

TOWN OF THORNTON PLANNING BOARD

Approved on: 3/15/2014
PB Initials: _____
Rec'd by Town Clerk on: 3/17/14
Town Clerk Initials: JPT

Planning Board Meeting Minutes Thursday, April 17, 2014

CALL TO ORDER – SALUTE OF FLAG:

T. Phillips called the meeting to order at 6:00pm and led the pledge of allegiance.

ROLL CALL: The following members were present:

T. Phillips, Chairman G. Kimball, Member B. Regan, Member
F. Freeman, Member S. Macintosh, Member
(S. Babin, Vice-Chairman arrived at 7:15pm)

The Board executed the following documents per the motions made at the March 20, 2014 meeting:

1. Fred Gunter Appointment Form
2. Russ Gilman Appointment Form

N. Decoteau reminded F. Gunter and R. Gilman to meet with the Town Clerk so he can administer the oath of office for the position of Alternate Planning Board member.

PUBLIC HEARING: Scenic Road - Upper Mad River Road

T. Phillips opened the Public Hearing at 6:15pm.

Public Hearing pursuant to RSA 231:158 to consider the removal of 9 trees along Upper Mad River Road. The trees under consideration for removal are double flagged and located on the first 1500' of the unpaved portion and the first 200' of the paved portion of Upper Mad River Road beginning at the junction of Burbank Hill Road.

On April 17, 2014 beginning at 5:30pm the members of the Thornton Planning Board conducted a site visit to inspect the trees under consideration for removal along Upper Mad River Road.

T. Phillips noted for the record that no members of the public attended the Site Visit and that no members of the public were present at the Public Hearing.

T. Phillips closed the Public Hearing at 6:20pm.

MOTION: "To approve the removal of the 9 trees which were double flagged and located on the first 1500' of the unpaved portion and the first 200' of the paved portion of Upper Mad River Road beginning at the junction of Burbank Hill Road designated by the Road Agent on Upper Mad River Road."

Motion: G. Kimball

Seconded: F. Freeman

Discussion: None

Motion Passes: 5- YES, 0- NO

T. Phillips appointed R. Gilman as a member until S. Babin arrives.

No alternate member was appointed to serve in place of Ex-Officio M. Peabody

PUBLIC HEARING: Boundary Line Adjustment - Sigurjonsson / Night Road and Wallace Drive

T. Phillips opened the Public Hearing at 6:30pm.

Public Hearing to consider an application for a boundary line adjustment submitted by K. French on behalf of property owners Gisli and Lidia Sigurjonsson for property identified as Map 16 Lot 4-33 located at 20 Night Road and Map 16 Lot 4-31 located on Wallace Drive.

K. French presented the plan and briefly reviewed the history of the parcels.

K. French noted that a Variance has been obtained from the Zoning Board of Adjustment for the approval of the resulting lots.

A discussion followed regarding whether or not to require the setbacks be added to the plan with regard to the right-of-way to Whitehouse's lot.

K. French noted that the width of the right-of-way is unknown.

The Board determined that there is no requirement for setbacks to be added to the plan.

T. Phillips closed the Public Hearing at 7:15pm.

T. Phillips asked if Board members had any concerns.

S. Macintosh asked if the parking configuration for the two homes met the regulations.

T. Phillips indicated that normally parking areas are part of a Site Plan review but that this did not fall under those requirements.

T. Phillips noted a Variance from Article VI Basic Development Requirements: A. Conventional Development; 1. Lot Size and 2. Location of Structures to allow the boundary line adjustment was granted by the Zoning Board of Adjustment on February 11, 2014 with the condition that there is to be not more than one dwelling unit in place on each lot at any time and that a note on the plan makes a reference to this condition.

MOTION: "To approve the boundary line adjustment submitted by K. French on behalf of property owners Gisli and Lidia Sigurjonsson for property identified as Map 16 Lot 4-33 located at 20 Night Road and Map 16 Lot 4-31 located on Wallace Drive. "

Motion: B. Regan

Seconded: G. Kimball

Motion Passes: 6-YES, 0- NO

S. Babin arrived at 7:15pm.

T. Phillips allowed S. Babin to replace R. Gilman as a voting member.

PUBLIC HEARING: Boundary Line Adjustment - Carignan / True Lane

T. Phillips opened the public hearing at 7:00pm.

Public Hearing to consider an application for a boundary line adjustment submitted by K. French on behalf of G. Andrew Carignan property owner of Map 9 Lot 1-3-7 and Map 9 Lot 1-3-8 located off True Lane.

