

**Pembroke Planning Board
Minutes of Meeting
(Adopted)
Tuesday, February 9, 2010**

MEMBERS PRESENT: Robert Bourque, Chairman; Alan Topliff, Vice Chairman; Cindy Lewis, Selectmen's Representative; Kathy Cruson; Kevin Krebs

ALTERNATES PRESENT: Larry Young, Sr., Ron Nowe

EXCUSED: Brian Seaworth

STAFF PRESENT: Stephanie Alexander, Interim Planner; David Jodoin, Town Administrator; Jocelyn Carlucci, Recording Secretary, Everett Hodge, Code Enforcement Officer

Chairman Bourque called the meeting to order at 7:00 p.m. He noted that Member Seaworth was absent and appointed Alternate Member Nowe to vote in his place and Alternate Member Young to vote in place of former Member Mark Zydel.

Old Business

1. **Nicole's Greenhouse. Case #09-103.** Applicant requests that the Board discusses suitable tree/shrub options identified by the Applicant for planting as screening along the back property line.

Present: Lisa Mills of Nicole's Greenhouse and R. Jeffrey Burd, Engineer.

Ms. Mills stated that she does not want any trees near the greenhouses. It would be unsafe and would block the sun. Her research has concluded that in order to have trees for screening and not impact the greenhouses, their growth would have to be inhibited which would cause the trees to die within 10 years.

Per the Planning Board's letter of January 13, 2010, she has been researching evergreen trees "to provide year-round screening to the abutting storage facility and have a height of no less than six to eight feet." She said that her property line is located in the swale. Six foot trees planted in the swale would not be high enough to screen the abutter's property.

Ms. Mills said that in order to have any height for screening, the trees would have to be taller than she would like near the greenhouses.

Selectmen's Rep. Lewis said that the closest greenhouse is 33-1/2 ft. from the property line.

Member Cruson suggested: (1) that the applicant plant trees 6-8 ft. from the property line and, if a 20 ft. tree fell, it would not reach the greenhouses; or (2) plant a row of 6-8 ft. trees (12-15 ft. apart) 6-8 ft. from the property line. In 6 years, plant another row of trees inside the first row of trees. The trees could be small 2-3 ft. trees obtained from the state nursery at a reduced rate. When the first row of trees become too tall, remove them and replant with smaller 2-3 ft. trees. This would cause a tree rotation which would screen the abutter's property and not harm the greenhouses.

Ms. Mills was concerned of the initial cost of purchasing enough 6-8 ft. trees to run along the 600 ft. boundary line only to be removed in 6 years.

Mr. Hodge said that the storage facility owner was concerned about security now that his units are visible. The abutter expressed an interest in erecting a fence along the property line.

Ms. Mills said that the fence would screen the abutting property and would allow her to landscape in front of the fence and affect the swale.

Vice Chairman Topliff expressed his concern with the legality of the Board imposing the screening requirement on the applicant and the fence being located on the abutter's property. He suggested that the applicant enter into an agreement with the abutter which would allow Ms. Mills the right to maintain the fence even if the abutter's property is sold.

Ms. Mills asked the Board for permission to erect the fence within 2 years. The consensus of the Board was that the fence would have to be erected this year. Ms. Mills said that the greenhouses already create screening.

Mr. Burd said that there is no town requirement for a buffer between commercial properties. He admitted making an error on the drawings. He thought that there were trees along the abutter's property which would have created appropriate screening once Ms. Mills' property was clear cut. He does not feel that the Board can require the applicant to include something that is not on the drawings.

Selectmen's Rep. Lewis said that the Board was led to believe that there would be natural vegetation along the property line. The note on the plan reads: "Existing natural vegetation to be supplemented with proposed shrubs to screen storage units on adjacent property." The Board is asking that the plan be followed.

Vice Chairman Topliff said that his feeling was that the Board should stick to the plan. The Board frequently requires screening between properties. If the plans showed nothing along the property line, he was confident that the Board would have required screening.

She did not understand what vegetation the Board thought would survive all the construction work that was to be done on the site. She felt that creating the swale prevented the existing vegetation from remaining on the site. Vice Chairman Topliff said that the Town Engineer required the swale for drainage purposes. Its location was determined by Mr. Burd based on the applicant's needs.

Vice Chairman Topliff said that the plans showed a curved line running along the edge of the site which indicated to the Board that there would be remaining vegetation and trees left on the property line. When the applicant created the swale, the trees were removed. The Board has an obligation to the abutter who is concerned about the visibility and security of his storage units. It is the Board's intent to give the abutter as much protection as possible.

