

GILMANTON PLANNING BOARD
THURSDAY, AUGUST 14, 2008
ACADEMY – 7 p.m.
MINUTES OF MEETING

Present: Chair Nancy Girard, Vice-Chair John Funk, Selectmen’s Representative Don Guarino, Dan Hudson (arrived late), Marty Martindale, David Russell, and Planning Administrator Lynne Brunelle.

Absent: Pam Fecteau

Chair N. Girard opened the meeting at 7:05 p.m. and introduced the Board members.

ACCEPTANCE OF MINUTES: The Board members reviewed the minutes of the 7/10/08 meeting and one minor change was made. **Motion:** D. Russell moved to accept the minutes of 7/10/08 as amended, J. Funk seconded. Vote passed 5-0.

COMPLIANCE HEARING – Kurt Rague, Crystal Lake Farm LLC: Final Plan Review for Open Space Subdivision of Tax Map/Lot #415-29, of 38 acres, into four lots consisting of: 2 building lots of 1.49 & 1.81 acres, a 20.81-acre lot used as a tree farm, 19.81 acres of which will be held in a permanent conservation easement, and a remaining lot of 9.89 acres. The plan also includes the phased construction of a 1,300’ road. Property located on Crystal Lake Road in the Rural Zone; PB#1406.

At this time, Board member D. Hudson joined the meeting.

Chair N. Girard explained that the purpose of the compliance hearing was to determine whether the applicant has met all the conditions set forth by the Planning Board in their conditional approval of 3/10/06. Kurt Rague, applicant, was in attendance and stated that he believes all conditions have been met. N. Girard asked the Planning Administrator to bring the Board up to date on the status of the application as well as any outstanding items.

L. Brunelle referenced her letter dated 10/17/07, which reflected the updated conditions set forth by the Planning Board at their 10/11/07 meeting. She reported that the Alteration of Terrain (AoT) application was submitted to the State of NH Dept. of Environmental Services (DES) as well as the wetlands application for culvert “A”. The AoT Permit was issued on 7/23/08. The wetlands application is pending State approval.

The Conservation Easement (CE) deed language has been prepared and reviewed. Gilmanton Conservation Commission (GCC) Chair Nanci Mitchell will report on the status of the title opinion and baseline documentation later in the meeting. Lynne continued that the language of the deed restrictions, road maintenance agreement and/or drainage easement has not yet been finalized and has therefore not been reviewed and accepted by the Board. Therefore, the final plan does not reflect the drainage and/or culvert maintenance easement as required.

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Due to a communication error, applicant's engineer Tom Varney did not receive the checklist from Hoyle Tanner & Associates (HTA) dated 4/11/08. Lynne also conveyed that several requests had been made of the applicant to forward copies of the AoT Permit, and all accompanying plans and documents, to HTA for their review and comment. These requests were refused, and as a result, HTA was unable to provide the Board with a report on the road plan in time for this meeting. Furthermore, the Town's engineer expressed confusion regarding the fact that the AoT Permit was prepared and submitted by Jim Bolduc, P.E., not Tom Varney, P.E. and HTA questioned whether the engineer of record had changed on the project. She continued that there is clearly confusion with HTA regarding the Board's decision to allow the applicant to construct the first 700' of road to gravel standards as part of Phase 1 of the project.

At this time, GCC Chair Nanci Mitchell reported that the changes made to the CE deed language reflects the changes made by the Planning Board at their last meeting as it pertains to drainage. She noted that the CE deed references the road plan as an appendix and Mr. Rague provided her with a reduced road plan dated September 2007 (revised 7/1/08) but it needs to show the easement boundary. Nanci also addressed the request for an updated title opinion. This was initially performed in October 2006 by the applicant's attorney, Warren Lake. This time the applicant submitted a "Commitment for Title Insurance" performed by Title Pro, LLC, which Nanci expressed concern, particularly with a disclaimer stating "*this commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title*".

N. Girard asked whether Town Counsel had an opportunity to review it? Planning Administrator L. Brunelle informed the Board that she faxed the document to Atty. Walter Mitchell and he emailed her back stating that it would be insufficient for *the conveyance of property* to the Town. Lynne returned his email and explained that it was not a conveyance but a conservation easement. She also reminded him of the title opinion from Atty. Warren Lake that he reviewed in October 2006. Since that email, she explained that they have been playing "telephone tag" and have not had the opportunity to clarify the request.

J. Funk conveyed that if the applicant has obtained title insurance a separate title opinion isn't necessary because the policy is basically insuring the title unless there's been an expressed exception. However, he still recommends that we obtain Town Counsel's opinion and acceptance. GCC Chair N. Mitchell conveyed that the Society for the Protection of NH Forests (SPNHF), who reviewed the CE deed language, indicated that the Town shouldn't accept a policy because we requested a title opinion, unless it is reviewed by Town Counsel.