K. French presented the plan indicating that G. Andrew Carignan Jr. currently owns 2 adjoining parcels located off True Lane which are identified as Lots 7 & 8 in the Shaughnessy subdivision approved in 2006.

K. French stated that both lots are currently serviced by a shared, private drive and that both lots will continue to be serviced by a shared 25 ft. private drive if the boundary line adjustment is approved.

K. French stated that the boundary line between the two lots will separate the two lots with a vertical line instead of the current horizontal line.

K. French indicated that the proposal shows the electrical service going to the westerly edge of new lot #7 and that the utility easement would be included in new lot #8.

T. Phillips asked if either lot would have frontage on the road.

K. French responded that both lots currently exist without frontage and if the proposed boundary line is approved both lots would not have road frontage but rather be accessed via the deeded 25 ft. shared drive.

T. Phillips stated there have been issues in the past with allowing lots to be created without frontage per RSA 674:41.

K. French stated he was not aware that there is a state law regarding requiring frontage on all lots. A copy of RSA 674:41 was provided for members and the applicant to review.

T. Phillips stated that allowing lots with no frontage creates a problem with obtaining a building permit for those parcels in the future.

T. Phillips stated the importance of informing the applicant that it may be more challenging to obtain a building permit if the frontage issue is not corrected or improved upon while a proposal is before the planning board.

K. French stated again that the two lots exist with prior approval without frontage on any road and that will remain the same if the proposal is accepted.

S. Babin clarified that both lots currently are accessed via a deeded 25 ft. wide easement across Lot 6 and do not have any frontage on True Lane and that if the proposal is approved both lots will continue to be accessed via a deeded 25 ft. easement.

K. French referred to Note # 7 on the plan which states the following:

"Lots 6 & 7 are subject to a 25' driveway right of way for the exclusive use of Lots 7 & 8. The cost of the repair, maintenance & snowplowing of said common driveway is to be shared equally by the owners of Lots 7 & 8 from True Lane Road to the junction of the driveway servicing the dwelling or buildings on Lot 7. From that point on the cost of the repair, maintenance and snowplowing shall be the sole responsibility of the owner of Lot 8."

A discussion followed regarding the interpretation of RSA 674:41 and how it may/may not apply to the application currently under consideration.

K. French pointed out RSA 674:41 I (d) states that a building permit can be issued if the street giving access to the lot is a private road providing that:

1. *"The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and*
2. *The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and*
3. *Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or "*

T. Phillips reviewed with the Board members some of the other instances the road frontage of lots was an issue.

S. Babin stated that aside from the frontage issue, in his opinion the proposal takes two oddly shaped lots and creates two less oddly shaped lots.

T. Phillips opened the meeting to comments from members of the public.

Hearing no comments from the public, T. Phillips closed the public hearing at 7:20pm

T. Phillips stated he understands the practicality of the proposal but remains gun-shy given the past experiences with the issue of frontage.

F. Freeman stated that in this circumstance the Planning Board is not creating anything new by virtue of the fact that the two lots already exist without frontage and the lots will continue to not have frontage if the proposal is approved.

T. Phillips suggested the Board should get a legal opinion on the issue.

T. Phillips suggested that in his opinion the Planning Board should consider improving the situation given that a proposal is before them.

K. French read RSA 674:41 I (e) which states that a building permit can be issued if the street giving access to the lot "is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the

planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street.”

K. French stated for the record that True Lane is constructed in accordance with town specifications and that there are two houses on it.

K. French made a distinction between moving forward with a policy that does not allow “back lots” without frontage but pointed out again that the two lots under consideration were already approved without frontage.

T. Phillips stated his interpretation of that part of the RSA is making reference to roads that were in place prior to the existence of the Planning Board.

K. French stated the subdivision was approved by the Planning Board with the regulations in place at that time and the access for the two lots is not changing.

