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COMMUNITY DEVELOPMENT

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Planning Board Minutes

April 18, 2012

Board Members:

Margaret Crisler, Chairwoman – Present
Ruth-Ellen Post, Vice-Chair– Present
Pam Skinner, Member, Member – Present
Kristi St. Laurent, Member – Seated at 7:01 pm
Jonathan Sycamore, Member – Present
Lee Maloney, Alternate Member – Seated at 7:10

Carolyn Webber, Member - Present
Ross McLeod, Selectman Member – Excused
Kathleen DiFruscia, Selectman Alternate - Present
Sy Wrenn, Alternate Member – Excused
Vanessa Nysten, Alternate Member - Present

Staff:

Elizabeth Wood, Community Planner
Laura Scott, Community Development Director
Cathy Pinette – Planning Board Minute Taker

Call to Order/Attendance/Pledge of Allegiance:

Chairwoman Crisler called the meeting to order at 7:00 pm followed by the Pledge of Allegiance and attendance.

Ms. Nysten was appointed to sit for Ms. St. Laurent.
Ms. St. Laurent arrived at 7:01 pm

The Chairwoman thanked Ms. Post for her service as Chairwoman in the past and presented her with a plant.

2012 Zoning Map Overview

Ms. Wood presented the 2012 Zoning Map which is located on the Town website. She thanked Mr. Eric De Long, IT/GIS Director for making it more user friendly with new colors. Ms. Post also thanked Mr. De Long and said he did a great job.

Ms. Maloney arrived at 7:10 pm.

Public Hearings

Case#2012-7 Minor Site Plan/Change of Use (WITHDRAWN)

Case#2010-44 Major Open Space/Workforce Housing Subdivision/Site Plan Application &WWPD Special Permit

A Major Open Space/Workforce Housing Subdivision/Site Plan Application and WWPD Special Permit has been submitted by Karl Dubay, of The Dubay Group, Inc., on behalf of AWAC Realty

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Trust, for Lot 11-A-1418 (76 Meetinghouse Road), which is located in the Rural, Aquifer, and WWP Districts. The Application is to subdivide 11.87 acres off Lot 11-A-1418, which already contains an existing home, and into a 13 lot Open Space Subdivision (12 residential lots and 1 open space lot) with a new Town-maintained road, as well as associated drainage improvements. Of the 12 residential lots, 3 lots are proposed to be Workforce Housing lots, as defined in NH RSA 674:58. The WWP Special Permit is for drainage improvements along Meetinghouse Road.

Ms. Post read the Hearing Notice into the record.

- Chairwoman Crisler asked if the Board planned on accepting the plan for public hearing as it was submitted over one year ago.
- Ms. Wood provided the Board with a case history on case #2010-44 which was included in their packets. She stated that it was originally not introduced as a Workforce Housing application. Attorney Campbell's opinion was that it was not grandfathered and the applicant must now submit to the new zoning regulations.
- The Chairwoman stated that it did not meet the criteria for workforce Housing as 50% of units must be set aside per 619.7.3.3. She also stated that this application was rejected last March.
- Ms. Wood stated that the application needed 2 variances which they had received from the ZBA.
- Ms. Post stated that Windham did not have a Workforce Housing ordinance in place when the applicant originally filed. She thinks the Board should accept it for a Public Hearing. Ms. Webber thinks that according to Counsel's recommendation the applicant should have to comply with the new ordinance. The Chairwoman asked Mr. Dubay of The Dubay Group Inc. on behalf of the applicant, as to why we should have a public hearing.
- Mr. Dubay stated that due to the timeline of the application, the fact that they needed a variance, the court decisions, and the fact that everything else was complied with, that the clock stopped for a period of 9 months to rectify these issues. He felt that they were still within the time frame. They had their variances in place and want to move forward with a public hearing. He now meets the Workforce Housing ordinance with the variances.

