

MINUTES

NEW DURHAM PLANNING BOARD

MAY 5, 2009

Chairperson Cathy Orlowicz called the meeting to order at 7:03 PM.

Roll Call: Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), David Bickford (Selectmen's Representative), Dorothy Veisel, Scott Drummey (Alternate). **Excused:** Paul Raslavicus

Others Present: Paul Gelinias, Jr.; Paul Gelinias, III; Carol Bolstridge, Walter & Catherine Hamel, Mark Fuller, Ryan Noonan,

Public Input: Chair Cathy Orlowicz asked for public input on any items not on the agenda. There was none.

Minutes of April 21, 2009: Board members made the following corrections:

On page 2, 3rd paragraph, second sentence should read, "The chart identifies ten issues...."

On page 3, 3rd to last paragraph, second sentence should read, "after the words 'Jennings Forest.'"

Bob Craycraft moved to approve the minutes of April 21, 2008 as amended.

Dot Veisel seconded. Scott Drummey abstained as he was not present. David Bickford abstained as he only at the last part of the meeting. Approved 3-0.

Cronin Conditional Use Application: Chair Cathy Orlowicz asked Tom Varney to present any updates from the applicant. Mr. Varney distributed a revised plan to the Board. He said the revisions change the extent of the porous pavement to provide extra protection against flow from the infiltration bed to the road bed. They are also paving a 6' section along the edge of the road to insure proper downstream flow of water in the ditch above the driveway.

Cathy Orlowicz referred to the minutes of the April 11, 2009 site walk which identified questions that Board members raised on the site walk.

Bob Craycraft asked what the plans are for mitigation of work done before the permit was applied for, and how the applicant will clean the swale at the top of the hill. Mr. Varney said the excavation was done prior to the adoption of the Steep Slope ordinance and so mitigation is not a legal requirement. He added that the applicant plans to restore the natural grade at the top of the hill, and does want to revegetate the excavated area to the west of the garage and wants to know what kind of mitigation the board desires.

Scott Drummey asked if the top of the hill can be accessed from the logging road. Mr. Varney said they can reach the area either from the top or from below.

Bob Craycraft said he did not have the UNH Stormwater Center best practice specifications in front of him, but wanted to be sure the mitigation and management would meet the best practice specifications. Mr. Varney said yes they would.

David Bickford said he was worried that the garage was so big and close to the road that it would be an eyesore. He said there would be less concern if it was set back from the road similar to the house to the east of the garage.

Chair Orlowicz read the letter of the New Durham Conservation Commission into the record. The letter responds to the request from Ms. Orlowicz for Conservation Commission comment in line with Article XII of the Zoning Ordinance. The letter states that the Conservation Commission does not support the current plan, but might support a smaller garage.

Ms. Orlowicz asked for comment from Town staff and the public. Road Agent Mark Fuller said the changes the applicant had made in the plan answered his concerns. He added that he is hopeful that permeable pavement will be a help to the town in the future and he is glad to see someone trying it out.

Arthur Capello requested a clear condition be established that no part of the structure will be used as living space. There were no comments from the general public and Cathy Orlowicz closed the public comment.

Bob Craycraft emphasized the need for a maintenance schedule and log that is accessible and reviewable by the Road Agent, Code Enforcement Officer, and/or Conservation Commission.

Chair Orlowicz asked Mr. Varney to confirm that he has conducted a perc test on the site as requested by the Town's Third Party Engineer, Bill Straub. Mr. Varney said that he had done that and the test results are stated in the Stormwater Impact report.

David Bickford asked if the road right of way is a consistent 50' in width. Mr. Varney and Mr. Fuller both said that it is not, it varies from 30' to 50'. Mr. Bickford suggested changing the road setbacks by adding 25' and measuring from the centerline instead of the edge of the right of way. He said this change would ensure that the intended setbacks were still there if the town had to widen the road at some time in the future.

Scott Drummey asked what would happen if the property owner did not continue maintenance on the permeable pavement. Arthur Capello said in that case he would issue a Cease and Desist order to disallow use of the structure and pavement. Road Agent Fuller said his crew would probably notice if the system was not working properly when they are working during a storm.

