



OLD VALUES - NEW HORIZONS
PLANNING AND DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

Planning Board Minutes
10/07/09

Roll Call:

Phil LoChiatto, Chairman – Present
Nancy Prendergast, Secretary – Present
Ruth-Ellen Post, Member – Present
Louis Hersch, Alternate – Excused
Sy Wrenn, Alternate – Present
Ross McLeod, Selectman Alternate - Excused

Rick Okerman, Vice Chairman - Present
Walter Kolodziej, Member - Present
Pam Skinner, Member – Excused
Kristi St. Laurent, Alternate – Present
Bruce Breton, Selectman Member - Present

Staff:

Laura Scott, Community Development Director/Town Planner – Present
Tracey Mulder – Admin Asst. – Excused

Call to Order/Attendance/Pledge of Allegiance

Mr. LoChiatto opened the meeting at 7:00 pm, followed by the Pledge of Allegiance. Sy Wrenn was seated for Pam Skinner.

Public Hearings

Preliminary Site Plan Review & Subdivision Application

A Site Plan Review and Subdivision application has been submitted for Lot 17-L-42 (130 Range Road) in the Residential A Zoning District. The applicant, Karl Dubay of MHF Designs, on behalf of E.A. Trust, is proposing a Workforce Housing project, subject to NH RSA 674:58-61, to construct 25 detached condos and rehabilitate the existing Austin Barn Manor into 5 condos and a common area. The project proposes a new private drive, common areas, play yards and exercise courts, and will be designed to LEED standards.

Mr. LoChiatto communicated to the public that the Preliminary Site Plan Review and Subdivision Application for the proposed Work Force Housing (WFH) project, Lot 17-L-42 (130 Range Road) has been postponed. Although a Site Plan Review and Subdivision application has been submitted by Karl Dubay of MHF Design, the Town's attorney, Bernard Campbell advised the Board to postpone the hearing until the statute comes into effect on January 1, 2010. Mr. LoChiatto recommended the applicant reapply in January when the statute takes effect and the Board will then have a statutory mechanism under which they can hear the application. Mr. LoChiatto read into the record a letter from Attorney Campbell that outlined NH RSA 676:4, which in part states that the statute requires "a completed application be submitted, which is defined as one which has "sufficient information" included to allow the Planning Board to proceed with consideration and to make an informed decision." In addition, Attorney Campbell stated in his letter that since the above-mentioned statute for WFH does not go into effect until January 1, 2010, the application by definition is incomplete, and the Planning Board may not proceed with consideration and Attorney Campbell also noted in his letter that under RSA 676:4 I (c) 1, "an applicant is entitled to have the Board determine whether

a submitted application is complete". Attorney Campbell's letter states that the appropriate action for the Board to take is to deem this application incomplete and therefore not accept the application for consideration.

A motion was made by Mr. Kolodziej to deem the application incomplete on advice of Town Council and that the fact that the state statute is not in effect. Second by Mr. Breton. Discussion from the Board.

Mr. Breton requested the Board make public the legal document from Attorney Campbell since portions of it were read at the meeting.

Mr. LoChiatto noted the Board has been counseled that by allowing comments from the applicant or the public germane to the case may affect the future application by compromising the integrity of the future application process. Because there is no state statute in place, and by allowing the applicant to speak, the Board is concerned about prejudice to the future application by the applicant when the statute comes into effect. Ms. Scott clarified for the Board that if they deem the application incomplete and the Board does not hear the applicant, they have not accepted the application. Ms. Scott reiterated attorney Campbell's recommendation not to hear the applicant because if the Board has not accepted the application they should not hear information on an application that has been deemed incomplete.

Ms. Prenergast addressed the Board and asked if it would be advantageous to allow the applicant to speak not as a hearing but as a discussion only. Mr. LoChiatto indicated that it would be to the applicants disadvantage because it has the possibility of prejudging the future discussion. Ms. Prenergast said contrary to the Chairman's response, after reviewing attorney Campbell's letter her interpretation of the letter was that an informal non-binding discussion or presentation would be okay from the applicant.

Ms. Scott said that the applicant had the opportunity to have a conceptual review; however, they chose to bypass the conceptual non-binding application and apply for a formal hearing instead. The applicant was also offered the opportunity to submit their application and have it heard in January. The applicant declined that offer as well and submitted for a formal public hearing and pre-application for this meeting.

