

NORTH BERWICK, MAINE 03906

MINUTES OF PLANNING BOARD MAY 22, 2014

Present: Chairman Barry Chase, Jon Morse, Rick Reynolds, Geoffrey Aleva, Lawrence Huntley, CEO

Absent: Mark Cahoon, Anne Whitten

Also Present: Lee Jay Feldman, Joseph Pelletier, Laurienne Missud Martin, Jim Marchest, Christian O. Smith, Bill Tobey, Stephanie Tobey, John O'Neil

1. Call to Order:

Chairman Chase opened the Planning Board meeting at 6:31 pm.

2. Review of Previous Minutes:

Rick Reynolds stated that on Page 10, under number 2, it reads, "The Town does not currently have a General retail sales..." and it should read, "The Town does not currently have a general retail sales..."

Rick motioned to accept the minutes of May 8, 2014 as amended. Jon Morse seconded the motion. VOTE: 3-0 Abstain: 1

3. Current Business:

Chairman Chase stated that the first item on the Agenda was for the applicant Recovery Maine for a substance abuse transitional housing to go over the Findings of Facts.

Here are the Findings of Fact:

TOWN OF NORTH BERWICK PLANNING BOARD

Recovery Maine, Inc.)	
Application for Conditional Use Permit)	Findings of Fact
Recovery Maine, Inc.)	
33 Main Street)	

Pursuant to the Town of North Berwick Zoning Ordinance, the Planning Board has reviewed the conditional use permit application submitted by Joseph Pelletier on behalf of Recovery Maine,

Inc. including supplemental information on file with the Town of North Berwick. The Planning Board was assisted in its review of the project by the Southern Maine Regional Planning Commission along with the Town's Attorney Drummond Woodsum. The Planning Board makes the following findings of fact and conclusions of law for this application:

BACKGROUND

Joseph Pelletier on behalf of Recovery Maine, Inc. filed a conditional use application in February 2014, for a State licensed abstinence-based living transitional housing and treatment facility. The project includes Offices, counseling and meeting rooms and living facilities for 16 adults. Recovery Maine, Inc., is located in the Commercial zoning district. The site consists of a two unit residential building that Joseph Pelletier has under agreement to purchase, which are identified on the Tax Assessor's Map as Map 18 lot 101. The Planning Board determined that the application was complete March 13, 2014 and a public hearing was held by the planning board on March 27, 2014. This project comes under the review of MRSA 4357-A Community Living Arrangements and that of the Federal Fair Housing Act of 1988.

(Rick Reynolds stated that in the second sentence, Offices should not be capitalized. It should read: "The project includes offices, counseling and meeting rooms and living facilities for 16 adults." Also, the sentence before last does not have the words planning board capitalized. It should read: "The Planning Board determined that the application was complete March 13, 2014 and a public hearing was held by the Planning Board on March 27, 2014.".

FINDINGS AND CONCLUSIONS

I. Background

The Planning Board finds that the project is categorized as a "Use similar to conditional uses" per the land use table in Section 4.2 of the Zoning Ordinance. The Ordinance does not separately define a use such as the one proposed but does define Nursing Homes in Article 3 Definitions section of the Ordinance.

The Planning Board has carefully considered the argument made by members of the public, however the board members felt comfortable with the answers provided to them by the applicant during the public hearing.

Recovery Maine, Inc. has adequate title, right, or interest in each of these parcels by virtue of valid purchase and sale agreements with the parcels' owners.

The project meets the dimensional standards set forth as being allowed to continue as a lawfully non-conforming building.

Recovery Maine is covered by the Federal Fair Housing Act of 1988 which states that a halfway house or recovery community shall be treated as a single family residential use. Alcohol and drug addiction are defined as a disability or handicap under the Federal Housing Act.

It is stated in Maine Statue MRSA 4357-A Community Living Arrangements-A community living arrangement shall not be excluded by municipal zoning ordinances and is deemed a single family use of property for the purposes of zoning. A community living arrangement shall mean a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility. The proposed use appears to fall within the group home and intermediate care facility definitions.

The proposed building is a grandfathered lawfully non-conforming two family residential dwelling located in the Commercial District.

