



TOWN OF BELMONT, NH

PLANNING BOARD

Monday, September 24, 2007
Belmont Corner Meeting House
Belmont, New Hampshire

Present: Chairman P. Harris; Members C. Patten, G. Flack, W. Peterson, C. Long and; Alternate W. Rollins.
Absent: R. Caldwell Ex-Officio, Alternate R. Davis.
Staff: C. Daigle and R. Ball.

The chairman opened the meeting at 7p.m. and appointed W. Rollins as a voting member. He explained that the Board would act on two hearings out of order as they were not going to be held as advertised so anyone in attendance for them would not be kept unnecessarily.

Plan Submission Meeting and Public Hearing – Mark Mooney: Request for site plan approval for wholesale firewood processing & storage w/related 7,440sf drying shelter and two kiln structures. Relocate existing RV and boat storage area. Property is located at 33 Province Road, Tax Lot 204-028 in the “C” Zone. PB #2107.

C. Daigle explained that Mr. Mooney has requested to table the application. He would like to include retail firewood sales in the proposal but must renote for that purpose. The application will not be tabled until time certain. New notices will be sent to abutters.

MOTION: On a motion by W. Peterson, seconded by C. Patten, it was voted unanimously to table the plan submission meeting and public hearing. Returning before the Board requires the applicant to renote. (6-0)

Plan Submission Meeting and Public Hearing – Susan Youssef: Request to waive all Site Plan review and requirements to allow existing lot filling and culvert installation to expand commercial use of property and construction of 888sf of accessory structure on a commercial lot. Property is located at 252 Daniel Webster Highway, Tax Lot 102-011 in the “C” Zone. PB #2207

C. Daigle explained that Ms. Youssef has withdrawn her application to waive Site Plan and will be submitting a Site Plan application for the work already done.

MOTION: On a motion by W. Peterson, seconded by C. Long, it was voted unanimously to accept the request to withdraw the application. (6-0)

Public Hearing – Capital Improvements Program 2008-2013:

P. Harris thanked the Committee members, Department Heads and Staff for their assistance in completing the annual update. He commented that it had become a smoother process as it has been updated annually since 2004. Once adopted by the Planning Board, the CIP Funding Schedule is sent to the Selectmen and Budget Committee to be used in the annual budget process creating the budget that is placed before the voters in March.

C. Daigle listed the changes being proposed to the previous 2008 schedule:

1. Cemeteries - \$10K increase for headstone repairs in 30 cemeteries
2. Community Facilities - \$61K decrease as no bond for a police station was voted in 2007
3. Conservation Commission - \$25K decrease – Commission removed request due to proposed income from Land Use Change Tax revenues
4. Environmental - \$10K decrease – reduction experience in annual expense
5. Fire Station – \$32K increase – roof central station
6. Information Technology - \$7K increase – for dedicated software and a VPN for direct computer access between the Town Hall, Fire, Police and Public Works buildings
7. Library – \$25K increase into building addition fund
8. Police Department - \$56K increase for flooring, equipment, security & HVAC upgrades to existing station
9. Public Works – \$1.3M increase for dump truck replacement, Concord St sidewalk completion, road and drainage reconstruction
10. Water Department - \$15K decrease – \$25K reduction because well #3 will be paid by user fees and \$10K increase for deposit into long-range water system maintenance fund

Total change - \$1.3M – primarily based on road reconstruction and drainage improvements. There were no comments or questions from the public.

MOTION: On a motion by G. Flack, seconded by W. Rollins, it was voted unanimously to adopt the 2008-2013 Funding Schedule as proposed and to forward it to the Selectmen and Budget Committee. (6-0)

Plan Submission Meeting and Public Hearing – William & Barbara Duggan: Request for site plan approval to construct an office/bathroom facility and relocate primary driveway location. Property is located at 300 Hurricane Road, Tax Lot 231-010-001 in the “R” Zone. PB #2007.

