

MINUTES

NEW DURHAM PLANNING BOARD

JANUARY 6, 2009

Chairperson Bob Craycraft called the meeting to order at 6:30 PM.

Roll Call: Bob Craycraft (Chair), Cathy Orlowicz, David Bradford (Selectman's Representative), Paul Raslavicus. **Excused Absence:** Paul McHale (Vice-Chair)

Others Present: Arthur Capello, Nicholas Bickert, John Quinn, Ron Gehl, Victor Piekarski, Gloria Switalski, Kathy Burkhardt, Tom Burkhardt, Tom Tremblay, Laurie Tremblay, Stanley Mullaney, Deborah East, Ron Gehl

Public Input: Chair Bob Craycraft asked if there was any public input. There was none.

Burned Building Amendment: Chair Bob Craycraft opened the question to Public Hearing at 7:10 PM. Public comment was favorable to the proposal as it stands.

Paul Raslavicus moved to approve the proposed Burned Building Amendment to the Zoning Ordinance as presented and to place the Amendment on the Town warrant for March 11, 2009. David Bradford seconded. Unanimous with no abstentions.

Town Center Zoning District:

The Board discussed the definition of the district boundaries. Cathy Orlowicz suggested replacing the words within "90 days of the adoption of this ordinance" in Section B.3 with the words "at the time of site plan review". The Board agreed by consensus.

Some Board members expressed concern about the centerline of the road serving as the starting point for measuring the 1000'. After discussion the Board made no change to the existing language.

Paul Raslavicus said he had some concern about whether the prohibition on hazardous materials could block approval of a medical facility. Ron Gehl said the language about hazardous materials does not include infectious or biohazard materials. It refers to chemical and metal materials that can be explosive or corrosive.

Cathy Orlowicz suggesting adding a clause to protect a lot too small to subdivide. After discussion the concept was dropped.

David Bickford said he wanted to be sure that the inclusion of "Lumber Yard, Mill, Wood Storage and Sales," as a use permitted by Conditional Use Permit would not interfere with the stacking or selling of timber harvested from a lot in the district. Board members agreed to ask Mr. Rob Johnson from the New Hampshire Farm Bureau for his guidance and to incorporate any suggestions he makes into the language of the proposed ordinance.

Paul Raslavicus moved to approve the language of the proposed Town Center Zoning District Ordinance as amended at this meeting, send it to Town Counsel for review, and to place the amendment on the Town Warrant for March 11, 2009. David Bickford asked that the motion specify that guidance from the Farm Bureau regarding Lumber Yards would be incorporated into the amendment. Mr. Raslavicus accepted the suggestion as an editorial change. Mr. Bickford seconded the motion. Unanimous with no abstentions.

Tremblay Site Plan: Chair Craycraft asked David Allen the status of the application. Mr. Allen reported he had not received a completed application from Mr. Tremblay. He had received a phone message saying that Mr. Tremblay would be at this meeting.

Mr. Stanley Mullaney introduced himself as an attorney from Rochester, NH representing Mr. Tremblay. Mr. Mullaney said he hoped he could be of assistance to the Planning Board. Chair Craycraft noted that what the Board needs is a completed site plan application.

Mr. Mullaney said that in 1993 or 1994 while he was living at 68 Meaderboro Road, across the street from Mr. Tremblay, the Town Building Inspector David Lindberg came to his house and said Mr. Tremblay could do his business.

Chair Craycraft asked if there was documentation of this. Mr. Mullaney said that Mr. Tremblay received a letter saying there was no record of approval for operating a home occupation.

Mr. Mullaney went on to say that Mr. Lindberg gave Mr. Tremblay the authority he needed to operate, Mr. Lindberg was the town representative, and Mr. Tremblay relied on Mr. Lindberg's authority and has been there operating his business for 18 years. Mr. Mullaney said that if the town wants to give Mr. Tremblay a Cease and Desist order and take away his livelihood without hearing what the Town's representative, Mr. Lindberg did at the time, they were leaving him (Mr. Mullaney) with no choice but to bring a petition to enjoin the cease and desist.

Chair Craycraft suggested that Mr. Tremblay did have the option to file the materials for a site plan review and authorization. Mr. Mullaney said he would not do that because Mr. Tremblay already has the authority to operate. Mr. Lindberg gave him that authority.

Arthur Capello, Building Inspector and Code Enforcement Officer described his conversation with Mr. Tremblay when he delivered the letter to him asking him to cease and desist. He said he informed Mr. Tremblay that he was not interested in putting him out of business and would not ask him to stop his business as long as he moved along in the process of getting a Site Plan permit. He emphasized that the letter he gave Mr. Tremblay was not a formal Cease and Desist order. If it came to that point a formal Cease and Desist would be served by the Police.