Ms. Post motioned to accept Case 2010-44 for Public Hearing. The issues before the Board were; 1. Does this fall under the new ordinance; 2. Does it meet the criteria; 3. Does it cover the outstanding issues; Motion was seconded by DiFruscia. Motion passed 7 – 0.

- Ms. Wood stated that the Board needed to decide if the old ordinance or new ordinance rules applied regarding the "clock stop" issue.
- Ms. Webber would like to hear the application on the new ordinance per Attorney Campbell. Ms. DiFruscia, Ms. Skinner, and Ms. St. Laurent agreed. Mr. Sycamore was torn as they had their variances. The majority of the Board decided that this would be a new application.
- Mr. Dubay stated that he felt the new ordinance did not apply but wants to move forward positively. He stated he would work with the new ordinance as the variance goes with the land.

He stated he has the open space approval from the State, he has done a fiscal impact study in accordance with the RSA, Windham's consultant review, it was discussed at the ZBA meeting, and a technical analysis. The open space and Workforce Housing percentages were tied together.

- Ms. Post stated that she would like to resolve this issue and has great sympathy for the applicant since the law has changed. She believes it is a lovely subdivision. She did not see in the ZBA decision if it should be 3 units or 6 units, just the open space variance. Ms. DiFruscia concurs with Mr. Dubay regarding the percentages; it seems the ZBA spent a lot of time on the issue before granting a decision on the 25%. Ms. Webber stated the variance was granted for the 25%. Ms. Skinner, Ms. St. Laurent and Mr. Sycamore agreed that the 25% was appropriate.
- Ms. Wood stated that now that the Board agreed on the application they needed to decide if the applicant was in the conceptual, design or final phase.
- The Chairwoman stated they would be in the final stage. Ms. Webber stated nothing on the plans have changed except the variances. The chairwoman would like to do a site walk and one more meeting.

Ms. Post motioned that in view of the 2 design hearings in 2010 she proposes that the spirit and intent of the Workforce Housing has been met according to Section 619.5.1. Seconded by Ms. Webber. Motion passed 7 – 0

- Mr. Dubay addressed the Board. He stated they were smaller houses, there would be no wetland impacts, there were some WWD improvements made in the 1970's and redesigned to put in a road, and there were several drainage and slope easements put in place. They do not need to use the drainage easement so they will eliminate that. There would be increased buffer easements on Old Butterfield Rock Road. Vegetative buffers will be dedeed. He also submitted a buffer plan that will be put on the record and they will replant trees taken down by road construction. The applicant is doing this to better the area.

Questions/Comments from the Board

- Ms. DiFruscia asked where the 3 units were located. Mr. Dubay stated there is no requirement to have them identified on the plan but he suggested the "Exeter Plan" be recommended.
- Ms. Post would like them shown on the plan. Mr. Dubay stated they would be in the deeds and have to be review by Attorney Campbell.
- Ms DiFruscia asked if there was a way to work with the abutter on the 10 foot buffer. Mr. Dubay would like to work with the abutter if that was possible.
- Mr. Sycamore asked if the WFH house was located on the lot with the small buffer. Mr. Dubay stated that the owner and the developer would decide that.
- Ms. Post asked that the variance notice of decision information be added to sheet 3 of the plan. Ms. Post asked about the road grade. Ms. Dubay stated that most of the road varies from 2% - 4%.

- The Chairwoman asked if the applicant was asking for the impact fees to be waived on the WFH units. Yes that was part of the original application Mr. Dubay stated.
- Ms. Nysten asked about the wells and cisterns. Mr. Dubay stated that information was on the plans and reviewed by the Fire Department.
- Ms. Webber asked who would maintain the cisterns. Mr. Dubay stated initially the developer and then the Town. Ms. Nysten asked about the number of gallons per well. Mr. Dubay stated that was not done yet but no overlapping of well radius was done.
- Ms. Post stated that the Board is setting precedence with this case as it was the first application under the new ordinance. Ms. Post would like to see a request for conditional use for the 50% requirement. The Chairwoman stated that it would be prudent to ask Attorney Campbell. Mr. Dubay does not agree with the conditional use but his group would be happy to put the paperwork together for a conditional use permit to alleviate concerns about only having three workforce housing units.

