

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

Regular Meeting

June 26, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Paul Punturieri, Josh Bartlett, Judy Ryerson, Bob Goffredo; Russ Wakefield (Selectmen's Representative)
Alternates: Keith Nelson (left at 9:40), Natt King (arrived at 7:25)
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. Wakefield moved to approve the Planning Board Minutes of June 12, 2013, as amended, seconded by Mr. Punturieri, carried unanimously.

Motion: Mr. Jensen moved to approve the Planning Board On-site Minutes of June 17, 2013, as amended, seconded by Mr. Bartlett, carried unanimously with Ms. Ryerson and Mr. Punturieri abstaining.

III. New Submissions

1. Jesse Davis (192-3)(473 Moultonboro Neck Road)
Two Lot Minor Subdivision

This was a request for a proposed Minor Two Lot Subdivision creating one new lot with one residual lot. Mr. Woodruff noted there were no requests for waivers submitted.

Motion: Mr. Jensen moved to accept the application for Jesse Davis (192-3) and to schedule a hearing for this evening to be Hearing #3, seconded by Mr. Bartlett, carried unanimously.

IV. Boundary Line Adjustments

V. Hearings

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

Mr. Howard stated that this was an application for a Conditional Use Permit for Bear's Nest Trail and that he would be stepping down from the board for this hearing. Mr. Jensen seated Keith Nelson in his place with full voting privileges.

Attorney Chris Boldt was present this evening representing the applicant. He stated that they had gone before the ZBA last Wednesday and received the needed variance that is relevant to the matter this evening, the one item in the check list for this Conditional Use Permit (CUP). Mr. Boldt stated that he

would cover why they believe they meet the criteria. He noted that they do reserve the issue, that because of the limited amount actual soil disturbance that has occurred, there is an argument that the CUP provision doesn't even apply. For purposes of tonight they were there to say why they meet the setback criteria. Also present this evening was Joanne Coppinger, PE and Dan Ellis of Ames Associates. Ms. Coppinger prepared the report of how they meet those criteria.

Mr. Boldt commented because of the variance, as the material in the files indicate, they meet the criteria listed. This is an item in the Zoning Ordinance and is considered the equivalent as if they were before the ZBA for a special exception. The board has to find that they meet the check list to grant them the CUP. This flipside of that is, if they meet the check list, they are entitled to CUP. They believe they have met the terms and conditions.

Mr. Boldt referred to the plan, noting the additional criteria the ZBA imposed. First was the requirement that an erosion drip edge mitigation device be noted on the plan and installed and second that the proposed vegetation to be put on the rain garden must be 100%. He noted the location of the rain garden on the plan. Mr. Boldt stated that they had met with a representative from the Lakes Region Conservation Trust (LRCT), who is the immediate abutter to the property. They have changed the plan to address the concerns of LRCT. Mr. Boldt noted the proposed erosion control measures on the plan. The water bars to be added to the walking trail, as well as the relocation of the trail to meet the Land Trust desires.

Mr. Boldt referred to the plan, noting there were two areas that were shaded different. The difference is the smaller area will be allowed to go back to natural and will not be pruned. The area in the closer inner circle will be allowed to go back to natural, but pruned as necessary, to no lower than three (3) foot. He noted the area that re-vegetation will be installed as part of the plan development.

Mr. Boldt reviewed each of the seven criteria for the granting of the CUP as contained in their application stating he believes they meet all of the criteria. He answered any questions from the board.

Mr. Wakefield stated he had been to the site and viewed the area that had been clear cut. He referred to the proposed filtration area, understanding its purpose for mitigation. But, after seeing the area and how much it has grown up, he finds the fact that they will need to go in there to install the filtration area will mean a machine will brought in to construct it, and he thinks that will be contrary to #B of the criteria. Mr. Boldt responded to Mr. Wakefield noting he was concerned on the protocols because the ZBA was very interested in having that. Mr. Wakefield commented that if you disturb ground, you'll cause runoff. If you don't disturb the ground, leave the natural vegetation as thick as it is, you're not going to have any runoff. If you want to put it in, far be it for me to say.

Mr. Bartlett stated what the ZBA has approved and the plan has approved is reasonable, but noted that he was very, very troubled as this was built without a permit. If this was done before hand a lot of the time and trouble would have been avoided. He was concerned about the way that this has happened. He has stated before that he is very much in favor of everyone following the rules, and that is very important that the rules are followed no matter who they know, who they bought the property from and should not enter into the discussion. Mr. Bartlett commented that Article XIV Paragraph VI(B) states "The applicant must demonstrate that no practicable alternatives exist to the proposal under consideration..." and that nobody has demonstrated to him that they had no other choice but to put this thing there, and that he has a problem with. They just go ahead and build it, and get enough people in here and it will be a popularity contest and we'll just allow it. That troubles him.

