

EXETER PLANNING BOARD

MINUTES

MARCH 24, 2011

Chairwoman Kathy Corson called the meeting to order at 7:00 PM in the Nowak Room on the above date.

PRESENT: Chairwoman Kathy Corson, Selectmen's Representative Frank Ferraro, Members: Carol Sideris and Gwen English, Alternate Members: Clerk Lang Plumer, Town Planner Sylvia von Aulock and Deputy Code Enforcement Officer Barbara McEvoy. It was noted that all board members in attendance would be voting.

Chairwoman Corson announced that the application of **Rollinsford Associates, PB Case #21103**, had been postponed and rescheduled for the May 12th, 2011 meeting, at the Applicant's request.

NEW BUSINESS: PUBLIC HEARINGS

BERRY SURVEYING & ENGINEERING (on behalf of David Newhall) – PB Case #21011

The application for a Conditional Use Permit (CUP) for the proposed construction of a new single-family home encroaching within the 40' wetlands buffer. The subject property is located at 10 Little Pine Lane, in the R-2, Single Family Residential zoning district. Tax Map Parcel #85-1.

Chairwoman Corson asked Ms. von Aulock if the abutters and public had been duly notified; Ms. von Aulock responded affirmatively. She asked if the application was complete enough for the Board to consider; Ms. von Aulock indicated the application was complete. ***Mr. Plumer moved to accept the application thereby beginning the 90-day clock for the Board to act; Ms. Sideris seconded the motion. VOTE: Unanimous. APPLICATION ACCEPTED.***

Attorney Mike Donahue, of Donahue, Tucker & Ciandella, PLLC was present to address the Board on behalf of the property owners, Mr. and Mrs. David Hampson. He acknowledged that Mr. Ken Berry, P.E. with Berry Surveying & Engineering was also present, on behalf of the Applicant, Mr. David Newhall and the property owners.

Attorney Donahue proceeded by identifying the subject property on Little Pine Lane and noting that the proposed area of construction was totally within the recently adopted wetland buffer setback area, but did not impact any wetlands which would necessitate a NHDES permit. He explained that he had originally been contacted by Mr. Newhall after meeting with Town staff and being advised that a Conditional Use Permit from the Planning Board would be required prior to any development of the property. Attorney Donahue indicated that he had discussed with Mr. Newhall that there was the possibility that since the lot was in a pre-existing subdivision which had been approved and built out long before the ordinance provision had been adopted, that the property owner would have vested rights, and be exempt from the recently adopted wetland setback provision. Subsequently, Attorney Donahue submitted correspondence to Town Planner, Sylvia von Aulock and Building Inspector/CEO Doug Eastman, dated January 26, 2011, detailing the history of the subdivision, and presenting his opinion as to why a conditional use permit would not be necessary. In his correspondence Attorney Donahue acknowledged that the Town had not had an opportunity to examine this legal issue, and requested that his correspondence be presented to Town Counsel for review. Attorney Donahue stated that Town Counsel, Jae Whitelaw, disagreed with his interpretation, and therefore, the application is before the Board for review. He asked that a copy of his correspondence be made part of the record and attached to the minutes for protection of his clients.

Attorney Donahue distributed a plan entitled "Buildable Area Plan", dated March 2, 2011, to the Board for review. He indicated that the Hampsons had resided at 8 Little Pine Lane (lot adjacent to the subject property) since 1981 when they had originally purchased both their residence and the subject property. Referencing the plan, he pointed out that the recent amendments to the Wetlands Conservation District Ordinance (WCOD) in March 2010 had affected the buildable area of this lot considerably. He noted that with only 537 square feet of buildable area, it would be necessary to obtain a CUP to construct any type of a residential structure. He provided the Board with a chart describing the surrounding neighborhood properties (i.e. address, type of home, footprint area, etc.) for comparison purposes and noted that the average footprint of the neighborhood was approximately 1,500 square feet in area. Attorney Donahue indicated that Mr. Newhall was proposing to construct a single-family home with a footprint less than the

average of the neighborhood; he noted that a copy of the proposed building plans accompanied the application submittal.