Ms. Donna Cilley and Mr. William Duggan presented the application. P. Harris explained the general application process and that the Board would first consider the completeness of the application prior to hearing a presentation on the merits of the application. He listed the request waivers and staff’s recommendation/reasons on each.

MOTION: On a motion by W. Peterson, seconded by G. Flack it was voted unanimously to grant the following waivers:

1. Additional offsite detail, utilities and fire protection plans, plan scale based on the minor nature of proposal.

2. Wetlands delineation based on prior review of the property.
3. Landscape plan, screening plan based on development site being remote from the highway.
4. Underground utilities based on the development site being remote from the highway on the condition that if power is ever relocated to access from the lot frontage that it be installed underground.

(6-0)

P. Harris asked the applicant if they had any additional comment on the fee waiver request. Ms. Cilley noted they did not even know why they needed Site Plan approval. When they subdivided this lot from the Duggan house lot they were just told they would need a bathroom on this lot if it was every sold separately from the house lot. Everything was reviewed and approved at the time of the subdivision. They should not have to pay again. They are already going to have to pay a building permit fee. Both the junkyard and the contractor's yard on this lot have been there for years; nothing is changing. They're only proposing a 24' x 24' building for a bathroom, desk and file cabinet to keep the junkyard records on site. Others don't have to go through this to build such a small building.

P. Harris noted that the applicant had chosen to previously subdivide the property, creating 2 lots with nonconforming uses and splitting the supporting facilities away from this lot. It was a condition of that subdivision that when this lot, with its nonconforming uses, was sold separately that it first have supporting facilities installed through Site Plan. C. Daigle read the applicable condition from the previous subdivision, "The uses occurring on Tax Lot 231-010-001 (junkyard/contractor's lot) are dependent on the facilities provided on Tax Lot 231/010-000 and shall not be owned and/or operated separately from Tax Lot 231-010-000 until Site Plan approval has been issued, the conditions of that approval met and all required facilities provided for uses proposed to continue on Tax Lot 231-010-001". That condition is printed on the final subdivision plan and it was clear at that time that Site Plan approval and all required facilities would be required when this lot was sold.

P. Harris asked whether the facility/building construction was an expansion of a nonconforming use and required ZBA approval. Ms. Cilley said that issue was not raised by the Planning Board during the subdivision and was not raised by the Planner when they met regarding this Site Plan application. P. Harris stated that he felt they may need a Special Exception as an expansion. They're adding a structure and its own facilities. Ms. Cilley reiterated that they were not directed to do so previously. C. Daigle commented that she had not directed the applicant to the ZBA because she had not felt that the use rose to the level of an expansion, but that was a decision that the Board could make. The options for the Board tonight included to act on the application as submitted, send it to the ZBA as an expansion (where the ZBA may make their own finding), or request input from Counsel.

G. Flack asked how long the well and septic had been on site. C. Daigle reported that they were both newly installed. P. Harris felt that the nonconforming use was being expanded. He explained that a Special Exception process can be a protection to the owner as well as the community. Ms. Cilley stated that she was almost at the point where she was going to ask P. Harris to recuse himself because, "there's a problem and it's spelled Grandfathered and we don't want to go there". P. Harris responded that applications are dealt with on a case by case basis and that the ZBA deals with expansions on a regular basis (usually of structures). If this is an expansion it is not right for the Duggans to skip that process. Ms. Cilley said she hears all the time that the Planning Board is out of control and this is a prime example of that, requiring

unnecessary reviews, approvals, information and fees.

Ms. Cilley said it's staff's fault that they're asking for a 24' x 24' building. Staff directed them to ask for a larger building if they felt they needed one. They're only going to actually put up a smaller one. She asked if they do that can a 24' x 24' be put up in the future? W. Peterson said that staff has been directed to encourage applicants to ask for everything they know they want so they don't have to come back through the process unnecessarily, but it's the applicant's choice. C. Daigle noted that if approval for a 24'x24' building is given they have 1 year to start it and 4 years to build it as 24'x24'. If they build something smaller in the interim and stay with that, the 24'x24' expires at the end of 4 years.

