, is that true? Mr. Howard stated the original approval did say that there were no public bathrooms. That is correct. Mr. Bartlett asked if there would be any public bathrooms in the building. Ms. Coppinger addressed the septic noting the system that is there, currently installed in the ground, which will be used, is designed for 300 gallons per day (GPD). She believes that there may have been some clauses about if the public could use that system or not. However, she designed a new replacement system in case the existing system fails, that will be installed if the existing system should fail. The system designed and approved is for 300 GPD. The state understands that the proposed use will use the current system, unless it fails, in which case the new one will be built. This is standard operating procedure. Mr. Bartlett asked if a restaurant can have 300 GPD that is adequate. Ms. Coppinger stated it goes by the number of seats. You have to have a certain number of GPD's per seat, and this was designed for 12.

Mr. Punturieri asked where the new leach field would go if the existing system were to fail. Ms. Coppinger stated in the same place.

Mr. Howard opened the hearing to the public, first noting that the board was in receipt of two pieces of correspondence. One memo (dated June 12, 2013) via email from Attorney Taussig that arrived at 3:48 today (see attached), and letter dated June 12th from Cristina Ashjian.

Eric Taussig, attorney, was present this evening and spoke to the application. He noted he was representing abutter's Robert and Gabriele Wallace in this matter, and the matter that is currently pending in Superior Court relating to the ZBA granting of variances and special exception. He commented as previously stated, any site plan should be limited to a retail bakery without any table seating or beverage service as to what Rock Pile applied for. Mr. Taussig went on to point out that this was the application that Rock Pile made before the ZBA, and in this iteration, they did not apply for a café. Mr. Taussig commented that he understands that a retail bakery is for the sale of baked goods, not for the sale of beverages and is not for a café. It's not for a sit down restaurant. It's not for anything else and his client's object very strenuously to that. Mr. Taussig went on to address each of the issues and or concerns noted in his memo of June 12th which included parking along Old Route 109, amended site plan, installation of berm, closing off Route 109 access, outside seating, hours of operation, and proposed signage. Mr. Taussig also noted to RSA 672:2 in which he feels provides each land use board the discretion to hold a joint meeting with another board. RSA 674:43 gives the Planning Board the authority to approve either a new or amended site plan. In closing he feels that these issues can be solved partially by having a joint meeting with the ZBA or remanding this back to the ZBA.

Mr. King stated that he feels this is a classic example of trying to put 6 quarts into a gallon container. He regrets what the ZBA did, but it's happened. He asked that the board be very thoughtful about what he thinks would be a relatively dangerous traffic situation both on site and on the access road.

Tom Randall commented on the parking point. He said that he has seen quite a bit of traffic coming in and out of the Lion's Club. He can't imagine a business could generate traffic that would create congestion or any meaningful hazard along that road. With respect to everyone involved in this, it seems like common sense has been forgotten about what this bakery is going to offer to the community. They have removed a derelict sight. This is being tied up in never ending legal dispute. This could go on constantly appealing the same things, if you want to go on forever, you can go on forever finding loop holes and referring to causes. It seems as though the objections seem to be getting out of hand. Mr. King commented that the Lion's Club has generous parking, unlike this. This has quite an intersection unlike the Lion's Club, so there is a substantial difference.

Mr. Bartlett commented in response to Mr. Randall's comment about common sense. Yes, there is a letter of the law, and lawyers can argue that all day long. Then there is the spirit of the law, and in this particular situation, he agrees with Mr. King, they are trying to put 6 quarts of milk in a gallon container. Mr. Coppinger earlier made the comment about the need for vegetative buffers for the back end of four very rural lots, yet there are no vegetative buffers around this site. There is a fence of sorts. His real concern is the septic system. He sees no reference, and no record of any test pits ever having been dug. He doesn't think that it's two feet to the water table much of the year. He does not understand how you can go from, no public use of bathrooms, which was a stipulation in the earlier things that we're now amending. It says no public bathrooms, takeout only for ice cream window and antique shop. Mr. Howard stated that Ms. Coppinger spoke to that issue fairly clearly. Mr. Bartlett stated that it is not clear to him. There is no evidence that there has ever been any test pits dug there. Ms. Coppinger stated that she is a Licensed State of NH Septic Designer and she did a test pit for her current design and she noticed on the former design there is test pit data. So yes, test pits have been dug on that site in the past and currently. Mr. Bartlett noted he was very concerned about a 300 GPD system if they have 10 seats and are opened 12 hours a day. He thinks that this violates the spirit of the zoning that we have and the planning we have. He will not object to it on the letter of the law, but it certainly violates the spirit.