The Board reviewed the road plans and the checklist from HTA. It was noted that HTA suggested that the size of the turnout be changed from 20' x 60' to 35' x 50'. The Gilmanton Fire Chief had recommended that a 20' x 60' turnout would be sufficient for a fire truck to turn around. Now it appears that HTA is recommending that this be increased to 35' x 50'. Neither the applicant nor the Board members recall this change.

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L. Brunelle indicated that there may have been a discrepancy between the last two Fire Chiefs. The Board agreed that this shouldn't be an issue; whatever the Fire Chief had initially recommended should be acceptable, unless HTA has reasonable justification for enlarging the turnout area. The Board also agreed that any concerns pertaining to the language of the drainage easement should be addressed by the applicant, his engineer and/or attorney. Lynne should not be drafting or reviewing deed language for the applicant. Furthermore, the Board would prefer to have the applicant's engineer work with the Town's engineer (HTA). Lynne has conveyed to HTA the Board's philosophy regarding approving Phase 1 with a gravel road as part of the Open Space Subdivision, and eventually Phase 2 with an asphalt road as part of the Site Plan Review.

When asked about the CE language, J. Funk indicated that any new language specific to the drainage easement may be reviewed by the Chair and/or Vice-Chair. The Selectmen may then accept the language at the recommendation of the Conservation Commission, and once all other necessary requirements are met, the plan can be signed and recorded. D. Guarino expressed apprehension regarding HTA's checklist, particularly concerns pertaining to drainage. L. Brunelle explained that Jim Bolduc, P.E. performed updated drainage calculations when he prepared the plans for the AoT permit for the State; unfortunately, they were never forwarded to HTA. Mr. Rague agreed to have these documents forwarded to HTA for their review and comment as soon as possible.

Motion: J. Funk moved that the Board authorize that the final plan may signed and recorded contingent upon meeting the conditions listed below. The Planning Administrator shall determine whether the conditions have been satisfactorily met and will consult with the Board and/or the Town's road engineer for guidance with any questions or concerns.

The following items must be fulfilled before the final plan may be signed and recorded:

1. The Conservation Easement Deed must be formally accepted by the Conservation Commission, Board of Selectmen and the Planning Board.
2. Town Counsel must provide satisfactory confirmation of title insurance or opinion is satisfactory to Town Counsel. The Board of Selectmen must provide due diligence and acceptance of the title.
3. Review and approval by Town Counsel of the Road Maintenance Agreement, Drainage Easement Deeds and the Declaration of Restrictions.
4. Delineation of the drainage easement shall be correlated with the road plan.
5. Both the subdivision and road plan must be identical in terms of the physical characteristics of the road.
6. The submission of updated road plans, satisfactory to Hoyle, Tanner & Assoc. for purposes of Phase 1; particularly, drainage issues pertaining to the gravel road and the appropriate size of the hammerhead turnout.

D. Russell seconded the motion, vote passed 5-0. The Board asked Lynne to forward a letter to the applicant and copy the road engineers indicating that this information must be received in the Planning Office by the appropriate deadline in order for it to be addressed at the next meeting.

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INFORMAL DISCUSSION – Joseph Alexander LeBlanc: Possible Open Space Subdivision of Town Tax Map/Lot #423-67 of 88 acres located at 339 Loon Pond Road in the Rural Zone.

N. Girard recused herself from the Board as she is a direct abutter to the subject property. Vice Chair J. Funk assumed the Chairmanship.

Mr. LeBlanc was in attendance with his brother and sister to discuss the possibility of subdividing the property into three building lots and one conservation lot. There are currently two houses located on the property. One is a 1900 two-bedroom cape situated toward the front of the lot and the other is a 1980 three-bedroom mobile home located a bit further off the road. Planning Administrator Lynne Brunelle had explained that according to Article VI.C. of the Town Zoning Ordinance, the mobile home may be replaced on the same site provided that it complies with all applicable septic system and setback requirements, applicable building codes, and does not exceed the footprint and living area of the replaced unit. The LeBlancs decided that they would rather build another house than replace the mobile home; and in order to do so, they would need to subdivide. The lot has only 470' of road frontage and the minimum required for the Rural Zone is 200' of frontage; therefore, only two lots could be achieved for a conventional subdivision.

Vice-Chair J. Funk addressed the requirements of the Open Space Subdivision Ordinance, which allows for reduced frontage and lot size requirements, depending upon the soils, as well as a reduced road standard. In exchange, half the property will be placed in a conservation easement as permanent open space. A survey must determine if 50% of the buildable area of the property is included in the conservation easement area. This portion of the property will remain in the property owner's name but it will be restricted to no further subdivision or development of any kind; however, most agricultural and forestry uses are permitted.