The Board agreed to revise the January 13, 2010 letter to indicate "evergreen shrubs and/or trees" for screening.

Ms. Mills showed the Board pictures of the plants that she is considering as screening (Virginia Rose, Beach Roses). She said they grow to approximately 6 ft. tall but do not have year-round foliage.

Ms. Mills said that her plans do not state the variety of the plants that will be planted. Vice Chairman Topliff said that the applicant can choose whatever she wants for screening as long as it provides a good year-round

screening such as arborvitaes or ewes. Member Cruson pointed out that a slender tree/shrub will need to be placed closer together in order to create proper screening.

Mr. Hodge will coordinate a meeting between Ms. Mills and the owner of the abutting storage units to discuss a possible fence.

The Board agreed that: (1) the screening will be completed by October 31, 2010; (2) if a fence is used for screening, a new landscaping plan would not be necessary; (3) should Ms. Mills and the owner of the storage units enter into an agreement for a fence, a copy of the agreement will be given to the Town; (4) the fence will be along the entire property line; and (5) the applicant will attend the February 23, 2010 Planning Board meeting for a progress report.

Chairman Bourque suggested that if a fence was erected, Ms. Mills could place plants between the fence and the swale. If the storage unit owner does not agree with the fencing, then the applicant would be responsible for planting something tall that would create the appropriate screening necessary to please the abutter.

Guests

2. Water Works: Aquifer Conservation District Special Use Permit Participation

Chris Culberson, Superintendent and Norm Provencher, Office Manager of the Pembroke Water Works.

Vice Chairman Topliff said that the Planning Board would like to receive comments from the Pembroke Water Works on any Special Use Permit applications that involve the Aquifer Conservation District. It was agreed that the Pembroke Water Works will receive a comment request form for all Special Use Permit applications in the Aquifer Conservation District.

Ms. Alexander said that, at the present time, only major site plan and major subdivision applications are reviewed by all Town Departments. It was recommended that all site plan and subdivision applications, whether minor or major, be reviewed by all Town Departments.

Mr. Hodge said that if an applicant asks to go before the Zoning Board of Adjustment (ZBA) and the application is in the Aquifer Conservation District, Mr. Hodge will request that the applicant obtain a letter from the Pembroke Water Works with their comments. A copy of which would be forwarded to his office.

Mr. Culberson said that the Pembroke Water Works inspects commercial businesses located in the aquifer conservation area every 3 years or sooner if they are notified of a problem. He also said that most commercial buildings have backflow preventors which must be inspected on an annual or bi-annual basis.

3. Zoning Board of Adjustment: Variance and Special Exception Criteria

Present: Zoning Board Members Dana Carlucci, Bruce Kudrick, and Tom Lopizio.

Member Krebs asked the Zoning Board members to explain why an applicant would be allowed to receive a variance for a duplex if they did not meet the frontage requirement.

Member Kudrick explained that each case is viewed individually. With regard to a recent application for a house on North Pembroke Road, the property was located on 5 acres of land with 200 ft. of frontage.

Originally the house was designed as a single family house with a mother-in-law apartment. The applicant wanted to build a second kitchen, thereby creating a duplex. The footprint of the building would not change if converting it to a duplex. A duplex requires 230 ft. of frontage. The applicant had 5 acres of land. In his opinion, it made no sense to deny the request for a duplex since the applicant intended to build the identical house with or without a second kitchen. It was felt that a second kitchen within the footprint of the original building plan would not adversely affect the Town.

Mr. Carlucci stated that the ZBA always takes into consideration the Planning and Land Use Guide, the ordinance, the Master Plan, and testimony from Boards and abutters when making decisions on what is in the best interest of the Town.

The ZBA also considers special conditions of each individual property. In the above case, the house was set back 400 ft. from the road on a lot that was twice as large as the town required. When referring to the Planning and Land Use Guide, the numbers are meant to eliminate congestion. When a lot size is more than necessary to meet the ordinance, it could be considered a special condition to that particular property.

Mr. Lopizio said that the North Pembroke Road house met all the setback and use requirements except the 30 ft. frontage requirement to build a duplex rather than a single family home with an in-law apartment. The applicant could have built a duplex on the lot across the street without a frontage variance but the overall lot size was not as large as the one they purchased.

