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COMMUNITY DEVELOPMENT

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**Joint Planning Board and Zoning Board of Adjustment
Draft Minutes
September 7, 2011**

Planning Board Roll:

Ruth-ellen Post, Chairwoman- Present
Margaret Crisler, Vice-Chair – Present
Jonathan Sycamore, Member – Present
Caroline Webber, Member – Present
Lee Maloney, Alternate – Present
Pam Skinner, Member- Excused

Kristi St. Laurent, Member – Excused
Ross McLeod, Board of Selectman Member - Excuse
Kathleen DiFruscia, Board of Selectman Alternate - Excused
Rob Folan, Alternate – Present
Vanessa Nysten, Alternate – Arrived 7:17 pm
Sy Wrenn, Alternate - Excused

ZBA Roll:

Tom Murray, Chairman – Present
Heath Partington, Vice Chairman – Present
Diana Fallon, Member - Present

Betty Dunn, Member – Present
Jim Tierney, Alternate-Present
Mike Scholz, Alternate-Excused

Staff:

Elizabeth Wood – Town Planner - Present
Tim Corwin – Code Enforcement Administrator- Present
Mimi Kolodziej – Planning Assistant – Present

Call to Order / Attendance

Chairwoman Post called the meeting to order at 7:03 pm followed by the Pledge of Allegiance and roll call.

Chairwoman Post appointed Mr. Folan to be seated for Ms. St. Laurent and Ms. Maloney to be seated for Ms. Skinner.

Chairwoman Post announced that the first agenda item is a joint hearing at the applicant's request in order to facilitate a variance request under ZBA jurisdiction and WWPD special permit request under Planning Board jurisdiction. She continued to explain the protocol for the joint hearing and its minutes.

Public Hearings:

Joint Hearing – Zoning Board of Adjustment & Planning Board

A Variance Application and a WWPD Special Permit Application have been submitted for 1 Northland Road (Lot 3-B-650) located in the Rural District. The applicant, Joseph Maynard of Benchmark Engineering, Inc., on behalf of Pennichuck East, is proposing to construct a 12' X 15' addition to the existing pump house and to install an 8' X 16' underground fiberglass tank, both to be located entirely within the WWPD.

Zoning Board of Adjustment Case#40-2011 is the applicant's request from the ZBA, Variances from Sections 601.3, 601.3.3, and 601.3.9 of the Zoning Ordinance to construct the 12' X 15' addition to the existing pump house where permanent buildings are not allowed in the WWPD.

Planning Board Case#2011-29 is the applicant's request from the Planning Board, a WWPD Special Permit to locate 12' X 15' addition to the existing pump house in the WWPD.

The Variance Application Case #40-2011 and the WWPD Special Permit Application Case #2011-29 were read into the record by Vice-Chair Crisler.

Planning Board alternate, Ms. Nysten, arrived at 7:17 pm.

Vice-Chair Crisler motioned for the Planning Board Chair to turn the hearing over to the ZBA Chair for purposes of hearing and deciding the Variance request with the Planning Board resuming jurisdiction after that. Seconded by Ms. Webber. Motion passed: 6-0.

Chairman Murray appointed Mr. Tierney to be seated for Mr. Samsel.

Ms. Dunn read the Variance application into the record.

Mr. Joe Maynard of Benchmark Engineering and representing Pennichuck East presented a brief overview. He explained:

- The water system in question is the system for Spruce Pond Phase 1
- It was approved in 2003 to feed approximately 50 house lots
- Pennechuck owns and maintains the pump house located at 1 Northland Rd
- The originally approved building is located outside the WWPD
- During Pennechuck's yearly water testing, a bi-product was discovered

Mr. Don Ware, representing Pennichuck East Utilities, explained the technical aspects of the byproduct and listed the changes Pennichuck is requesting to be made to the pump house system. They are:

- The addition of a treatment system for the water and its byproducts
- A water softening system
- An underground fiberglass tank for the backwash.
- The addition to house these features would go 9 feet into the WWPD

Mr. Maynard explained that these improvements would meet the State standard for safe drinking water and would need relief from WWPD.

Mr. Tierney questioned the need for relief from Section 601.3.3 and Section 603.3.9. He believed the requested improvements were accepted uses in the WWPD. Mr. Corwin agreed with Mr. Tierney and explained that Pennechuck is seeking relief from the 12X15 square foot permanent structure only, not the water treatment systems which are allowed.