Mr. Nelson stated the fact of the matter is that the ZBA gave its approval to locate it there. Since they gave their approval, they cannot reverse their approval. The ZBA has the power to grant the variance as to what the language says.

Mr. Goffredo questioned the Town's ability to take care of the property in case of a fire. What precautions have they made? Mr. Boldt commented that this is not to be a dwelling unit. It is a recreational tower, an ancillary structure. It was noted one of the condition of approval for the ZBA was a waiver or provision to any liability against the town for utilization of town services to the Tower.

Mr. Punturieri questioned what variances they went before the ZBA for. Mr. Boldt stated that they went for two variances, one for a corner of the tower which encroaches into the rear property line and the second for the steep slopes.

Mr. Bartlett commented that the term rain garden was used earlier and asked what it was. Mr. Boldt stated that it is a feature that will allow water to be slowed down and allowed to infiltrate naturally. It is planted. It is not a detention pond as it is not intended to hold that much. Ms. Coppinger noted that she did not term that a rain garden, she called it an infiltration trench. Mr. Boldt commented that he has filed some shoreland permits with NH DES and they like the term rain garden. It was noted that the trench will be fully vegetated as opposed to being lined with stone.

Mr. Punturieri noted the Conservation Commission (Con Com) comments mentioned that this was disturbing more than 20,000 sq. ft. of contiguous area and asked if that was accurate. Mr. Boldt stated the plan reflects that the disturbance of the area around the structure plus the trail is 10,400 sq. ft. The additional area that was cut, not stumped, is an additional 32,500 sq. ft. Mr. Jensen explained how the Con Com arrived at their square footage. Mr. Punturieri commented noted the ordinance speaks to 20,000 and Mr. Boldt stated the provision in the ordinance is they have to come to the board if they disturb 20,000 sq. ft. which is why they are here. The argument that they have in the application is because our terminology in the article is what it is, and defines what disturbance actually is, they were arguing the 32,000 doesn't count, only the 10,000 would be, and therefore there is an argument they don't have to come to the board. Rather than fight that fight, they have said it in their application, but they are here before the board asking for that relief. Mr. Woodruff noted for clarification purposes that the applicant gave up their right of appeal of an Administrative Decision on this long ago, and this is a moot point. There was a decision made that all of the disturbed area was disturbed area. There was a 30 day appeal period of that written email was sent to Mr. Ellis, which is long gone. That is one of the reasons that the application is here before the board. Mr. Boldt said that he has respectfully reserved that right as he is not positive. He would rather reserve a right and not stand on it for the decision tonight. Present the evidence as they have, that they meet the criteria. They are providing exactly the same kind of information, albeit after the fact, that they are showing the same that would be shown to them had they been hired this time last year, rather than this spring.

Mr. Jensen stated that the board is considering this in the framework that they have disturbed more than 20,000 sq. ft. and that is why they are before the board.

Mr. Punturieri asked that the soil engineer explain what the mitigation was. Ms. Coppinger explained the infiltration trench, water bars and vegetation.

Mr. King noted there appears to be a considerable amount of bedrock in the area and asked how that would affect the runoff. Ms. Coppinger stated all of the area that is disturbed is to be loamed and seeded. As far as bedrock affecting the flow, in the areas that have been disturbed, it shouldn't. Mr. King asked if the percolation changed with bedrock. Ms. Coppinger replied that she would say that. Certainly the water will infiltrate the soil, hit the bedrock and run across the top of the bedrock until it can find an outlet. She did not say that bedrock does not impede infiltration, but in this case it is a very small area. If it does hit bedrock once it infiltrates, it doesn't have far to go before it hits the infiltration trench. She stated that she was confident that this will work well in this situation. Mr. King asked exactly where the bedrock areas are. Ms. Coppinger stated that they did not map the bedrock areas. Mr. Ellis pointed to the plat, noting the areas of ledge he knew of, in the area of the trail to be relocated, which will be loamed and seeded. There is ledge that was encountered in excavating for the footings at a relatively shallow

depth. Mr. King asked how far it was to ledge when they excavated for the footings. Mr. Ellis stated he was not involved, stating it was perhaps less than four feet.

