

## **NORTH BERWICK, ME 03906**

### **MINUTES OF PLANNING BOARD OCTOBER 22, 2015**

**Present:** Rick Reynolds, Jon Morse, Matthew Qualls, Barry Chase, Anne Whitten, Jim Marchese, CEO

**Absent:** Chairman Geoffrey Aleva, Mark Cahoon

**Also Present:** Lee Jay Feldman from SMPDC, Chris Mende, Les Bodwell, Megan Bodwell, Julie Alexander, Donald Royal

Vice Chairman Rick Reynolds will be Acting Chairman tonight.

1. Call To Order:

Vice Chairman Rick Reynolds called the meeting to order at 6:32 pm.

Vice Chairman Reynolds moved Anne Whitten and Matthew Qualls up to full voting status.

2. Review Previous Minutes:

Jon Morse stated that on Page 1 under the Other Business section, the first sentence currently reads, "Jim Marchese stated that there is business...". It should read, "Jim Marchese stated that there is a business...". Also on Page 2 in the first paragraph, the sentence before last reads, "In this case, the project is in on Route 4...". It should read, "In this case the project is on Route 4...".

Barry Chase motioned to accept the minutes of October 8, 2015 as amended. Jon Morse seconded the motion. VOTE: 4-0 Abstain: 1

3. Current Business:

3.1 District Boundaries revision request by Julianne Alexander at 5 Burma Road

Vice Chairman Reynolds stated that the first item on the Agenda was for a district boundaries revision request by Julianne Alexander at 5 Burma Road. She is proposing to extend Burma Road's commercial business line. She has presented an extension to the commercial zone and she has drawn the maps to show what she is suggesting for a change in the boundaries.

Julianne Alexander stated that since she closed her practice on Burma Road, she has been trying to sell the property. She said that she has been approached by several businesses who have

expressed an interest. Their biggest concern is that they would like to have a business that provides a drive thru service such as a pharmacy or bank. She is here to see if it is feasible with the Planning Board and to see what is needed to be done to move it forward if the Board feels it is an appropriate request. She stated that she has heard over the years from community members that they would like to have a pharmacy in town and this could be an option on the property.

Acting Chairman Reynolds stated that it would have been nice to have an actual proposal because Burma Road splits up Village Center. He stated that in moving it to Commercial, there are a lot of residences along Burma Road that would need to be changed to Commercial. He asked Julianne if she had any idea as to where she wanted the boundary to be. She stated that it didn't matter to her as long as it included her property. She said that she didn't extend it herself on the drawings because she didn't know exactly where they should go. She stated that if they could extend the corridor of the Commercial District right up along Route 9 in some fashion, then it could probably work. She is looking for the Board's guidance.

Jim Marchese said that he wanted to clarify that the District to the north of this subject property is in the Industrial Zone. Mr. Marchese pulled up the maps to show the Board where this property is located and in what zone. The Board members had some discussions about what some of the options could be. Anne Whitten stated that it may be easier to change it to allow drive thru's in the District that she is currently in instead of changing the zoning to Commercial. Barry Chase stated that they could change Village Center to allow drive thrus. He stated that they were allowed before but it was changed at some point. Jim Marchese said that they need to look at the Comprehensive Plan that was adopted on April 4, 2009. He said that on Page 243 of the Comprehensive Plan it talks about drive thrus. It talks about action to amend Land Use Ordinance to restrict franchise drive thru restaurants. Matthew Qualls stated that it specifies only drive thru restaurants.

Lee Jay Feldman stated that, at this point in time, they shouldn't be considering what may be going on that site. If a perspective client that is being discussed here walks away and we have rezoned that property, anything can then go on that property. Anne Whitten stated that a zoning change needs to be for the good of the town not just for one person. Lee Jay stated that the actual Zoning Ordinance states that Drive-in or Take-out eating establishments & Drive-in facilities offering goods and services to customers waiting in parked motor vehicles, except drive-in theaters, Auto Serv. Stations are not allowed anywhere except in Commercial and Industrial Districts as a Conditional Use. He said that offering goods and services is above and beyond just drive-in food establishments. He said that they could change it in Village Center to allow that use as a conditional use. Also since there is an Industrial District in that area, you may be able to drag it down to include the property in question depending on if the Comprehensive Plan allows this or not. All of the neighbors in that area would have to agree to have their property rezoned.