The Chairwoman opened the discussion to the public.

- Mr. Jim Maloof, 82 Meetinghouse Road was against the application. He stated that there were too many houses proposed and having a house 15 feet from his property line with a 10 foot buffer was totally inadequate. He stated that the ZBA denied a rehearing, he could not present his case in court, it is not considerate of the neighbors, and he doesn't feel his interests are protected as it will impact his property value.
- Ms. Dana Call, 80 Meetinghouse Road would like to know what kind of protection she has for her well. She would like the trees marked that are to be taken down and she would like a buffer. She would like a timeline on the road construction.
- Mr. Robert Pliskin, 76 Meetinghouse Road, stated that he will be considerate of his neighbors and the neighborhood.
- Mr. Stanley Yost, 84 Meetinghouse Road was concerned about the density of the housing and said that the ZBA could have done a better job with the open space. This will encourage people to pack houses on smaller lots with open space. He feels it will impact future developments.
- Mr. Joe Antista, 77 Meetinghouse Road said that if the Board agreed with town counsel that this application would have to meet the new regulations. The Chair explained to Mr. Antista that this was what the Board was struggling with and that this case has been going on for a long time which makes it an unusual application.

Public Comment was closed.

- The Chairwoman stated she would like a site walk. The site walk will be scheduled for April 28th at 9:00 am. Mr. Pliskin stated he wanted the next hearing to be a final hearing. Mr. Dubay will make sure the stakes are still in the ground. Mr. Dubay stated they would be using the Exeter model. The Chairwoman suggested May 9th the next hearing.

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Motion by Ms. Skinner to date specific the hearing to May 9th. Seconded by Ms. Post. Motion passed 7-0.

The Board took a 5 minute recess at 9:15 pm. The Board was back in session at 9:20 pm.

The Chairwoman appointed Ms. Lee Maloney to sit for Mr. Sycamore.

Case #2010-46 Workforce Housing Final Site Plan/Subdivision Application

An application for Final Site Plan/Subdivision has been submitted for Lot 19-A-300 (66 Mammoth Road), which is located in the Rural & Aquifer Protection Districts. The applicant, Peter Zohdi of Edward N. Herbert Assoc. Inc, on behalf of Sun Coast Properties LLC, is proposing a 10-unit residential condominium development, consisting of 5 duplex buildings with 5 units to be Workforce Housing, per RSA 674:58-61.

Ms. Post read the Hearing Notice into the record.

- Ms. Scott updated the Board on the history of the application and stated the application has been to the Technical Review Committee. The town engineer and legal counsel have provided additional comments on the 4/11/12 memos.
- Attorney John Cronin, representing the applicant gave an overview of the history of the case. He stated that in May 2011 the Planning Board did not accept the application as it did not meet the requirements of the Zoning requirements of section 602.1.2, the applicant appealed the decision to the Superior Court and it was decided that relief would be granted and that 50% of the units would be WFH. Town counsel asked for enforcement issue to comply with the 50%, Attorney Cronin has no objection to adding language to the deed even though the Court Order did not stipulate that. He did state they were not asking for a waiver of the impact fees but reserves that right to ask for a conditional use permit or waiver in the future.
- Mr. Zohdi stated they had requested a waiver for the soil scientist but does not need this anymore as they have the report.

Motion by Ms. Post to accept Case # 2010-46 for hearing. Seconded by Ms. Skinner. Approved 7 – 0.

