

NORTH BERWICK, MAINE 03906

MINUTES OF PLANNING BOARD JANUARY 22, 2009

Present: Chairman Todd R. Hoffman, Julie Fernee, Shaun DeWolf, Barry Chase, Mark Cahoon and Lawrence Huntley, CEO.

Absent: Dennis Hartigan and Scott Strynar

Also Present: Marlene Bolster, Leah Rachin (Bergen & Parkinson), Don Winslow, Sean Murphy, Sally McLauren, Ben Gumm, and Oscar Stone.

1. Call to Order:

Chairman Todd R. Hoffman opened the Planning Board Meeting at 6:34 p.m.

2. Current Business:

A. Tri-Son, LLC, ---Applicant proposes to convert existing Industrial and Residential Uses to Condominiums Uses at 12 Elm Street (Map 22, Lot 1)

Leah Rachin explained to the Board that she is from Bergen & Parkinson. I believe you received correspondences from Durwood Parkinson.

Durwood Parkinson asks in his Letter dated December 5, 2008 to basically have a workshop with the Planning Board. Our goal is to open a dialog with the Town in looking in the possibility of how this property can be used in going forward. As I'm sure you know it is a very unique situation. There is a mixture of a number of different uses that are legally non-conforming. Basically I'm here to answer questions, I'm also up here to talk about the ideas that we have had and to get feed back from you folks on how you view our various proposals.

I would like to turn this over to Marlene so that she can give you a little background and the history of the property and her personal circumstances.

Marlene Bolster explained to the Board that we bought the property with the intention of fixing it and living there ourselves. Unfortunately last year my husband came down with diabetes and 17 years ago was hit by a car so that has kind of exacerbated vascular damage in his legs. He is really not able to do the work that we have been doing. We have put a lot of love, sweat and tears into this and we don't want it see it become a dumping ground again. What we were thinking was that we did not want anymore of an impact on the Town. How it is situated right now is; we have had the machine shop in there and John and Cindy have been in there for about 13 years. We are basically trying to figure out how we can maybe break this up, so that we don't have it sitting idle and used as a dumping ground again and get things moving and do it so it isn't so much of an impact.

Julie Fernee asked how large the property was.

Marlene Bolster answered 5.5 acres.

Julie Fernee asked what is it you want to do.

Marlene Bolster answered that we have an antique car collection and it was perfect in buying this particular piece of property, is because it had a lot of buildings that we could use to store our vehicles and be able to turn the house or use the Carriage House and turn it into our house. That was our purpose initially.

Chairman Todd Hoffman asked Marlene to go over the uses for the other buildings on the property besides the Machine Shop.

Marlene Bolster answered that the front house is basically gutted and there is no occupancy in that building. We cleaned out the Carriage House and that was only used for storage by the previous owner.

Chairman Todd Hoffman asked that the only current activity is the Machine Shop.

Marlene Bolster answered the Machine Shop and we rent the open bays towards the school and a roofer rents the building in the back of the Machine Shop and there are bays attached to that also.

Mark Cahoon asked if anyone had a copy of the Permit #96-11.

Lawrence Huntley, CEO answered that it is down stairs.

Chairman Todd Hoffman replied that the Board should see the Permit #96-11. And what the proposed uses would be.

Marlene Bolster replied basically were not proposing to change any of the uses that are currently there.

Leah Rachin explained that were not conceiving this as a change of use rather there some expression of interest in the existing buildings from the renters of the Machine Shop. If we could some how manage to figure out a way to separate out some of the units and the land around them. The tenants of the Machine Shop are actually interested in purchasing the Machine Shop the area around it as well as the storage bays and the roofer's rental. These all exist legally non-conforming. At this point we not looking to change the use but rather continuing the legally existing uses. It is the mechanism to do that is what we really are trying to address here.

The two legal ways of doing it deal with either by a condo or this notion of a functional subdivision. The functional subdivision came out in the 80's out of a case called Keith and Saco River Corridor Commission and basically what that is was a situation pretty much very conceptually similar to this one. In that case it was a large parcel with three dwelling units on it in Saco, it had been three one parcel of land but with three cottages on it. What this property owner wanted to do was to sell and essentially carve out from one lot, sell out these separate cottages. The question was is this an expansion, an enlargement, is this a change of use. What the lower court said was no; just because you are moving tenant occupancy to ownership occupancy, it is conceptually the same thing and you should be allowed to do it, if those properties have been used in the same way since before zoning. These were all legally non-conforming on one parcel and they wanted to divide up the parcel and sell it and I don't believe she could have met them in a lot size or other Ordinance requirements by doing that. This case we believe is very similar to what is being proposed here.

The other step is it becoming condo, which again you don't divide a lot, you basically convey the buildings out, but there would be association rules that everyone would have to abide by. From the Bolster prospective that would be the less desirable of the two, because these uses are sort of different and it is not what one would usually think of as a condo type concept. But legally both are feasible. I know that Durwood had some exchange with Bill Plouffe about it.
(See attached Bergen & Parkinson and DrummondWoodsum)

Julie Fernee asked are you talking about making the house a condo.