W. Peterson asked if the Filing Fee had ever been waived? C. Daigle responded she did not think so since the recent fee scheduled had been adopted. She explained that larger applications also had a per-acre fee that was not assessed on this application. Only the basic filing fee was imposed. Staff was not recommending to waive the filing fee as the review of this application included a review by Land Use Staff members, a complete review of their previous several applications so a recommendation could be made on all the waivers being requested, a review and comment by all other Department Heads, meetings with the applicant and a comprehensive staff report so the applicant could reasonably expect an expedited process. These are all costs to the Town that should be covered by applicants and not passed on to taxpayers in general. In this instance the applicant has paid the filing fee, but the check is being held until the Board acts on the waiver request.

MOTION: On a motion by C. Patten, seconded by W. Rollins, it was voted unanimously to deny the request to waive the filing fee. (6-0)

MOTION: On a motion by G. Flack, seconded by C. Patten it was voted that the application be accepted as complete for the purposes of proceeding with consideration and making an informed decision. However, additional information shall be requested as necessary and must be submitted to complete review and act on the application. Action on this proposal shall occur by 11/28/07 subject to extension or waiver. (5-0-1 P. Harris abstained)

The Chairman opened the public hearing.

W. Peterson noted that it was an interesting point that the bathroom be considered accessory, and not rise to the level of "expanding" the nonconforming use, but that a much larger building may be considered an "expansion". C. Daigle explained that in her consideration of whether or not the current proposal was an expansion she looked specifically at the use and not just the size of the structure. Would the structure itself result in an increase or expansion of the use occurring on site, or was it simply a matter of putting part of the existing use under cover. For instance, a 10'x10' building on one site that will allow an increase in employees might be an expansion, where on another site the same building might be attached to a 30,000sf industrial plant and used to shelter an existing employee picnic table from the elements and not considered an expansion of use. P. Harris responded that this is a great property and it has its current approved/grandfathered uses, but that it's important that proposed and future development get all the necessary approvals. Ms. Cilley stated that they don't want a big business, it's been a one-man show, just used on a minimal basis and that's how it's going to stay. Right now her father does his "office" business from the back of a truck located in the junkyard. It's locked and all the junkyard files are in it. All they need is a bathroom, desk and file cabinet. They really only want a smaller building anyway. The lot/junkyard is

just not large enough anyway to be attracting someone who wants an intensive use. It's an 18 acre lot with only a 3 acre approved junkyard site and a small area that has historically been used as a contractor's yard. In that contractor's yard there is no truck repair, only parking a loader and truck and some material storage. The contractor's yard is used much less frequently than the junkyard. P. Harris noted the smaller building and less intensive uses are a good argument why it would not be an expansion.

C. Daigle asked if there was to be a garage door in the building. D. Cilley said there would not be. There will be one light on the side of the building by the door, an entrance light. They are prepared to drop the size to 10'x10' if necessary. They would like to see the project done in 6 weeks, but if not, it will have to wait until Mr. Duggan returns home in the spring, but they are sure it would be done in 6 months to 1 year. Their hours of operation could span 8am to 7pm, Monday thru Saturday, but it's pretty much a one-man operation open sporadically. It's just not a large operation. The storage a junkyard requires limits even the number of vehicles that can be processed through. There is plenty of parking, but it gets moved based on the vehicles on site.

D. Cilley explained that they have met all the State and local requirements for spill containment through the junkyard licensing process. There are no fuels, fluids, batteries, or other such items stored or changed in relation to the contractor's yard use and no vehicle repairs or other related work. It is only equipment and materials storage. They have the well radius easement and will provide a copy to the Town. There are no lienholders and they will provide a written statement of same. The Town has the driveway permit that was issued. The apron has been paved. Boulders have been placed along the edge of the driveway at the steep slope.