Anne Whitten motioned to table the issue to discuss at another meeting so they can research and see what can and can't be done in that area. Matthew Qualls seconded the motion.

Jon Morse stated that he doesn't see how it can be changed. Barry Chase said that they could probably do it by changing Village Center to CU. They could probably also look at the where it says "except drive-in theaters, Auto Serv. Stations." in the Ordinance and have it include banks and pharmacies.

Lee Jay Feldman stated that when you have a tabling motion, there should be no further discussion after a second is made.

Matthew Qualls rescinded his second to the motion.

Barry asked Jim what the best way to go about changing the verbiage. He wants to make sure that it would have no other implications with other issues in the Ordinance. Jim said that he can do some research on it. Barry said that he would also like to see it changed to CU in the Commercial II District. Anne Whitten said that she would like to go back and see why these were changed in the first place. Barry said that they could probably have it as 2 separate Warrants for the public to vote on.

Barry Chase motioned to have Jim Marchese to look into the proposal of either adding it into the verbiage in the Ordinance under "Drive-in or Take-out eating establishments & Drive-in facilities offering goods and services" or by changing Village Center and Commercial Districts to CU. Matthew Qualls seconded the motion. VOTE: 5-0

### 3.2 Bodwell Application Tax Map 1 Lot 65, Preliminary Review

Vice Chairman Reynolds stated that they are here for a review and to see if their application is complete.

Chris Mende from Civil Consultants stepped forward to represent Les Bodwell. Mr. Mende stated that one of his associates had come before the Board at one of the past meetings with a conceptual plan. Tonight he is presenting what he hopes is close to a final design. He gave Jim some paperwork with some changes on it. He said that the actual land owner of the lot is LRB Leasing, LLC and he has changed the application to reflect this. It previously said it was LRB Investments, LLC. He stated that the deed that they submitted with the application was a deed for the entire property which was originally owned by LRB Investments, LLC. He now has a deed that shows the property has been divided into two as shown on the plan. He is also submitting a letter regarding well capacity and demands. He said that another item that they said they would submit was a driveway application. They have sent the application to DOT but it has not been approved yet. He also stated that the plan sets that the Board have do not reflect the

changes that were made based on conversations that he had with the Code Enforcement Officer after he did his preliminary review as well as the comments that they received from SMPDC. He gave the Board updated copies.

Mr. Mende stated that the project consists of a parcel of land that currently has 2 single family homes and have been occupied for over 5 years. He said that the proposal is to demolish the two existing buildings and replace them with a single 6 family 2 bedroom multi-family unit. Vice Chairman Reynolds asked about the septic system. Mr. Mende said that there is currently a septic system for the existing buildings but they will be removed and a bigger new system will be installed. There are also 2 wells on the property. One is a steel cased well and the other is a dug tile well. The plan is to fill the dug well and to retain the steel cased well.

Mr. Mende stated that the first item that he wants to touch on comes out of one of the items from the review from Lee Jay Feldman's letter. The present application is for multifamily development with 6 dwelling units within one building which is the left hand lot on the plan on 3.65 acres. The remaining portion of the original parcel that LRB Investments had acquired has been divided already and not requiring any subdivision approval. He feels that this is not part of the present application. He just wants the record to reflect this because it is already a free standing lot on its own. Jim Marchese stated that the subdivision rule states that you have a five year look back window and you are essentially dividing that lot by putting 6 units on it so that is creating a subdivision. He stated that you have to look back 5 years and that lot was created less than 5 years ago so that lot on the right side should be part of the subdivision. Mr. Mende disagreed with that interpretation. He stated that you do get to look back and to count it and examine what has gone on already on that lot. But as far as encumbering it with the present application and under the present review, he doesn't agree. For instance, if he had bought this lot prior to 5 years ago and had built a house on it, it would not have been subject to subdivision review and it would not be under the scrutiny of the Planning Board. He said that it would be ludicrous to think that now, because of an application on the remainder of the property, you could tell me what I can do on my property that was legally divided. He thinks that the provision of the law is to allow consideration of that, but he doesn't think it allows you to include it in the subdivision as another lot. Jim asked that if he felt that this was the case, then why did he change the configuration of that lot on the right side. Mr. Mende said that they did this as a result of questions that Jim and the Planning Board had in regards to usable area and investigating the usable area. Also, the applicant in a separate corporation is holding on to that lot and did not want to encumber all of the property with the development that didn't require the property. Jim stated that they already combined the two lots by making the changes. He stated that they are saying that it is a stand-alone lot that is not a part of this application. Jim said that they then reconfigured that lot and doesn't know why he did it since they didn't need to. Mr. Mende stated that it was the desire of the applicant to include more land with the lot. Barry Chase asked Lee Jay Feldman what his thought was about it. Mr. Feldman stated that under the Subdivision definition, section b, it states, "The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion

of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.”. He said that he thinks that it means that the lot should be at least included as part of the subdivision review to be considered. He said that it needs to be a lot number within the subdivision. Mr. Mende said that they don’t want to encumber this parcel because if they want to do something with that other land in the future they will need to come back before the Board for approval. Lee Jay said that he doesn’t think that they have a choice. Under the Subdivision definitions under section 1, it reads, “In determining the amount of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.”. He said that even if it was an exemption from a subdivision lot it would have to be included when you are talking about number of units in the project. Mr. Mende said that they can say that this is the 2<sup>nd</sup> through 7<sup>th</sup> division of the lot but they do not want to say that this is Lot 7 and therefore requires review for everything down the road.

Lee Jay Feldman stated that they should probably let this be for tonight and he will look into it further and let Jim know what needs to happen.

Vice Chairman Reynolds asked Mr. Mende if they have had any soils analysis done. Mr. Mende said that at the last meeting, they asked to have soil mapping waived. In lieu of soils mapping, they have the medium intensity soils survey. He stated that Jim had requested to do 2 foot contours on the portion that is being developed. They actually did 1 foot contouring on the front part of the property and 2 foot contouring on the back part where they are not doing any developing. They also had a soil scientist out there and he mapped all of the wetlands and the areas of the poorly drained soils. Regarding the septic system, they did all of the necessary test pits to substantiate that the soils were suitable. They did check separation from wells to abutters on the opposite side of the street and they meet the requirements by the State. They exceed the minimum requirements on site.

Vice Chairman Reynolds asked about the emergency systems that they are going to have for fire suppressions and the decision to have an underground tank. Mr. Mende stated that this is the only outstanding item that they have on the present design regarding the capacity of the tank. This is going through the State Fire Marshall. He stated that the applicant is looking at putting storage tanks in the cellar of the building that meet the requirements that will be imposed by the State Fire Marshall. He hopes to have these design requirements at the next meeting. He stated that the reservoir for a sprinkler system need to be filled once and kept filled.

Mr. Mende reviewed the plan with the Board. He stated that they will have driveway access from Route 9 in the presently used location so there will be no shift in the location of the driveway. They are eliminating a driveway that currently goes up to one of the buildings. They are going from a sloping intersection with the siding of Route 9 to one that is much flatter and meets the requirements of the Ordinance and DOT. They are improving the drainage. There is presently a collapsed culvert but they will be installing drainage. In regards to the drainage on

the site, there is very little change. The only change is in grading in the area of the septic system. All of the drainage is internal on the site to existing properties owned by the applicant.

Vice Chairman Reynolds asked Jim Marchese if the construction entrance the right dimension and Jim said that it was.

Mr. Mende said that they are requesting a paved parking area with 12 spaces. They are requesting a driveway easement for future access if needed.

Mr. Mende stated that there were a couple points brought up in the letter from Lee Jay regarding stormwater treatment or detention/retention. He stated that this is one of the items that they are asking for a waiver with regards to stormwater path and concentration along the side of Route 9. They will be coordinating this with DOT. Regarding on site drainage, they have done very little to change the path of drainage.

Barry Chase asked about the lighting. Mr. Mende stated that they have added lighting to the site plan. They are proposing an 8 foot pedestal light, Victorian style and he indicated to the Board where they were going to be located on the site plan. Lee Jay asked if they were a dark sky kind of light or if they illuminated. Mr. Mende said that the one they are showing on the plan is one that illuminates outward with low wattage.