Mr. Jensen asked the Planner if there were any comments from the Code Enforcement Officer (CEO). Has he looked at this and said that the structure meets all the requirements necessary? Mr. Woodruff replied that the applicant is being made, through a code enforcement process, to do everything that they would have had to do should they have gone through the process correctly. This means they need to apply for, and be issued a building permit. They need to apply for, and be granted a CUP from this board. Given the fact that the structure is already there, they needed to apply for, and be granted two variances to make all of this come together. If any one of those approvals doesn't get done, they are to a point where they are at that nuclear option, which is to take everything down. This is step 2. The applicant has prepared the engineering reports and storm water reports for the CUP application. If they had applied for a building permit at the proper time they would have found out that the use of native timbers was not necessarily up to code. That is still up in the air as we speak, which is one of the reasons why the building permit has not been issued. It is in process now. The CEO feels some of those need to be replaced with certified lumber to handle the load. The CUP is now being considered. The variances that would allow them to come to the Planning Board have been granted. To Mr. Bartlett's point earlier, everything that they have had to do after the fact, they would have had to do before the fact if they had done it correctly.

Mr. King and Mr. Bartlett both asked if and how section VI (B) of the ordinance has been addressed. Mr. Nelson commented that it was addressed in the sense that the zoning board said that the structure could be there. Mr. King noted that he was at the zoning board meeting and they were told that this was completely separate and that the Planning Board would act on this. Mr. Woodruff commented that both he and Mr. Boldt were at the same zoning board meeting and stated that it was his understanding that in listening to the zoning boards discussion and what led them in their deliberation to their decision, one of the aspects that they considered was the fact that regardless of whether it was legal or not, the tower was there and it weighed heavily in their decision on that particular. Mr. Jensen questioned that there were no particular alternatives? Mr. Woodruff continued with "because it is there." Mr. King stated that he did not interpret it that way at all. He specifically asked where there were less steep slopes on the assumption that during the subdivision process there had to be some and in all probability slopes a lot less steep than that that would be more practicable. He didn't know that for sure, maybe the prior Planning Board did not handle it appropriately at the time of the subdivision. Obviously it is up to the applicant to demonstrate that. The board reviewed the section of the ordinance Mr. King and Mr. Bartlett were referring to. Mr. Jensen asked the Planner what is typically a practicable alternative. One practical alternative could be if it violates an ordinance don't build it. Ms. Ryerson commented or if there was a nice flat area. Mr. Bartlett noted that it was said that this was being treated as if they were coming to us for a permit now. He certainly does not want them to tear it down. That makes no sense, there would be more damage done. Mr. Wakefield commented that the area that the tower is built on is not that steep, it doesn't have to go too far before the grade does get very steep. Mr. Jensen stated that he wasn't there for the ZBA site walk. The question still is has the requirement that they address that there is no practical alternative, and has that been addressed. Mr. Boldt stated that he agrees and has not said that the Planning Board has to rubber stamp just because the ZBA gave them the variances. What he has said is under the law that governs special exceptions and CUP's, if they meet the criteria they are entitled to the permit. The board cannot change the list, he can't ignore a provision and neither can they. Nor can they add anything to the list. From a standpoint of what do you consider the circumstances of this case that the ZBA did. The ZBA listened to Mr. King, but he did not persuade those members that there was an alternative location. One member discussed that at the time that this lot was created it met the conditions imposed at that time. Mr. Boldt reminded the board that the Steep Slopes is a new provision. Based on the site walk there is not a flat area that this "coulda, shoulda" been located, unless you are smack down behind the garage. However from a standpoint of how the courts view the criteria, he believes the board would get some guidance from the recent Harbor side decision. You look to the built environment, the as built.

Mr. Bartlett commented that they have had people take things down, take them down when they did them without a permit. In this case the applicant was required to get a permit to start with and they didn't. He commented that that was what was troubling him. He doesn't have a problem with the building. Mr. Jensen asked that they stay focused on demonstrating that there is no practicable alternative existing to the proposal under consideration. Mr. Boldt stated the proposal under consideration is to allow this structure to remain. Yes, it is after the fact and he is not saying that they cannot decide against them. If they decided against us, the game is over and we take it down. He doesn't think that is what the ordinance is targeting, keeping in mind that the purpose of the ordinance is clearly set out in the beginning passage which is to avoid dwelling units and septic systems in these locations. This is not a going to have a septic system with it and it is not a dwelling unit. Mr. Jensen commented that he involved with the conversation of this section of the ordinance, and most of it had to do much more with erosion than it had to do with either of those two things. Mr. Boldt stated that they have provided the evidence that clearly shows they are not going to have erosion as a result of this. Mr. Jensen does not agree that they have to take an approach on treating this as if it's an as built rather than treating it as if it had not yet been built. Their decision has to be based on if it wasn't there how we would view it. Mr. Boldt commented that from a standpoint if they were able to dial back the clock to last year, what else would they want to see from them, if they had gotten the variance that they have for this location. What other information would they require by their ordinance? He is positive that they have given them exactly what they would have wanted to see, had they been here in June of 2012 instead of June of 2013. Ms. Ryerson stated it was an assumption the ZBA would have given them the variance De novo. Mr. Boldt stated yes.