Mr. Ken Berry, P.E. of Berry Surveying & Engineering addressed the Board. He identified the subject property as being Lot #22 of the Bayberry subdivision approved in December 1973 and being 0.4 acres in area. He indicated that a wetlands survey of the site had been completed in 2010 and he noted that the property sloped in a southerly direction from the road to the rear where the wetland area is located. Mr. Berry stated that his client was proposing to construct a 26'x 50' residence (1,272 s.f. footprint) with a driveway along the north side of the property to access the 'drive-under' garage. It was represented that a ten-foot (10') vegetative buffer would be provided between the proposed area to be cleared and the wetland. He indicated that the site would be graded in such a manner as to divert the water in a southerly direction to the rain garden. He noted that the drainage in the rear yard would be diverted to the rain garden by berming, including the run-off from the gutter system. Mr. Berry represented that the proposal, as presented, included 1,150 square feet of impervious surface and 3,780 square feet of total disturbance within the buffer area. He indicated that Mr. Newhall has agreed to and offered to have a post-construction engineering review done to ensure compliance with the plans.

Ms. von Aulock reviewed for the Board the location of the drainage stream depicted on the original subdivision plan. She noted that development on the adjacent lot had also been restricted due to it being bisected by the stream. She inquired about the possibility of two different pipe systems being installed to handle the flow from the down spouts and foundation drains. She requested that elevations be added to the details on the plan.

Mr. Berry proceeded to review the criteria outlined in Section 9.1.6 B. of the Zoning Ordinance for granting a Conditional Use Permit. He mentioned that no state and/or federal permits would be required and that all disturbed areas, other than the structure footprint, would be re-vegetated (i.e. rain garden area and/or loam and seeded).

There being no questions from the Board at this time, Chairwoman Corson opened the meeting for public testimony.

Mr. David Hampson, current property owner, approached the microphone and commended the Board for their volunteer participation and thanked Ms. von Aulock for her explanation of the regulations. He stated that he had owned the property for 29+ years and had paid over \$60,000. in taxes during that time. He indicated that having lived in this neighborhood for as long as he had, it was important to him to see that the proposed home and improvements fit into the neighborhood. Mr. Hampson stated that he believed the new regulations were not intended to take away property rights, although he agrees there needs to be a balance for environmental reasons. He expressed that he was hopeful that the Conditional Use Permit, as presented, will strike that balance necessary and allow the property to be developed.

Mr. Gerry Hamel, 17 Little Pine Lane, had several questions regarding the status of the drainage swale, the location of the driveway and construction design of the proposed structure. He commented that the proposed construction, as presented, appeared to require a substantial amount of fill to be brought into the site. Mr. Berry indicated that the Applicant was proposing a walk-out basement on the back side of the structure. Mr. Newhall introduced himself to the Board and explained that the plans had not been finalized, but provided a brief review of the house design in response to Mr. Hamel's inquiries. Mr. Hamel also inquired about the elevations and the required setback distance for the proposed deck from the wetlands.

There being no further public testimony, Chairwoman Corson closed the public portion of the meeting and resumed Board discussion.

Ms. von Aulock stated that this was an existing lot of record with a natural drainage system and that it had clearly been affected by the new wetland regulations adopted in March 2010. She noted that the lots' buildable area was reduced substantially, and therefore a Conditional Use Permit (CUP) would be necessary for the proposed construction. She provided a brief summary of her discussions with the Hampsons and Attorney Donahue relative to the application. She recommended the following revisions to further reduce the impact to the wetland buffer (and possibly become conditions of approval):

- Reduce the footprint of the proposed structure to approx. 28'x 40 and relocate the structure further away from the wetland by moving it closer to front property line (shortening the length of the driveway).
- Require the Applicant to have a drainage analysis prepared and submitted to the Town for review and approval by an independent consultant on behalf of the Town.
- Future property owner may consider a gravel driveway. It was represented that Town Engineer Paul Vlasich reviewed the location of the proposed driveway and found it to be adequate for site distance requirements.