F. Freeman referred to RSA 674:41 I (d) again which allows for the access to a lot be via a private road provided that three criteria are met.

S. Macintosh stated she is not against the proposal if it is within the authority of the Board to approve it.

S. Babin informed the applicant that as the lots exist today there is potential for difficulty in obtaining a building permit and if the proposal is approved the potential for difficulty in obtaining a building permit continues.

T. Phillips stated that previously the Board received legal counsel that RSA 674:41 provides that a private easement (driveway) will not satisfy the frontage requirement unless that easement/driveway is itself a public highway, approved and recorded subdivision road etc., and the town cannot override that requirement in its zoning ordinance.

T. Phillips stated that the legal counsel received continued by adding it may be a good idea to inform the applicant about the potential problem with future building permits for back lots.

S. Babin stated that to completely alleviate the potential difficulty is obtain building permits for the two lots a road could be constructed to provide frontage as described in RSA 674:41.

B. Regan stated the Planning Board is not precluded from approving the proposal before the Board as RSA 674:41 II-(a) provides municipalities opportunity to except any lot from the regulations regarding frontage in the RSA.

T. Phillips stated that the record will show that the Board made the suggestion to the applicant to make improvements to the parcels to create a situation that would provide assurance of obtaining a building permit by extending the road but that the applicant may or may not choose to do so.

MOTION: “To approve the application for a boundary line adjustment submitted by K. French on behalf of G. Andrew Carignan property owner of Map 9 Lot 1-3-7 and Map 9 Lot 1-3-8 located off True Lane as presented.”

Motion: S. Babin

Seconded: F. Freeman

Discussion: There was discussion over the fact that the lots in question were previously created and approved without frontage per NH RSA 674:41 and that in the existing configuration , a lot owner may have difficulty obtaining a building permit. There was a suggestion that the present boundary line adjustment application may provide an opportunity to alleviate this difficulty, while other felt that the town, through this hearing, has made an adequate effort to inform the applicant (who is also the present owner of the lots in question) of this opportunity to rectify the present lot frontage an building permit situation.

Motion Passes: 5 – YES, 1- NO (T. Phillips)

PUBLIC HEARING: Boundary Line Adjustment - Rebeiro & Gazder / Covered Bridge Road

T. Phillips opened the public hearing at 7:45pm.

Public Hearing to consider an application for a boundary line adjustment submitted by M. Moran on behalf of Humayun & Catherine Gazder property owners of Map 11 Lot 1-142 located at 135 Covered Bridge Road and Andrew Rebeiro property owner of Map 11 Lot 1-141 located at 141 Covered Bridge Road.

M. Moran of Moosilauke Realty, LLC presented the plan and stated that the two property owners agree to the boundary line adjustment which provides setback requirement compliance for an existing garage.

M. Moran added that the two lots were previously owned by one individual when the garage was constructed and little attention was given to the location of the garage being within the setback.

M. Moran stated the Boundary Line Adjustment presented corrects the issue.

T. Phillips closed the Public Hearing at 7:50pm.

Board members expressed no concerns regarding the plan.

MOTION: "To approve the boundary line adjustment submitted by M. Moran on behalf of Humayun & Catherine Gazder property owners of Map 11 Lot 1-142 located at 135 Covered Bridge Road and Andrew Rebeiro property owner of Map 11 Lot 1-141 located at 141 Covered Bridge Road."

Motion: G. Kimball

Seconded: S. Macintosh

Motion Passes: 6-YES, 0- NO

S. Babin submitted a copy of the NFPA 13D Standard for the installation of sprinkler systems in one- and two- family dwellings and manufactured homes for the Board members to use as a resource.

N. Decoteau provided the wording of RSA 674:36 IV for the Board's information:

RSA 674:36 IV. The planning board shall not require, or adopt any regulation requiring, the installation of a fire suppression sprinkler system in proposed one- or 2-family residences as a condition of approval for a local permit. Nothing in this paragraph shall prohibit a duly adopted regulation mandating a cistern, dry hydrant, fire pond, or other credible water source other than a fire suppression sprinkler system. Nothing in this paragraph shall prevent an applicant from offering to install fire suppression sprinkler systems in proposed one- or 2-family residences and, if the planning board accepts such offer, the installation of such systems shall be required and shall be enforceable as a condition of the approval. The applicant or the applicant's successor in interest may substitute another means of fire protection in lieu of the approved fire suppression sprinkler system provided that the planning board approves the substitution which approval shall not be unreasonably upheld or delayed.

