

**DRAFT**  
**Planning Board**  
**March 18, 2008**

**Members Present: Bill Weiler, Vice-Chair; Travis Dezotell; Tom Vannatta; Ron Williams; Ken McWilliams, Advisor.**

Mr. Weiler called the meeting to order at 7:00 p.m. and the Board reviewed the minutes of February 19, 2008.

Mr. Dezotell made a motion to approve the minutes of February 19, 2008 as corrected. Mr. Williams seconded the motion. All in favor.

**CASE: 2008-001: Conditional Use Permit – Joseph Goodnough Revocable Trust/agent: Pierre Beddard – Bay Point Road – Map/Lot 06-119-115 & 06-120-127 (to be merged) – dwelling unit above garage.**

The Board reviewed the application for completeness.

Mr. Vannatta made a motion to accept the application as complete. Mr. Williams seconded the motion. All in favor.

Mr. Goodnough explained that the plan presented this evening has taken in to consideration comments from the Planning Board and from abutters given at a previous hearing on December 18, 2007 in which the application for conditional use permit was denied. This plan proposes to remove an existing garage and construct a new garage with a dwelling unit above. The original proposal consisted of four bedrooms, 2,045 sq. ft. of building, and 4,800 sq. ft. of encroachment in the wetland buffer for development. The new proposal this evening includes removing the existing garage which encroaches 435 sq. ft. in the wetland buffer, building a dwelling unit over a garage which will have only two bedrooms, 1200 sq. ft. of building with an additional 300 sq. ft. of deck, resulting in a net encroachment of 255 sq. ft. in the wetland buffer for development. The natural vegetation will be maintained and preserved as much as possible. There will be two 100 sq. ft. rain gardens built between the dwelling site and the wetland area.

Mr. Goodnough commented that turning the building around allowed him to have a minimal impact on the wetland buffer. The roof run-off will be caught by gutters and directed into the rain gardens.

Mr. Beddard explained that the lots have been merged and are now one 1.29-acre lot.

Mr. Vannatta asked if the reference to an ‘accessory apartment above the garage’ will enable the opportunity for a future proposal for a dwelling unit on this lot.

Mr. Weiler clarified that the reference to this application as an accessory apartment above a garage was inaccurate. This application is for a dwelling unit above a garage and this

proposed dwelling unit is the primary structure and only dwelling unit to be constructed on this lot.

Mr. Weiler opened the hearing up to questions from the Board.

Mr. Vannatta asked what kind of surface is proposed for the driveway.

Mr. Goodnough stated that he has not decided but is considering blue stone, pavement or a new material called Grassy Pavers. He explained that he heard about grassy pavers from Fish and Game and is very interested in learning more about that material before making a final decision.

Mr. Dezotell advised Mr. Goodnough and Mr. Beddard of the new Storm Water Management ordinance that the voters recently passed at Town Meeting. The new ordinance(s) may affect their methods of development and they should make themselves fully aware of the changes.

Mr. Weiler opened the hearing up to questions from the public.

Betsy Deasy, abutter, commented that she has a number of concerns. She stated that her main concern is the run-off. There is 47,000 sq. ft. of natural woodland that is very wet and 'boggish'. The run-off has become much worse due to construction up on Summer Street which now goes through the culvert on her property. The run-off used to keep an underground route, which led under one of her two cottages, and then emptied into the lake. The run-off has increase so much that it now runs above ground. In taking an above-ground route, the water now picks up more debris and compromises the structure of her cottage. She stated that she is concerned that more development along the path of the run-off will exacerbate an already unhealthy and dangerous situation. Additionally, she commented that she does not understand what a rain garden is or its purpose and benefit.

Mr. Bedard explained that a rain garden is a small depression in the land surface what run-off is directed to. Within that depression is planted certain types of vegetation that are known to absorb water and respond to fluctuations in extreme moisture. The vegetation can survive a dry spell, but can also survive and make use of excess water during very wet conditions. The water is designed to go to these rain gardens and then go into the ground before it goes down hill or off-site. It is filtered in the depression and seeps into the soil and does not flow over ground. The design and information on rain gardens comes from the Co-operative Extension Service an UNH for designing near the waters' edge. It advises what types of plants will tolerate the extreme fluctuations in moisture. The size of the rain gardens are calculated based on formulas for impervious surfaces.