Attorney Donahue addressed the issue of ensuring compliance of the specific details of the CUP approval by subsequent property owners. He suggested that the properly prepared plan could be recorded at the Registry along with a copy of the CUP approval; he noted that this is done often for Zoning Board of Adjustment approvals. He also indicated that the recorded plan and conditions of approval would be incorporated by reference in the property deed description as you would not typically include such specific conditions in a deed. Chairwoman Corson asked what recourse the Board would have if over the years as the property begins to age and improvements are necessary, items that were specifically part of this approval are no longer adhered to (i.e. drainage, gutters, etc.). Attorney Donahue stated that the impact would be on the property owner and the Board would have the authority to enforce the conditions if there was damage being done.

Attorney Donahue commented that there seemed to be a focus on reducing the size of the proposed building to provide more buffer protection. He distributed copies of an engineered plan to the Board to help provide for a better idea as to the actual distance between the proposed structure and the wetlands. Chairwoman Corson explained that the wetland buffers were equally as important and that better protection of them was the intent when the Wetland Conservation Ordinance was amended in 2010 and this process was adopted. Attorney Donahue reiterated that information had been presented indicating that the footprint of the proposed structure was smaller than the average sized home in the neighborhood. He stated that the Applicant has presented an engineered drainage design and was willing to accept the condition to have a drainage analysis prepared for town review; he added that they were comfortable that the drainage design would be found acceptable given the Applicants' entire application package had already been reviewed by Professor Robert Moynihan of UNH on behalf of the direct abutter (most likely to be affected). Attorney Donahue also indicated that they had looked at all the options suggested by Ms. von Aulock, although the builder was not interested in making the home wider. He noted that they were only able to move the structure forward by 1½ feet and still remain in compliance with the required dimensional setback of twenty-five feet (25').

Attorney Donahue stated that he understood the concerns of the Board, although by making the home smaller it would not benefit the neighborhood in terms of the valuation of their homes, and it would not be economically viable. He emphasized the importance of the drainage design functioning properly and concurred with the condition requiring the Applicant to submit a drainage analysis for review. He indicated that development of the proposed driveway area (approx. 3,000 s.f.) would have a very minimal impact on this project. He commented that this was a well-established neighborhood and a gravel driveway would not be appropriate. Ms. von Aulock indicated that there were other applications of pervious-type materials available. Attorney Donahue agreed to discuss the idea with Mr. Newhall while Mr. Berry responded to the earlier concerns relative to the rain garden.

Mr. Berry clarified that the base of the rain garden was designed to be elevated. He indicated that further details of the rain garden would be provided, including spot elevations, on the final plan. He noted that the detail came directly from the StormCenter at UNH.

Attorney Donahue stated that Mr. Newhall was prepared to install pervious pavement to further minimize the impervious surface impact. He proceeded to review the other conditions discussed. He indicated that his client would move the footprint of the proposed structure as far forward as possible without requiring Zoning Board of Adjustment (ZBA) relief but was not interested in shaving the footprint. He indicated that his client also agreed to have a drainage analysis prepared for review by the town. He noted that there had not been any discussion regarding the cost of such review, but expected that his client would be expected to bear the cost, and would do so provided it was reasonable. His client also agreed to have engineering inspections conducted during the course of construction and a post-construction engineering certification would be provided to the Town ensuring the site improvements were complete and in

compliance with the approved plans. In addition, he also agreed to the condition regarding the appropriate use of fertilizers and lawn maintenance as previously suggested by Ms. von Aulock. He also represented that the details of the proposed deck would comply with Section 9.1. of the ordinance.