Mr. Punturieri commented what the board may have lost sight of is the fact this is a residential neighborhood. This is not a commercial neighborhood where you would reasonable expect a seven day a week high volume business. He struggled with trying to find a balance with what's fair to the applicant verses what's fair to the neighbors. He feels the character of the neighborhood is going to change. There's a potential for a dangerous intersection and a bad fit for that property. He agrees with Natt and Josh and would much rather see an exit onto Route 109.

Ms. Nadeau responded to some of the comments made this evening. In regards with questions about the septic system, the subsurface division of NH DES is aware of what the proposed use of the property. The approval is for two seats more than what they are going to have. They got approval before they reduced the number of seats. She made a comment regarding Mr. Taussig's suggestion for a joint meeting with the ZBA or remanding it back to the ZBA. She stated that was not legally within the purview of the board. That was a series of decisions that were made by the ZBA, which are under appeal with the court. It's highly inappropriate to ask a Planning Board to then go back to the Zoning Board and ask for them to reopen the matter. The issues he wants to get them to change are hours of operation, whether or not there can be internal seating, what they can serve. These are all things that were discussed at the zoning board. When the ZBA granted the special exception it was specifically based on the hours of operation that they spoke to, the fact that they would have seating, the fact that they would have takeout. That is the scope of what they have the right to come to the planning board for approvals for. The signage on the building has been approved and is in accordance with the sign ordinance. The ZBA approved the use and variances based on the plan presented. There has been a suggestion that they mischaracterized a status of what the right-of-way (ROW) is, that is absolutely not true. DOT wanted it closed. Ms. Nadeau stated that she believed that Bruce was involved with it during this process and spoke to DOT. She does not think this is relevant because they made the deal with the town and they need to abide by their deal with the town. She asked Mr. Woodruff if he recalled in his conversation the issues with DOT.

Mr. Woodruff stated that he travelled to Concord with Peter Minkow sometime in November of 2011 and met with Chuck Schmidt and others. He spoke at that time to try and convince DOT to keep both driveways open because it made no sense. DOT was adamant and would not change their decision to close that entrance. So closing that entrance is a moot point. If he had been deposed by Mr. Taussig instead of the Town Administrator, that fact would have come out in his facts for whatever case he has, but he was not deposed.

Mr. Wakefield questioned if the driveway permit in question is permit 03-2012-51, which states that that drive thru onto Governor Wentworth Highway is to be closed. Mr. Woodruff stated yes. Mr. Wakefield stated that Mr. Taussig had him confused. Ms. Nadeau commented that was her concern that this was another attempt to try and reverse something that was voted on by the Town, which was negotiated between the Select Board and her client, and wants to use this site plan process to reopen a deal that he doesn't care for. They are obligated to live up to their side of the agreement. She did not receive Attorney Taussig's letter until a little after 6. He stated that filling in the berm is bad faith. They did it because they were running into expiration on their construction permit from DOT. They did because no matter what happens with this property it's a requirement from DOT and the Board of Selectmen. It wasn't any attempt to suggest that they are not going to pay attention to what happens in this forum. Ms. Nadeau commented that Mr. Bartlett had asked that they might want to consider further to the issue of safety, posting a sign for right hand turns coming out of the parking lot. This lead to the Planners recommendation about the off street parking. They are agreeable to the recommendation that they escrow money for the signs.

Mr. Wakefield spoke to the Planners recommendation of cutting off a right hand to exit. He asked for the Planners experience. It was noted that this was not cutting off a right hand exit, but right turn only exiting. Mr. Woodruff commented that he did not believe the intensity of traffic for this use merits that type of restriction. If the sign is placed by the applicant, the Police does not have the authority to enforce

that type of sign. Mr. Woodruff referred to his March 21st staff memorandum, which makes it clear that the traffic study memorandum that was submitted by the applicant meets the board's policy for thresholds.