Ms. Deasy asked how far away from the boggy area will the rain gardens be built.

Mr. Beddard explained that they will be 57 ft. from the corner of the building and approximately 35 ft. from the actual wetland.

Ms. Deasy asked where the run-off from the driveway will be directed to.

Mr. Beddard explained that the driveway run-off will be directed along the ditch for approximately 160 ft. before it reaches the existing culvert.

Ms. Deasy asked if the run-off will be able to flow over the proposed retaining wall.

Mr. Beddard explained that the retaining wall is 'up-hill' from the grade of the house and was built to accommodate the grade for development of the driveway. Therefore the run-off will not be able to go over the retaining wall.

Mr. Weiler asked Mr. Beddard if the plantings will absorb pollutants.

Mr. Beddard stated that the plantings will absorb nutrients such as phosphorous, and they will also filter the soils.

Mr. Weiler commented that the filtering is good because any contribution the rain gardens make to the wetland will be to purify the run-off.

Ms. Deasy reiterated her concern for the negative effects of run-off on the lake and surrounding properties. She asked if there is any recourse in the event there are negative effects of this development. She commented that Mr. Goodnough's monitoring work on the Lake Sunapee Protective Association must have made him aware of the change in the run-off from below to above ground.

Mr. Weiler advised Ms. Deasy that if she notices any negative change in the run-off she should notify DES right way. Mr. Weiler read a letter, signed by the other abutters, dated March 8, 2008.

*...The undersigned would like to express the following concerns about the proposed application. Previously, in a letter dated December 9, 2007, the undersigned opposed the application of the Joseph Goodnough Revocable Trust for a similar project in the same location. That letter is attached. The Board, in consideration of the facts of the application and the concerns of the abutters, rejected the application. The current proposal, while smaller in scale, has many of the same problems that resulted in our previous opposition.*

*The latest proposal still infringes on the wetland buffer. Approving a variance to this proposed infringement would set a dangerous precedent and contribute to the slippery slope of slow degradation we mentioned in our letter of December 9.*

*The proposed project will exacerbate an already problematic drainage and run-off situation. It requires removing trees and substituting the structure and driveway area. This will increase run-off onto the abutting properties and into the Lake.*

*As the Board knows well, Article VIII (Wetlands Conservation Overlay District) clearly states that the purpose and intent of these regulations is to protect wetlands and*

*ultimately the integrity of Lake Sunapee. Adherence to these principles will protect and general welfare.*

*In bringing these concerns to the Board, we all feel very conflicted because of our sincere admiration and affection for Joe Goodnough. We feel, though, that it is important to take the big picture view of how little concessions can create a larger problem.*

*Sincerely, Betsy Deasy, Thomas & Marilyn Hill, John & Cynthia Kuusisto, David & Mary Blohm, Peter Helwing, John & Nancy Girald.*

Mr. McWilliams advised the Board that the criteria for a conditional use permit is different than that of a variance, per Article 8.6.5 of the Zoning Ordinance.

*Standard: Prior to issuing a permit, the Planning Board shall be convinced that:*

*8.6.5.1 the use cannot be implemented outside of the wetland buffer*

*8.6.5.2 the location in the wetland buffer will cause the least impact, and*

*8.6.5.3 the method of implementation will minimize the impact to the wetland buffer.*

Mr. McWilliams commented that compared to the size of the development further up Summer Street, the abutters may want to call D.E.S. for that impact regardless of what Mr. Goodnough may or may not do.

Mr. Dezotell asked if by changing this use from a house to an apartment over a garage as the application states, as we look into the future, can that property be said to have a just a garage and be open to building a house.

Mr. Weiler said no. He clarified that this application is for the one and only dwelling unit allowed on this lot.

Mr. Vannatta made a motion to approve the application for a conditional use permit as submitted based on the testimony given this evening. Mr. Dezotell seconded the motion. Discussion followed.