N. Decoteau noted the statute allows for applicants to offer to install sprinkler systems and in that case the installation of the sprinklers would then be an enforceable condition of approval.

S. Babin submitted a two page document titled "Thornton, New Hampshire Campground Regulations" and stated it is his first draft of updating the town's Campground Regulations.

The Board determined to hold a workshop session on Thursday, April 24, 2014 beginning at 6:00pm to begin work on updating the Campground Regulations to prepare a document for review at a Public Hearing.

PUBLIC HEARING: 4-Lot Subdivision - Fehm, Norris & Brown / NH Rt. 49

T. Phillips opened the Public Hearing at 8:00pm.

Public Hearing to consider an application for a 4-Lot Subdivision submitted by J. March on behalf of property owners Stephanie Brown Fehm, Susan Norris & Katharine Brown for property identified as Map 17 Lot 19-15 located at 878 NH Rt. 49.

J. March began by introducing property owners, B. Montmarquet, S. Norris and T. Norris.

J. March presented the plan which creates three new lots from existing 7 acre lot Map 17 Lot 19-15 all with frontage on NH Rt. 49 and the Mad River.

J. March indicated the NH Driveway permits are in place and that lots 2 and 3 on the plan will share a driveway.
J. March stated there are no wetlands on the property.

T. Phillips stated the Base Flood Elevation (100 yr. flood elevation) labeled on the plan as the Floodplain Development Ordinance requires for a subdivision with over five acres:

J. March stated that having the flooding event of Irene in August of 2012 provided clear evidence of the 100 yr. flood line.

J. March stated the NH State Subdivision application has been submitted and the approval should be forthcoming.

T. Phillips asked if the owners intend to place fill within the limits of the floodplain to build there in the future.

T. Phillips suggested that a note "No Fill will be added to the Floodplain" be added to the plan.

J. March and property owner S. Norris agreed that the note can be added.

J. March indicated the 50' waterfront buffer, 150' natural woodland buffer and 250' protected shoreland buffer are shown on the plan.

After a discussion regarding how the setbacks from the river frontage were taken it was determined that the 50' waterfront buffer, 150' natural woodland buffer and 250' protected shoreland buffer would not be shown on the final plan.

T. Phillips closed the Public Hearing at 8:20pm.

The Board reviewed the Preliminary Plan Application Submission Checklist and determined the following items need to be addressed:

1. Sufficient data to determine approximately the location, bearing and length of the lot lines
2. Flood Hazard Areas
3. The Seal of a land surveyor licensed in New Hampshire;

The Board reviewed the Final Plat Subdivision Checklist and determined the following items need to be addressed:

1. One mylar copy (for recording)
2. Three amended, blue or black line paper copies (for Town Office records)
3. The final lot lines of each lot,
4. The final dimensions of each lot,
5. The final frontage of each lot,
6. The final area of each lot,
7. A copy of any restrictive covenants to be attached to the deed
8. The location and descriptions of permanent monuments shall be shown.
9. NH DES subdivision approval
10. A note added to the plan stating no fill will be added to the Flood Plain.

MOTION: "To accept the Subdivision Survey for Katharine Brown, Stephanie Fehm, & Susan Norris Route 49 Thornton, NH as complete."

Motion: S. Babin

Second: G. Kimball

Discussion: T. Phillips stated that the list of items that need to be addressed are items that will be shown on the final plan and enough information has been submitted for the Planning Board to make an informed decision.