1. Article 4-11F Tables--- 10,000 s/f required per use in the Commercial District.
 - a. Lot is .25 acre (10,900 s/f) therefore, one use would be allowed but due to grandfathered status it has 2 uses allowed.
2. Proposed to be, one single family residential use and one commercial use.
 - a. Commercial use on first floor and residential on the 2nd and 3rd floors.
3. A Single Family Use is allowed in the Commercial District as a Conditional Use. Article 3.2 Definitions defines a Single-family dwelling as a dwelling for occupancy by not more than two (2) families.

Article 3.2 Definitions defines a family as one or more persons occupying a premise and living as a single housekeeping unit and shall not exceed five persons not related by blood or marriage, therefore:

- a. Since the Recovery Maine recovery home would be considered a single family residence which allows two families and a family is defined as not having more than 5 unrelated persons, the proposed residential use would be limited to not more than 10 residents. Although State Law seems to allow up to eight persons, our zoning allow additional persons due to the definitions adopted by the town.
4. Professional and Administrative Offices are allowed in the Commercial District as a Conditional Use. Article 3.2 Definitions defines a Professional Offices as an office of professional practice of which licensure qualifications and standards are required for compliance with State Law. The proposal is to have licensed counselors to have two offices on the 1st floor, therefore:

- a. The proposed floor plan has two offices which would allow for two additional 24 hr. staff to the residences and two additional day staff.

II. Conditional Use Review

Conditional use approval requires that the Planning Board review three separate sections of the Zoning Ordinance: (1) applicable performance standards under Article 5; (2) multiple immediate and long-range effects of the project under Section 6.9.6.a; and (3) multiple additional standards under Section 6.9.6.b. Because the performance standards in Article 5 are highly detailed, we will begin by analyzing compliance with those criteria, and then move to discussing the conditional use provisions under Sections 6.9.6. and 6.9.6.b.

A. Performance Standards

As an initial matter, the project must demonstrate compliance with Section 5.1, which sets out the basic requirements that apply to all projects. Specifically, the Planning Board finds the following:

1. Traffic.

The applicant has parking for 16 vehicles, 14 regular spaces and 2 handicapped spaces. It is not anticipated that the people living at the facility will all own vehicles. The proposed development will not have an unreasonable negative impact on the Town's road system, and will provide safe interior circulation within the site. Accordingly, the applicant has met Section 5.1.1 of the Ordinance.

2. Noise.

The project will not generate excessive or objectionable noise, including with respect to issues of intermittence, beat frequency, shrillness, or volume. The project is located on Somersworth Road, where regular car and truck traffic already dominate the acoustic environment. This property will continue to operate as a residential property with several offices and conference space. No new mechanical equipment is being introduced to the property other than what exists there now. Accordingly, the applicant has met Section 5.1.2 of the Ordinance. The applicant also indicated during the hearing of 4/24/14 that the hours of the office operation will be 9AM – 4 PM and the residence will have a 9:30 PM curfew.

3. Air Emissions.

The project will not adversely affect air quality. Accordingly, the applicant has met Section 5.1.3 of the Ordinance.

4. Odor.

Refuse for the project will be disposed of in a sealed compactor unit and no open dumpsters are proposed as part of the project. The project will not produce offensive or harmful odors perceptible beyond lot lines. Accordingly, the applicant has met Section 5.1.4 of the Ordinance.

5. Glare.

The application does not suggest any changes to the lighting scheme changing the impact of glare on the property. Accordingly, the applicant has met Section 5.1.5 of the Ordinance.

6. Stormwater Run-Off.

The applicant has not proposed any changes to the site that would impact stormwater. Accordingly, the applicant has met Section 5.1.6 of the Ordinance.

7. Erosion Control.

This standard is not applicable.

8. Setbacks and Screening.

The applicant is not proposing any additions to the property that would further impact setbacks on the site. Accordingly, the applicant has met Section 5.1.8 of the Ordinance.

9. Explosive Materials.

This standard is not applicable.

10. Water Quality.

This standard is not applicable.

11. Flood Protection.

This standard is not applicable.