Ms. English commented that this request was somewhat different where as the subject property was an undeveloped existing lot of record versus relief being requested for additional development on an already developed lot. Chairwoman Corson indicated that the marketing of the home would have to be specific to the importance of the rain garden improvements and observance of the Conditional Use Permit conditions. Ms. von Aulock commented that clearly the proposed improvements could not be carried out outside of the buffer area.

For clarification, Ms. English indicated that she understood the run-off from the roof was being directed to the rain garden. Mr. Berry confirmed that the roof run-off was intended to go into the rain garden area. He added that the detail from the rain garden collection pipes will be shown on the plan. Noting that the roof run-off detail was dependent upon gutters, she inquired if there was an alternative to accommodate the drainage should the gutters be removed. Mr. Berry responded that the site is to be graded so that all of the run-off goes into the rain garden area. He further noted that the perimeter drains were located a minimum of one foot (1') below the piping for the gutter system and will discharge directly into the buffer.

Discussion ensued relative to the grading for the rain garden within the buffer area. Ms. von Aulock approached the microphone and physically delineated a wetland 'no-cut/no disturb' buffer of twenty-feet (20') in width from the westerly property line, following in a southeasterly direction and tapering to a reduced width of fifteen feet (15'), and continuing in a northerly direction and reduced to eventually ten-feet (10') along the easterly side of the property.

Chairwoman Corson suggested that final determination of the structure size and location can be determined during the drainage review. It was represented that the final plans would be reviewed by the Town Planner for compliance with the Board's discussion and all conditions imposed by the Board.

There being no further discussion, ***Mr. Plumer moved to grant the request for a Conditional Use Permit, as presented, subject to the following conditions:***

- 1. The Applicant agrees to install and maintain a pervious-type construction material (in lieu of asphalt pavement) for the proposed driveway area. A reference note and construction detail shall be added to the plan and also incorporated in the property deed description.***
- 2. The plan shall be revised to depict a wetland 'no-cut' buffer of twenty-feet (20') in width from the westerly property line, following in a southeasterly direction and tapering to a reduced width of fifteen feet (15'), and continuing in a northerly direction and reduced to eventually ten-feet (10') along the easterly side of the property, as discussed (see attached sketch plan).***
- 3. The Applicant agrees to relocate the footprint of the proposed structure as far to the north as possible without encroaching upon the minimum required setback of twenty-five feet (25') and shall be depicted on the plan accordingly;***
- 4. The plan shall be revised to depict a new footprint of the proposed structure not exceeding forty-six feet (46') in length;***
- 5. The drainage information provided by the Applicant shall be reviewed by an independent consultant on behalf of the Town. The expense of said review shall be borne by the Applicant.***
- 6. The new property deed description shall include reference to the use of 'environmentally safe' landscaping products (i.e. fertilizers, etc.); and***
- 7. The Applicant agrees to engineering inspections being conducted during the course of construction and that a post-construction engineering certification shall be provided to the Planning Office ensuring the site improvements are complete and in compliance with the approved plans.***

Motion was seconded by Ms. Sideris. VOTE: Unanimous. CONDITIONAL USE PERMIT GRANTED.

FELKON. INC. – PB Case #21102 (extension of former PB Case #2318)

The application for a Conditional Use Permit (CUP) as required for the extension of a conditionally approved site plan (PB Case #2318) for the proposed construction of a manufacturing/office building and associated site improvements encroaching within the 40' wetlands buffer. The subject property is located at 10 Industrial Drive, in the I-Industrial zoning district. Tax Map Parcel #54-2.