The board went on at great length talking about this being a request for approval after the fact and questioning if the applicant has demonstrated that no practicable alternatives exist to the proposal under consideration Mr. Wakefield stated in laymen's terms, the question is can we put it here or is there a better spot. Mr. King does not feel this has been demonstrated and suggested looking at the subdivision that was involved with this lot.

Mr. Jensen questioned the purpose of the structure. Mr. Boldt stated that it is a residential recreational look out. It is intended to capture the view. Mr. Jensen asked if the primary purpose to have a nice platform in the woods somewhere. Mr. Boldt stated that they like the view at the top of their property. It is surrounded by the land trust property. Mr. Jensen asked if they could not build it there, would they put it on a more level piece of property. Mr. Boldt said probably not. They looked at it as that was the best location.

There was a mixed feeling amongst several of the members as to whether or not the applicant has demonstrated if there was no other practicable alternative for the structure. Mr. Boldt stated that it is blatantly obvious when you are on the property that this is the most practical spot given all things that were there, even if they were here in June of last year. This is the best spot. If there is a concern that they don't have enough information, continue, and schedule a site visit and come out again. Mr. Jensen polled the board at this time on their desire to conduct a site walk.

Mr. Jensen opened the hearing to the public for comments.

Don Berry, President for the Lakes Region Conservation Trust was present representing the Trust who is abutters. Mr. Berry stated that he was present at the ZBA meeting and as he had told them they have had conversations with Mr. Boldt as they were redoing their plan. The corrective measures that they have agreed to implement to address the damage specifically to the LRCT's property are acceptable to them and they appreciate what they have done on that. He reiterated what he said at the ZBA that he was not speaking to the issue of what Town's standards and requirements should apply to this project or what requirements should be imposed by the board given the somewhat unusual situation this is.

Tom Howard spoke to this application as a member of the public, having recused himself from the hearing for a conflict of interest. Mr. Howard stated that he respectfully disagrees with Mr. Nelson in

that he does not believe that the ZBA approved this site. The ZBA approved a variance if indeed the applicant achieved a CUP from the Planning Board. He commented because of recent legislation they have wrestled with this, which comes first, the chicken or the egg. He said that the board has found themselves in the egg position a couple of times thinking their hands have been tied. The grant of a variance to allow a building on an excessive slope of 35% and the variance to allow an encroachment on a setback on an eight acre lot does not tie the hands of the board. Because of the practical alternative he did attend the site visit. One thing he did hear was ZBA member Hopkins stating that the lot does have spots that meet the 25% slope maximum. Mr. Woodruff outlined in his memo to the board that the Planning Board must consider whether it is consistent with the spirit and the intent of the ordinance. He does not think that this is. Town meeting has supported zoning since 1985 and it is a working document with improvements some 20 meetings. This past year there were several articles that were passed by the voters to improve the ordinance, which takes a lot more votes than it takes to grant a variance to the ordinance. He believes the majority of the voters feel that variances should be allowed only when true hardships have been proven, not when someone chooses to ignore the regulation our town has set forth and assumes that they will be granted relief. In closing the application for the current CUP states that the tower is not intended to have electricity and makes him ask why is there electrical wiring and fixture receptacles in the structure.

Mr. Boldt replied that they were not before this board for any variance they were here for a CUP. This is a completely different body of law that they consider verses what the ZBA considers. They believe that they do meet the spirit and intent. They have set forward in the application, relying on the report from Ms. Coppinger, how they do meet the criteria for the exact things they are concerned about. He replied to the electrical comment. It was their intent to have a small generator for a light fixture. If that is a condition they don't want that to occur, than that's fine. This is an open air lookout tower that is in the best possible spot and there is not an alternative for that use. He believes they have met the criteria.

Motion: Mr. Nelson moved that the board conduct an on-site visit for Monday, July 1, 2013, at 4:30 PM for Bear's Nest Trail, LLC (64-5), seconded by Mr. Punturieri, passed in favor 6 to 2 with Mr. Bartlett and Mr. Wakefield opposing.

Motion: Mr. Punturieri moved to table the application for Bear's Nest Trail, LLC (64-5) and to continue the public hearing until July 10, 2013, seconded by Mr. Nelson, carried unanimously.

Richard Taussig stated he was an attorney representing abutters and needed to talk the Chair with questions and he wanted this to be on the record. Mr. Jensen replied no, that they were not going to take that comment that they had to finish their business first.

Mr. Howard returned to the board at this time with full voting privileges. Mr. Nelson removed himself from the board at this time. The board took a 10 minute break.