12. Soil Suitability.

This standard is not applicable.

13. Off-Street Parking and Loading.

This was discussed earlier in the Traffic Portion of the findings indicating that the applicant has met the obligation.

14. Subsurface Sewage Disposal.

Because the project will be served by public sewer, this standard is not applicable.
(Lawrence Huntley said that he received a letter from the Sanitary District stating that they need to be notified every time that we have a project that involves them. They want to know every time they have to provide service to a project.)

15. Other On-Site Disposal Systems.

Because the project will be served by public sewer, this standard is not applicable.

16. Private Wells.

Because the project does not include any private wells, this standard is not applicable.

In addition to the basic performance standards in Section 5.1, the project must also meet any applicable standards in Section 5.2 for specific activities. The Planning Board finds the following:

1. Medical Marijuana.

This standard is not applicable.

2. Earth Material Removal.

Because all earth material removal activities will be incidental to normal construction activity, this standard is not applicable.

3. Home Occupation.

This standard is not applicable.

4. Mobile Home Parks.

This standard is not applicable.

5. Planned Unit Development.

This standard is not applicable.

6. Signs and Billboards.

The applicant does not propose any signage identifying the property. This standard is not applicable.

7. Timber Harvesting.

This standard is not applicable.

8. Animal Husbandry.

This standard is not applicable.

9. Residential Uses in Commercial Zones.

Residential Uses are a permitted use in the Commercial zone. Therefore the applicants use is allowed.

10. Recreational Vehicles.

This standard is not applicable.

11. Agricultural Land and Development Standards.

This standard is not applicable.

12. Manufactured Housing.

This standard is not applicable.

13. Aquifer Protection.

Because this project is not in the Aquifer Protection district, this standard is not applicable.

14. Street Design and Construction.

This standard is not applicable.

15. Handicapped Accessibility.

Under the building code the applicant will be required to make the property accessible.

16. Affordable Housing.

This standard is not applicable.

17. Shoreland District Standards.

Because the project is not in the Shoreland district, this standard is not applicable.

18. Adult Business.

This standard is not applicable.

19. Emergency Public Health and Safety Facilities.

This standard is not applicable.

B. Immediate and Long-Range Effects

In considering this application, the Planning Board evaluated the immediate- and long-term effects of the project, per Section 6.9.6.a of the Zoning Ordinance, as follows:

1. The proposed project is and will continue to be compatible with adjacent land uses and other property in the district. The property was recently utilized as an office and residence and will continue to operate in the same manner as proposed by the applicant and as testified to during the Public Hearing.

2. The Town does not currently have a Treatment facility which fills the needs of a segment of the population in the region; therefore there is a need for this project, both now and in the future.

3. There will be few, if any, negative impacts on the local population and community facilities. As noted above, the applicant has made substantial efforts to fit the project harmoniously into the neighborhood. In addition, this project fills a need in the community for a segment of the population seeking assistance.

4. As discussed in detail above, the project meets the traffic requirements, and there will otherwise be little to no impact on transportation facilities.

5. By meeting the performance standards regarding issues such as air emissions, odor, glare, stormwater, erosion, water quality, and sewage disposal, as described in detail above, the project will maintain safe and healthful facilities.

6. The project site a built environment. The applicant plans no changes to the site which would impact the landscaping or vegetation in the immediate area.

7. As discussed in greater detail above, the project meets performance standards for managing stormwater and erosion, and will be connected to public sewer. Therefore, Recovery Maine, Inc. has adequately addressed the prevention and control of water pollution and sedimentation.

8. The project is not located in a flood plain or in the floodway of a river or stream.

C. Conditional Use Standards

In addition, the Planning Board finds that Recovery Maine, Inc. has made satisfactory provisions and arrangements concerning the following, per Section 6.9.6.b of the Zoning Ordinance.

1. Ingress and egress to the property and the current structure, with particular reference to vehicular and pedestrian safety and convenience, traffic flow, and control, and access in case of fire or other catastrophe, will be safe, convenient, and adequate for the anticipated type and quantity of traffic, particularly given compliance with the traffic and parking performance standards, which are addressed in detail above.

