



**Planning Board
Academy Building
503 Province Road
Gilmanston, New Hampshire 03237**

**Minutes of the Meeting
Thursday, November 18, 2010**

Approved: 12/09/2010

Desiree Tumas, Administrator
Mark Fougere, Certif. Planner
Nancy Girard, Chair
John Funk, Vice-chair
Rachel Hatch, Select-Rep
Dan Hudson, Member
Marty Martindale, Member
Dave Russell, Member
John Weston, Alternate

Member Attendance Nancy Girard, Chair; John Funk, Vice-chair; Don Guarino, Select-Rep seated in the absence of Rachel Hatch; Dan Hudson, Member; Marty Martindale, Member; John Weston, Alternate; Desiree Tumas, Administrator & Mark Fougere, Planner.

Public Attendance Bernard Lynch

Open Meeting

*Call to Order at 7:07 pm.
Introduction of Board Members
Explanation of Meeting Procedures*

Approval of Minutes

October 14, 2010 – Lynch Site Walk - TM 412/LT 20

Vice-chair Funk moved to approve the October 14, 2010, Site Walk Minutes as submitted, Member Hudson seconded the motion as stated; the motion passed unanimously.

October 14, 2010 – Regular Meeting

Member Hudson moved to approve the October 14, 2010, Regular Meeting Minutes as amended, Member Martindale seconded the motion as stated; the motion passed unanimously.

October 14, 2010 – Work Session Meeting

Member Hudson moved to approve the October 14, 2010, Minutes of the Work Session as submitted, Member Martindale seconded the motion as stated; the motion carried. 4-in favor, 1-abstained vote by Vice-chair Funk as he was absent from the meeting.

Public Hearing (Continued from October 14, 2010)

PB Case #1609 – Bernard Lynch (TM 412/ LT 20) Public Hearing, for the purposes of a Compliance Hearing, pertaining to the Conditional Approval granted, on October 08, 2009. Said property is located on, the Westerly side of Route 106, one lot North of 235 NH RTE 106, in the Business Zoning District.
Chair Girard called and recognized Bernard Lynch who was present.

Board Member's reviewed the Staff Report and past Minutes of the Meeting pertaining to the case.

**Planning Board
Minutes of the Meeting
November 18, 2010
Page 2 of 5**

Board Members questioned the stonewall that was constructed without a building permit.

Mr. Lynch shared a photo of the wall and explained that he was unaware that a permit was necessary and that he would address the issue with the Building Inspector.

Board Members requested a final plan for approval.

Mr. Lynch explained he has not had the opportunity to complete the final plan. He went on to explain that the plan submitted on October 14, 2010, was created electronically and was far better than the hand-drawn plan originally submitted.

Board Members went on to discuss the drainage calculations and erosion controls for the site and that it was a conflict of interest for Mr. Lynch to provide delineated wetlands on his own site plan submitted for the site. Mr. Lynch indicated that he had another wetland scientist review his delineations.

It was noted that Mr. Lynch had not used the Temporary Transfer Station Permit issued to allow local disposal of the debris from the mobile home trailer that was demolished.

Board Members questioned where the debris from the demolished trailer was disposed of confirming that the debris was not buried onsite.

Mr. Lynch explained that he used the services of Bestway Disposal in Tilton.

Board Members questioned, why Mr. Lynch had not complied with the condition of approval in a timely manner with consideration that the Board has permitted the case to remain open 13 months after the original approval and more recently the request to have a completed plan and compliance with the conditions of approval by November 8, 2010.

Mr. Lynch explain he had conversations with 2-professionals and they concurred it was inappropriate for the Board to request drainage calculations or even a survey, because the outcome would be fruitless.

Mrs. Tumas inquired if Mr. Lynch would disclose who the professionals were.

Mr. Lynch stated that Tom Varney was one of the professionals and wished not to disclose whom the other professional was that he consulted.

Board Members explained that the predisposed flow was understood, but that was not the issue. The request was made to determine if there was erosion onsite and if sediments were reaching the wetlands.

Mr. Lynch maintains that there is no migration of sand taking place.

Board Members disagree with Mr. Lynch's statement that there is no migration on site as photos taken the weekend following the site walk of October 14, 2010, to which heavy rain fell, show erosion was occurring across the driveway.

Mr. Lynch disputes the signs of erosion shown in the photos and maintains that there is no migration taking place onsite.