Mr. Carlucci said that it is important that the Planning Board be aware that all variances or special exceptions are not approved. The applicant must meet very specific criteria outlined in the Planning and Land Use Guide in order to be approved by the ZBA. The list of criteria is on a checklist. Each criterion is discussed and voted on. If one criteria is not met, the variance or special exception is denied.

With regard to setbacks, Mr. Kudrick spoke of a case that was brought before the Board for a variance to encroach 10 ft. into the setback in order to build a garage. It was later discovered that, although the variance was granted, because the applicant was handicapped, the applicant was not required to come before the Board to build the garage.

In many areas, such as the village, the properties have no setbacks -- the buildings were built on the property line.

Mr. Carlucci noted that very few properties from Maple Street to Fairview Avenue conform to the R1 ordinance. The homes were either built when there was no zoning or the zoning regulations, at that time, were different than they presently are. Most of the property in the Commercial District is in the R3 District which can pose a challenge to both the ZBA and the applicant.

The ZBA members present all agreed that it is critical to have input from the Pembroke Sewer Department and Pembroke Water Works. It would be advantageous to also receive input from the Planning Board. Selectmen's Rep. Lewis stated that Town Counsel advised the Board not to comment at ZBA hearings for fear that those attending members would have to be recused if the cases were ever before them. Mr. Kudrick suggested that the Town Administrator or a Planner attend the Zoning Board meetings to express the Planning Board's concerns.

With regard to removable letter signs, Selectmen's Rep. Lewis said that the ordinance was originally written to prohibit them along Route 3. The Master Plan focuses on protecting the look of Route 3 in order to prevent it from appearing as a commercial district. She said that there are many removable letter signs presently on Route 3. The intent of the ordinance was to make businesses unobtrusive along Pembroke Street.

Mr. Kudrick said that at one Pembroke Street location, the hand-painted portion of their sign announcing hours of service was replaced with a removable letter portion to contain the same information. The location, width, and other aspects of the sign did not change.

Mr. Hodge read aloud Zoning Ordinance Article VIII, §143-58.B: "Prohibited signs: The following shall not be constructed, posted or erected in any District unless otherwise indicated: (1) Billboards, streamers, pennants, ribbons, spinners or other similar devices; (2) Flashing signs, roof signs containing moving parts, and signs containing reflective elements which sparkle or twinkle in the sunlight."

Selectmen's Rep. Lewis said that removal letters were considered "moving parts" and, therefore, were prohibited. This also applied to the temporary "movable" signs on trailers. Some of the Planning Board members were not aware that "removable letter signs" were different from electronic letter signs.

Mr. Hodge said that seminars that he has attended on signs have shown that temporary banners or signs will appear where removal letter signs are not allowed.

Mr. Hodge said that the ZBA is the vehicle that the law created for applicants to get relief from a town ordinance. The difference between the ZBA and the Planning Board is that the ZBA allows people to accomplish things that are not normally permitted by the ordinance. The Planning Board helps people do things that are permitted by the ordinance.

Harold Thompson, Sewer Commissioner asked what the Board's thoughts would be on the following: A duplex was built and later converted to a single family house. Twelve years later, the owner would like to convert the house to a duplex.

Mr. Carlucci said that it is his understanding that the ordinance states that if a non-conforming use ceases for 12 months, the use of the property must comply with the current zoning regulations. He directed Mr. Thompson to the Planning and Land Use Guide. Selectmen's Rep. Lewis said that, based on that understanding, it could not be reverted to a duplex unless it conformed with the present ordinance or was granted a variance from ZBA.

Mr. Kudrick said that if a gas station stopped repairing vehicles, after 12 months, the station would not be allowed to begin servicing vehicles again because it would be a non-conforming use under the present ordinance. The use would no longer be grandfathered.

Discussion

4. Town Meeting Strategy and Coverage (March 9)

Ms. Alexander will not be available at the polls on March 9, 2010 to answer questions on the zoning amendments. Since March 9, 2010 is a workday, Alternate Member Young will be the only Planning Board member available to answer questions. The Planning Board will provide handouts at the polls explaining the amendments.

Minutes

5. Review and Approve Meeting Minutes of December 8, 2009

MOTION: Vice Chairman Topliff moved to approve the meeting minutes of December 8, 2009 as amended. Seconded by Alternate Member Young.

VOTE: R. Bourque – Y A. Topliff – Y C. Lewis – Y K. Cruson - Y
K. Krebs – Y R. Nowe – Y L. Young – Y

MOTION TO APPROVE THE MEETING MINUTES OF DECEMBER 8, 2009 AS AMENDED PASSED ON A 7-0 VOTE.

