

## NORTH BERWICK, ME 03906

### MINUTES OF PLANNING BOARD DECEMBER 3, 2015

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

**Absent:** Mark Cahoon

**Also Present:** Steven Bourque from Patco Construction, Julie Alexander

1. Call To Order:

Chairman Geoffrey Aleva called the meeting to order at 6:30 pm.

2. Review Previous Minutes:

Rick Reynolds stated that on Page 2, the 7<sup>th</sup> sentence in Paragraph 5 currently reads, “He stated that the project is a considered a subdivision...”. It should read, “He stated that the project is considered a subdivision...”. Also on page 3, the 2<sup>nd</sup> sentence in Paragraph 4, the word “bump” should be changed to “pump”. Jon Morse stated that the first sentence on Page 3, the elevation amount should be 153’.” Instead of 153.”.

Rick Reynolds motioned to approve the minutes of November 12, 2015 as amended. Jon Morse seconded the motion. VOTE: 5-0

Chairman Aleva moved Anne Whitten up to full voting status.

3. Current Business:

3.1 Conditional Use Permit Application for Susannah Baker

Chairman Aleva stated that the first item on the Agenda was a Conditional Use Permit Application for Susannah Baker, Morrells Mill Road, Tax Map 8 Lot 87-2-2. The applicant is proposing the construction of a single family dwelling.

Steven Bourque from Patco Construction stepped forward to represent the applicant. They are before the Board to obtain a building permit for a 24’x44’ single family dwelling. It will have 3 bedrooms and 1 ½ baths. Chairman Aleva said that it seems pretty straight forward. He asked Jim Marchese if he had any comments to make about the project. Jim stated that he reviewed the application and he didn’t see any problems with it.

Chairman Aleva opened the Public Hearing at 6:36 pm. There was no public comment at this time.

Chairman Aleva closed the Public Hearing at 6:37 pm.

Rick Reynolds stated that it says in the Project Description for the application that the size is 26'x44' but he thought that Mr. Bourque had stated that it was 24'x44'. Mr. Bourque stated that the correct dimensions are 26'x44'.

Barry Chase motioned to approve the conditional use permit for a single family dwelling for Susannah Baker on Morrells Mills Road, Map 8, Lot 87-2-2. Rick Reynolds seconded the motion. VOTE: 5-0

### 3.2 Review of ordinance amendments as recommended by the Board of Selectmen

Chairman Aleva asked the Board members that had attended the Board of Selectmen meeting how it went. Rick Reynolds said that they were pretty much in agreement with everything except the part about the drive-thrus in the Commercial II zone.

Jim Marchese stated that the five amendments that were discussed at the Tuesday night Board of Selectmen meeting have been reformatted for voting as Questions 1-5. Chairman Aleva suggested that they go through each question and review them.

Question #1: Shall an ordinance entitled, "An Ordinance Amending the North Berwick Electrical Ordinance" be enacted?

The change for this is just that we will be adopting the current State of Maine adopted National Electrical Code instead of the 1999 edition and we will only need 1 copy instead of 3 copies. The Planning Board members were all in agreement with this question.

Question #2: Shall an ordinance entitled, "An Ordinance Amending Section 5.1.9 of the Zoning Ordinance to state the performance standards and requirements Explosive Materials" be enacted?

Chairman Aleva stated that this question is to propose to bring our Ordinance in line with the rest of the country. He stated that if you have an underground propane tank, you will need to meet the required standards. Our current standards are way out of whack because we need to be so far away from your house. This is not the typical standard.

Question #3: Shall an ordinance entitled, "An Ordinance Amending the Land Use Table 4.3 of the Zoning Ordinance to require a Code Enforcement Officer Permit (CEO) instead of a Conditional Use (CU) Permit for the certain uses within the specified Zoning Districts:

Shoreland Limited Residential District – Single Family Residence

Shoreland Limited Residential District – Structures Accessory to uses which are similar to permitted uses

Resource Protection District – Structures accessory to permitted uses

Shoreland Stream District – Structures accessory to permitted uses  
Shoreland General District – Structures accessory to permitted uses be enacted?

Intent: This amendment is to allow for the streamlining of applications before the town. The Code Enforcement Officer will be allowed to permit these applications where currently a Conditional Use Permit through the Planning Board is required. As a backup for the Code Enforcement Officer section 6.9 can be applied. This will allow the Code Enforcement Officer to require Planning Board review of complex or environmentally sensitive permit applications.

The Board members were in agreement on this one.

Question #4: Shall an ordinance entitled, “An Ordinance Amending the Land Use Table 4.3 of the Zoning Ordinance to require a Conditional Use (CU) Permit for Banks and Pharmacies (with or without drive through) in the Village Center District, Shoreland General District, Commercial District, Commercial II District and Industrial District” be enacted?