Mr. Wakefield commented to the signage that was previously there for Ceka Trading Post. That sign was in the same place and close to the same size as what is proposed. There was an ice cream window that was put in. He doesn't know if it was ever used, but they did get approval for it.

Mr. Jensen believes that the use has been approved. He noted his concerns about putting a business on this site. He stated that the applicant has reduced the parking and asked that they would entertain one more consideration, and that would be to not put the seating on the front deck. After discussing this, the applicant was in agreement to limit the number of outdoor seating to two, one table with two seats.

Mr. Punturieri asked if there was any concession from the applicant in terms of the hours of operation. Ms. Nadeau stated they have an exception for that, noting that Attorney Taussig noted the prior site plan had no limitations, so this approval curtails it back to what that site plan allowed. This request would affect their ability to make a living.

Mr. Goffredo commented that the applicant has jumped through hoops. The ZBA has granted all the waivers needed, and he sees no reason why they can't make a success out of this. He supports this.

Mr. Taussig disputed Mr. Woodruff's comments regarding the ROW. He did not know the exact date that Mr. Woodruff arrived here, but did not believe that he was here at the time when this issue originally arose. This application and applicant has been through here for three applications going back to 2011, and he doesn't think Mr. Woodruff came until 2012. He stated that they had a deposition under oath with the Town Administrator. Mr. Woodruff stated that he was here in 2011. Mr. Taussig stated the Town Administrator, records and the documents that were produced indicated that this was a requirement of the Town and not the Department of Transportation. The closing of the access on Route 109 is a big issue with his client and will end up again with more litigation. They do not want an access point coming out so that both entry and exit are on Old Route 109. He does not see any reason this cannot go back to the town and renegotiated. The worse that could happen is that they would not get control of the ROW that the town owns and they would have less land. Mr. Taussig stated the property was built on speculation. They can have an antique shop. He stated the planning board has the authority to review what is going on the property. In regard to remanding and joint meetings, the provision in the RSA is there, and it is within the prerogative of the board to do so. He suggested that this be referred to independent counsel to determine what the authority is of the board. In view of the fact that Mr. Minkow, town attorney, is defending this matter in Superior Court with regard to the ZBA grant, obviously he has a conflict of interest. Mr. Taussig stated here is nothing to prevent from asking for independent counsel on this particular subject. There is nothing wrong with this board rejecting this particular application because of the nature and size and impact of this particular proposal. He submits that this will be a travesty if you approve it with the access as it is proposed. Mr. Taussig was disappointed to hear there would be seating for two outside, which means that six more people will be standing around talking with them. This will be a loud intrusion onto his client's peace and quiet and this will reduce the value of his client's property. This is not a suitable establishment for this location and that this board should reject this application.

Mr. Howard called for further public questions or comments. There was not at this time.

Mr. Howard asked what the pleasure of the board is. Mr. Bartlett commented that he wasn't certain of the jurisdiction of the board. He thinks the board is getting two legal opinions that are directly opposed. He understands, but could be wrong, that the Planning Board does have jurisdiction over hours, parking, ingress and egress, and parking in general, whether it's a special exception or not.

Mr. Punturieri commented that he tends to agree with Josh, but again, they have two different opinions, two different lawyers. He would have liked to see more concessions in terms of the impact and hours of operation.

Mr. Wakefield asked if members were comfortable with the information they have at this point, to make a decision? Mr. Jensen commented that he doesn't think they will be any more comfortable no matter what they hear. He was comfortable making a yes or no decision.

Mr. Howard called one last time for public input. Jim Leiterman noted his concern about the possibility of picnic tables being placed on the lawn. Starts with one and pretty soon there are six of them. Mr. Bartlett requested clarification, noting that they are limited to ten seats. If there are two outside, then there are only eight inside. That is the understanding of the board. It was noted that the applicant has agreed to limit the outdoor seating to two. Mr. Howard stated they are limited to ten seats on the site, only two of which are being allowed to be outdoors, and those will be located on the deck.

Mr. Howard closed the public hearing at this time.