Mr. Howard called the meeting back to order and stated that he would respond first to Mr. Taussig. Richard Taussig stated he was an attorney for the abutter's Gabriele & Robert Wallace, abutter's to Rock Pile Real Estates property. Mr. Howard stated that he may address the board under Agenda Item VIII, Other Business and Correspondence. Mr. Taussig continued, asking the Chair if he had received an e-mail letter from Mr. Eric Taussig. Mr. Howard stated that they would address the issue under number VIII of the Agenda, Other Business and Correspondence in due respect to the applicants who have been scheduled on the agenda. Mr. Taussig asked the Chair if he could answer the question in an affirmative. Mr. Howard stated that he just did, thank you. Mr. Taussig continued, might I add... Mr. Howard continued with Hearing #2, stating no, sorry you may not. Mr. Taussig continued again, adding "you're the Chair. You're not the gate keeper. You were elected by the members of the Board. You weren't elected by the voters of this town. I think it's up to the other members of the board, so I respectfully disagree with you Mr. Chair." Mr. Howard asked if any member of the board wished to override the

Chair. Mr. Wakefield made a statement noting the board has an agenda for a reason, and that is to give each applicant a fair amount of time. They have submitted their applications. There is an opportunity to speak under Other Business and Correspondence and that is where the board should deal with this. Mr. Taussig commented that this is a yes or no answer. Members noted that there is a spot on the agenda for unscheduled issues. Mr. Taussig stated ok.

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

Dave Dolan of David M. Dolan Associates, PC was present to represent the applicant, and noted since the time the application was submitted the ownership of the property has been transferred to 61 Venture, LLC. Members of the LLC, Ken Bickford, John and Mark Stephens were present.

Mr. Dolan noted there was a site visit done last week. They submitted two plans, one that shows the existing conditions at a 1"=50' scale and the proposed site plan at a scale of 1"=20'. They did submit a waiver for the requirement to show the entire boundary, bearing and distances of property line, and topography of the entire parcel. This is a request for a site plan amendment, and included in that, was a request for a conditional use permit to allow outdoor storage of landscape related materials in the area outline in purple, and to allow parking in the 50' wetland buffer. Mr. Dolan stated during the site walk there was an area the board was interested in, in relation to the wetland area. He pointed that area out on the plan. He gave a brief history of the lot. It was initially developed in 2005, a special exception was granted for commercial use to include any and all uses that are allowed in the commercial district. Over time, for convenience, an area of the power line has been used as parking. The vegetation has worn off. They are asking for a Conditional Use Permit (CUP) for that parking, as well as the outdoor storage. Mr. Dolan noted the edge of the disturbed area, stating one part of the requirement for the CUP is that no other area is feasible and reasonable for the proposed use. Mr. Dolan stated that the other criteria for the CUP address "a" which is feasible and reasonable. There are 9 or 10 spaces within the 50' setback. They are located for the best access to the building. Mr. Dolan addressed each of the remaining criteria the CUP noting the soil disturbance will be minimized using this area as opposed to other parts of the property. There will be no grading done. Detrimental impact will be minimized as there will be no grading. They are restoring a lot of the disturbed area. They will be defining and delineating the parking. Restoration activities will leave the site as nearly as possible in its pre-disturbance condition as there will be no grading associated if the parking spaces are allowed as proposed with the CUP. They received a letter from the NH Natural Heritage Bureau indicating that there are not threatened or endangered species. Mr. Dolan believes that they meet all the conditions for the CUP and answered any questions from the board.

Mr. King commented that there appears to be an area to the south west abutting parking space #42 that would accommodate more parking spaces and not be in the wetland setback and asked Mr. Dolan to address that. Mr. Dolan stated the more feasible and reasonable location was where the site condition is already disturbed. Mr. Dolan noted a few areas that were further from the building, noting that was not as reasonable, although it may be feasible, it is not reasonable and feasible in his opinion. All 10 spaces could not be relocated to that area due to a brook and wetland area there also. An area noted at the last meeting, across the driveway, would require excavating into the bank and would require channelization to divert water away and potential erosion. Mr. Dolan noted parking has to be on one side or the other as there is not enough width to back up, it would be a potential safety issue. Mr. King questioned how many spots they could relocate in that area. Mr. Dolan noted 4 or 5.

Ms. Ryerson noted she wasn't present for the prior hearing and questioned the need for all of the parking. Was it needed now or is it for future use. Mr. Dolan stated it has a need. There are some peak uses at the gym. He noted the parking table on the plan that was based on the zoning ordinance requirements. Noting practically it fills up during peak hours of the day. These spaces will accommodate the peak demand. It was noted 25 spaces were approved on the original site plan, which were 10' x 20'. Spaces are no longer required to be 10' x 20. They have been able to add a couple of more. The spaces on

the proposed plan are now shown at 9' x 18'. It was noted as an observation during the site walk that vehicles do not park in front of the gym. There is a basketball hoop and other stuff in those 4 or 5 spaces that can't be used because the gym was using them for outdoor activities. Mr. Dolan stated the new owners of the building are aware of that and see that as an enforcement issue and will deal with that and make some of that space available.