Intent: To allow for Banks and Pharmacies to be a Conditional Use (CU) in the specified districts and to allow them with or without a drive through.

Chairman Aleva asked if this was the one that the Selectmen had an issue with. Anne Whitten stated that it was actually in the section below this one in the Table that states: “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”. She stated that the Planning Board had wanted to change it to a “CU” in the Commercial II District but Dwayne stated that this would be in violation of the Comprehensive Plan. Barry Chase stated that if you read the Comprehensive Plan for Land use in the commercial and industrial areas, it says, “Amend land use ordinances to restrict franchise drive-thru restaurants.”. Rick Reynolds said that this is what they would be doing with it as a CU. They would be restricting what they could do. Barry Chase said that they would be restricting it only to those Commercial zones and we would have the opportunity to put restrictions on it when it comes before them for a Conditional Use. Anne Whitten said she thinks that it means to restrict not about setting restrictions.

Chairman Aleva would like to still do it the way they had it but thinks that it should be a separate item. He doesn’t think that it should be looped in with this question regarding the banks and pharmacies. Anne Whitten stated that she believes that the town didn’t want things like MacDonald’s or Burger King coming into town. Barry Chase stated that he didn’t think that those types of restaurants would be interested in coming to a small town like North Berwick. Matthew Qualls stated that Dwayne was most vocal about it being against the Comprehensive Plan. Mr. Qualls said that he feels the same way as Chairman Aleva in regards to making it a separate voting issue so people can make a better distinction about what is being done. Anne Whitten wanted to clarify what they were looking to do. She asked Chairman Aleva if he was talking about allowing take-out and drive-in establishments in the Commercial II District. Chairman Aleva stated that this is what he was saying. Jim Marchese said that they already have

7 issues that the town will be voting on so he wasn't sure if they wanted to have too many more. Chairman Aleva said that he didn't think it mattered how many questions to put to the vote, as long as they were for legitimate issues that will benefit the town. Rick Reynolds stated that when they were first putting together the Comprehensive Plan, they had a lot of items that needed to be voted on. Rick said that he thinks that the Selectmen are trying to draw more things to the Village Center but unfortunately there is not much room for expansion there. When they did the Comprehensive Plan, they had to get approval from the State. If the State disagreed with something, then we couldn't do it. We went through the same process that any other small town would go through. Some of the things that the State wanted did not allow any room for growth. Barry Chase stated that if the center of the town was on the main road than they would probably have to worry about the restaurants coming into town. He doesn't feel that having them along the Route 4 corridor would be a bad thing. He said that they should let the town vote on it.

Anne Whitten looked up the definition of restrict. It says, "to put a limit on and keep under control". Chairman Aleva asked the Board if they would like to have another question that would have the one individual change in that one zone and present that to the Selectmen for their review instead of lumping it in with the banks and pharmacies. The Board agreed that this is the way it should be.

Chairman Aleva asked the Board members if they were in favor of the revisions shown for Question #4. Favored: 5-0

Question #5: Shall an ordinance entitled, "An Ordinance Amending Section 4.2.j and Land Use Table 4.3 of the Zoning Ordinance to require a Conditional Use (CU) Permit for Uses Bordering Town Lines not currently permitted in the Town of North Berwick meeting the established performance requirements" be enacted?"

Proposed to Read:

4.2.j. Uses Bordering Town Lines: The Planning Board shall be authorized to allow for the expansion of the use of a bordering property into North Berwick not currently permitted in the North Berwick Zoning District through the conditional use process as long as the following conditions are met.

1. The use cannot expand more than 250' along the existing roadway frontage.
2. The use cannot expand by more than 50%.
3. The use must have a 100' vegetated buffer.
4. The use cannot be closer than 250' from an existing residence.

Intent: This amendment allows for the expansion of bordering uses into North Berwick when the existing conforming use in a neighboring community is non-conforming use in North Berwick. The non-conforming use is to be reviewed By the Planning Board as a Conditional Use and must meet the performance standards established.

Also in the Article 4.3 Land Uses Table they will add under the Miscellaneous section, "Uses Bordering Town Lines". It will be a "CU" in the Village A,B, Resource Protection, Shoreland General, Residential District, Farm/Forest, Commercial II and the Industrial District. It will be a "NO" in the Village Center, Shoreland Limited Res., Shoreland Stream and Commercial District.