Motion: Mr. Wakefield moved to approve the site plan for Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) for a bakery/café, recognizing that a civil suit is currently pending regarding the ZBA decisions on this development proposal, with the following conditions: 1. Add "to be removed" to the note call-out for the existing gravel driveway to NH Route 109. 2. Correct the owner call-out for Tax Map 44, Lot 12. 3. A note should be added to the plan that references the NH DOT Driveway and Excavation Permit. 4. The "trash bin" located at the rear of the building needs to be screened. 5. Add "and shall be re-applied as necessary for functionality" to note 15. 6. Add a note that states, "Drive location, berms and landscaping shall be installed as per this site plan, dated 04 March 2013, as revised on 28 May 2013, and not per the plan dated August 20, 2012 as referenced in the NHDOT Driveway Permit #03-2012-51." 7. A draft maintenance schedule for septic tanks and filters shall be provided to Development Services Office for review and filing. Maintenance Inspection results shall be submitted for septic tanks and filters to the Office of Development Services semi-annually on during the first week in May and the first week in November once the Certificate of Occupancy (CO) has been issued. 8. Limit seating to a total of ten seats, with a total of no more than two outside. 9. Recommend the placement of signage at the entrance suggesting right-hand turn only upon exiting. 10. If, in the opinion of the Police Chief, using his own forces through regular observation, on-street parking becomes a regular occurrence within the first year after the CO is issued, the applicant/owner shall pay the cost to the Town for the purchase and installation of the required number of parking restriction signs at approximately \$150 per sign (maximum of 5 signs or a total of \$750), and that the Board requires that an upfront contribution to be placed in a non-interest bearing account for this purpose to be returned if not used in eighteen (18) months from the commencement of business. 11. The applicant/owner shall submit the required nitrate and bacteria test reports for the well to the Development Services Office semi-annually during the first week in January and the first week in July every year for review, Seconded by Mr. Goffredo, motion passed by a vote of four (4) in favor (Jensen, Wakefield, Goffredo, Howard) and two (2) opposed (Bartlett, Punturieri).

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

3. NH Route 25 Storage Realty Trust (141-8)(61 Whittier Highway)
Site Plan Amendment and Conditional Use Permit

This was a request for a Site Plan Amendment and a Conditional Use Permit (CUP).

Dave Dolan of David M. Dolan Associates, PC was present to represent the applicant, NH Route 25 Storage Realty Trust, noting the plan was prepared for 61 Venture, LLC, potential buyers for the property. Mark Stephens, John Stephens and Ken Bickford were present as members of the LLC, one of the tenants of the building. Mr. Dolan presented the application for a site plan amendment. He briefly described the lot, location, size, current development, and use of the site. Members were provided with two plans, one that shows the existing conditions and the other the proposed changes. The site received a special exception in 2005 from the ZBA, which included any and all uses allowed in the commercial zone. There are two utility easements that encumber the property. The Public Service has a 100' wide easement that straddles the property line and adjacent to that is another easement for the NH Electric Coop. Mr. Dolan noted the wetlands depicted on the plan with the setback lines depicted. The present use of the property are a one (1) bedroom apartment, a gym, food pantry, landscape/maintenance contractor and one unit used privately. There are no proposed changes to the use or occupancy at this time.

Mr. Dolan referred to the proposed site plan, noting the site is out of compliance. A significant portion around the building is disturbed, gravel surface that extends off of the property line. The plan depicts areas of gravel to be re-vegetated. About 120 SF of the pavement that was previously approved for a parking area extends up to the edge of the wetland will be removed. The area outlined in purple will be a containment area for storage of landscape related materials. They have reconfigured the parking with 15 spaces along the front of the building and have shown spaces 16-23 and 24-42, which will occupy what's now a gravel area. The green hatching indicates areas that will be re-vegetated. All of the proposed parking spaces 16-42 are under the utility easement and is located less than 10' from an abutting residential use, so they will require a variance for those parking spaces. They are on the ZBA agenda for next Wednesday for the variance request. A proposed dumpster location is shown on the plan behind the building and noted that it is to be placed on an impervious pad and adequately fenced/screened. Mr. Dolan noted that the abutting property (Olden) is accessed from Glidden Road and the house is a couple of thousand feet, more or less, away. The existing lot coverage is 28.9%, as proposed with the disturbed and gravel areas restored and re-vegetated, it will be 23.78%. They have noted on the plan that there will be no outside storage of fertilizers or salt. Mr. Dolan stated the property is subject to the Groundwater Protection Ordinance. He has noted on the plan the requirements of the ordinance and responded where appropriate. There are no proposed changes of grading or lighting. They are asking for a Conditional Use Permit (CUP) to allow the storage area and the parking within the wetlands conservation overlay district. As far as requirements for the CUP, they have to show that no other area is feasible and the use is reasonable. Mr. Dolan noted that presently the area across from the building is being used for parking now. It wasn't part of the prior approval. They are trying to organize it and define the parking better than it is now. People come in and park wherever they want. They are trying to show parking for what uses there are now, and the property was approved for anything that is allowed in the commercial zone. They are trying to accommodate and seek approval for anything that might eventually be there. In regards to the CUP, they believe in their opinion, the most reasonable locations for those uses given the constraints of the property with wetlands, easements and the configuration of the property. Mr. Dolan noted the parking table shown on the plan. Based on the present use 22 spaces are required and 42 are provided, including 1 handi-capped. Mr. Dolan answered any questions from the board.