Discussion occurred regarding what types of uses are allowed and how the conservation status would affect the property taxes. It was noted that the taxes would remain similar to that of current use status; timbering is allowed, as long as a Forestry Plan is in place, but there shall be no clear cutting, mining or commercial development.

Extensive discussion continued regarding potential configuration of the proposed lots and reduced road standards. The applicant indicated that he intends on removing the existing cape to possibly put in a road to access the backland, but may leave the mobile home where it is. L. Brunelle reminded the Board that if the applicants intend to leave the existing mobile home in place, it needs to be subdivided on its own lot. J. Funk suggested that the applicants sit down with a surveyor and discuss options with the family to determine the number of lots, etc. and return for another informal discussion before submitting a formal application. The LeBlancs thanked the Board for their time.

At this time, N. Girard reassumed the Chairmanship and opened the next informal discussion.

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INFORMAL DISCUSSION – Laurie Henderson: Possible Site Plan Review for Town Tax Map/Lot #409-76 located at 120 Middle Route in the Rural Zone.

Laurie Henderson was in attendance and explained that she had come before the Board informally on 4/17/07 to discuss her desire to establish an in-home child care facility. She would like to refer to it as “EduCare” and is planning to incorporate horsemanship into her curriculum. Mrs. Henderson would have up to six children after school, which is the maximum number of children allowed by the State of NH. At this time, Mrs. Henderson presented a Site Plan depicting her property located at 120 Middle Route. She would carry out the EduCare in the existing ell of her house, which is currently being renovated, denoted on the plan as a 16’ x 40’ “all purpose room”. She also expressed an interest in providing space in the future for the sale of craft products on the second floor of the existing 39’ x 76’ barn. Mrs. Henderson explained that she and her husband are currently removing an old garage located on the property, which will be replaced with a new gravel driveway and a parking area for at least five spaces. There will be additional room to pull in and out of the parking area for pick-up and drop-off. She continued that there is also another driveway for parking their personal vehicles, which could also be used if additional parking is needed.

J. Funk inquired about the drop-off and pick-up times, when and how? Mrs. Henderson stated that the children would most likely be dropped off by the school bus in the afternoon and then picked up by parents by 5 or 6 p.m. In the event she does preschool, it would only be for the morning session and she may consider day camp in the summer.

M. Martindale asked if she would consider connecting the driveways and have a “drive-thru” driveway? Mrs. Henderson responded that they would never do this as they have horses and it would interfere with the riding arena, gate, etc.

J. Funk referenced the Town’s Site Plan Regulations and the requirements for an eventual expansion of the barn into a retail area. Mrs. Henderson referenced the Site Plan for the previous business located there (Bark & Bradley) and the fact that she would be utilizing the same area including a bathroom with a 1,000-gallon septic system, parking facilities, lighting, etc.

GCC Chair Nanci Mitchell asked about the dry hydrant shown on the plan? Mrs. Henderson indicated that there is a dry hydrant located in the parking area; however, the fire pond has not been kept up, is quite mucky and fenced-in. She doesn’t think the Fire Department uses it anymore. D. Russell confirmed that the dry hydrant is nonfunctional.

J. Funk asked if the retail and daycare facilities would be operating at the same time? Mrs. Henderson responded that it was not likely. The craft shop would be open on weekends, maybe some evenings, and the educare would be mornings and after school only. J. Funk asked if she anticipates much waste or just standard trash? Mrs. Henderson responded that she recycles everything and therefore there won’t be much trash.

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She does not anticipate any refinishing when it comes to the craft shop. Her idea is to set up booths where people would perform their craft and/or sell their products, which may even include antiques; however, she does not want to create a situation that requires an extensive set up and clean up process.

N. Girard asked Mrs. Henderson if she understood the Board's recommendations as they pertain to the Site Plan Review process? Mrs. Henderson responded that she understood the purpose of the Site Plan; however, she was under the impression that what she was proposing falls under the definition of Home Occupation. Planning Administrator L. Brunelle referenced Article IV Table 1 of the Zoning Ordinance, which indicates whether a specific use requires Zoning Board approval. A Retail Use requires a Special Exception in the Rural Zone while a Home Occupation is permitted in all zones, but may be subject to Site Plan Review. After reviewing the definition of Home Occupation, the Board agreed that the proposed use falls within this definition as: "any use conducted by an owner or residential tenant entirely within the owner's existing dwelling or accessory building....for manufacturing of craft or food products for sale, provided that there are no more than three paid employees on the premises other than the operator of the business." Therefore, the "craft shop" proposal will not require Zoning Board approval, but does require Site Plan Review. The childcare facility will require a Special Exception as well as Site Plan Review, which may be reviewed simultaneously with the shop.