Ms. Cilley reported that the driveway has a 250' sight distance in both directions which meet the Regulations. W. Rollins noted that he did not think that 250' meet the Regulations and that he had a concern about the safety of driveway sight distance both from within the driveway and from within the road ROW coming up on someone stopped to make a left into the driveway. Mr. Cilley stated that her surveyor stated the sight distance conformed. C. Daigle noted that the junkyard area had previously been accessed either directly from the Duggan house lot, or out a driveway to the west of the adjacent apartment house lot. When the lot was subdivided, the primary driveway access was permitted out the westerly driveway, but the Board also granted a driveway location between the apartment house lot and the Rogers lot. Although it did not provide the full 300' sight distance, the surveyor had placed it in the best location for sight distance in both directions. This kept the commercial access separate from the apartment house access. W. Rollins stated his concern about the safety of the new driveway but acknowledged that it had already been permitted.

Mr. Duggan explained that fluids taken from vehicles in the junkyard are stored in a metal storage tank that is placed within a secondary container. The fluids are used in the waste oil furnace or taken away by a licensed hauler. When he has a contract crusher come in, they are self-contained and take everything with them. They have all required spill kits.

Ms. Cilley explained that the State wanted a concrete pad where vehicles are placed when fluids are withdrawn. The building official knew about it and did not require a permit. If they need a permit they will obtain one. W. Peterson noted they can add it to the building application and do it all on one. P. Harris asked if the State requires the slab to be covered. Mr. Duggan stated they do not.

Mr. Donald Rogers, an abutter, and his son, David were present. Mr. David Rogers stated that 24'x24' was

overly large for a bathroom, desk and file cabinet and that he felt the building would be used as a garage. C. Daigle noted that no garage door would be permitted. Mr. Rogers felt it would be put in after-the-fact. C. Daigle noted the site is inspected annually through the junkyard licensing process so it would be an enforcement issue if it occurred.

Mr. David Rogers asked what type of debris was used as fill in the new driveway. Mr. Duggan stated that virgin concrete, slurry directly from Persons was used along with road dirt from the Town roads and clean fill material was used. There is no building debris concrete or steel included.

Ms. Elizabeth Austin was present and asked to view the plan in relation to their property. She was given a copy of the plan to review and all pertinent locations were pointed out. She stated she had no opposition given the remote location of the building from her property.

Mr. Donald Rogers stated that he does not agree with the ROW as shown on his property. The Board responded that it was being shown by a licensed land surveyor. If Mr. Rogers has rebutting evidence he should provide that to the Town.

Mr. Rogers stated he would not have a dumpster and that the State did not want him to have a dumpster because of all the illegal items that are usually put in a dumpster located in a junkyard. Any household-type trash from the office and bathroom would be removed off site.

Ms. Cilley noted that their AC is extracted by a licensed contractor that comes on site. They do not have their own extractor.

MOTION: On a motion by W. Peterson, seconded by C. Patten, it was voted unanimously to grant a waiver from providing a written Quality Assurance Program based on the testimony provided. (6-0)

There being no further comment or question, the chairman closed the public hearing.

MOTION: W. Peterson moved that the application be granted Final, conditional approval as it appears to meet all of the technical requirements of the Ordinances and Regulations of the Town of Belmont with the following conditions:

Conditions to be complied with or secured (as appropriate) prior to plan being signed and decision recorded. No site improvements or approved uses shall commence and no building permit shall be issued until plan is signed and decision recorded.

1. Submission of building plans, approved by Building Inspector & Fire Department prior to plan signing. Shall comply with all applicable building, fire, health, and life safety codes.
2. Submission of final plans:
 - a. Show paved apron on driveway.
 - b. Show sight distances for driveway.
 - c. Any utilities installed from lot frontage are required to be underground.
 - d. Building shall comply with ADA.
 - e. Location of flood light. Light to be full cutoff fixture.

- f. Sign location.
- g. 911 street number location.
- 3. Erect 911 street number.
- 4. Payment of decision recording fee.
- 5. Submission of NH DES septic operational approval.
- 6. Obtain building permit for the concrete pad.
- 7. Applicant shall sign and follow Inspection Schedule prepared by Planning staff.
- 8. Compliance hearing shall be held by Board as necessary.