Ms. Post commented that since the Board is in the process of coming up with a plan for the workforce housing requirements, and their plan is not yet complete, and she would like the Board to have the opportunity to finish their plan before listening to individual applications and because of this, she feels the need to wait.

Mr. LoChiatto agreed with Ms. Post and went on to say that the state statute raises the point we need to address workforce housing but does not say how to address workforce housing. He went on to say the town is now working on the framework for workforce housing and how it should be done.

Mr. Kolodziej indicated he would like to amend his original motion to make the letter dated October 7, 2009, addressed to Ms. Scott from attorney Campbell part of the public record. Mr. Breton had no objections. A motion to deem the application incomplete on advice of Town Council and the fact that the state statute is not in effect passed 7-0.

Mr. Sumner Kalman, attorney for E. A. Trust, addressed the board on the procedural issues addressing NH RSA 676:12, VI that cross-references NH RSA 676:4. Mr. Kalman communicated to the Board that he did

not think it is up to the Board to vote or determine whether the application his client submitted was complete or incomplete because it is a "proposal". Mr. Kalman referenced the letter he wrote to the Planning Board dated 9/3/2009, regarding the use of the word 'proposal' and the applicant fully intends to file a formal application within twelve months of the end of the design review process. Mr. Kalman said he timed the application process so his client could benefit from NH RSA and that by his client submitting this proposal, the applicant will be protected by subsequent zoning ordinance changes. In addition, Mr. Kalman noted that his client has satisfied the conditions of RSA 676:12 VI and under those circumstances he believes that whatever posted zoning ordinances changes the Board considers between now and the Board's deadline will not affect his clients proposal. The client has no plans to resubmit their design review, but they are willing to have a continuation of their design review to January.

Ms. Prendergast questioned if a statute for workforce housing does not go into effect until January 2010, how can the applicant submit a proposal and not have the proposal be impacted by any zoning the Board may be proposing.

Mr. LoChiatto agreed with Ms. Prendergast and said he thinks the Board needs to confer with Attorney Campbell and he would like to understand what statute the application was formally submitted under.

Ms. Prendergast inquired as to the next steps for this application. Mr. LoChiatto indicated that a non-public meeting on October 21, 2009 with Attorney Campbell is needed to clarify the next legal steps.

There was further discussion by the Board about the differences between conceptual (non-binding), preliminary site plan (binding) and a final site plan.

Conceptual Site Plan – Windham High School

Proposal for a 50x50 building to be constructed at the Windham High School that would contain a garage, concession stand, and bathrooms. A new septic system, well, sidewalks, and gravel drive is proposed as part of this project.

Ms. Scott outlined for the Board the following items for their review and noted that this is a public presentation only and no public hearing or formal site plan review is required.

TRC Memo dated September 27th
Email from Police Chief Lewis dated September 25th
Proposed Site Plan

Warren Billings, Facility Manager with SAU 28, addressed the Board regarding the proposal for a recreational building (aka storage facility) with a concession stand for athletic events and bathrooms. Corrections have been made to the bathrooms upon recommendation by the TRC. Mr. Billings discussed several maps presented to the Board regarding the Maintenance Building Pump Station Connection.

Mr. Okerman asked if two bathrooms were enough and Mr. Billings replied that the new drawings have more bathrooms and since the school will be locked up during after school activities and these bathrooms are necessary.

Mr. Breton made a suggestion to reduce the paper consumption and utilize automatic hand dryers. In addition, Mr. Breton mention that urinals and toilets could be fully automatic and Mr. Billings said he thought the bathrooms in the recreation building were waterless. Mr. Kolodziej said he wanted to know if there were enough washbasins and Mr. Billings said that they were code compliant. Further discussion ensued about having a hose spigot inside the bathroom, exterior lighting and alarm systems.

Ms. Post noted Police Chief Lewis' comments to see the structure alarmed when not in use and illuminated at all times. Mr. Billing had numerous conversations with Chief Lewis and they will have an alarm system. Mr. Billings said their first choice if money is allowed, is to have a separate zone within the school's alarm system. In addition, illumination and exterior lighting will be discussed with the architect. Mr. LoChiatto asked if the space would be heated and Mr. Billings explained that right now it will not be heated; however, it will be insulated if in the future they choose to heat the building. Mr. Billings thought he would have to utilize a small hanging heater during the fall/winter months.