Mr. Murray opened discussion to the public. Hearing none, he closed Public discussion.

Ms. Dunn asked for an explanation of the map and location of the WWPD. She asked if there was no other logical placement for the pump house. Mr. Maynard replied that there was not. Ms. Dunn asked how much area will be disturbed. Mr. Maynard estimated about 10' of disturbance when it is done.

Mr. Murray asked if Mr. Maynard had any rebuttal. He did not, and Mr. Ware read the 5 Variance Criteria into the record.

Mr. Maynard explained that the underground storage tank which will be emptied weekly is an improvement over the previous allowed method in which backwash emptied naturally across the ground. Mr. Maynard said these results are a betterment.

Mr. Tierney motioned to enter deliberative session. Mr. Partington seconded. Motion passed: 5-0.

Ms. Fallon thought there was no need for relief under Section 601.3.3. Ms. Dunn agreed.

Ms Dunn motioned that no variance is necessary for this application for this proposal under Sections 601.3.3 and 603.3.9. Ms. Carroll seconded: Motion passed: 5-0.

Mr. Tierney motioned for lot 3-B-650 Case #40-2011 from Section 601.3 to permit the construction of a 12X15 addition to the existing pump house and install an 8X16 underground fiberglass tank within the WWPD. Seconded by Mr. Carroll.

Ms Dunn thinks it meets the 5 Variance Criteria and is within the spirit and intent of the Ordinance. There are multiple references to use of water and utility systems. It is not outside the spirit and intent of the Ordinance. Granting the Variance would be in the public interest because there is a water quality problem there, and the benefit of this outweighs the varying from the Ordinance and it would not diminish property values of the surrounding properties and it may actually increase it because it takes care of the water quality problem. The use is reasonable and this is a situation where the parameters of the existing condition make it impossible to construct something that would be in conformance with the Ordinance.

Motion passed: 5-0.

Mr. Murray reminded the applicant of the 30-day appeal process and then turned the meeting over to the Planning Board.

Ms. Carroll motioned to adjourn the ZBA meeting. Seconded by Mr. Tierney. Motion passed: 5-0.

The ZBA portion of the meeting adjourned at 7:45 pm.

Chairwoman Post adjourned the Planning Board meeting for a short recess. The meeting resumed at 7:50 pm.

Vice-Chair Crisler motioned to accept the WWPD Special Permit Application, Case#2011-29, for public hearing. Seconded by Ms. St. Laurent. Motion passed: 6-0.

Ms. St. Laurent was seated at 7:55 pm with Ms. Maloney stepping down. Mr. Folan was appointed to sit for Ms. Skinner.

Planning Board Case#2011-29 is the applicant's request from the Planning Board, a WWPD Special Permit to locate 12' X 15' addition to the existing pump house in the WWPD.

Vice-Chair Crisler read Case #2011-30 into the record.

Ms. Wood noted that the application is complete; staff had no issues and supported this application. Furthermore, TRC had no issues.

Mr. Maynard presented an overview of the application explaining that erosion control measures are shown on the plan. Pennichuck is eager to get construction completed before winter.

Vice-Chair Crisler asked what the building is going to look like and what kind of buffers would there be. Mr. Maynard described a Cape-style, wood building with 2 gables that is shielded from the road by surrounding trees. A small portion of the roof is visible from route 28.

Mr. Folan asked about the tank and where the overflow would be.

Mr. Maynard said there would be an alarm tied to Pennichuck who would be there weekly to pump.

Vice-Chair Crisler expressed concern about contaminant spillage at the time it gets pumped. The Pennichuck representative explained that the DES says it is OK for the spillage to dump on the ground. Contamination is not an issue; the new systems are to primarily protect water quality taste. The byproducts are not a health problem; they make the water taste salty. Currently, there is 600 gal/day backwashing onto the ground. The hose spillage that might occur at the time of pumping is significantly less than what occurs now. Vice-Chair Crisler confirmed that it is a non-toxic contaminant.

Ms. Maloney asked if there would be additional noise. Mr. Maynard said the component being added is a noiseless filtration device.

Chairwoman Post requested a word change to the notes on silt fence maintenance on the plans. Under #3 where it says, "... sediment deposits to be removed..." She would like it to read, "...shall be removed." Mr. Maynard will change the wording. Mr. Maynard will add language that says, "The sediment deposit will be removed outside the WWPD." Chairwoman Post requested that construction materials be removed from the site

Chairwoman Post opened the Hearing to public. Hearing no comments, she closed the Public Hearing.