Construction conditions to be complied with once plan has been signed and decision recorded:

- 9. Construction shall be monitored and certified by a consultant appointed by the Board at the applicant's expense if any.
- 10. Property owner shall install all required traffic control and fire and life safety facilities and systems required by the Board and/or by other applicable Codes and Regulations.

General conditions to be complied with subsequent to plan being signed and decision recorded:

- 11. Driveway shall be maintained for emergency access at all time unless the on-site activities are closed for an extended period.
- 12. No other uses shall occur within the permitted structure which shall be a maximum of 24' x 24' in size.
- 13. Permits must be obtained for all signage, and signs for inactive, closed or abandoned uses shall be removed within 30 days.
- 14. No changes shall be made to the approved plans unless application is made in writing to the Town.
- 15. The Planning Board shall have the power to modify or amend its approval upon its own motion to do so.
- 16. Approval is subject to expiration, revocation and changes in the Ordinances.
- 17. Any future increase in size, area or useage will require review under the Site Plan Regulations and may also require a Special Exception if determined to be an "expansion" of the nonconforming uses.

The motion was seconded by C. Patten, and carried. (5-0-1 P. Harris abstained)

5. **OTHER BUSINESS:**

A. **MINUTES – September 10, 2007:**

MOTION: On a motion by C. Patten, seconded by W. Peterson, it was voted unanimously to approve the minutes of 9/10/07 as written. (6-0)

B. **STAFF REPORT:**

1. **Joint Meeting w/School Board and Selectmen:**

C. Daigle reminded the members of the invitation to meet with the School Board and Selectmen at 6pm on Thursday, September 27th, at the Middle School. Last year very few Planning Board members were able to attend. It is hoped that there will be more able to attend this year. C. Daigle distributed demographic info to share at that meeting.

2. **Kenneth Barrett – Tax Lots 204/19 & 211/16:**

The chairman signed the previously approved Boundary Line Adjustment. Staff had been waiting for the discontinued driveway on Plummer Hill Road to be successfully reclaimed.

3. **John Fairhurst – Tax Lot 215/27:**

The chairman signed the previously approved Site Plan.

4. **Contract:**

The members signed the planner's contract approved at the August 27, 2007 meeting.

5. **Hand outs:**

The members received:

- a. New Chapter on Capital Improvements Program for their existing Planning Board Handbook from NH OEP.
- b. Supporting documentation submitted to the Selectmen on the 2008 budget request.
- c. Recent NH Court Cases including:
 - Conversions of Structures into Condo form of ownership;
 - Regulating Earth Excavations;
 - Regulating minimum lot size.
- d. Recent NH LGC Q&A including:
 - The basis of Ex officio members' votes;
 - How abstaining effects a vote.
- e. 2007 Final Legislative Bulletin
- f. NH LGC, "*Excellence in Local Government: Building on Commitment, Civility and Cooperation*".

C. SITE PLAN EXEMPTIONS:

The Board discussed the basis used in making determinations on:

1. Waiving Site Plan Review entirely – similar to the Youssef request that was withdrawn. The Board has not done that in the past.
2. What basis was used in the past where in a small number of instances under Section

1.E.5. of the Regulations the Board found that a proposal was minimal in impact and that it did not require Site Plan approval. Their finding in those instances was based on the specific proposal and its significance in relation to the existing on-site use and whether it resulted in an expansion or change in use.

3. The difference between a Major and Minor Site Plan – which is defined by Section 5.G. of the Regulations.
4. The difference between a Major and Minor change in an approved Site Plan – which is defined by Section 8.C. of the Regulations.

ADJOURNMENT:

MOTION: On a motion by C. Patten, seconded by G. Flack, it was voted unanimously to adjourn at 9:09p.m. (6-0)

Respectfully submitted:

Richard Ball, Land Use Technician