The Board discussed the facts of the case and the conditions they should attach to approval. They identified the following facts of the case:

1. Anna Cronin, 77 North Shore Road, is the owner of a property located on the north side of North Shore Road, designated as Map 38, Lot 217.
2. The owner began excavation to construct a 3 car garage in the summer of 2008. The Town Code Enforcement Officer issued a cease and desist order because the excavation was not properly permitted.
3. The owner has submitted an application for a Conditional Use Permit in order to obtain the required permits to construct the garage. The application is properly based on the condition of the lot before excavation was begun.
4. The applicant has stated that no part of the proposed structure would at any time be used as living quarters.
5. The lot has solid ledge with steep slopes exceeding 30% going back approximately 100 feet from North Shore Road. Behind that point the lot continues to slope upward at a more gradual rate. The front section of the lot is in the New Durham Steep Slope Protection Overlay Zone and is subject to the restrictions of that section of the Town of New Durham Zoning Ordinance.
6. The Steep Slope article restricts disturbance of slopes exceeding 30% to a maximum of 6,000 square feet. The applicant proposes disturbance of just less than 6,000 square feet.
7. The applicant has submitted an engineered plan showing the design of the garage on the lot, and the stormwater management plans. The plans include:
 - a. construction of an interceptor ditch at the top of the hill that will divert water flowing from the back of the lot away from the disturbed part of the lot and down to the roadway;
 - b. excavation assisted by blasting to dig out a section of the ledge for the garage, creating a vertical wall of solid ledge approximately 16' high directly behind the garage;
 - c. a retaining wall constructed at the top of the ledge wall to hold back the soil and rocks that are on top of the ledge;
 - d. paving the garage driveway with porous pavement and installation of a 5500 cubic feet infiltration basin underneath the pavement (1,125 square feet in surface and 4'-6' deep);
8. The applicant has analyzed the possibility of water seepage from the infiltration basin into the roadbed or downhill into the House and Cottage structures located below the garage. The analysis demonstrates there will not be seepage at a level that would create any threat to the road or the structures;
9. William Straub, P.E. of CMA Engineers is the Town of New Durham's Third

Party Engineer. Mr. Straub has reviewed the application proposal. He confirms that the proposed design meets the requirements and standards of the Steep Slope Ordinance. He believes the stormwater management structures will function as proposed by the applicant;

10. Mr. Straub believes the applicant's analysis of potential problems from water seepage out of the infiltration basin is accurate if the soil type it is based on is accurate. He recommends that the soil type be confirmed by a percolation test;
11. The applicant conducted a percolation test and the results are reported in the Drainage report;
12. The applicant has modified his plan to address specific concerns raised by Mr. Straub and Mr. Fuller;
13. The Conservation Commission has reviewed the plan and says it does not support the proposal in its current configuration because of concerns of stormwater damage;
14. The University of New Hampshire Stormwater Center, and Appledore Engineering (currently working with the Board on Stormwater standards) recommend a maintenance plan for all installations of impervious pavement and other stormwater management structures; and
15. The New Durham Code Enforcement Officer has expressed concern to the Board about the potential use of the structure for living quarters.

Bob Craycraft moved that the Board accept the above findings of fact and tentatively approve a Conditional Use Permit for Anna Cronin to build a garage on steep slopes on Tax Map 38, Lot 218 according to the plans submitted by Mr. Tom Varney on May 5, 2009. This action is subject to final approval at the June 2, 2009 Planning Board meeting after the board sees the full motion in writing; and it is subject to the following conditions:

1. No part of the garage structure will be used as living quarters at any time;
2. The applicant and successors are responsible in perpetuity for regular maintenance of all storm management structures, specifically including the porous pavement, the infiltration basin, the retaining wall, the diversion ditch and the catch basin and drainage system behind the garage;
3. Maintenance shall be done according to a maintenance plan meeting the current best practice standards of the University of New Hampshire Stormwater Center and approved by the Town of New Durham Third Party Engineer.
4. The Maintenance plan shall include provisions for record keeping, access to records by town officials, and an annual written report to the Town code enforcement officer.

5. The applicant is responsible for reclaiming the land and vegetation disturbed on both sides of and above the proposed garage;
6. Reclamation shall be done in conformance with Article XII.G.3 of the New Durham Zoning Ordinance, and according to a reclamation plan that
 - a. replicates the density and composition of the original vegetation;
 - b. utilizes native vegetation; and
 - c. Is approved by the Town of New Durham Third Party Natural Resource Consultant.
7. The applicant is responsible for installing stormwater management structures so they meet installation standards of the manufacturer. To ensure this the applicant will establish a written inspection schedule approved by the Town Engineer. No work on the following stage of installation will begin until the town engineer has signed off on the previous stage;
8. The applicant is responsible for all costs incurred by the Town's third party engineer and natural resource specialist in the review and approval of agreements, and the inspection of work in progress. The applicant will establish an escrow fund of \$3,000 with the Town to cover these costs.
9. The applicant will amend the deed for this lot (Map 38, Lot 218) to incorporate all conditions of this decision.
10. The New Durham Building Inspector shall issue a building permit for the garage only after verifying that
 - a. the terms of conditions 3 – 6 and 8 - 9 have been met;
 - b. the terms of condition 7 have been met as far as is practicable before construction; and
 - c. All fees and costs have been paid in full.
11. All conditions precedent to issuance of a building permit must be completed within 12 months of full approval of this motion by the Town of New Durham Planning Board. Failure to complete within this period shall require application to the Planning Board for an extension of the Conditional Use Permit.
12. Failure to maintain the conditions of this decision, or failure to maintain the structures according to the terms of the maintenance agreement is a violation of this decision and may result in a cease and desist order from the Town of New Durham Code Enforcement Officer.