Questions/Comments from the Board

- Ms. Post thanked Attorney Cronin for his synopsis of the application. She stated for the record that the Superior Court upheld the decisions of the Planning Board and Zoning Board in this case. She questioned the test pit data and Mr. Zohdi stated it was on Page 16 of the plans but do not have the soil scientist signature. Ms. Scott stated that the town soil consultant has signed off on this plan, the septic plan has been approved by DES and the NH Driveway permit is pending.
- Ms. Nysten noted that the waiver requests of Section 701.2.8.1 was an incorrect “section”

- Ms. DiFruscia asked about fire hydrants. Mr. Zohdi stated that once the plans were approved, the Fire Department would add them in. Ms. Scott spoke with the Fire Department and they have to work with Pennichuck.
- The Chairwoman asked if there were any changes to the plan since the last hearing. Mr. Zohdi replied no.
- Ms. DiFruscia asked if the Board will be provided with stamped plans. Mr. Zohdi stated yes.
- Ms Maloney spoke to the 22 feet of roadway and asked if it could be 24 feet. Mr. Zohdi stated that 22 feet is what the ordinance requires and he has added additional parking. Ms. Maloney asked about condo fees and Attorney Cronin stated that condo fees are uniform per statute.
- Ms. Nysten asked about landscaping on Mammoth Road and Mr. Zohdi stated it was on the plan. The Chairwoman asked about the big Maple tree on Mammoth and Mr. Zohdi stated it was not going to be removed.

The Chairwoman opened the discussion to the public.

No one from the public spoke on the plan.

Public Comment was closed.

- Ms. DiFruscia asked about compliance with the fees, responsibility and the 3rd party monitoring. Attorney Cronin stated there are restrictions in the deeds and the town can assign someone to monitor the WFH. He did not include this language because it is not in the ordinance. He is not willing to put in open ended language.
- The Chairwoman stated there is a statute in place to collect fees to pay for monitoring so that the taxpayers won't have to pay for it.
- Ms. Post asked how they were planning on keeping these units WFH for 30 years. Attorney Cronin stated that it is in the covenant and deeds. It is up to the Town to enforce it or whomever they designate. He is willing to work with the Planning Department on this. Ms. Post stated that the applicant does not want open ended wording and she is not sure she wants an open ended approval. Attorney Cronin will leave that up to the Board's judgment. The Chairwoman suggested that if they approve the plan that they make it a condition of approval to work with the Town staff and Attorney Campbell on ongoing monitoring expenses. Ms. Scott stated there are quasi government agencies and non profits that the Town could approach. Ms Nysten asked about the condo fees. She will be provided a copy.
- Ms. Scott stated the conditions the board should seek if approved are: NH DOT Driveway plan, plan number on all pages, hydrant locations noted on the plans, permits numbers noted on the plans, soil mapping and signature, final plans signed and stamped by engineer and applicant, HIS map, items outlined in the 4/11 memo from Keach, the items outlined in letter from legal counsel dated 4/11, third party monitoring language, and correcting of typos and grammatical errors on the plans and legal documents.

- The Chairwoman suggested that the WFH has to be dispersed

Ms. Post made a motion to approve on the following conditions :

- NH DOT Driveway plan, plan number on all pages, hydrant locations noted on the plans, permits numbers noted on the plans, soil mapping and signature, final plans signed and stamped by engineer and applicant, HIS map, items outlined in the 4/11 memo from Keach, the items outlined in letter from legal counsel dated 4/11, third party monitoring language, and correcting of typos and grammatical errors on the plans and legal documents. With the manner of third party monitoring to be determined collaboratively by town counsel, staff, and the applicant with payment of fees if any if any for this monitoring service to be covered by a party or parties other than the town. WFH not clustered together, separate from the rest. Attorney Campbell can final approve all documents.

Ms. DiFruscia seconded. Approved 7 – 0.

Mr. Sycamore was seated back on the Board and Ms. Maloney stepped down.

Case #2012-8 Preliminary Major Site Plan Application

A Preliminary Major Site Plan has been submitted for Lot 12-A-532 (125 Indian Rock Road) in the Gateway Commercial District, Cobbett’s Pond and Canobie Lake Watershed District, and the Wetland and Watershed Protection District. The applicant, Karl Dubay of The Dubay Group, on behalf of Jeff Thompson, of MacThompson Realty, Inc., is proposing to amend the April 6, 2011 approved Site Plan to remove the 2,400sqft freestanding bank building and instead, have a single building on the site, which will consist of a 32-seat café, 2,100 sq ft of office space, 515 sq ft of retail space, and 5,000 sq ft for an urgent care facility. The site grading, landscaping, lighting, parking, traffic, drainage, and signage will also be amended.