Mr. Howard noted there was a request for waiver submitted. Mr. Dolan asked for a waiver to not show the entire boundary, bearing and distance of property lines, and topography of the entire parcel.

Mr. Jensen asked if he understood correctly, if Mr. Dolan said because people are currently parking where they are not supposed to, that they should then give them a permit to allow them to park where they aren't supposed to. Mr. Dolan stated that's not what he said, he said that's what's happening

now and they are trying to define an area to accommodate the present and future use. Mr. Jensen asked if Mr. Dolan had a chance to review the comments made by the Conservation Commission (Con Com). The request to not build parking spaces 19-28, and how that would impact the current business. Mr. Dolan answered it would accommodate the business. They are asking for them to try and accommodate any future use of the building. The wetland in question is a small area that's repeatedly altered or trimmed by PSNH, maintaining the vegetation of the power line. It is not a highly functional wetland.

Mr. Punturieri noted the second part of the Con Com's comment was that the storage area not be allowed to increase as it is in wetland setbacks. Mr. Dolan replied the paved parking that was previously approved, prior to the adoption of that ordinance, goes up to the wetland. So they are making it a little better. There is more area, but it's better contained. They are further away from the wetland than it was. It is not just sheet flow over the pavement, it is contained.

Mr. Howard opened the hearing to the public. There were no comments at this time.

Mr. King commented it seems like it's a lot for the lot. The lot was approved for a certain use and I think these are substantial "asks" right here. Because of the wetness, it's like they're trying to fit a lot in a small space again. He is concerned that this is going to just be the way things are going to be going in Moultonborough. Setbacks are going to be ignored. We're going to be overbuilding. This is a useable lot now and we're intensifying it. It's useable and doesn't have to be intensified like this. Is it an appropriate place to do that.

The board reviewed the plan at length, with concerns that the area now being used for parking was not previously approved. Mr. Dolan stated they are trying to bring the site into compliance, and at the same time trying to accommodate what might be needed for the future use of the building. It is new parking. Mr. Jensen asked what was that area supposed to be. Mr. Dolan stated initially it was undesignated, it was undisturbed area and not being used under the previous site plan approval. The area was driven and parked on. Between the maintenance of the power line and driving on it nothing grew there.

Mr. King questioned what the area of the encroachment of the wetlands setback. It was calculated to be approximately 1,800 – 2,200 SF. Members discussed areas that appeared that they would be able to site 10 parking spaces that would not infringe on any wetland setbacks. This was discussed at length.