Scott Drummey seconded the motion. Yes: Cathy Orlowicz, Bob Craycraft, Scott Drummey, and Dot Veisel. No: David Bickford.

Bob Craycraft moved to continue the application to June 2, 2009. Dot Veisel

seconded. Approved unanimously with no abstentions.

Hamel Home Occupation: Catherine Hamel described her plan for a home occupation operating a hair salon in her home at 301 Old Bay Road, Map 6, Lot 24. She has 28 years in the field including owning a salon in Rochester for 17 years. The hours will be Monday & Tuesday 2-7, Wednesday-Friday 10-7, and Saturday 9 am – 3pm. There is a bathroom easily accessible from the work area that customers can use.

Arthur Capello, Building Inspector, said he had completed an onsite inspection and found no concerns. He said the site requires minor electrical, plumbing, and carpentry work before a permit can be issued. He said the permit should be issued after Ms. Hamel is given her state license for the location.

Chair Orlowicz opened the issue to public comment. There were no abutters present and no public comment.

Bob Craycraft moved to approve a Home Occupation Permit for Ms. Catherine Hamel to operate a hair salon in her home at 301 Old Bay Road, Tax Map 6, Lot 24, conditioned upon approval of her application for a New Hampshire State hairdresser license. Scott Drummey seconded. Approved unanimously with no abstentions.

Requests for Information by Code Enforcement Officer: Paul Gelinas, expressed concerns about a letter he received from Code Enforcement Officer Arthur Capello requesting information regarding his business at 14 Old Bay Road. He felt the letter implied that he was not in compliance with zoning regulations. Cathy Orlowicz noted that Mr. Capello has mailed out 16-17 letters based on a citizen's inquiry about businesses in town. She said the questions in the letter reflected information that he needed to know in order to know if any additional permitting action might be required.

David Bickford added that Mr. Capello first checks town records to see if the information is discoverable in town hall before sending out the letter. He said he had personally checked with legal counsel who had told him the same thing that Mr. Capello had said—he is required to follow up on any citizen inquiry that comes in.

Mr. Gelinas suggested that the board review the Zoning Ordinance for clarity about agricultural land uses; the Home Occupation for clarity about when it applies; and the non-conforming uses section of the Zoning Ordinance for clarity that only legal uses can be grandfathered.

Arthur Capello agreed with Mr. Gelinas that the Home Occupation Ordinance needs some clarification. He suggested the board consider a 3 tiered system in which the simplest and most straightforward home occupations can be approved by the Building Inspector without needing Planning Board review.

Voluntary Lot Merger: The Board reviewed the application from the Society for the Protection of New Hampshire Forests to merge 4 lots.

Bob Craycraft moved to approve the application for voluntary merger of Map 12A, Lot 6 and Map 12B, Lots 1, 2 & 7. Scott Drummey seconded. Approved unanimously with no abstentions.

Minutes of November 18, 2008: Bob Craycraft moved approval of the minutes of November 18, 2008 as written. Cathy Orlowicz seconded. Scott Drummey and Dot Veisel abstained as they were not members of the Board at the time. Approved 3-0.

Minutes of December 8, 2008: Board members made the following corrections:

Page 2, Paragraph 1 should read "RSA 676:4".

Page 3, Paragraph 1, 1st sentence should read "workshop which was seconded by Paddy McHale."

Bob Craycraft moved approval of the minutes of December 8, 2008 as amended. Cathy Orlowicz seconded. Scott Drummey and Dot Veisel abstained as they were not members of the Board at the time. Approved 3-0.

Adjournment: Bob Craycraft moved to adjourn the meeting at 10:10 PM. Scott Drummey seconded. Approved unanimously with no abstentions.

Respectfully submitted,

David Allen
Land Use Administrative Assistant