Mr. Dezotell asked Mr. Goodnough and Mr. Beddard to please review and follow the Best Management Practices guidelines for development. He commented that he was pleased to see implementation of rain gardens and the consideration of pervious pavers in the plan.

Mr. Vannatta commented that this project is merely 1/10<sup>th</sup> of that which was presented in December. He stated that Mr. Goodnough should be able to make use of his property and has made good concessions. Mr. Vannatta commended Mr. Goodnough for listening to the Board and the comments from the abutters.

Mr. Williams commented that this is a good project, well designed with minimal impact.

Mr. Weiler recognized that the activity is well outside of the wetland buffer as much as possible.

VOTE: All in favor.

**CASE: 2007-018: Conceptual – Site Plan Review – Jim Dudley/Sunapee Outfitters - 104 Route 103. Map/Lot 050-531-080, aka Sweet Patch Bakery site.**

Mr. Dudley reminded to the Board that several months ago he came before the Board to discuss the concept of opening a business in the old Sweet Patch Bakery building on Route 103. His retail business would be called Sunapee Outfitters and would be selling kayaks, canoes and related equipment. They are hoping to open for business next month. The Board took issue with the part of the site plan concept of using a vacant lot across Route 103 on Lake Todd for potential customers to gain access to the water in order to try out the equipment before purchase.

Mr. Dudley stated that he would like to talk about the water access issues. He circulated a copy of a Summary of Proposed Plan and Property Details for Lot 051-423-478 which showed a copy of the tax map and the lot in question.

***Summary of Proposed Plan.** Sunapee Outfitters is an outdoor adventure gear retail store located at 104 Route 103 in Newbury. Our primary market is paddle sports gear, such as kayaks and canoes. We are seeking to use a nearby lot on Lake Todd as a location for our customers to “demo” our kayaks & canoes.*

***Property Details for Lot 051-423-478.** Lot 051-423-478 is a vacant waterfront lot on Lake Todd, located on Route 103. It is owned by the same owners as our retail store location.*

***Our Plan.** This lot will simply be used as a place for our customers to demo & rent our kayaks.*

*This area will be staffed by one of our employees.*

*We will not be making any improvements on the lot.*

*We will not be modifying the shoreline whatsoever. There is a small sandy area which can be used for launching kayaks.*

*There is a paved driveway already existing for vehicles to access the lot from Route 103.*

*We would like to have a small wooden kayak rack somewhere on the lot to store up to six kayaks.*

*We would like to erect a small wooden sign that says something to the effect of “Sunapee Outfitters – Demo & Rental Location”.*

Mr. Dudley addressed Article 7 in the Zoning Ordinance. He commented that Article 7.3 Site Requirements is not applicable to his situation because there are no buildings or structures proposed. Article 7.4 Zoning Compliance for Alteration is not applicable to his situation because there are no dwellings to be altered. Article 7.5 Alteration and Reconstruction of Non-conforming Buildings is not applicable to his situation because there are no buildings to alter or reconstruct, conforming or non-conforming. Article 7.6 Buffer Zone is satisfied because, as stated, there will be no modification of the shore line and no cutting of trees. Article 7.6.3 is pre-existing because there is already a lot of open grass area with some trees and shrubs. Mr. Dudley stated that he is willing to plant more

vegetation if the Board desires. Article 7.7.1 Shore Land Rights is not applicable to this application because he is not granting deeded rights or access to residents of multiple units and/or non-waterfront properties. Article 7.7.2 Creation of Access Rights is not applicable to this situation because he is not attaching the access to real estate, it is attached to the business activity and the lot remains empty. Article 7.7.3 Common Areas all requirements outlined are met by the proposed use. Article 7.8 Erosion Control is not applicable because there will be no activity that will have anything to do with land disturbance.

Mr. Dudley pointed out that if this use is defined and considered a common area, it would already be non-compliant with the zoning ordinance since it is currently used as a snowmobile trail to access Lake Todd. Additionally, most of the zoning ordinances are 'subject to Planning Board approval', thereby giving the Planning Board a measure of flexibility. Mr. Dudley reiterated that he and his affiliates are very concerned with the environment, which is part of the reason they are in the paddle sport business.

Mr. Weiler commented that there was considerable discussion in August regarding the zoning ordinance and the concept of funneling that was not mentioned in detail in the minutes. It was the decision of the Board to not use that lot for water access for this business because of the funneling issue. At that time, the Board went so far as to suggest to Mr. Dudley to research access to Lake Todd from the Bradford side. The sense of the Board was that could be considered funneling which has been voted on as prohibited per the zoning ordinances approved by the Town. Mr. Weiler explained that this use would be considered funneling because the use would be tying two pieces of property together that are separate lots. Article 7.7.1 and 7.7.2 talks about common area being used by two or three unrelated persons. That is what this use would be.

Mr. Dudley asked how that is different from the snowmobiles gaining access to Lake Todd via the snowmobile trail that cuts across this lot.

Mr. Weiler stated that that perspective is interesting but the difference is because the snowmobiles run during the winter months over the snow and ice with less impact to the Lake.

Mr. Dezotell commented that this use could be allowed because Mr. Dudley cannot and is not proposing to sell access to the Lake, and he can deny access if he wants because he can limit the activity, thereby granting nobody rights of access.

Mr. Dudley stated that this use would in no way be a public access.

Mr. Weiler pointed out that it is not Mr. Dudley who is the subject to grant or deny access, but the property owner. Approval of this activity could be setting a precedent.

Mr. McWilliams commented that in his opinion, the issues are not clear enough to make a decision and suggested that legal counsel be consulted before a decision is rendered.

Mr. Williams asked if this activity would still be considered funneling if there were two separate leases for two separate lots. Each lot and lease would be handled as its own business and therefore not tied together.

Mr. Weiler commented that separate leases would not resolve the issue because the customers would not be independently driven from one business to the other.

Mr. Webb, property owner of both sites, asked the Board if funneling would be an issue if there was a building erected on the now empty lot on Lake Todd to accommodate the retail sales of Sunapee Outfitters; then the whole lot would be dedicated to the business and not tied in to a different site and the customers could use the shorefront for demos.

Mr. Williams commented that as long as the new building maintains setbacks and site plan review requirements, it could be done.

Mr. Dezotell commented that from a common sense perspective, Mr. Dudley is going about this proposal in a very responsible manner. The Board has an opportunity to create a safe environment for customers as opposed to subjecting people to park and unload kayaks along Route 103 in a 50 mph zone.

Mr. Williams stated that two leases would not establish precedent.

Mr. McWilliams asked Mr. Dudley if it was his intention to allow the general public to launch their own kayaks from this site.

Mr. Dudley said absolutely not. The launch site would be for Sunapee Outfitters' customers only and with an employee present. During closed hours, there would be a rope or chain across the access drive.

Mr. Weiler advised Mr. Dudley to not sign a lease until the Board gets a legal interpretation as to whether or not this proposed use is a legal use based on the Newbury Zoning Ordinance.

Mr. McWilliams agreed to outline all of the regulations and issues surrounding this proposal and send them to legal counsel.

Mr. Webb stated that as the property owner, he is trying to help Mr. Dudley succeed with his business and is open to options to help make this work and allow someone the opportunity to use the land.

Mr. Dezotell asked if there was a state law that required access to the water.

Mr. Weiler stated that there is a law, but that law is satisfied by the access near the bridge on Route 103.

**CASE: 2008-002: Conceptual – Major Subdivision – Noel Collins, Agent/Pellerin Property – Old Post Road – Map/Lot 032-476-448.**

Noel Collins and Jeff Reed were present to discuss a conceptual subdivision plan of 30 acres off Old Post Road. The land is currently owned by Julie Pellerin, but will be sold in the near future. Mr. Collins explained that the lot has approximately 1700 ft. – 1800 ft. of road frontage, some on Old Post Road and some on Colburn Farm Road. There is enough road frontage for approximately 7 to 8 lots.

Mr. Weiler advised Mr. Collins that the subdivision rules are detailed in the regulations. He suggested that Mr. Collins begin with Article 5 of the Zoning Regulations in order to figure the density calculation in consideration of steep slopes, wet areas, deer yards, etc. By process of elimination, the lot sizes, layouts and access points may define themselves. Mr. Weiler advised Mr. Collins that the subdivision regulations will guide him through the subdivision process in detail and the subdivision requirements in order to receive Planning Board approval.

Mr. McWilliams added that the subdivision regulations explain how to design a subdivision around some of the natural resources that will be encountered. Then the houses can be planned around those characteristics and perhaps preserve the natural resources through cluster development.

Mr. Collins agreed that the natural characteristics will definitely dictate how the development unfolds. He commented that there will probably be a small number of lots over this large area, and it may not be conducive to cluster development. 'I think it will be a straight forward subdivision with two- to five-acre lots.' He stated that if the engineer says he can make twice as much money clustering, then he will cluster.

Mr. McWilliams advised Mr. Collins that the Planning Board will be able to guide him more effectively than the engineer.

Mr. Collins commented that there is always a Plan A and a Plan B, and he is open to all options.

Mr. Weiler informed Mr. Collins that it is a requirement that a preliminary application hearing be held prior to a final plan. The preliminary application gives both sides plenty of time to figure out the best plan for the site.

Mr. Collins explained that in his experience in Massachusetts, he always worked things out with the abutters and will do so in New Hampshire as well as working with the Planning Board.

**CASE: 1996-007: Subdivision – Whitethorn Subdivision – Summer Street off Bay Point Road – Robert Bell**



Mr. Weiler informed the Board that Cal Prussman, Road Agent, received a letter from Lou Caron, Engineer, regarding the road specifications of Summer Street, which was on the warrant for acceptance as a Town Road.

*'As you requested, I visited the site to measure the profile grade of Summer Street, the approach road to the Whitethorn Development. Prior to leaving the office, I reviewed the subdivision plan to check the grade as shown of the plan. Using the contours and scaling distances between the full 5 ft. contour lines, I found the road to have average grades for the straight, tangent section, to range from 11.9 % to 12.4%. IN the field, using a Laser Level, I measured the grades at two locations near the top of the straight-away section to be 12.9% and 12.0% respectively. Finally, using a "Smart Level," I measured the profile grate at 25 ft. intervals between the horizontal curves. At the horizontal curves at the top and bottom of the tangent section, the grades measured 9.5% and 9.2T respectively. Between these points, the grades ranged from 11.3% to 13.4%.*

*In summary, the profile grade of Summer Street exceeds 11.3% for more than 400 ft. of its total length of 900 ft. Over 250 ft. of this length exceeds 12.2% grade.*

*If you questions or need further assistance.....'*

#### **CASE: Adm1-060: Town Admin Building Study – Old Town Highway Garage – 20 Sutton Road**

Mr. Vannatta asked if any of the Board members knew what the Old Town Highway Garage site was used for prior to the Town use. He stated that when the sale of that property happens, the new owners may be subject to site plan review because a municipal use is not a commercial use. Therefore the site cannot be grandfathered as a commercial use.

Mr. Williams commented that the Town can control what goes there by making the use subject to the sale of the property.

Mr. Weiler commented that the Board of Selectmen will not put any restrictions on it especially if it will put any hurt on the sale.

Mr. Dezotell commented that with the level of degradation of the building, the town is either faced with a choice of fixing the building or selling it as is.

#### **CASE: Adm1-041: Planning Board Issues – Projects for 2008**

Mr. McWilliams asked for a sense of the Board as to what the Board would like him to work on next. He proposed three projects that were previously discussed.

1. Conservation Subdivision Design Ordinance
2. Alternative Energy Ordinance (regulate use of wind and solar energy)
3. Viewshed Overlay District for the Lake

The sense of the Board was that they would like him to begin working on a Conservation Subdivision Design Ordinance.

**CASE: Adm1-061: Masterplan 2007(8)**

Mr. McWilliams informed the Board members that one copy of the Masterplan is available at the Town Office in the Lobby for public review, one copy is at the Library, one is made for Planning Board records and a fourth and final copy is with Mr. McWilliams. There have been larger maps made for review at the public hearing on April 1, 2008.

Mr. Dezotell made a motion to adjourn. Mr. Williams seconded the motion. All in favor. Meeting adjourned at 9:10 p.m.

Respectfully submitted,

Linda Plunkett