Vice-Chair Crisler motioned to approve the applicant's request for the Special Permit to erect a 12X15 foot addition to the existing pump house and to install an underground fiberglass tank both to be located entirely within the WWPD with the following conditions:

- That a note be added to the plan depicting the setback of the addition to the edge of the WWPD,
- That a note be added to the plan depicting the setback of the tank to the edge of the WWPD, and
- That any sediment deposit shall be removed outside the WWPD.

Seconded by Ms. Webber. Motion passed: 6-0.

Case#2011-30/Minor Site Plan

A Minor Site Plan Application has been submitted for 4 Ledge Road (Lot 11-A-165) located in the Limited Industrial District. The applicant, Joseph Maynard of Benchmark Engineering, Inc. on behalf of Murray Properties is proposing to modify the driveway that provides access to the site from Ledge Road to improve the ability for emergency vehicles to enter the site. The proposal is also to modify the parking calculation to accommodate 4,200 sq. ft. of warehouse space and 2,000 sq. ft. of general office space. Additional building space has become available as a result of the roof remodel.

Vice-Chair Crisler read Case #2011-30 into the record.

Ms. Wood said that everything is in her memo. For the public, this proposal is an access improvement. Both Fire and Police had given their approval and prefer the plan as a safety measure.

Vice-Chair Crisler motioned to accept Case #2011-30 for Public Hearing. Ms. St. Laurent seconded. Motion passed: 6-0.

Attorney David Lefevre, representing Mr. Murray of Windham, highlighted the sequence of events:

- In May of 2011, Mr. Murray had received a code enforcement letter from the Town which informed him that his property was being used in violation and would not receive a certificate of occupancy.
- He and Mr. Murray sent two e-mails, one on 6/2 and another on 6/3, in response.
- Attorney Lefevre said that the individual who issued this code enforcement letter was not vested with code enforcement authority, and he thought this was a real problem.
- All the deficiencies noted in letter were concerned with the esthetics of the property none of which were part of the Planning Board's previous approval.
- Within 2 weeks he received a letter from Attorney Campbell, who concluded that none of the items are conditions of Planning Board approval.
- Secondly, the Town attorney acknowledged that it is unlikely that the certificate of occupancy could be lawfully denied.

Attorney Lefevre said that Mr. Murray genuinely feels he is being harassed. There is no lawful or factual basis for the code enforcement action taken. Attorney Campbell did acknowledge there is an issue that needs to be resolved - the driveway. Mr. Lefevre highlighted the driveway issue:

- In April of 2011, there was an incident at the property where some fire apparatus from Derry had trouble accessing the property because of the driveway.
- Because it was a pre-existing property and pre-existing access, Mr. Murray did not have to legally make any changes to the driveway.
- Because of this event, Mr. Murray contacted the Town and received back a written memo from the Community Development Director saying that the proposal to change the driveway configuration was approved.
- It cost Mr. Murray \$80,000 to alter the driveway, and he did it as a courtesy to the Town.

Attorney Lefevre said that Mr. Murray has not done anything wrong. He made changes at his own expense with some approval from the Town and feels he is being targeted.

Chairwoman Post noted that because the Board has not had an opportunity to see the various correspondences Mr. Lefevre just presented, it would be difficult to respond to them at this time. She said that this Board has had previous experience with an approved building design that was not what was constructed. The Board sentiment was that when an applicant puts a picture in front of the Board, it is to show the Board what the building is supposed to and will eventually look like. This type of situation has occurred before. Chairwoman Post pointed this issue out to suggest that Mr. Murray was not singled out.

Attorney Lefevre said no one's sensibilities are offended by the notion that aesthetics and architectural design be subject to Planning Board approval. This was a minor site plan in the industrial zone that was specifically not part of Planning Board's review. The elevation was submitted solely for the purpose of displaying a sign. He did not feel, in this case, that there was a misrepresentation.

Chairwoman Post said that the applicant's intent may have been something different than what the Board understood, and it may be something the Board has to clear up in their own regulations. Speaking for herself, she claimed no one was singling out Mr. Murray. It was unfortunate, if there has been a misunderstanding.

Ms Webber commented that this is the 3rd time an applicant has asked the Board to approve a plan that has already been built. Attorney Lefevre said the applicant is not requesting approval; he does not need approval.