Leah Rachin answered no, what it would be is the entire property; the Machine Shop would be its own condo and each of these structures or groupings of them would be considered condominiums, the land would be what we would think of as common area and association rules drafted and recorded in the registry of deeds.

The Bolster's are looking for and would benefit the Town and also everybody who had an owner interest in this property going forward is some certainty, because as it stands I think it's pretty murky. We have all these non-conforming uses and addition to helping the Bolster's with their personal circumstances could also result in some clarity and moving forward; who ever owns this property or pieces there of would be better served.

Chairman Todd Hoffman asked CEO what the zoning is.

Lawrence Huntley, CEO answered that it is limited commercial; Village A.; but it is all grandfathered as far as all the issues she is talking about. It is grandfathered as Planning Board approval approximately ten years ago.

Chairman Todd Hoffman asked how that legal structure would set up; would you survey out, plot line to sell out.

Leah Rachin answered exactly; they would be separately deeded lots and the reason why it would be exempt from the current minimum lot sizes and frontage and all the Ordinance provisions is because of this concept of a functional subdivision, they have been used in this way consistently for years.

Lawrence Huntley, CEO commented that he is apprehensive about deeding lots; if your deeding buildings and condo areas that is one thing. The deeding of lots, you're talking a whole different ball game. This is the first time I've heard of a functional subdivision. Bill Plouffe as reviewed the concept of condominiums, which is in your letter.

Leah Rachin comments that the functional subdivision may not be in the perennial of the Planning Board, but in the same token it is such a unique property and if anybody's going to review land use it's the Planning Board and the Code Enforcer.

Chairman Todd Hoffman asked your opinion coming into this, that if there was a change further on; say we did this functional subdivision; then what review process would the Town have; none. Say ten years down the line somebody in one of those units wants a change; a line change. The Town then has any jurisdiction.

Leah Rachin answered that it really isn't a subdivision and you really wouldn't have the ability to review it as a revision to a plan.

Lawrence Huntley, CEO comments that I don't have that big of problem with the condo idea, but when you start dividing up and shifting our deeds for lots. How do we circumvent our Ordinance and become a non issue. Just because they have so many buildings on it, they don't have to conform to the Ordinance.

Leah Rachin discussed that at this time we'll do a visual; write things down and contact Bill.

B. Glenn Winslow---Applicant proposes a Timber Harvest at 600 Morrells Mill Road (Map 8, Lot 87-2)

Don Winslow explained to the Board that he is a professional forester and he is representing his cousin Glenn Winslow. Glenn Winslow owns a parcel on Morrells Mill Road. I would like to do selective cutting which has been marked.

Lawrence Huntley, CEO commented to the Board that Don Winslow informed him that he has marked all the trees that he wants to cut.

Don Winslow informed the Board that that he will walk the parcel again. The lot was previously harvested some years ago. I marked the trees to improve the composition of the stand and I may have exceeded the 40% in some places.

Julie Fernee asked how many acres.

Don Winslow replied approximately 25 to 30 acres.

Lawrence Huntley, CEO asked Mr. Winslow if he has a Forest Service Permit.

Don Winslow answered that it was in the process.

Condition:

That no cutting will take place before Lawrence Huntley, CEO inspection of selected trees.

Shaun DeWolf moved to accept the application for Glenn Winslow to Forest Harvesting in the Resource Protection Zone; with one Condition that no cutting will take place before Lawrence Huntley, CEO inspection of selected trees, Mark Cahoon seconded a motion. Vote, 5-0

3. Preview next agenda:

4. Other Business:

Lawrence Huntley, CEO handed the Board a packet on the proposed Cell Tower to review with no discussions this evening. The Town Attorney will discuss with the Planning Board the proposed Cell Tower if needed.

5. Preview Previous Minutes:

Shaun DeWolf moved to accept the Minutes of November 20, 2008, Mark Cahoon seconded a motion. Vote, 5-0

Shaun DeWolf moved to accept the Minutes of December 11, 2008, Barry Chase seconded a motion. Vote, 5-0

6. Adjournment:

Mark Cahoon moved to adjourn at 7:55 pm, Shaun DeWolf seconded a motion. Vote, 5-0

Lawrence Huntley, CEO
Planning Coordinator

Respectively Submitted:
Anita Lambert, Stenographer

Chairman: R. Todd Hoffman

Julie Fernee

Shaun DeWolf

Barry Chase

Mark Cahoon

Dennis Hartigan

Scott Strynar

Copies:
Chairman R. Todd Hoffman
Julie Fernee
Shaun DeWolf
Barry Chase
Mark Cahoon
Dennis Hartigan
Scott Strynar
CEO
Town Manager
Selectmen
Christine Dudley
ZBA
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