Ms. Post read the Case into the record.

Ms. DiFruscia made a motion to accept this preliminary plan application. Seconded by Ms. Post. Approved 7 – 0.

- Ms. Scott stated the applicant had gone to the Technical Review Committee and their comments have been included in the Board’s packet. This is a change and reduction on the WWD and easements.
- Mr. Dubay of The Dubay Group addressed the Board. They were amending the plan to remove the bank building and replacing it with an urgent care center. They are simplifying the site plan, traffic circulation, and the septic. Lighting and landscaping have been updated. Reducing the pavement in the back which was in the WWD. They will hopefully be submitting the final plan soon as they are still working on them.

Questions/Comments from the Board

- Ms. DiFruscia stated that if there would be ambulances that the traffic lights have the ability to be changed if necessary.

- Ms. Webber doesn't like the lighting. Ms. Dubay stated they are using the same fixtures that were previously approved.
- Ms. Nysten would like to see signage for parallel parking so people slow down coming around the corner of the building. Mr. Dubay stated that that is employee parking. She suggested a "slow" sign for the corner. Lane widths have not changed since last plan. Bypass aisle is wider than the town requires. There is also a circulation plan included on sheet 10. Mr. Dubay stated that he has the DOT permit on the plan. They are working with the applicant to reissue the permit for an urgent care center. Ms. Nysten asked if there was specific parking for urgent care patients. Attorney Gerry Prunier spoke to Ms. Nysten question. He stated that the applicant has given the right to the urgent care center to designate parking up front for patents if necessary.
- Ms. Maloney question if there was a shipping area for the café. Attorney Dubay stated that there was a back door for shipping. Also an egress door through the rear that they can access the café. Ms. Maloney asked if the urgent care center was open 24/7.
- Ms. Webber stated there were two handicapped parking spots for the café and retail but only one for the urgent care center. Attorney Dubay stated that the ADA requirements are for 3 for this project. If they see that adjustments need to be made they will address that.

Max Puyanik, of ConvenientMD addressed the Board.

- He stated that this will be a full service urgent care center with a full medical team. It will be open 9am – 9pm, 7 days a week and they are very customer service oriented. There will always be a physician on staff.
- Ms. DiFruscia asked about medical waste. Ms. Puyanik stated that they follow standard procedures and work with a company for that.
- The Chairwoman asked about chemicals for testing and cleaning. Ms. Puyanik stated that they follow standard procedures and work with a company for that.
- The Chairwoman asked about plantings. Mr. Dubay stated that they cannot plant in the right-of-way.
- Ms. Post stated that this was a great potential for mixed use. She also stated that she had a voluntary request of the applicant. She asked that they look at the Design Review Regulations that are being proposed. Mr. Dubay stated that they would be submitting the final plans in the next few days and they would like to be on the May 16th agenda.
- Mr. Sycamore asked if the entryway could be linked to tie it to the other building. Mr. Dubay stated that they provided a tower between the two.
- Ms. St Laurent asked where patients that needed to be transported to another facility would leave the facility. Mr. Puyanik stated the double doors.

The Chairwoman opened the discussion to the public.

No one from the public spoke on the plan.

Public Comment was closed.

Ms. DiFruscia made a motion to end the preliminary hearing, seconded by Ms. Webber. Motion passed 7 – 0.

Member Binder Update - Revised Applications and Flow Charts (Tab #10).

Adjournment

Motion to Adjourn was made by Mr. Sycamore, seconded by Ms. Webber. Passed 7 – 0. Meeting adjourned at 11:10 pm.

These minutes were approved 5/9/12 and respectfully submitted by Cathy Pinette, Planning Board Minute Taker.