Members discussed at length the proposed parking spaces, the number of spaces originally approved, and other possible areas to relocate the proposed spaces within the wetland setback and if they felt that the applicant had met the criteria for the granting of the requirement for the CUP that no other area is feasible and reasonable for the proposed use.

Members expressed their concerns with applicants seeking after the fact approvals. It was noted that these are new owners of the property and that they are trying to make a bad situation better. Other members noted their concerns with the proposed spaces within the wetland setback. The question was asked of the applicants if they were willing to relocate the spaces. Mr. Bickford commented that after the last meeting they had looked at moving the spaces down, but that area of the driveway is narrower and that would create a safety issue as that is the main thoroughfare to get in and out. It has significantly less backup space for the cars and there is a ditch on the other side. They do not want to have to alter the ditch as that would disturb another area. Mr. King indicated that he had parked in that area for the on-site visit and did not have any problem. Mr. John Stephens noted that area was not delineated at that time and you could pull further onto the power line. If they were to delineate those spaces with wheel stops or landscape timbers the spaces are at an angle making it very difficult to back out of them.

Mr. Bartlett asked the applicant if they didn't want to relocate the spaces, would they or could they lose 4 spaces, going from 42 to 38, when they only need 22. Mr. John Stephens stated they would be willing to move them, but they feel that it is most practical where they are.

Mr. Howard commented that in his opinion the board need to not approve 8 of those spaces (20-23 and 24-27), 4 on either side of the re-vegetative area and see that that area is re-vegetated. Mr. Bickford noted there is an area could not be re-vegetated as there are the easements for the power company and they bring their trucks through multiple times during the year. Mr. Howard noted it appears that a simple majority of the board is leaning toward having some of the spaces relocated elsewhere.

Mr. Jensen stated that during the site visit it was mentioned that the proposed parking area was to be paved was he correct? Mr. Dolan stated that as submitted, it is not presented as paving for part of this application. It may be paved in the future, but they do not want to be held to having to pave it in a certain timeframe.

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

Mr. Howard noted the request for waiver regarding the site plan not depicting the entire parcel which was discussed at the last meeting. He noted at the TRC meeting the Police Chief has requested that as a potential condition of approval that the Planning Board require the owner to update the Police Department regarding current tenants and contact information.

Mr. King questioned the Conservation Commission's comments. They had recommended the removal of all of the parking spaces that were within the setback area. Mr. Jensen commented having been at the Conservation Commission meeting and part of the comment process they had not gone out and looked at the site. After looking at the site he doesn't think the site doesn't need to be treated that way. As proposed this will improve that area significantly beyond what it is now and or will not impact it any worse than it is now. He did not feel that the Conservation Commission's comments apply.

Motion: Mr. Bartlett moved to grant the Conditional Use Permit as presented for NH Route 25 Storage Realty Trust (141-8) with the following conditions: 1) removal of spaces 23, 24, 25 & 26 and that area be re-vegetated. And to further grant the Conditional Use Permit for the proposed material storage area, seconded by Mr. Wakefield.

Discussion on the motion: Mr. Wakefield commented by removing those 4 parking spots, if they want to add those 4 spaces someplace else, they will have to come back to the board, unless they decide where else they are going to go on the lot. He feels they have presented a good plan and agreed with Mr. Jensen that this isn't a serious situation down there. He thinks they are going overboard. It is a good design and they are making it better.

Ms. Ryerson asked again if the spaces were needed at this time or are they to accommodate future use. If there is a change of use to the site they will have to come back before the board anyway. She felt they should be made to correct the violations on the site. They have not made the case for a need of 42 spaces. Mr. Woodruff stated the site has been approved by both the Zoning Board and the Planning Board to have any use that is allowed by right in the commercial Zone, the 4 tenant spaces and they would not have to come back before the Planning Board. Mr. Jensen commented at the site walk the parking spaces that are proposed defined were filled and certainly there was peak usage. Mr. King noted all of the parking spaces weren't used because of the basketball hoop, and it does appear they can remove the spaces in the wetland setback.

Mr. Howard commented that he did not believe that splitting the difference in the 8 spaces is what they should do. He thinks that they should either not allow the spaces or do allow them. He does not think 4 is the right way to go from setting precedent. He thinks they need to be consistent. He referred to the criteria for granting CUP approval "no other area is feasible and reasonable". He commented that they had parked in an area for the site visit that was feasible. He feels they should not allow the 8 spaces.