Vice Chairman Reynolds asked about the heating. Mr. Mende said that he didn't know what was going on inside the building. Les Bodwell stated that it will be all electric hydronic base board heaters. The building is all electric and has LED lighting and is all superefficient. Vice Chairman Reynolds asked Jim if the building was all up to code. Jim states that the Fire Marshall will be looking at that.

Vice Chairman Reynolds moved on to review the waivers that are being requested. The first one is Waiver 7.2.b.4 which states that a copy of any covenants of deed restrictions intended to cover all or part of the lots in the subdivision.

Barry Chase motioned to approve Waiver 7.2.b.4 as stated above for the preliminary application. Jon Morse seconded the motion. VOTE: 5-0

The next Waiver is 7.2.b.7.c which states that Ground water impact shall be assessed as follows for drainage conditions.

Jon Morse motioned to accept the Waiver 7.2.b.7.c. Barry Chase seconded the motion. VOTE: 5-0

The next item is Waiver 7.2.b.19 regarding Surface Drainage Disposal Plan. Mr. Mende stated that they do show drainage ways but not really specific details.

Jon Morse motioned to approve the Waiver 7.2.b.19 for the preliminary application. Barry Chase seconded the motion.

Jim Marchese asked what they believe would be the tipping point to obtaining a surface drainage study on a project. He stated that there is a significant amount of impervious area that this project is creating on the lot. He said that it is not very big when you look at it in comparison to the size of the entire lot but they are raising the size of the impervious area on the lot by 50% or more. This could be considered by some as an opportunity for the Planning Board to take advantage of obtaining some sort of surface water draining and treatment for the parking area. He said that moving the drainage off of the building to a specific area while you have the opportunity to do so. Lee Jay does concur. He feels that the lot is a fairly large lot. He said that at this point, maybe a condition of the preliminary review would be for them to provide some basic storm water calculations so we can see what the increase in water is. The Board will have the opportunity to review this prior to final and if there is anything that jumps out, than they can require changes to the plan at that point.

Jon Morse asked what the approximate area of the two existing homes that were on the lot compared to the one that they want to build. Mr. Mende said that the existing buildings were 3,565 sf and the new building with decks and stairs is 3,276 sf. The parking is what is increasing. Mr. Mende stated that everything right now either infiltrates into the ground or runs down to Route 9. Jon Morse and Barry Chase said that they don't think that it will make a big impact.

VOTE: 5-0

The next item is Waiver 7.2.b.20 which states, "A copy of that portion of the County Soils Survey covering the subdivision, when the medium intensity soils survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a report by a registered Soil Scientist indicating the suitability of soil conditions for those uses.". Mr. Mende said that in this particular area the medium intensity soils mapping is pretty poor in regards to actually being able to tell where those soil's boundaries are on the face of the earth. He stated that what they found on the grounds does not exactly mimic what is shown on the mapping. They do adequately show that there are well drained and very poorly drained areas but as far as where they place the boundary, it is not typically represented. He said that when he went on the site, he found that in order to address the density issues he really needed to do a certain level of soils mapping. They had a Soils Scientist go out on the site and map the wetlands boundaries and map the poorly drained soils boundaries.

Jon Morse motioned to approve the Waiver 7.2.b.20. Barry Chase seconded the motion. VOTE: 5-0

Barry Chase motioned to accept the application for the Bodwell multifamily 6 unit development on Map 1, Lot 65 as complete. Matthew Qualls seconded the motion. VOTE: 5-0

Vice Chairman Reynolds would like to schedule the site walk. They all agreed to do the site walk on Tuesday, October 27<sup>th</sup> at 4:30 pm at 62 Somersworth Road.

Jim Marchese stated that the Public Hearing will be on Thursday, November 12, 2015.

4. Other Business:

Jim told the Board that they were all invited to attend the Board of Selectmen meeting on December 1, 2015 to discuss zoning issues.

5. Adjournment:

Anne Whitten motioned to adjourn the meeting at 8:20 pm. Barry Chase seconded the motion.  
VOTE: 5-0

J  
ames Marchese  
Planning Coordinator

Respectively submitted,  
Susan Niehoff, Stenographer



Chairman Geoffrey Aleva

Barry Chase

Rick Reynolds

Mark Cahoon

Jon Morse

Anne Whitten

Matthew Qualls