Approved Site Plan - Dunkin Donuts (Map 16-L-1)

Request to modify the approved site plan to add additional lighting & landscaping, relocate the location of the drive-thru menu board, add 2 dumpsters, and remove Conditional of Approval # 3 of the Site Plan that related to signage.

Ms. Scott addressed the Board outlining the information provided in the Board's packet regarding the list of changes the applicant is seeking:

- Drive thru menu board to be moved back 22' from corner rather than 8'.
- Adding 3 additional copper lighting - Luminark – on the site.
- Using the typical Dunkin Donuts coloring for the signs, as opposed to copying the design and color combinations used in Hollis, which was a condition of approval. The signs proposed are slightly modified in shape but not larger than those previously approved.
- Allow for awnings to be placed on the building with the "DD" logo on it, which was not included in the original site plan.

Not on the memo but was discussed:

- Additional Landscaping
- 2 Additional dumpsters

Ms. Scott noted that this is not a public hearing. If the Board thinks these requests are minor in nature, they can be approved without a public hearing and that can be done tonight. If the Board does not support these changes or the Board wants to consider these changes at a public hearing, and that is also an option. Mr. LoChiatto noted there is a menu of items and the Board can consider any one of them individually.

Mr. Peter Zodhi of Herbert and Associates addressed the Board regarding the proposed changes. Mr. Zodhi discussed:

- Landscaping
- Type of lighting
- Location lighting
- Double Dumpster (one dumpster for tenant and one for DD)
- Moving menu board

Mr. Zohdi indicated to the Board that he was withdrawing the request to have the awnings sign with the DD logo.

Mr. LoChiatto asked the Board if they would like to hear these as a minor change to the site plan tonight or if they considered them to be significant enough, the Board could reopen the application and consider the changes as part of a formal site plan approval.

Ms. Post asked to see the old and new location of drive thru menu board on the map in order to make an informed decision. Mr. Zohdi explained the previous location of the menu board in comparison to the new

location. It was previously approved at 8 feet from the corner and it is being proposed to be moved 22 feet from the corner.

Ms. Post made a motion to hear the five items as a minor change to the Site Plan without a public hearing being required. Second by Mr. Kolodziej. Motion passed 7-0.

Drive thru menu board

The Board opened the discussion regarding the proposed changes beginning with the Drive thru menu board. Mr. Zohdi told the Board that the reason for the change is because it would allow at least one additional car in the drive thru area.

Mr. Alan Carpenter, a Windham resident, addressed Mr. Zohdi questioning whether moving the menu board would provide room for any addition vehicles.

Motion by Mr. Breton to accept as a minor change to move the menu board back to the proposed location on the plan dated 9/29/09. Second by Mr. Okerman. Motion passed 7-0.

Additional Lighting

A request to add three additional copper lighting (Luminar). Mr. Zohdi noted that the lighting is being added because there is not enough lighting along Rt. 111 and they need it for sight and for safety.

Mr. Kolodziej asked why they needed additional lighting in the front of the building as he thought the building would provide enough lighting. Mr. LoChiatto noted he did not see the need for additional pole lighting at this site and the lighting that was previously approved is sufficient lighting.

Mr. Zohdi withdrew the 3 additional lights proposed for Dunkin Donuts.

Dunkin Donuts Signs

Ms. Scott noted for the Board the sign change complies with the sign ordinance and the applicant is acting in accordance with the size previously approved by the Board. Ms. Scott also mentioned that when she met with Mr. Zohdi regarding the originally approved signage, the language on the meeting minutes, notice of decision, and the conditional approval notes on the plan was to have signs that looked like the Dunkin Donuts in Hollis. Ms. Scott received pictures of the signs in Hollis and they are black with gold reflective lettering.

Mr. LoChiatto asked Mr. Zohdi to show the Board what was previously approved. Mr. Zohdi went on to say the signs do not have lighting inside and the only lighting is reflection light from outside and the originally approved sign does not get illuminated as Dunkin Donuts would like.

Mr. Kolodziej noted for the Board that he liked the sign the Board approved the first time with the dark background and that it blended in with the environment.

The Board questioned Mr. Zohdi on the portion of the sign that says 'Drive Thru'.

Mr. Zohdi presented to the Board a third scenario for the sign that has an all brown background. . The Board was in agreement that the all brown sign on the plan dated 9/29/09 was the most appropriate looking sign. Ms. Scott addressed the Board with regard to the "Drive Thru" portion of the sign and the Board agreed that if it fits within the square foot requirements in the zoning ordinance, then it can stay.