Members suggested changes to the motion on the floor. Mr. Wakefield removed his second to allow amendments to be made. It was noted the need to make two separate motions, one for the CUP and a second for the site plan amendment. If the CUP was not approved they wouldn't be able to approve the site plan.

Motion: Mr. Bartlett moved to grant the Conditional Use Permit with the following conditions: 1) removal of 4 spaces and re-vegetating the proposed spaces marked as 23, 24, 25 & 26, seconded by Mr. Wakefield.

Ms. Whitney commented that the motion appeared the same as the prior motion and that it was not clear. Mr. Howard commented that some of the suggested changes were relating to the site plan amendment and not needed for the CUP approval.

Mr. Woodruff commented that there are 5 criteria that are required that the board makes a finding on. If they find in the affirmative on the 5 criteria then they must grant the applied for CUP. He believes that they need to ask the applicant if they are willing to amend their CUP application and doesn't believe that they can do it unilaterally. Mr. Bartlett and Mr. Wakefield withdrew their motion at this time.

Ms. Ryerson referred to the 5 criteria, noting it appears that the only one the board has a problem with is "no other area is feasible and reasonable" which was the bulk of the lengthy discussion. Therefore they asked the applicant and while there appears to be another area that was feasible, they did not think it was reasonable. It is up to the board to decide if they think that is the fact in this case. Mr. Dolan asked if they were to amend their request to reduce the number of spaces, would they be convinced that they it were reasonable and feasible. If they were to relocate spaces 23-26 to the south west to adjoin what is presently space #42, and reducing the impact, would that be a reasonable request in addressing item a?

Mr. Howard asked members if they all agreed that b, c, d and e are acceptable. A majority of the members stated yes. Mr. Wakefield commented that Mr. Bickford indicated that moving the spaces in that area caused a problem backing up into a ditch and thoroughfare and asked if that a more reasonable spot to put those 4 than in a marginal wetland setback? Mr. Wakefield would go for leaving them as proposed, or removing, not relocating them to the south west. Mr. Goffredo commented that he was okay with them as proposed. Mr. Jensen commented he doesn't see a problem with relocating them there. Ms. Ryerson asked if they could take a vote on criteria a.

The board discussed criteria "a" at length. Mr. Punturieri commented that he believes at one point that the applicant had agreed to amend their CUP application to relocate the 4 parking spaces to the south west. Mr. Dolan stated that was right. Mr. Punturieri stated if that amendment was being made officially, then he would make a motion that they approve it based on that amendment. Mr. Howard stated the board has been advised that they should vote on each of the 5 standards and called for a motion on each criterion starting with "a" no other area is feasible and reasonable for the proposed use. This would be with the amended request, parking spaces 23, 24, 25 & 26 being removed or relocated to the south west of space #42.

Mr. Howard called for a motion for criteria a: No other area is feasible and reasonable for the proposed use.

Motion: Mr. Punturieri made a motion that the board agreed that as amended there is no other area that is feasible and reasonable for the proposed use, seconded by Mr. Bartlett, carried unanimously.

Mr. Howard called for a motion for criteria b: Soil disturbance will be minimum necessary for construction and operation.

Motion: Mr. Bartlett made a motion that the board agreed that Soil disturbance will be minimum necessary for construction and operation, seconded by Mr. Punturieri, carried unanimously.

Mr. Howard called for a motion for criteria c: Detrimental impact will be minimized.

Motion: Mr. Jensen made a motion that the board agreed that Detrimental impact will be minimized, seconded by Mr. Bartlett, carried unanimously.

Mr. Howard called for a motion for criteria d: Restoration activities will leave site as nearly as possible in its pre-disturbance condition.

Motion: Mr. Jensen made a motion that the board agreed that Restoration activities will leave site as nearly as possible in its pre-disturbance condition, seconded by Mr. Punturieri, carried unanimously.

Mr. Howard called for a motion for criteria d: Will not disturb habitat for rare, threatened or endangered species as determined by the NH Natural Heritage Bureau.

Motion: Ms. Ryerson made a motion that the board agreed this will not disturb habitat for rare, threatened or endangered species as determined by the NH Natural Heritage Bureau, seconded by Mr. Punturieri, carried unanimously.

Motion: Mr. Jensen moved to grant the Conditional Use Permit for NH Route 25 Storage Realty Trust (141-8) for both the proposed parking area as amended and the

proposed material storage area with the following conditions: 1) Flagging of the 50 foot buffer/setback is required when construction is to take place within 50 feet of the Wetland – before and during any construction. 2) Applicable industry Best Management Practices shall be employed for pre & post construction, forestry, agriculture, and other permitted activity, seconded by Mr. Punturieri, carried unanimously.