2. The parking area, with particular attention to the items addressed immediately above in (1), and the economic, noise, glare, and odor effects of the use on adjoining properties generally in the district, will be reasonable given that the district is zoned for commercial use and the project will meet the performance standards regarding parking, noise, glare, and odor, which are addressed in greater detail above.

3. The refuse and service areas, with particular reference to the items addressed immediately above in (1) and (2), have been adequately designed and will be safe and well buffered from abutters, and will not create unreasonable noise or odors.

4. Utilities – including water, sewer, and electricity – are available, will be adequate to serve the project’s needs, and will be located conveniently and appropriately to limit impacts on neighboring properties. Both the North Berwick Water District and the North Berwick Sanitary District have the capacity to serve the project. Electrical service is readily available from Somersworth Road. The applicant will upgrade the existing water supply system along Somersworth Road to meet the fire suppression flow and pressure requirements for the building.

5. As discussed in greater detail above, the screening and buffering will be adequate to limit impacts of the project on neighboring properties, particularly in light of the project’s compliance with setbacks and landscaping requirements, as well as the maintenance of natural vegetation.

6. The signs and proposed exterior lighting will not cause unreasonable glare, or pose a threat to traffic safety, and will not have an adverse economic impact or otherwise be incompatible with properties in the district.

7. The project meets the requirements for proposed yards, as discussed above with respect to the requirements for setbacks, and will make adequate provision for open space, much of which will be left in its natural state.

III. Conditions of Approval

The Planning Board approved the project in a vote of 5-0 with the following conditions:

1. The parking area be approved with no screening in the North or East sides of the lot with the Planning Board having the option to review the screening issue within 12 months of the Certificate of Occupancy being issued.

2. The Facility shall be limited to 10 occupants living on the premises.

3. The parking are be finished with a compacted reclaim material or Bituminous pavement. This issue shall be revisited within 12 months of the issuance of the Certificate of Occupancy.

(Geoffrey Aleva stated that the first sentence that reads, “The parking are be finished with a compacted reclaim material or Bituminous pavement.” should read “The parking area is to be finished with a compacted reclaim material or Bituminous pavement.”.)

4. The Planning Board shall revisit the entire site plan approval for compliance with the North Berwick Zoning Ordinance within 12 months after the Certificate of Occupancy has been issued.

IV. Conclusion

The Planning Board hereby finds and concludes that Recovery Maine, Inc. has demonstrated compliance with all applicable standards of the Zoning Ordinance and approves the conditional use application in this matter.

Dated at North Berwick, Maine, this 22nd day of May, 2014.

Geoffrey Aleva motioned to accept the Findings of Facts as amended for Recovery Maine, Inc. at 33 Main Street. Rick Reynolds seconded the motion. VOTE: 4-0

Chairman Chase stated that the next item on the Agenda is for Changing Places LLC for a proposed open space development and discussions on Elm Street (Map 1, Lot 39).

Christian Smith stepped forward and stated that he is an engineer with Beals Associates and he is representing Changing Places, LLC and the Tobey family for the project. They are here to discuss an open space development. He stated that the design that he was showing was based from the public record and not an actual survey. He pointed out where the wetlands were on the site. The proposal is looking to create roughly 1,200 feet of road. They were looking at a cul-de-sac and they know the limit in town is 600 feet. So they thought of another design where they would connect through into South Berwick with a crash gate that would allow emergency vehicles to go through.

They are looking at designing 16 buildings for a total of 32 duplex units on about 13 acres of land. Mr. Smith stated that there is about 11.5 acres of wetland on the property. He stated that none of this part of the property would be impacted by the development. They would need to extend the water main down Route 4. He stated that they wanted to get the Board's thoughts on the duplex units which he knows is allowed in this zone and also on the idea of connecting through to make Whitetail Drive connected for at least emergency access only.