Chairwoman Corson provided a brief summary of the project noting that Mr. Felder had obtained conditional approval for it approximately four or five years ago. She recalled the discussion at the December meeting in which the Board tabled further discussion of the extension request until the February 10th, 2011 meeting to provide Mr. Felder the opportunity to reconsider his options with respect to the property and whether he wished to proceed with the CUP application. She acknowledged that this was a new application and asked Ms. von Aulock if the abutters and public had been duly notified; Ms. von Aulock responded affirmatively. ***Mr. Plumer moved to accept the application thereby beginning the 90-day clock for the Board to act; Ms. Sideris seconded the motion. VOTE: Unanimous. APPLICATION ACCEPTED.***

Mr. Bob Felder addressed the Board and explained that he was simply seeking an extension of the conditional site plan approval previously granted for this project several years ago. He indicated that he had no specific details to share with the Board at this point given the current economic conditions. He stated that his expectations were that the property was still buildable although until there is some interest in the site, it would be unreasonable to invest any more money into engineering and also difficult to determine the amount of additional impact any proposed development would create. He commented that he had a considerable amount invested in the property to date and would like to see it be able to be developed. He acknowledged the most recent changes to Section 9.1 of the zoning ordinance (Wetlands Conservation District Ordinance) and that they may have some adverse effect on the project, therefore requiring that a CUP be obtained for any future development on the site. He reiterated that all he was seeking at this time was to keep the conditional approval active until such time as he can provide the Board with a more firm proposal.

At this time, Ms. von Aulock recalled her discussion with Town Counsel prior to the December meeting in which it had been represented that the Board had two options relative to action on Mr. Felder's request and they were to either:

- deny the request for the extension, therefore requiring the Applicant to resubmit a new application; or
- grant the extension request with the condition that a CUP is applied for within a specific time frame.

At this time, Ms. von Aulock briefly reviewed the additional impacts to the site as delineated on her marked-up (color version) of the plan. She reiterated that the plan submitted with the CUP has not been revised to reflect any changes in an effort to reduce and/or alter any of impact on the wetlands buffer areas. She commented that she did not believe there was any "middle-ground" and that the Board should either act to grant the CUP (and subsequently grant the extension) or denies the CUP and extension, therefore making it necessary for a new application to be submitted for any future proposed development of the site.

Ms. Sideris inquired as to how long of an extension could be granted. Ms. McEvoy responded that Mr. Felder had requested multiple extensions subsequent to the 2003 conditional approval being granted. She represented that this most recent required abutter notification and a public hearing as two (2) one-year extensions had been previously granted. She indicated that she was not aware of any restrictions prohibiting the number of extensions permitted specific to any one project.

Mr. Plumer acknowledged that the plan had been conditionally approved for an existing lot, an investment has been made to get to this point, and if in the foreseeable near future it becomes financially sound to proceed with the project, Mr. Felder would be required to address the 40' wetland buffer requirements at that time. Mr. Ferraro commented that he concurred that the engineering was of value and could be used in preparing a future plan, but inquired as to what granting an extension would give the Applicant; he commented that the Applicant would still be required to return to the board with a whole new plan.

Ms. Sideris inquired if the two components could be addressed separately, such as the Board granting the requested extension and possibly tabling action on the CUP until such time as the Applicant has a more definitive plan. Ms. von Aulock responded that this process was new territory for the Board and it was necessary for them to determine how this process should be addressed. Chairwoman Corson indicated that she would expect there would be considerable changes to the plan and would therefore require a complete review by the Board and would basically be considered a new application. Mr. Plumer stated that he did not see how the Board could approve the CUP when there have been no changes to the plan as presented.

Discussion ensued relative to the marketing and economic value of the property with and/or without approvals, and why an extension of the existing conditional approval would benefit the Applicant. Consensus of the Board was that there appeared to be no difference in the outcome whether the conditional approval extension was granted or not, the Applicant would still be required to provide new plans to the Board.

Ms. Sideris made a motion to table action on the Conditional Use Permit (CUP) application for one year and to grant a one-year extension of the conditional approval (as previously granted by the Board for PB Case #2318), subject to the condition that the Applicant shall return with a completed Conditional Use Permit application for their review. The one-year extension shall expire on March 24, 2012. VOTE: Unanimous.

