

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD MAY 25, 2023

Present: Anne Whitten, Justin Perry, Scott Carpenter, David Ballard

Absent: Chairman Jon Morse, Mark Cahoon, Jack Olea

Also Present: Mary Zucco, Francesca Zucco, Jonathan Davis, Owen Thyng, Jeffrey Lapointe

1. Call to Order:

Vice-Chair Whitten called the meeting to order at 6:30 pm.

2. Review Previous Minutes: N/A

3. Current Business:

- 3.1 Public Meeting review continuance from January 12, 2023
Mary & Francesca Zucco
6 Burma Road, Map 022, Lot 67
Conditional Use Application request for a home occupation – family day care.
The property is located in the Village C Zoning District

Attorney Jonathan Davis, who is an attorney in Freeport, spoke on behalf of Mary and Francesca Zucco. He stated, as before, that a conditional use permit was filed in November of 2022. Then Mary and Francesca came before the Board in January and there were some questions as to the completeness of the application. He stated that a site walk was scheduled and completed on April 25, 2023 and Board Members went through the property. He indicated that as far as the Applicant's perspective goes and considering the provisions of the Town's ordinance, they feel they are present tonight to address three main topics. He indicated that one is the completeness of the application and they believe it is complete. He stated that the second topic is to address the escrow amount and the third matter would be if the Board has any particular concerns based on the application and information provided, they would love to address those before the final planning board hearing.

Anne Whitten referred to the Minutes of January 12, 2023 wherein of the Stipulations from the Code Enforcement was to provide an 11x17 floor plan, having one for each story. Anne stated that has yet to be received and until the Planning Board receives that, the application will be tabled. Mary Zucco stated

that those were submitted and they were overnighted. Justin Perry indicated that there needs to be an 11x17 plan for each floor. Jonathan asked if this request is in the provisions of the ordinance as part of the application process. Anne Whitten indicated that the Board does request this for home occupations so in the future, if someone has questions, it can be understood by referencing the plans. Mary Zucco indicated that she feels she did do what was asked of them at the initial meeting in January. Attorney Davis referenced 6.94 of the Ordinance and stated that the Board could waive any particular requirements and asked that the Board consider waiving the requirement of a separate 11x17 floor plan for each floor so they could move forward. He indicated that this has been pending since January and it has almost been 6 months now. They would like to see this expedited if at all possible. David Ballard indicated that the reason the floor plan was requested initially is because of the questionable spaces that are being used and how the front living room, as well as other spaces, are going to be divided up to meet the square footage requirement of 30%. David feels it is still not clear from the documents provided as to how that is going to be divided. David asked how are we going to delineate that square footage as it just cannot be an invisible line and it has to be on some type of blueprint or be defined by a wall, etc. He stated that is why the push for the floor plan is necessary. Attorney Davis reminded the Board that at the site walk, there was a delineation on the floor and wall and a box was hauled inside to provide how the physical barrier that was going to be installed in that space. Attorney Davis renewed his request to have the Board waive that requirement in light of the information that was provided and the measurements taken on the site walk. David Ballard does feel it would help clarify the square footage and the taping of the floor does not do that and does not meet the requirement at this time. David feels that to their benefit, they were trying to look at how could you define this room and how could you make it work but without knowing those specifics, it just does not meet the requirements at this time. David stated that with tape on the floor and a potential box outside that might be used, to him, that is not enough evidence to prove what the square footage requirement.

Anne Whitten asked if there was a motion to waive the request for an 11x17 floor plan at this time. Justin Perry asked if the application could be accepted at this time so as to start the escrow process and move forward with the stipulation that an 11x17 plan be required before final approval. Anne Whitten stated she does not see how they could accept it as being complete without a floor plan itself. David Ballard indicated that to accept it, would be implying that it is complete. Justin indicated that a very detailed 11x17 layout of each floor which means it needs to show the accurate measurements so the Board can then determine the square footages being requested. Attorney Davis stated that regarding any other details that are missing, it would be helpful for the applicant to understand if a fence which is attached to the wall and floor which could potentially be moveable in the future acceptable or is the Board looking for a more permanent fixture. He indicated the type of delineation the Board is looking for would be helpful for the Applicant's understanding.