Motion Passes: 6-YES, 0- NO

MOTION: "To approve the application for a 4-Lot Subdivision submitted by J. March on behalf of property owners Stephanie Brown Fehm, Susan Norris & Katharine Brown for property identified as Map 17 Lot 19-15 located at 878 NH Rt. 49 with the following conditions:

1. One mylar copy and three blue or black line paper copies of the final plan be submitted
2. The final lot lines, dimensions, frontage and total area of each lot be shown on the final plan,
3. A copy of any restrictive covenants to be attached to the deed shall be submitted,
4. The location and descriptions of permanent monuments shall be shown on the final plan,
5. NH DES subdivision approval be submitted,
6. A note added to the final plan stating no fill will be added to the Flood Plain,
7. Flood Hazard Areas (100 year floodplain boundary) will be shown on the final plan with a notation of the field evidence used in determining such boundary, and
8. The seal of a land surveyor licensed in New Hampshire be on the final plan."

Motion: S. Babin

Second: B. Regan

Discussion: None

Motion Passes: 6-YES, 0- NO

J. March indicated that the Planning Board may want to add the requirement to show the setback lines to the submission checklist.

T. Phillips added that the requirement for the Seal of a land surveyor licensed in New Hampshire should be listed on the final submission checklist rather than the preliminary checklist.

PUBLIC INPUT:

J. Marshall stated that the William Tell Restaurant is being listed as a commercial property.

J. Marshall noted that the Article VIII E. 5-*Nonconforming Uses and Structures* in the Zoning Ordinance states the following:

Non-conforming use may be continued indefinitely so long as it was legally in existence at the date of adoption of this ordinance. However one non-conforming use shall not be changed to another non-conforming use. If the non-conforming use has been discontinued for a period longer than one year it may not be reestablished and any further use must comply with the requirements of this ordinance.

J. Marshall asked what the definition of a use being discontinued is and specifically if being closed and listed for sale would be defined as "discontinued".

J. Marshall stated her concern for prospective purchasers of the property as it is being listed as "commercial" when it is in fact a non-conforming commercial use in the General Residence zone.

T. Phillips stated the enforcing agent of the town is currently the Board of Selectmen but they would likely look to the Zoning Board of Adjustment for a definition of "discontinued".

There was some discussion at to the date the restaurant stopped operating and the consensus of the Board was that is closed late May of 2013.

F. Freeman stated the Real Estate Agent listing the property has a responsibility to be sure the property is listed correctly.

APPROVAL OF MINUTES:

The Board reviewed the minutes of February 20, 2014 which include changes submitted by G. Kimball and T. Phillips.

MOTION: "To approve the minutes of January 28, 2014 as amended."

Motion: F. Freeman

Second: G. Kimball

Discussion: The amendment was made of changing the word "Thursday" to "Tuesday" which accurately identifies the date of the meeting.

Motion Passes: 4-YES, 0-NO B. Regan abstained

MOTION: "To approve the minutes of March 20, 2014 as amended."

Motion: F. Freeman

Second: G. Kimball

Discussion: The amendment was made to add specify the "Planning Board's" legal fees were being discussed under the CBDA Litigation Update heading.

Motion Passes: 5-YES, 0-NO B. Regan, S. Macintosh abstained

OTHER BUSINESS:

1. 2014 Zoning Ordinance:

N. Decoteau presented a copy of the 2014 Zoning Ordinance for signature and stated the Board members had been presented the document for review at the last meeting.

T. Phillips asked Board members if there were any comments/changes.

Board members did not have any changes/comments.

N. Decoteau stated there is a note on the signature page which indicates the amendments made to the document in 2014.

MOTION: "To have Chairman T. Phillips sign the 2014 Zoning Ordinance."

Motion: G. Kimball

Seconded: F. Freeman

Discussion: None

Motion Passes: 6 – YES, 0 - NO

2. Mad River Learning Center Zoning Verification Form:

N. Decoteau stated the Health Officer has been out to the site to do her inspection.

T. Phillips signed the Zoning Verification Form for the Mad River Learning Center.

3. Draft Planning Director Job Description

The Board discussed the draft document for the new Planning Director position.

T. Phillips stated his opinion that there may be too few hours given to the position and that he voiced that concern during the budget process.

T. Phillips stated the draft document is a starting point and once the person is hired it may become apparent that more or less hours are required to do the job which can be addressed in the budget planning for next year.

T. Phillips questioned how N. Decoteau would fulfill the role of Ex-officio where the Planning Director "works for her" and continue in the role of an Administrative Assistant that would be under the supervision of the Planning Director.