Motion: Ms. Ryerson moved to approve the Amended Site Plan Application for NH Route 25 Storage Realty Trust (141-8) with the following conditions: 1) relocate spaces 23, 24, 25 & 26 to the south west end of space #42. 2) re-vegetate parking spaces 23, 24, 25 & 26. 3) Wheel stops be installed and be painted delineating parking spaces, and to further grant the waiver for the requirement to show the entire boundary, bearing and distances of property line, and topography of the entire parcel, seconded by Mr. Jensen, passed in favor with Mr. Goffredo opposing.

3. Jesse Davis (192-3)(473 Moultonboro Neck Road)
Two Lot Minor Subdivision

Dan Ellis, from Ames Associates presented the application for a two lot minor subdivision of a 4.55 acres parcel of land located on Moultonboro Neck Road with an existing house and barn. The proposal is to subdivide creating one new lot containing 1.68 acres with 175' of frontage on Moultonboro Neck Road and one residual lot of 2.87 acres with 425' of frontage of Moultonboro Neck Road. Poorly drained soils have been depicted on the plan. Lot calculations were noted as 1.03 for proposed Lot 1 and 1.41 for the remaining residual lot. Mr. Ellis stated this was a minor subdivision, as neither lot may be further subdivided. The have received state subdivision approval and have made application to NH DOT for a driveway permit, which is pending at this time. Mr. Ellis referred to the Planner's Staff Memo of June 24th noting he has met conditions 2, 3 and 4. Mr. Ellis answered any questions from the board.

Mr. Howard asked for questions or comments from the board or the public. It was noted there were none.

Motion: Mr. Wakefield moved to approve the Jesse A. Davis (Map 192-Lot 3) (473 Moultonboro Neck Road) Two Lot Minor Subdivision of an existing 4.55 acre parcel of land into two lots; one lot containing 1.68 acres and one lot with 2.87 acres (remainder) located entirely in the Residential/Agricultural zone with the following conditions: 1. Add a note that references the state driveway permit number. 2. Property bounds shall be set prior to the Chair signing the plat. 3. Driveway construction shall disturb the stone wall to the least extent possible. 4. 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, seconded by Mr. Bartlett, carried unanimously.

VI. Informal Discussions

VII. Unfinished Business

VII. Other Business/Correspondence

Richard Taussig opened with apologizing to the Chair and the Board for jumping the gun earlier this evening. He noted his father, Eric Taussig, submitted to the board a letter through Bonnie and he was wondering if the board had received the letter that was addressed to you Mr. Howard. Mr. Howard stated he did receive the letter and asked if any other board members received the letter from Mr. Taussig. The

members replied no. Mr. Taussig asked if he could distribute the letter to the members. Mr. Howard noted that he may. Mr. Taussig asked if it would be okay if he read the letter aloud so it's in the record. Mr. Woodruff asked if he could speak with the board regarding this issue. He stated that this case was decided by the board two weeks ago. So the case is over and there is a possibility of an appeal to a higher court. NH Practice Volume 15 Land Use Planning and Zoning kind of eludes to this saying the board certainly shouldn't accept additional evidence and testimony on a case that has already been decided, especially since it could go to court. By accepting that you are possibly adding items to the record that were not really part of the record file when you adjudicated the case. Mr. Howard stated no, he may not read the letter into the record. Mr. Wakefield asked if he could ask Mr. Taussig a question. Mr. Howard stated they needed to be very careful that they are not entering into territory where they shouldn't be entering into. Mr. Wakefield commented that was exactly his question. What exactly were there supposed to do with the letter as they have given approval already. They have already gone through the process of the application. He didn't mind receiving the letter. He just didn't know what to do with it. Mr. Taussig commented at the last Planning Board hearing Mr. Woodruff made a representation to the board that was incorrect and contradicted the emails that are attached to... Mr. Howard stopped the conversation stating that there is an appropriate appeal process and this is not the correct forum. Mr. Woodruff commented that there is a suit against the applicant and against the town's Zoning Board of Adjustment on their decisions and the judge has recently ruled that in that instance the ruling will be based upon the record only and half hour oral arguments. Mr. Woodruff commented that he hopes the board agrees by accepting the letter doesn't mean that it has to go in the application case file because it was not part of the case.

Motion: Mr. Punturieri moved that the letter will not be entered into the case file of the Rock Pile Realty because they have adjudicated it already, seconded by Mr. Jensen, carried unanimously.

IX. Committee Reports

X. Adjournment: Mr. Wakefield made the motion to adjourn at 10:11 PM, seconded by Mr. Jensen, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant