

**Parsonsfield Planning Board Meeting
Tuesday, March 21, 2017
Minutes (Revised)**

Planning Board Members in Attendance:

Carl Nance, chair
Todd Crooker
Donna Dulude
Thelma LaVoie
John Wagner
Louis Aubuchont, alternate

CEO David Bower in Attendance

Selectman S. Tiffany Brendt in Attendance

Also in attendance:

Joanne McKenney, Nancy Bower, Meg DeStefano, Jeff Wright, Kim Pepin, John D. Pepin, Linda Marsh, K. Ricker, Heather Ricker, William Ryan, Colleen Allard, Cynthia Carroll, Clifford Krolick, Gordon L. Winget Jr., Austin Turner of Bohler Engineering, Jamel Torres of SMPDC, Stephen Stearn of Pinkham and Greer Engineers

Chairman Nance called the meeting to order at 7:23.

February Minutes Approved

The minutes from the February 21, 2017 meeting were reviewed. Ms. LaVoie motioned to approve the minutes and was seconded by Mr. Crooker. The minutes were unanimously approved.

Site Plan Review

Dollar General Store Application

The Planning Board continued discussing this project with Austin Turner of Bohler Engineering. Jamel Torres of SMPDC provided guidance.

1. Parking Waiver

Mr. Aubuchont: Has a problem with the Planning Board issuing a parking waiver and referred to his brief dated March 21. He believes the Planning Board is in violation of the ordinance by approving the waiver. Mr. Aubuchont didn't finish his comments, as he was interrupted by Mr. Wagner and left the room.

Mr. Crooker: The Planning Board has carefully considered the parking waiver in consultation with the engineer, SMPDC and CEO, and believes it to be valid.

Austin Turner: Explained they don't want to fill in the wetlands. The number of parking spaces approved is appropriate to the use. He attended the October Planning Board meeting when precedence was set regarding Village Variety. His interpretation is that the Planning Board has the ability to use its discretion in working with the ordinance.

David Bower: Referred to Article III, Section 6 of the Land Use and Development Ordinance:

“Section 6. Criteria for Review and Approval of Site Plans and Subdivisions

In approving site plans and subdivisions within the Town of Parsonsfield, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this Ordinance have been met and that the proposed development will meet the guidelines of Title 30-A, M.R.S.A., Section 4404, as amended, which include the following:

A. Aesthetic, Cultural and Natural Values

The proposed activity will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

B. Conformity with Ordinances and Plans

The proposed activity conforms with this Ordinance, other duly adopted ordinances, including the Subdivision Regulations of the Town of Parsonsfield, and the Parsonsfield Comprehensive Plan.

C. Erosion

The proposed activity will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.”

Mr. Bower introduced Jamel Torres from SMPDC, who has been hired by the town to provide guidance on the application. There was a question from the audience to Mr. Bower regarding waivers; Mr. Bower believes the Board has the authority to waive submission requirements.

Mr. Austin: Stated they have been in accordance of Article III, Section 4. Administration:

“Section 4. Administration

A. Pre-Application Meeting

1. Applicants are required to schedule a meeting with the Planning Board prior to a formal submission for review, discuss their plans and gain an understanding of the review procedures, requirements and standards.

2. During this pre-application meeting, the Planning Board will determine the appropriate procedural and administrative process for the proposed development. In addition, the Planning Board may waive specific application requirements when an applicant can show that such requirements are not relevant to the proposed project.

B. Applications in Writing

All applications for Site Plan Review must be made in writing to the Code Enforcement Officer on the forms provided for this purpose. An applicant must be the owner of the property or his agent, if so authorized in writing by the owner.

The Code Enforcement Officer shall make an initial determination of the completeness of the application, which is then subject to the determination of the Planning Board. If an application is not complete, it will be held by the Code Enforcement Officer and the CEO must inform the applicant in writing what additional information is required. When an application is determined to be complete, including all documentation required by this Article, the Planning Board at its next regular meeting shall issue a dated receipt to the applicant. Unless the applicant and Board agree to an extension, the Board shall within sixty [60] days of the dated receipt act to approve or disapprove the Site Plan Application in accordance with this Article. An application must be submitted at least fifteen (15) days before the scheduled Planning Board meeting unless waived by the Planning Board chairman.

C. Notice to Abutters

The Planning Board shall send by first class mail to all property owners within five-hundred (500) feet of the lot notice of a pending application for Site Plan Review. The notice must indicate the time, date, place and reason for the application.

D. Independent Review and Advice

1. Professional Services

The Planning Board may require that a consultant or other appropriate professional advisor review one or more aspects of an application for compliance or noncompliance with this Ordinance and to assist the Board. The consultant or other advisors shall first estimate the cost of the review and the applicant shall deposit, with the Town the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the consultant or advisors from the escrow account and reimburse the applicant if funds remain after payment.

2. Additional Studies

The Planning Board may require the applicant to undertake any study which it deems reasonable and necessary to demonstrate and ensure that the requirements of this Ordinance are met. The costs of such studies must be borne by the applicant.

E. Public Hearing

Prior to taking final action on any Site Plan Review Application, the Planning Board may hold a hearing to afford the public an opportunity to comment on the application.

F. Financial Guarantee

Prior to final approval of any plan, the Planning Board may require the applicant to provide a financial guarantee, in such amount as is reasonably necessary, to ensure completion of all public improvements in accordance with the Performance Guarantees section of this Article.

G. Conditions

The Planning Board may attach reasonable conditions to Site Plan Review or Special Exception Permits to ensure compliance with the standards and requirements of this Ordinance.

H. Expiration of Permits

All permits issued by the Planning Board shall expire within eighteen (18) months of the date of issuance, unless work thereunder is commenced within this time period. If work is not completed according to a schedule, if any, set forth in the approval, a new or amended application must be filed with the Board.

I. Access

The Town shall have access to the site at all reasonable times to review the progress of the work and shall have the authority to review all records and documents related to the project.

J. Responsibility

The applicant is responsible for all expenses to the Town for the costs of notifications, mailings, printing, advertising, public notices, clerical work etc., to administer the provisions of this Ordinance. The Planning Board may require the applicant to deposit adequate funds in an escrow account to meet these anticipated expenses before they are incurred. Any funds that remain in the escrow account after all expenses are paid must be returned to the applicant, without interest.

Mr. Austin referred to the pre-application meeting with the Planning Board on October 18 where he solicited feedback from the Board. He proceeded with the feedback and put the application together. His interpretation is they have operated within the regulations of the document.

Mr. Bower: The decision regarding the Dollar General parking was a trade-off made in the interests of the Town, as it was agreed we don't want to go into the wetlands area.

Mr. Turner: Leaning on procedural precedent. His understanding is if there is precedent, it implies the authority of the Board.

Todd Crooker: The ordinance doesn't give us much leeway, but the precedent set by the Board regarding the bakery parking when it was on Elm Street is troubling and doesn't necessarily make this decision legal. He questions the outcome if this goes to court. He also expressed concerns about the transference of the water table and where the fill would push the runoff.

Donna Dulude: She wasn't present when the Board voted on the waiver, but it is important to follow the "Must, shall, will" vs. "may" in the ordinance.
During the April 18 Planning Board meeting, Mr. Crooker noted that Ms. Dulude was present when the Board voted on the parking variance for the Village Variety project.)

John Wagner question to Jamel Torres: Where does the standard regarding parking waivers come from?

Jamel Torres: Many developments waive the minimum parking requirements. Parking is considered a waste of space, and more times than not the local Planning Boards waive the minimum parking requirements. The decision is ultimately up to the Board, and in this case he suggested they approve the waiver.

Ms. Dulude to Mr. Torres: Does that mean the building is in an appropriate space?

Mr. Crooker: The developer could take 4300 sq. feet to fill wetlands under State Law.

Mr. Torres: Yes

Mr. Turner: The zoning boundary is defined on the map. The zoning boundary is not the same as the wetlands boundary.

Someone (?) asked for a report.

Mr. Torres: The materials provided are equal to a report and meet the criteria for drainage, utilities, lighting.

Mr. Turner: They have met the performance criteria. The collected material is intended to address the potential impact and all plans submitted have met the State and Local standards.

Chairman Nance: called for a 5 minute break. Thelma LaVoie leaves the meeting.

Ms. Dulude: Has concerns about the percentage of wetlands in this site and questioned Mr. Torres about the zoning maps.

Mr. Torres: This project has been thoroughly vetted and wouldn't be able to go forward without DEP approval.

Mr. Turner: Repeated that the zoning line is not the same as the wetland line. They are required to hire a certified wetland scientist that goes into the field to look for vegetation and soil types to confirm the project meets the State requirements. The wetlands line is independent of the zoning line.

Mr. Bower: They also used certified surveyors. Mr. Bower asked Ms. Dulude what information she was looking for.

Ms. Dulude: Anything that isn't included in his letter.

Mr. Turner: Referred to the drainage report that talks about the runoff conditions. Shows how it is designed to protect the environment.

Mr. Crooker: Brought up Article III, Section E. Applications for Special Exception Permits:

E. Applications for Special Exception Permits

In addition to the foregoing requirements, applications for Special Exception Permits must include:

- 1. An alternative sites analysis identifying and analyzing other reasonable alternative sites and justification of how the proposed site is the most suitable; and*
- 2. A neighborhood environmental impact report evaluating the potential impacts on neighboring properties and environs and presenting mitigating measures that alleviate adverse effects.*

Also, Mr. Crooker stated there is intent but no standards for zoning for Village New England Town. He asked Mr. Torres about changes in property values.

Mr. Torres: Property values typically increase. In this case, the existing building is dilapidated and the environmental hazards would be cleaned up. Regarding Article II, Section E on Special

Exception Permits, Mr. Torres believes #2 has been met. He asked Mr. Turner about the Alternative Site Analysis.

Mr. Turner: He views public testimony as analysis which would not change the application.

Mr. Torres: (addressing the Board), The Alternative Site Analysis could be a condition of approval before licensing. The normal procedure is to waive the requirement, and most boards do. Mr. Torres suggests the Board has followed procedure.

February Site Walk

There was a question regarding the legality of the Site Walk held in February.

Mr. Bower: There is a restriction on site walks held from December through March in subdivision applications, but that doesn't apply here, so the site walk was valid.

Chairman Nance asked if there were any more questions.

Mr. Crooker: Is ready to move forward with the approval.

Ms. Dulude: Could we stop now and go forward next month?

Mr. Crooker: The rejection of the development is with the tenant and the owner of the property.

John Wagner: It's obvious that townspeople don't want a Dollar General, but we can't vote on sympathy. We must vote on whether the requirements have been met.

Mr. Crooker motioned to vote on final approval of the application, and was seconded by Mr. Wagner.

Chairman Nance: Referring back to the concerns over terms "Shall" vs. "Not" in the ordinance, should we get legal counsel from MMA?

Mr. Torres: The Planning Board wouldn't be sued – the application would go to the Appeals Board. Below is Article VI, Section 3 of the Land Use and Development Ordinance:

Section 3. Appeal Procedure

A. Making an Appeal

An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 2.A above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from.

B. Written Notice

Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

- 1. A concise written statement indicating what relief is requested and why it the administrative appeal or variance should be granted.*
- 2. A sketch drawn to scale showing lot lines, location of existing buildings and structures, and other physical features of the lot pertinent to the relief sought.*

C. Record of Case

Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision being appealed from.

D. Public Hearing

The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of a meeting at which it finds an application to be complete, unless this time period is extended by the parties. Interested parties and the public must be given an opportunity to be heard at the public hearing.

E. Decision by Board of Appeals

1. Quorum

A majority of the full voting membership of the Board of Appeals shall constitute a quorum for the purpose of deciding an appeal.

2. Majority Vote

The concurring vote of a majority of the full voting membership of the Board of Appeals is necessary to make a decision.

3. Burden of Proof

The burden of proof lies with the applicant.

Mr. Turner reminded the Board that a clock has been established.

Vote: Nance, Wagner and Crooker voted in favor of final approval; Dulude opposed

9:00

Pre-Application Review

Pinkham and Greer Engineering for Nathan Wadsworth (Nate Sells Real Estate, LLC)

14 lot Subdivision plan on corner of Route 160 (North Road) and Hussey Road

Stephen Stearns, engineer with Pinkham and Greer Engineers, presented an overview on behalf of Nathan Wadsworth. The project is 60 acres in total, with 14 house lots averaging 4 acres per lot, with a layout created to comply with the local zoning ordinance. Nathan Wadsworth is not a developer; he intends to sell the lots individually, and envisions small houses on each lot.

Mr. Crooker: Are we going to meet with the land owner? He has questions for the seller about the covenances.

Mr. Wagner: What is the owner going to do with the excess land?

Mr. Stearns: The land has already been logged for the timber, and he now wants to sell the property. Two test pits per lot have been dug. He envisions leaving the rear of each lot in a natural state.

Next steps:

The Board asked Mr. Stearns to return with the following:

- Would like to know the wetland area on each lot
- Check with DOT for entrance permits
- Will need a permit from the road commissioner
- Consider cluster development
- A couple of the lots might be better with shared driveways
- Details on Fire plan – The topography doesn't really support a pond and the Fire Chief believes not to have a fire pond
- Board would like to see covenances

Other Business

Marijuana Ordinance

Chairman Nance brought up an individual that lives on Route 160 who is growing marijuana. Mr. Bower had given them a permit to make improvements on the barn, but when the Sheriff went there, they were growing marijuana. They have also set up on 2 other properties in the town.

Selectman Brendt: She has attended meetings regarding how local governments are handling the issue of marijuana. The recommendation is towns should be proactive in creating a local ordinance, or people will come in.

Next step:

Ms. Dulude will do research in the process of creating a moratorium.

Mr. Wagner moved to adjourn the meeting, seconded by Chair Nance. The meeting was adjourned at 9:38.

Approved

Date