Deborah Earle spoke. She said she was a neighbor and the person who filed the complaint. She said she wanted to explain to Mr. Tremblay where she stood on the issue. Chair Craycraft said the issue was not open to public comment.

Mr. Mullaney advised Mr. Tremblay to leave the meeting.

Bob Craycraft moved to deny the application without prejudice, because of incomplete application. He said the applicant does not appear willing to work with the Board.

David Bickford asked what options the Board had at this point. Chair Craycraft said the Board could continue the application process indefinitely, it could continue to a date certain, it could continue with a condition that Mr. Tremblay submit an application by a certain date, or it could deny without prejudice.

Arthur Capello said he hoped the Board would set a date certain if it did not act to deny at this meeting because he cannot do any further enforcement without a date certain.

Mr. Bickford asked Mr. Capello if he felt the Town had made a mistake on this situation. Mr. Capello said if it was true that the previous Building Inspector gave Mr. Tremblay authorization to conduct a business that was a mistake because he did not have authority to do so. He said a mistake does not relieve the property owner of responsibility, and Mr. Tremblay has since added another business.

David Bickford said it appears that Mr. Mullaney does not believe the site plan application process is appropriate and does not plan to submit an application. Paul Raslavicus agreed and said the only thing the Board can do is deny the application.

Deborah Earle asked to speak again. Chair Craycraft said the Board's hands are tied and it cannot allow public comment because that would be ex parte discussion.

Paul Raslavicus seconded. Yes: David Bickford, Bob Craycraft, and Paul Raslavicus. No: Cathy Orłowicz. Passed 3-1 with no abstentions.

Chair Craycraft called a 5-minute recess at 9:13 PM.

Mr. Craycraft reconvened the meeting at 9:20 PM.

Conservation Subdivision Application Process: Chair Craycraft opened the proposed amendments to the Subdivision Regulations for public comment at 9:21 PM. There were no comments. He closed the public comment at 9:23 PM.

David Bickford moved adoption of the proposed amendments to the Subdivision Regulations as Section 6. Paul Raslavicus seconded. Unanimous with no abstentions.

Amendments to the Sign Ordinance for Town Center: The Board agreed by consensus to add the words “or smoke” after the words “emit sounds” in Section O.2.d.

The Board agreed by consensus to strike the words “Traffic on Route 11 travels between 45-55 miles per hour, requiring larger signage for safety and visibility” from the proposed Section P: Sign Requirements on Route 11.

Paul moved to approve the amendments to the Sign Ordinance as amended above, to schedule for Public Hearing on January 20, 2009. Bob Craycraft seconded. Yes: Paul Raslavicus, Cathy Orlowicz, David Bickford, and Bob Craycraft. Unanimous with no abstentions.

Natural Resource Additions to Subdivision Regulations: Paul Raslavicus proposed revisions to the draft additions to the Natural Resource section of the subdivision regulations as follows:

“3. The location and orientation of structures and dwellings should be designed to maintain and take advantage of the natural topography and drainage patterns to the greatest extent possible, and to minimize disturbance of natural vegetated cover, grading (cut and fill) and soil removal.

4. Building envelopes should, to the maximum extent possible, not be located on ridgelines, hillsides, valley floors, or other visually prominent areas. Dwellings on separate lots should avoid being placed one above another, or have unscreened backs of dwellings face each other.

5. At the discretion of the Planning Board a formal landscaping plan, including fencing for screening purposes, may be required.

6. Prime agricultural soils and soils of statewide importance should be preserved to the maximum extent possible.

7. The removal or disruption of historic, traditional or significant structures or architectural elements should be minimized to the greatest extent practical.

8. Significant trees, boundary trees, stone walls, and streams should be incorporated along the edges of individual lots or along a path or roadway, rather than transected by lot lines or a roadway.”

Chair Craycraft opened the issue for public comment at 9:45 PM. There was no public comment.

The Board agreed by consensus to delete the words “including fencing for screening purposes,” from item # 5. The Board agreed by consensus to add the changes proposed by Mr. Raslavicus and to review the natural resources section as changed at the next meeting.

Subdivision Regulations Renumbering. David Allen suggested the Conservation subdivision application section should be a separate section 6. Paul Raslavicus moved to approve the change, David Bickford seconded. Unanimous with no abstentions.

Cathy moved to adjourn at 10:11 PM.

Respectfully submitted,

David Allen
Land Use Administrative Assistant

Minutes approved 1/20/2009