6. Review and Approve Minutes of January 12, 2010

MOTION: Chairman Bourque moved to approve the meeting minutes of January 12, 2010 as amended. Seconded by Alternate Member Young.

VOTE: R. Bourque – Y A. Topliff – Y C. Lewis – Y K. Cruson - Y
K. Krebs – Y R. Nowe – Y L. Young – Y

MOTION TO APPROVE THE MEETING MINUTES OF JANUARY 12, 2010 AS AMENDED PASSED ON A 7-0 VOTE.

7. Review and Approve Meeting of Minutes of January 26, 2010

Ms. Alexander said that although the Notices of Decision have gone out, she suggested that the conditions listed on the Notices of Decision be compared with the conditions listed in the January 26th minutes for continuity. After a brief discussion, Ms. Alexander agreed to compare the 2 documents.

MOTION: Chairman Bourque moved to table the approval of the minutes of meeting of January 26, 2010 until the conditions listed in the minutes are compared to the Notices of Decision. Seconded by Vice Chairman Topliff. Unanimously approved.

Miscellaneous

8. Correspondence

- Town of Hooksett Zoning Board of Adjustment notification of a hearing on Tuesday, February 16, 2010 regarding a special exception for a wireless communication facility on White Hall Road.
- Division of Historical Resources will investigate the feasibility of the Buck Street West Dam Removal.
- Letter of notification from Merrimack County Commissioner Leo Bernier that the Edna McKenna Correctional Facility is vacant.
- Letter to Everett Hodge, Code Enforcement Officer from Alan Johnson of the Hodges Company regarding 5-9 Sheep Davis Road. He requests review of consideration to proceed with the 2 parking areas that have already been approved. They will use the gravel for the base rather than pavement. The areas will be used as parking 3-4 times per year or as needed by the prospective tenant.
- Ms. Alexander sent a second letter regarding the incomplete application for 55 Sheep Davis Road welding and fabrication shop.

- Ms. Alexander sent a letter in December to Mr. Robinson of Fourth Range Road regarding the stream location. The letter indicated that the Board would await the resolution of pending DES issues.
- Plan NH Charrette Program, Application for 2010 Design Charrette Assistance.
- A Coordinated Transit and Human Services Transportation Plan brochure for Belknap County and the Central New Hampshire Region.
- Town and City Publication of the Local Government Center, January 2010.
- Central New Hampshire Regional Planning Commission annual report.

With regard to the Board's inquiry on the price of a set of tax maps being available in the first floor public meeting room, Ms. Alexander said that a set would cost \$450. Different types of carts or clamps to hold the maps would be approximately \$200 each for a total cost of approximately \$800-\$1000.

9. Committee Reports

Member Krebs agreed to be the Planning Board representative to the Conservation Commission.

10. Other Business

Ms. Alexander reported that the February 23, 2010 Agenda will consist of an update from Nicole's Greenhouse, Chickering Meadows, LTC Properties, Concord Sand & Gravel, Dennison Cabinets, NE Flower Farms, and 1 conceptual consultation.

Ms. Alexander said that she has not had an opportunity to speak with Mr. Jodoin about Chickering Meadows.

Ms. Alexander has a draft Joint Use Agreement between Public Service of New Hampshire (PSNH) and Redrock Realty and a copy of the site plan. Mr. Jodoin agreed to write a letter to the applicant and his attorney asking for an update of the situation, and evidence of due diligence including correspondence.

Ms. Alexander said that the Meathouse installed 2 grease traps. The applicant has been told that they must submit a monthly report to the Sewer Commission.

The cease and desist order for 65 Sheep Davis Road was presented and is now in Town Counsel's hands.

The cease and desist order for the Sheep Davis Road Farm Stand was rescinded. The applicant has agreed to seek a Hawkers and Peddlers License.

Chairman Bourque announced that the Board of Selectmen has decided to hire a full time Planner. There will be a closed meeting on Monday, February 15, 2010 to discuss the position.

The Board will decide on February 23, 2010 whether to meet on March 9, 2010.

MOTION: Chairman Bourque moved to adjourn. Seconded by Vice Chairman Topliff.

The vote was unanimous in favor of the Motion.

The meeting adjourned at 9:42 p.m.

Respectfully submitted,
Jocelyn D. Carlucci, Recording Secretary