Chairman Chase asked Larry Huntley if he had any comments regarding the project. Larry stated that he was questioning the total acreage of the property. He asked if it included the wetlands and Mr. Smith said that it did. Larry told him that they could not include the wetland acres for the total acreage of the development. He stated that this would take out 11.5 acres from the 38 acres for the development. Mr. Smith said that he thought they could include half of the wetland area into the density calculation. Larry said it depends on things such as drainage so everything would have to be delineated. Mr. Smith stated that they did utilize only 50% of the wetlands for the density calculations on the site plan. Larry stated that he does not think that the total amount of units that they are proposing will work for the amount of acres they can use for development. Mr. Smith stated that he didn't think so either but they won't know for sure until they have definitive boundary survey and the physical field location of the wetlands. That's why they wanted to come to the Board on a preliminary consultation basis and get their thoughts and ideas on the layout.

Larry also stated that they need to provide 100 foot setback from the wetland zone and the edge of the property. On their plan, they have buildings that look like they are right on the wetlands and they will not be able to do that. Larry also stated that the Town Manager does not want a gate like they are proposing to connect with the property in South Berwick. He would rather just have the road go right through. Mr. Smith did state that it appears that there was a right of way left on the cul-de-sac just for this purpose. Larry stated that our Ordinance states no dead end streets so it would have to be a cul-de-sac or a thru street.

Chairman Chase asked Lee Jay Feldman if he had any comments at this time. He stated that he has worked with the applicant previously on a project in South Berwick and he does work with the Town of South Berwick Planning Board as well. He stated that because this project needs access in South Berwick, he will need to set up joint meetings between the North Berwick and South Berwick Planning Boards. Mr. Feldman stated that after the initial meeting, if South

Berwick does not feel that they need to continue further, he will draft a letter for the South Berwick Planning Board members stating that they are all set with the project. Mr. Feldman's main concern is how the South Berwick homeowners in the development are going to feel about the added traffic in the neighborhood. Chairman Chase stated that he did not feel that they would be greatly impacted. He felt that it would probably be more the traffic coming from South Berwick into the new development that would be an issue.

Chairman Chase said that he did not see the cemetery that is located on the property on the plan. Christian Smith stated that they had not done the complete field survey yet but it will be afforded its requisite and required buffer. Rick Reynolds asked what the general topography is like at the site. Mr. Smith stated that it is pretty gentle. Chairman Chase asked Larry what the buffer was for the cemetery. Larry said that it was a 50 foot setback. Rick Reynolds asked if the wetlands drained south towards South Berwick. Mr. Smith that this was how it appeared on the USGS map. Mr. Reynolds asked if most of the lots sloped toward the wetlands and Mr. Smith said about half of them would.

Lee Jay Feldman stated that he had worked up a budget for the Town Manager for his work on this project. He stated that when the applicant is ready to submit a sketch, they will have to give money to put in an escrow account to pay for his fees. At this time, they will need to coordinate a joint meeting with South Berwick. If they can do this at the same time, then we can get a better understanding of where South Berwick will stand in the process.

Christian Smith asked how many building permits would be allowed in a given year. Larry stated that there is a limitation of 39 permits per year and 6 in a subdivision. Mr. Smith asked if this would be 6 buildings since these are going to be duplexes and Larry said yes it would be.

Chairman Chase asked how the growth permit ordinance was working out lately. Larry stated that they had not reached it. Lee Jay asked if they had revisited it lately and Larry stated that they had not but should look at it this year. Geoffrey Aleve stated that they should definitely consider opening it up or carrying it over. Lee Jay stated that he rewrote the regulations of South Berwick. It states that if you have access to town water and sewer and you were in the town's designated growth area by their comprehensive plan, then you were exempt. This encouraged infill development in the built up area and then all the permit requirements that were in the outlying areas would still be required. Larry stated that our Ordinance states that the Planning Board has the option to reduce the number but not increase the number. Larry stated that the Board could also vote to eliminate the whole thing, but it would then have to go to referendum. The Board all agreed that they will need to look into this at some point of time this year.

4. Other Business:

No other business at this time.

5. Adjournment:

Rick Reynolds motioned to close the meeting at 7:03 pm. Geoffrey Aleva seconded the motion.
VOTE: 4-0

Lawrence Huntley, CEO
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Barry Chase

Geoffrey Aleva

Rick Reynolds

Mark Cahoon

Jon Morse

Anne Whitten