Mr. Maynard of Benchmark Engineering recapped the sequence of events for the application:

- The original approval for this property which happened in October of 2010 was for 4,200 sq. ft. of warehouse space and 2,000 sq.ft. of office space.
- When doing building construction, they discovered the roof needed repair.
- They replaced the roof adding some dormers to the facade.
- This generated a bit of attic space which fell under their original approval.
- When the applicant started getting the letters of petition and the request to come back, they decided to clean up their housekeeping.
- The net result was 1 additional parking space and about 600 sq. ft. of attic.

Ms. Maloney asked if there was to be any additional traffic. Mr. Maynard said there was not.

Mr. Maynard offered some history on the building:

- In the 1970's it was originally a refrigeration storage building.
- They outgrew the space and the new owner converted it to a hardware/office space for which they received a variance.
- Mr. Murray eventually bought the property requesting and receiving a change-of-use from the Board.
- In the spring, the Fire Chief called Mr. Murray saying there was an incident at his property and the fire truck could not get up the driveway.
- Mr. Murray sat with Mr. Maynard, Chief McPherson, Highway, and Economic Development and reviewed a plan to make a betterment of the driveway.
- Because it was an emergency situation, permission was granted and the improvement made.
- In order to clean things up, we are back at the Planning Board to show the new driveway, the additional parking space, and the solar trees and solar panels on the structure.
- Another architectural improvement that was made over the original plans was the replacement of metal siding by clapboard siding - an improvement.

The applicant's reasoning for being here tonight, is to clean things up. The applicant assumed they had approval for the driveway.

Ms. Wood explained that, for what the applicant proposed, the Town's ordinance does not require the applicant require architectural specifications. But there was a point of contention. So, Ms. Wood looked at the original approved minutes as saw nothing about architectural detail. At that meeting, however, Mr. Maynard had hung up an architectural rendering that was not in the minutes, but was put into the file. After Mr. Murray received the code enforcement; the Town consulted with Attorney Campbell saying Mr. Murray was correct. And so we are here tonight to move forward.

Ms. Wood clarified for Vice-Chair Crisler that the rendering was in the file; it was hung on the wall; it was not in the signed plans; it was not part of the official application; was not in the minutes; and was not required.

Vice-Chair Crisler said this is something the Board needs to think about as it moves into Design Review.

Mr. Maynard said that the plan presented at the meeting was to show the location of the proposed sign. They were making aesthetic improvements to building at the same time.

Chairwoman Post said the Town needs more clarity in the process and needs better clarity from the applicant also. The Town needs to know if a rendering is an official signed representation.

Ms. Webber stated that Attorney Campbell's letter is important and none of the Board received it. In his letter he mentions other complications with the current situation:

- Attorney Campbell does not think that the building, as constructed, can support the sign.
- The changes made to the driveway may cause future lending or building sale problems.
- He suggested it is in the best interest of the property owner to obtain documentation approval for this change
- The building, as it exists, has features that were not within the scope of the original building permit issued in 12/10. They are dormer spaces in the front and a cupola on the roof.
- A recent permit application for an after the fact permit has not been approved yet.

Chairwoman Post mentioned that the Board does not issue certificates of occupancy.

Ms. St. Laurent said that as part of the minor site plan application, there is supposed to be a letter of intent and proposal as well as a letter from the applicant requesting that it be heard as a minor site plan.

Mr. Maynard read from an 8-15-11 in which the applicant requested a minor site plan review for an intent to apply for a change of use and outlined the project. This project was approved by the Planning Board on October 2010. It referenced the driveway improvement, additional warehouse space gained through the roof remodel, additional parking and restriping, signage, and general update of site plan approval.

These documents were dated, initialed and accepted as part of the record.

Ms. St. Laurent confirmed with Mr. Maynard that the driveway was too steep; there was not enough land available to moderate the incline. Mr. Maynard said that signage is still needed, but the grade was adjusted. It is not perfect; it is better without having to blast.

Ms. St. Laurent confirmed that the additional attic space is not more than 25% for which the 1 additional parking space is enough.

Ms. St. Laurent referenced Section 306.6 which states that the maximum allowed increase of floor space shall not be more than 500 sq. ft. The Board decided that the 67 sq. ft. overage was insignificant.

Ms. St. Laurent motioned to accept Case# 2011-30, 4 Ledge Road (Lot 11-a-165) as a minor site plan application. Ms. Webber seconded. Motion passed: 6-0.