**Planning Board
Minutes of the Meeting
November 18, 2010
Page 3 of 5**

Board Members went on to review the conditions of approval that have yet to be complied with, noting the following:

- A complete Final Plan for approval.
- Repair, replace and maintain the existing temporary erosion controls until permanent erosion controls are established.
- Creation of a permanent berm on the upper parking area to protect the wetlands and to allow growth of vegetation on the steep slope to be established.
- Continued oversight of the permanent erosion controls and maintenance as needed, over the long term.
- Engineered drainage calculations and erosion controls shown on the plan. Both temporary and permanent. (Requested following the site walk at the October 14, 2010, Compliance Hearing)
- Final Site Plan that includes all requirements of the Site Plan Regulations and/or Waivers seeking relief from requirements not included on the final plan.
- Amendment of the note on the plan submitted on October 14, 2010, indicating no parking of vehicles near the lower wetlands area. (Requested when the note was added to the plan submitted on October 14, 2010)
 - Original Condition of Approval prohibits parking of vehicles near the lower wetlands.
- Permanent remedy on the final plan addressing the issues of runoff on the steep slope.
- An after the fact building permit will have to be submitted to the Building Department.

Board Members discuss the following options:

- Revoke the Conditional Approval for failure to comply with the conditions of approval.
- Continue the Compliance Hearing at the Applicants Request
- Final Approval

Board Members agree that a significant amount of administrative time has been spent attempting to gain compliance with the conditions of approval; including 6-site walks. Conditions of approval are clearly outlined in the original Decision Letter as well as subsequent correspondence sent to Mr. Lynch, however they have not been satisfied.

Board Members went on to explain that a plan is necessary for final approval ensuring compliance.

Board Members reviewed the October 14, 2010, Minutes of the Meeting and agree, they were clear as to what was required forthwith, during the Compliance Hearing and to date, Mr. Lynch has failed to comply.

Board Members went on to discuss that a hard deadline to comply with the conditions of approval was not outlined, in the Conditional Approval of October 8, 2009. However, all agree that a year's time is more than adequate to comply with the conditions.

**Planning Board
Minutes of the Meeting
November 18, 2010
Page 4 of 5**

Board Members appreciate what has been done thus far. However, the Board does not have an accurate plan and the plan the Board received on October 14, 2010 is deficient in that it does not include the conditions of approval or the requirements of the Site Plan Review Regulations.

Board Members revisited the issue of the retaining wall that was constructed without a permit and it was made clear that the Board didn't request a wall be constructed but rather the wall was one of several options that were discussed at the October 14, 2010, Compliance Hearing. Rather the Board had requested a plan for how the applicant would address the issue for review and approval.

Board Members agreed that adequate guidance has been provided and expectations of the applicant have been clearly outlined and due diligence on behalf of the Board and Administration has been applied.

Board Members revisited the facts of the case and options available to Board.

Following brief discussion, Chair Girard called for further discussion, hearing none; entertained a motion to revoke the conditional approval for non-compliance despite reasonable efforts requesting compliance with the conditions of approval and refusal to allow designated agents of the Board to conduct a site walk. The plan submitted October 14, 2010, is deficient and a final plan was not submitted for approval.

Vice-chair Funk suggested and Members were agreeable to the Board revoking the approval without prejudice, as this would allow Mr. Lynch to reapply and submit a complete plan at a later time and that no further alteration of the Contractor Yard will be permitted without Board approval or proper permitting from the Building Department as required. Additionally, it was requested that erosion controls both temporary and permanent be maintained, so that no further damage or drainage issues occur on the property.

Vice-chair Funk moved to REVOKE THE CONDITIONAL APPROVAL without prejudice as the applicant has not complied with the conditions of approval 13-months following the conditional approval and refused to allow the site visit on October 4, 2010, by designated agents, Member Hudson seconded the motion as stated; Chair Girard called for further discussion, hearing none; called for a vote; **The motion, to revoke the conditional approval to operate a contractor yard, on the property shown as, Tax Map 412/Lot 20, passed unanimously.**

It was explained to Mr. Lynch that his conditional approval to operate a contractor yard had been revoked without prejudice. This action would allow Mr. Lynch to reapply and submit a complete plan at a later time, if he so chooses.

Mr. Lynch questioned, if basic landscaping would be considered alteration of the site?

Board Members agree that basic landscaping would not be considered alteration of the site.

Both the Chair and Vice-chair thanked Mr. Lynch for attending the meeting and discussions were concluded.

**Planning Board
Minutes of the Meeting
November 18, 2010
Page 5 of 5**

Administrative Business

Planning Board Expenditure Report – Information Purposes

Board Members were provided a copy of the Expenditure Report for review and informational purposes.

Chair Girard called for further discussion, hearing none; entertained a motion to adjourn the meeting at 8:30 pm.

Adjournment

Vice-chair Funk moved to adjourn the meeting at 8:30 pm, Member Hudson seconded the motion as stated; the motion to adjourn passed unanimously.

Respectfully submitted,

Desiree Tumas
Administrator