Mr. Woodruff read his recommendation into the record. Noting that he has reviewed the site plan amendment and conditional use permit applications. The TRC met yesterday and had two comments after reviewing the plan. The Fire Chief didn't attend the meeting but sent his comments after review of the plan. The TRC has requested as a potential condition of approval that the Planning Board require the owner to update the Police Department regarding current tenants and contact information. The TRC did review the CUP application and they support the creation of the parking spaces in the wetland buffer. Mr. Woodruff's comments were as follows: I support granting the CUP because I concur with the CUP letter dated 5/22/13, because currently patrons park where the new parking spaces are proposed now without Planning Board or utility approval, which points up the need for the spaces. Since the applicant has reached an agreement with the utility to allow these spaces, and there is and will be future parking demand because a commercial building this size was approved for any commercial zone A allowed use, it stands to reason that spaces be maximized on this constrained lot where the proposal would re-vegetate the area around the spaces to mitigate storm water runoff into the wetlands. Please note that as a result of the re-vegetation, the lot coverage is reduced by over 5%. The Conservation Commission has submitted a comment (recommendation) that was predicated on inadequate information and review and I am partially responsible for this situation. My recommendation is to not follow the comments from the Commission because the CUP and site plan amendment proposal would serve to address current and future parking demand on a constrained site, improve storm water runoff filtering and detention and to correct a site plan

violation. He noted that the ZBA must approve a variance for the 3 feet of parking from the 10 foot parking setback requirement to construct most of these spaces, so this should be a condition of approval.

Mr. Howard commented that yes there was a special exception granted. Yes it was for any commercial use that would have been allowed in the commercial district. However, presently the requirement for parking spaces is 22, understanding that the need is for more. Because of the lot coverage change, the mitigation on the water, which is all great, he feels that they can do better.

Mr. Wakefield commented that it looks as though the area that they're expanding on, in the parking area for material storage, will be swapped out for re-seeding and reclamation of the gravel area.

Mr. Goffredo commented that they are trying to organize and define the parking. It will be safer for everyone.

Mr. Bartlett has no problem with the change on the storage area and if you forego people will accommodate the parking spaces that solves the problem.

Mr. Howard stated the parking spaces still raises the questions.

Mr. Dolan stated the remaining issue with the parking is the proximity of the side property line. It is a 10' parking setback for commercial parking to the property line.

Mr. Howard asked the board if the spaces were relocated outside of the wetlands area, from the Planning Board perspective, does anyone have difficulty with the plan. Mr. Wakefield commented that it is better than it was. They have proposed green space. He agrees with Mr. Woodruff's memo in that they are taking away some of the bad area where they are just haphazardly parking. This is defined and it will take care of a lot of problems. Mr. Wakefield feels that the board is spinning their wheels trying to redesign their site plan and it is not getting them anywhere.

Mr. King does not feel that they are spinning their wheels. They are trying to make it more compatible with our ordinance. He would feel more comfortable if those parking spaces were outside the wetland setback, regardless of what Bruce says. He likes what the Con Com has stated.

Mr. Woodruff stated that the ConCom did not go out and look at the site.

Mr. Howard commented perhaps they should go out and look before they make a decision.

Motion: Mr. Punturieri moved that the board conduct an on-site visit for Monday, June 17th, 2013, at 5 PM, seconded by Mr. King.

Mr. Dolan asked if this was necessary if they relocated the parking spaces. Mr. Jensen commented if they relocate the parking spaces he would be fine with it.

Mr. Bartlett offered an amendment to the motion on the floor, that if they are willing to move the parking spaces they wouldn't need to do a site visit. There was no second on this amendment.

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

Motion: Mr. Wakefield moved to table the application for NH Route 25 Storage Realty Trust (141-8) and to continue the public hearing until June 26, 2013, seconded by Mr. Goffredo, carried unanimously.

VI. Informal Discussions

VII. Unfinished Business

VII. Other Business/Correspondence

IX. Committee Reports

- X. Adjournment:** Mr. Wakefield made the motion to adjourn at 10:58 PM, seconded by Mr. Punturieri, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

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June 12, 2013

Via E-Mail

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:

This letter is intended to supplement my prior letters on behalf of the abutters, Mr. & Mrs. Wallace and should be read in conjunction with those letters.

As previously stated, any site plan should be limited only to a retail bakery, without any table seating and beverage service as that is what Rock Pile applied for¹.

On June 6, 2013, the Board of Selectmen reviewed Kim Prause's request on behalf of Rock Pile to establish no parking zones along Old Route 109. The Board of Selectmen (BoS) responded that Rock Pile's request for parking signage was premature

¹ Although Rock Pile applied for seating at the bakery, none should be required at a retail bakery, which sells only for off premises consumption.