The Board members agreed that the Site Plan presented this evening is sufficient with additional information that will need to be provided at the public hearing such as the location, size and surface of any additional parking, hours of operation, size and location of signage, lighting, location of fuel tanks and dumpster. Mrs. Henderson will contact Lynne in the Planning Office if she requires assistance. She thanked the Board members for their time.

INFORMAL DISCUSSION – Richard Acquilano: Possible Boundary Line Adjustment between Town Tax Map/Lots #119-96, #119-86, #119-87 & #119-89 located on Berry Avenue in the Residential Lake District.

Richard Acquilano was in attendance with his abutters to discuss a possible boundary line adjustment with the Board. He explained that in 2005 he purchased a house located at 21 Plum Ave (Map/Lot #11-96) and discovered after-the-fact that a three-season restriction had been placed on the property by the ZBA due to the steep access of Plum Ave. In 2006 the abutting lot behind his (Map/Lot #119-87) with frontage on Berry Ave was tax deeded to the town. In 2006, the town had Paul Darbyshire, LLS, survey the 60'x100' lot and it was determined that abutter, James Boudreau (Map/Lot #119-89) was encroaching on town-owned property. In 2008 the town offered the lot for sale to the abutters, which Robert Harding (Map/Lot #119-86), James Boudreau and Richard Acquilano purchased for \$600 and currently own in joint ownership. They are now proposing to divide the lot into three 20'x 100' strips, thereby each would obtain 20' of frontage on Berry Ave. This would provide Mr. Acquilano access via Berry Ave, which is maintained year-round, while Plum Ave is not maintained in the winter.

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Planning Administrator L. Brunelle presented the survey performed by Paul Darbyshire. She explained to the Board that the reason she invited the potential applicants into the meeting was because they questioned the reason for the survey requirement as part of the application process. Mr. Acquilano believes that if the lot measures 60' x 100', each property owner would measure 20' from the pins that were set by Paul Darbyshire. Lynne had explained that in accordance with the Town's Subdivision Regulations and RSA 674:37 a survey is required as part of a subdivision and/or boundary line adjustment application. Mr. Boudreau believes that Paul Darbyshire surveyed the entire road (Berry Ave) and he sees no reason for them to pay him \$3500 in surveying costs.

J. Funk explained that the Board cannot grant "subdivision" approval without a recorded plan. He acknowledged that it appears to be a very simple process, but in 40 years a future owner may be in the same situation they are in now; and this is why they need to refer to a survey plan. Lynne conveyed that the Board may grant waivers for the requirements that contours, topos, wetland delineation, etc. be shown on the plan, which will decrease surveying costs. Nonetheless, the property owners think that the town created the problem and therefore the town should pay for it. Selectmen's Representative D. Guarino stated that it cost the town \$5000 to survey the lot and then sold it to them for \$600. He suggested that they consider obtaining a right-of-way easement instead of a boundary line adjustment. Mr. Acquilano responded that this is probably what he will do. He continued that the Board of Selectmen told them that the Planning Board would approve the boundary line adjustment and they're disappointed that the Board won't approve it. J. Funk conveyed that this Board cannot approve it unless a plan is prepared by a licensed land surveyor so it may be recorded at the registry of deeds. He continued that a survey would not only solve this immediate issue but also increase the value of their property. Mr. Acquilano, Mr. Boudreau and Mr. Harding were adamant that the Selectmen had reviewed a survey of Berry Ave in its entirety performed by Paul Darbyshire. At this time, L. Brunelle referenced the Selectmen's minutes of 3/3/08 where they only reference the survey of a town lot (singular). However, Lynne offered to research whether an additional survey exists and will get back to them.

Mr. Acquilano asked for direction of how to get a 911 number issued for Berry Ave. Lynne informed him that he must first return to the ZBA for approval for year-round access off Berry Ave and then contact E-911 Clerk Cindy Bedford in the Selectmen's Office for further approvals.

ADMINISTRATOR'S REPORT

Abbott Site Plan Approval: The final Site Plan and septic design were submitted to the Board for final approval. Planning Administrator Lynne Brunelle informed the Board that the Conservation Commission forwarded their approval that the Board's condition of approval #4 regarding mitigating run-off from the parking area into the wetlands has been addressed. The applicant raised the corner of the parking area so that the run-off would drain into the wooded area instead of the wetlands. Lynne will inform the applicant and Paul Darbyshire, LLS, will submit the mylars for signature and recording at the registry of deeds.

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Benson Site Plan: The final Site Plan was presented and reviewed by the Board members. As requested, the wetlands had been delineated and picked up on a survey. The final plan was signed by the Chair and the Conditions of Approval will be recorded at the registry of deeds.

ADJOURNMENT

On a motion made by J. Funk and seconded by D. Russell, vote passed unanimously. Meeting adjourned at 9:45 p.m.

Respectfully submitted,

Lynne R. Brunelle