OTHER BUSINESS

THE PROVIDENT BANK – PB Case #2907

The Board reviewed a request dated December 8, 2010, from Ms. Allison Field, regional Vice President of Provident Bank for the release of the performance bond (escrow funds) for the construction of their new building and associated site improvements at 95 Portsmouth Avenue. The Board also reviewed a memorandum from Town Engineer Paul Vlasich, dated February 2, 2011, which indicated that the project had been completed to the Town's satisfaction and that the performance bond could be released.

Chairwoman Corson noted that in the future, the Board would prefer a more detailed recommendation for such requests. Ms. McEvoy indicated that the Town was currently holding \$147,036. In an escrow account, and that no partial reductions had been made during the construction process.

Mr. Plumer moved to release the performance bond (escrow funds) as recommended; second by Ms. English. VOTE: Unanimous. PERFORMANCE BOND RELEASED.

BOATOFGARTEN, LLC – PB Case #2813

The Board reviewed a request from Mr. Eben Tormey, Project Manager dated March 9, 2011, for a one-year extension of the their previously approved site plan for a proposed 30,000 square foot addition and associated site improvements at 32 Industrial Drive. It was noted that an amended site plan had subsequently been submitted to the Planning office, had been through the Technical Review Committee (TRC) process and was scheduled to be heard at the Board's April 14th, 2011 meeting.

Ms. von Aulock mentioned that she believed a Conditional Use Permit would also be required in conjunction with this request for extension, as the regulations had changed and would have some effect on the proposed project. She indicated that she would prefer to consult with legal counsel before the Board acts on the request.

Consensus of the Board was to table any further discussion on the extension request until the Board's next meeting on April 14, 2011.

APPROVAL OF MINUTES: December 9, December 16, 2010 and January 13, 2011.

Mr. Plumer moved to approve the minutes of December 9, 2010, as written; second by Ms. Sideris. VOTE: 4-0. Mr. Ferraro abstained.

It was determined that there was not an appropriate quorum to act on the minutes of December 16, 2010 and January 13, 2011 and were deferred to the Board's next meeting.

TOWN PLANNER ITEMS

- Master Plan is now on the Town's website! A big thanks to Rockingham Planning Commission (RPC) for their help with this project.
- Looking for recruits for a sub-committee for the next Master Plan update – currently six (6) chapters that need to be updated.
- A public workshop will be scheduled this year to review all of the Master Plan recommendations.
- The "Zoning Ordinance" is currently being updated to incorporate 2010 and 2011 amendments. New 2011 versions will be available soon.
- Report on Town's Transportation Committee – Following up on a recommendation heard numerous times throughout the Master Plan process, the committee began discussions this past summer about providing transportation to connect outlying neighborhoods with community and recreational facilities (i.e. Library, Train station, Rec. Park facility on Hampton Road, Brickyard Pond, and Town Offices). She indicated that they were currently working on an 8-week pilot program (summer vacation) to provide for an 'in-town' mini-van shuttle service.
- New web committee being formed to assist with the coordination Town's website.

REPORTS ON "OTHER COMMITTEE" ACTIVITY

CHAIRMAN'S ITEMS

Chairwoman Corson reported on Board vacancies and appointments, noting that currently there was one open "alternate" position. She indicated that both she and Ms. Bailey's terms were expiring at the end of April. She also mentioned that it was necessary to fill two PB representative vacancies ---- one on the Historic District Commission (HDC) and the second on the Capital Improvements Program (CIP) subcommittee for the upcoming year.

There being no further business before the Board, ***Mr. Plumer moved to adjourn; second by Mr. Campbell. VOTE: Unanimous. The meeting was adjourned at 9:55 P.M.***

The next meeting of the Exeter Planning Board will be held Thursday, April 14, 2011 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully submitted,

Barbara S. McEvoy
Deputy Code Enforcement Officer
Planning & Building Department

:bsm