N. Decoteau pointed out the SUPERVISION EXERCISED indicates the Planning Director will "provide general supervision over the Administrative Assistant with respect to Planning Board secretarial duties with the approval of the Town Administrator".

S. Babin stated his opinion that Planning Board representatives should be present during the interview process and that the Planning Board should have the ultimate say in which individual is hired.

S. Babin stated that the Planning Director will work under the direction of the Planning Board and it is critical that since the Planning Board will be most closely working with the Planning Director, the Planning Board should be able to have the final say in which individual is hired.

Board members agreed that one very important skill/knowledge for the Planning Director to have would be to be able to keep the Planning Board in compliance with NH law and local regulations.

Board members did not suggest any changes to the document.

4. The Board reviewed the following correspondence:

- a) Grafton County Conservation District- 2014 Annual Meeting April 19, 2014
- b) NH DES Annual Drinking Water Source Protection Conference April 30, 2014
- c) NH DES Focus Groups/Listening Sessions re: Wetlands Program Rulemaking & Process Improvement Effort

d) A Public Meeting regarding the Northern Pass Project at Pease Public Library on May 4, 2014 put on by the "Bury the Northern Pass" and "No Northern Pass Coalition" groups. T. Phillips stated the Annual OEP Planning & Zoning Conference is Saturday, May 3, 2014 at the Grand View in Whitefield, NH and encouraged members to consider attending.

BOARD MEMBER CONCERNS:

S. Macintosh stated that the Barron Mt. subdivision is advertised for sale at auction in late May.

R. Gilman stated his concern that members of the Planning Board may differ in their opinion regarding the requirement of frontage on a road for new lots and asked how the Planning Board was going to come to a consensus on the issue.

A discussion followed regarding the specifics of the interpretation of the state laws on the issue.

It was determined that a starting point will be for N. Decoteau to send in the question to the Local Government Center.

ADJOURNMENT:

At 10:30pm the following motion was made:

MOTION: "To adjourn."

Motion: G. Kimball

Second: F. Freeman

Discussion: None

Motion passes: 6 – YES, 0-NO

Respectfully Submitted,
Nancy Decoteau

TOWN OF THORNTON PLANNING BOARD

AGENDA

Thursday, April 17, 2014

6:00PM

A. CALL TO ORDER – SALUTE OF FLAG:

B. ROLL CALL:

T. Phillips, Chairman
F. Freeman, Member
G. Kimball, Member

S. Babin, Vice Chairman
S. Macintosh, Member
F. Gunter, Alternate

M. Peabody, Ex-officio
B. Regan, Member
R. Gilman, Alternate

C. PUBLIC HEARINGS:

- 5:30 Site Visit: Scenic Road Tree Removal – Upper Mad River Road
- 6:15 Public Hearing: Scenic Road Tree Removal
- 6:30 Public Hearing: BLA Sigurjonsson / Night Road
- 7:00 Public Hearing: BLA Carigan / True Lane
- 7:30 Public Hearing: BLA Rebeiro / Covered Bridge Road
- 8:00 Public Hearing: 4 Lot Subdivision/ Brown / NH Rt 49

D. APPROVAL OF MINUTES:

January 28, 2014
March 20, 2014

E. OTHER BUSINESS:

Fred Gunter Appointment Form
Russ Gilman Appointment Form
Sign the updated Zoning Ordinance
Mad River Learning Center Zoning Verification Form
Draft Planning Director Job Description
Correspondence:

1. Grafton County Conservation District- 2014 Annual Meeting April 19, 2014
2. NH DES Annual Drinking Water Source Protection Conference April 30, 2014
3. NH DES Focus Groups/Listening Sessions re: Wetlands Program Rulemaking & Process Improvement Effort

F. ADJOURNMENT

Planning Board
April 17, 2014
SIGN IN SHEET (Please Print)

- 1 Steve Shaughnessy
- 2 Kevin French
- 3 Bill Walker
- 4 Myles Moran
- 5 Darlene King Jennings Darlene King Jennings
- 6 John March
- 7 Bob Montmarquet
- 8 Joan Marshall
- 9 SUSAN NORRIS
- 10 Timothy Norris
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