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because the Planning Board has not requested signage nor made any decision.² The Town Planner in his Memorandum to the Board has also taken the position that a request for a no parking zone is premature as no problem has yet manifested itself. Notwithstanding as to how the BoS and Town Planner characterize the parking issue, the Wallaces request that as a condition of any approval of any site Plan that parking be prohibited on Old Route 109 for 300 feet from the corner of Route 109 on both sides.

As a side note, it has been brought to my attention that Road Agent Scott Kinmond and Town Administrator Carter Terenzini conducted a special meeting concerning Old Route 109 improvements on June 10, 2013. The proposal is to reconstruct the road at a cost estimated to be \$180-185k. The road is to be narrowed to 21 feet wide to facilitate shoulders and “to improve traffic safety.” Because the road shoulders will enable on-street parking in front of the proposed site of the bakery café, my clients are very concerned that the presence of road shoulders will facilitate parking, creating a significant safety issue and problem for them.

According to counsel for Rock Pile, the existing site plan is supposed to be an amended site plan. The Planning Board has not acted on this application yet the applicant has unilaterally closed off the Route 109 access with a recently installed berm. Rock Pile’s contractor installed a berm cutting off access to Route 109 without first receiving approval of a site plan from the Planning Board, when the existing 1992 Site Plan shows a curb cut on the Route 109 side. The access to Route 109 is an ongoing issue and it was inappropriate and in bad faith to unilaterally install the berm without gaining Planning Board approval. The Wallaces object to the proposed traffic flow that requires vehicles to exit at a point directly opposite their home, which will result in headlights shining into their residence, and request that traffic exit onto Route 109 from the site.

I want to reiterate to the Board that the closure of the Route 109 access is not a requirement of the NH Department of Transportation (DOT), notwithstanding any representations to the contrary. It was a condition imposed contractually by the Town in the agreement to sell and transfer the Town’s Right of Way (ROW) to Rock Pile. This provision can simply be addressed by requiring the Applicant to renegotiate their agreement with the Town as a condition of the Board’s approval of a site plan.

My clients, Gabrielle and Robert Wallace also object to any outside seating at the bakery. Accordingly, they request that any site plan that is approved have a condition prohibiting outdoor seating and food and/or beverage consumption outside the shop. For the Wallaces and other abutters, any outside seating will create a nuisance and disruption. They do not want any additional noise from the bakery and café than they already face.

Further, the Wallaces reiterate their request that the hours of operation be substantially reduced from the current proposed hours of operation, given that the bakery and café proposed is to operate in the rural residential zone, in close proximity to their

² It appears Ms. Prause made an incomplete request to the Town for no parking along Old Route 109, as she (1) did not specify the location for the no parking zone in proximity to the Route 109 intersection, and (2) indicate that it is needed on both sides of the road.

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home. They request hours of from 8 AM to 6 PM Monday through Saturday and 10 AM to 2 PM on Sundays.

Additionally, the Wallaces request that signage should not be one large obtrusive sign on the eave of the roof as suggested in one of the pictures ('Cup and Crumb Café'), nor facing Route 109 since this is an Old Rte 109 address.

RSA 676:2 provides that each land use board has discretion as to whether it will hold a joint meeting with another board. The Planning Board has exclusive authority under RSA 674:43 to approve either a new or amended site plan. The Planning Board's authority extends to it regulating the egress and ingress to the property; the number of seats; hours of operation; and parking. As the ZBA usurped the jurisdiction of the Planning Board in approving the number of parking spaces and the amount of seating at the proposed site, there should be a joint meeting with the ZBA, or alternatively a remand to the ZBA concerning the variances and special exception. Moreover, in the light of the bad faith effort by Rock Pile in constructing a berm when this matter remains pending before the Planning Board and at Carroll County Superior Court, the request to close off the Route 109 access should be denied.

As there are many remaining open legal issues to be addressed, the Planning Board should ensure that it has a competent and an unbiased legal opinion before approving a site plan, otherwise it will only result in more litigation and unnecessary costs for the town. The Town's Counsel may not be the appropriate person to provide an unbiased legal opinion, as he is currently litigating issues regarding Rock Pile's ZBA variances and special exception against the Wallaces.

Very truly yours,



Eric Taussig

cc. Peter J. Minkow, Esq.
Regina A. Nadeau, Esq.
Mr. Bruce Woodruff