Anne Whitten stated she herself is looking for a permanent $\frac{1}{2}$ or $\frac{3}{4}$ wall and it does not need to be a full wall. She also is looking for at least a half-door that can be open and closed to get into the other room. Justin Perry clarified that this would be between the dining room and the living room. David Ballard stated the diagram provided is very misleading in regard to the doors. He feels that is why the door entrance matters because they are going from the square footage being used and the square footage not being used. It is going from one use to one non use and an invisible line just cannot be accepted. Attorney Davis indicated he is trying to problem solve as to not change the characteristics of the residence and at the same time talking about carving out spaces and he is trying to figure out a way to do that in a consistent and permanent way without building something so that during the occupation period, when the daycare is being used, they would have the walls or gate up to keep the physical separation. David Ballard feels there may not be a space that can be used for the home occupation because it does not fit into the floor plan but without a good floor plan, it is hard to confirm that.

Anne Whitten indicated again that they will need to have a corrected, to scale, 11x17 floor plan, showing doors, walls, etc. and how the business and home are going to be separated, before they can go forward. Anne feels that there may be some sort of a permanent divider (wall/door) necessary.

Attorney Davis asked if the Applicant can ask for a motion that the application is in fact not-complete pursuant to the requirements of Section 6.94 and the January 12, 2023. Anne stated that she would just leave it as it currently stands and table the meeting until such time as an acceptable floor plan is received. Justin Perry feels they have asked for the same thing numerous times and feels that before the Board can do anything else, they absolutely need to have an accurate floor plan as required by the permit and there can be no deviation from that.

Article 6, Section 6.9.4 is what Attorney Davis is referencing and is asking for a formal determination by the Board that the application is not complete. Anne Whitten indicated that the application is not complete because the Board has not deemed it complete. David Ballard stated that this is a Home Occupation Application and the Board currently does not have enough information at this time.

Justin Perry motioned that the application be tabled until a proper 11x17 to-scale floor plan of a single floor, is provided in regards Mary & Francesca Zucco, 6 Burma Road, Map 022, Lot 67, Conditional Use Application request for a home occupation – family day care in the Village C Zoning District. David Ballard seconded the motion. VOTE: 4-0

3.2 Public Meeting Zoning Map Clarification Review

Owen Thyng 931 Lebanon Road, Map 005 Lot 33 & 40

Request for amend the Resource Protection District along Lebanon Road in accord with the Maine Licensed Soil Evaluators recommendations. The property is located in the Farm & Forest Zoning District.

Anne Whitten stated that the Board has received a Memo from Dwayne Morin, Town Manager, outlining this issue and Owen's proposal and it seems that the Town has been working with Owen for about seven months on this project and the town maps have been incorrect when it was done in 1990. It was deemed to be one large wetland but Mr. Thyng hired a certified wetlands inspector who states that there are actually two and a hill separates them. It is believed that because of the wetlands certified inspection that states it is insignificant, the Town's maps are incorrect and the Board has the authority to change the map. Anne quoted from excerpts from the map as follows..."This map was compiled from existing available property maps, land use maps and U.S.G.S. maps and is a planning tool only, it is not to be used for property conveyance or as a basis for legal tort. The information shown should not be substituted for actual field investigation"

Justin Perry indicated that everyone seems to be in agreeance that the maps are in fact wrong and it needs to be corrected.

Scott Carpenter motioned that the Town amend the Resource Protection District along Lebanon Road with the Maine Licensed Soil Evaluator's recommendations for Owen Thyng, 931 Lebanon Road, Map 005 Lot 33 & 40, which property is located in the Farm & Forrest District. Justin Perry seconded the motion. VOTE: 4-0

4. Other Business:

Jeff Lapointe asked if there was going to be any discussion regarding the solar application. Anne Whitten indicated that there will not be tonight. Justin Perry indicated it will be on the Agenda when they will be at a meeting.

Reminders: Next Planning Board Meeting – June 8, 2023 - 6:30 P.M.

5. Adjournment:

David Ballard motioned to adjourn the meeting at 7:00 p.m. Justin Perry seconded the motion. VOTE: 4-0

Matthew LeConte
Planning Coordinator

Respectively submitted,
Jennifer Berard, Stenographer

Chairman Jon Morse



Anne Whitten

David Ballard



Mark Cahoon



Scott Carpenter



Justin Perry



Jack Olea