Ms. Webber confirmed that Attorney Campbell's questions in his previously referenced letter had been answered.

Ms. St. Laurent asked if the Town engineer had approved this site plan. Ms. Wood responded that to her knowledge, he had not. Ms. St. Laurent asked about the driveway change and the drainage. Mr. Maynard said that the Town's Highway Agent and Chief McPherson had accepted the changes as not perfect, but acceptable.

Chairwoman Post opened the Hearing to the public. Hearing no comments, she closed the Public Hearing.

Chairwoman Post inquired about note #16 on the plan and asked if there was new lighting. Mr. Maynard said no.

Chairwoman Post confirm one additional parking space and that there is no need for a road directional sign permit.

Vice-Chair Crisler motioned to approve the minor site plan application of Case #2011-30 with the condition that the abutter notification be corrected on the plan. Mr. Wrenn seconded. Motion passed: 6-0.

Mr. Sycamore brought up the question of whether the Board should expect that an applicant's architectural rendering be what they expect to see as a completed project. Ms. St. Laurent said that in Section 801 of the Town's site plan regulations specific expectations are required for new construction. However, there is a hole for expectations of redevelopment of an existing structure and the Board may want to look at this.

Mr. Jim Tierney said that typically in the industrial zoned district you get square metal structures that do not often get seen by the general public. Design Review Criteria are included in the guidelines for certain Districts.

Chairwoman Post asked for 2-3 volunteers to form a sub-committee to return in October with their thoughts about the problem of how literal should the Board be with their expectations of architectural drawings.

Mr. Sycamore was excused at 8:59 p.m. Chairwoman Post appointed Ms. Nysten to be seated for Mr. Sycamore.

Meeting Minutes Review

July 6, 2011

Ms. Crisler motioned to accept the minutes of July 6, 2011 as amended. Seconded by Ms. Nysten. Motion passed: 4-0-2. Ms. Webber and Mr. Folan abstained.

The Board continued to express their interest in having the Approved minutes posted on the Town web site.

Town Meeting Workshop

Draft Commercial Kennel Ordinance

Vice-Chair Crisler would like to redo the Purpose Section and suggested the following language:

This ordinance is intended to provide regulations for protecting public health and safety as well as welfare concerns for dogs and other household animals; in addition to controlling nuisance animals, preventing animal neglect, and containing the spread of diseases.

Chairwoman Post added the word "adult" under the definitions section; "...more than one unspayed, adult female ..."

Ms. Webber noted a typo on unspayed.

Ms. Wood will look into the consideration of snakes as household pets.

Chairwoman Post noted an inconsistency of a number in #7. The text will be changed to read "ten (10)."

Under the Fencing section, the Committee will look into how far the fence needs to be buried to take care of the digger dog. Ms. Webber suggested adding the term "curved in" as a fence requirement.

Ms. Webber will look into the issue of animal waste and the standard industry practices.

Ms. Nysten and Ms. Webber suggested changing a word in the Setbacks section, letter b. to read "occupied structure" as opposed to "residential structure."

Gateway Purpose Section

Ms. St. Laurent worked with Ms. Scott on reviewing this Purpose Section. She gave an overview of the thought processes that led to this revision.

Ms. Webber noted a typo; Route 11 should be Route 111 and the word “used” to “uses” in bullet 1.

The Board reviewed the language and decided to change bullet #2 to read:

“Ensure that the entrance to the Town reflects and/or complements the architectural style of New England and maintains Windham’s historical character and reflects the aesthetic vision and goals as included in the Gateway Design Regulations.”

August Staff Reports

The Economic Development Department Director’s and Town Planner’s staff reports were read.

Member Binder Update

The 2010 Economic Development Opinion Survey; Results and Conclusion Report (tab 16).

Mss Wood re-capped the accomplishments of the Mulit-zoned Subcommittee. The IT Director is working with the committee to make an effective Public presentation. The many abutters will be notified when the multi-zones are changed and a budget request may be needed.

New Applications Submitted:

- Medicus is applying for a final site plan approval.
- Preliminary review for 8 Rockingham Road – is applying for a reconfiguration of the existing building and a reduction of the parking requirements
- A preliminary review of a technical school

The Law Lecture Series in Derry will be held on October 12, 19, and 26.

Vice-Chair Crisler motioned to adjourn and was seconded by Ms. Webber. Motion passed: 6-0.

These minutes are respectfully submitted by Mimi Kolodziej.