Chairman Aleva asked how the Selectmen felt about this one. Rick Reynolds said that they wanted to know how it would work if somebody from North Berwick wanted to go into one of the other towns. He stated that Dwayne had also mentioned that a lot of the surrounding properties were wetlands and not really buildable on them. Matthew Qualls said that the Selectmen also commented about the 100' vegetated buffer being a large buffer. Chairman Aleva asked what the definition of a vegetated buffer was. Rick Reynolds said that it doesn't really specify and it could just be a grass buffer. Chairman Aleva stated that it leaves it up to the Planning Board to set what the buffer should be as part of the Conditional Use. Barry Chase said that maybe it should match what our Ordinance says for when a Commercial zone abuts a Residential zone. Chairman Aleva stated that he believes those setbacks are a lot smaller.

Jim Marchese said that the next Question #6 would be regarding the signs. As soon as he gets the information back from the attorney, he will bring forth the question regarding them. Chairman Aleva asked what the issue was regarding the signs. Chairman Aleva asked what the changes were that they wanted to do to the Sign Ordinance because he was not at the Selectmen's meeting. Rick Reynolds stated that the Supreme Court filed a decision stating that signs have to be equal no matter what the purpose of it is and cannot discriminate with who wants the signs up. Rick said that Dwayne felt that they will probably just need to come up with a maximum size. Dwayne has the attorney reviewing the decision to see how it will affect our Ordinance.

Jim Marchese asked the Board what they think about demolition permits. Should the town require people that are tearing down an existing structure obtain a demolition permit? He stated that there are several reasons for doing this. One of the reasons is that it is a requirement of the State that somebody go through and inspect the building before it is torn down to make sure that there is no hazardous waste. It allows for the proper handling of waste. It would also ensure that all utility companies like Dig Safe and the Fire Department are informed and that everything is disconnected before the demolition occurs. It enhances safety of the project. It also provides an avenue for the assessment department to track when things are being demolished. Anne Whitten asked what the fees would be for this and Jim said that it would be whatever the Town decides. Rick Reynolds stated that in industries, companies have to have this done before they can destroy anything. He thinks that this could be a good idea because some of the old buildings have lead paint. Chairman Aleva stated that they are more worried about asbestos than they are lead paint. Chairman Aleva said that overall it is a good thing, but there is a cost involved with that. Barry Chase said that he thinks that it is a good idea to have the permit so the town knows what is going on but he doesn't feel that they need to be this extensive and have people spend all of this money. Jim said that the Code Enforcement Officer has the ability to inspect single family

homes and he should be able to tell if there is asbestos or not. There was further discussion among the Board members regarding asbestos removal, costs and the need for it for residential uses.

Jim Marchese stated that they do not need to use this sample form that he presented to them. He could draft a very simple form that pretty much states that a building is coming down. They can have just a few questions regarding whether or not the utilities were notified and if there is asbestos in your home, they would probably want to have somebody take care of it. The Board agreed that they should simplify it. Jim said that he would have a draft of a new permit form for the next meeting.

The Board went on to discuss the drive-in or take-out establishments to be a “CU” in the Commercial II district. Barry Chase stated that they could request that they are not going to allow them in the Industrial zone any more but would like them in the Commercial II so that both the Commercial districts are the same. The Board reviewed the zoning maps to see where the different districts are located for what they are discussing.

Jim Marchese said that he would get something written up for the next meeting.

#### 4. Other Business:

Jim gave the Board a sketch of the site plan for the In-Law Apartment that was approved at the last meeting. There is a problem with it. The applicant failed to provide the Board with a site plan that included setbacks. He added setbacks to the plan. He said that 100’ setbacks are required if the lot is in the Farm and Forest zone so they have an existing non-conforming lot. What was approved by the Board at the last meeting cannot be done. Chairman Aleve said that they would need a variance. Jim said that even with a variance of 20% it would be 80’ of frontage so they would need to come back before the Planning Board for approval of the building once it is moved. He said that the applicant is mulling over what direction they are going to go. If they don’t go before the Board of Appeals for a 20% variance, they only have 27’ of space to build a 30’ wide structure. Jim stated that the Board should rescind their prior approval due to the current findings.

Jim also stated that it is an accessory building so if it is located to the rear of the main building the setbacks from the side or lot lines decrease to 10 feet.

Rick Reynolds motioned to rescind the Conditional Use Permit for Stanley Welch, 515 High Street, Tax Map 4 Lot 76. Barry Chase seconded the motion. VOTE: 4-0

#### 5. Adjournment:

Rick Reynolds motioned to adjourn the meeting at 7:59 pm. Jon Morse seconded the motion. VOTE: 5-0

James Marchese  
Planning Coordinator

Respectively submitted,  
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Barry Chase

Rick Reynolds

Mark Cahoon

Jon Morse

Anne Whitten

Matthew Qualls