Mr. Carpenter addressed the Board and suggested the "Drive Thru" sign be changed to colored letters to make it blend better.

A motion by Mr. Kolodziej to approve as minor change to the site plan the sign proposal with an all dark background, not including the drive thru signage under the main freestanding sign. There was not a second to Mr. Kolodziej's motion.

Mr. Breton motioned to approve the third scheme with an all dark background as a minor change to the site plan allowing for the drive thru language under the freestanding sign if it fits within the square footage parameters spelled out in the zoning ordinance but reversing the sign color to have brown background with white letters. Second by Ms. Post.

Mr. Kolodziej said he thought that the sign added clutter to the site and serves no useful purpose. Motion passed 6-1. Mr. Kolodziej opposed.

Double Dumpster

Mr. Zohdi requested the approval of 2 additional dumpsters to accommodate the Dunkin Donuts and other businesses on site. Mr. Breton made motion to approve for a minor change to add 2 dumpsters as shown on plan dated 9/29. Second by Mr. Wrenn. Motion passed 6-1. Mr. Kolodziej opposed.

Additional Landscaping

Mr. Zohdi is proposing additional landscaping above and beyond what was required on the approved Site Plan.

Motion by Mr. Breton for additional planting as a minor change. Second by Ms. Post. Motion passed 7-0.

Planning Board Rules of Procedure

Public hearing to adopt amendments to "Windham Planning Board Rules of Procedure"

Ms. Scott addressed the board noting that in their packet was the previous version the Board had discussed with all their requested amendments. The only change the Board had not discussed that has been included is in proposed Article 3.3 regarding what to do if the Chair and Vice Chair were not available and that the alternates sitting in for them would not assume the duties of the Chair or Vice Chair. Any current member can hold the alternate position except for the Selectman member.

Ms. Post made a motion to open for public hearing for the proposed Rules of Procedure. Second by Mr. Okerman. Motion passed 7-0.

The Board discussed the position of the clerk as outlined in Article 3 and the responsibilities associated with that position. Additional clarification was added to the language to clarify responsibilities of the clerk. In addition, the Rules of Procedure language will be updated to reflect the new department title for Planning and Development to Community Development. Mr. LoChiatto asked the Board what gender specificity they would like to see throughout the document. The Board decided that they would like to change the language to be gender neutral. There was further discussion regarding the CIP subcommittee charge and role and other subcommittees created by the Planning Board.

Mr. Alan Carpenter addressed the Board regarding the elimination of the role of Secretary, when minutes are posted to the Town Hall, Planning Department and the Town's website.

Mr. LoChiatto closed the public hearing. A motion to approve the Windham Planning Board Rules of Procedure as amended by Mr. Breton. Second by Mr. Kolodziej. Motion passed 7-0.

Meeting Minutes – Review & Approve

- September 9, 2009 – Postponed
- September 16, 2009 -Motion to approve minutes as amended by Motion to approve as amended. Second by Mr. Kolodziej. Motion passed 7-0.

2010 Town Meeting

Finalizing Planning Board Proposed Amendment List

Ms. Scott addressed the Board asking for clarification for what the Planning Board is undertaking for Town Meeting amendments versus what the public needs to undertake for petition warrants. Ms. Scott outlined for the Board a list of zoning items that have been previously discussed and worked on as the 2010 Town Meeting Warrant Article items. Ms. Scott noted that this is not a set list nor is it an inclusive list of all the possible zoning amendments that could be made.

Listed below is the input the Planning Board received from the public from the 9/9/09 open forum meeting. The Planning Board has decided not to take these on as their amendments due to time constraints; however the Board encouraged the public to propose them.

- Watershed Protection Overlay Ordinance (CPIA)
- Include NH RSA 674:17 Zoning purposes in document
- Have more restrictive uses allowed in Neighborhood Business and Village Center District and clearer understanding of what is and is not allowed
- Clean up entire zoning ordinance to make sure there are not conflicts
- Prohibit the conversion of seasonal residences to year-round use and/or strengthen safety requirements and need to individual wells for each lot
- Historic Preservation
 - Help owners preserve historic structures through incentives
 - Less restrictive setbacks
 - Parking requirements
 - Access, and uses
- Strengthen the demolition delay ordinance

Consultants will be working on the following:

- WWPD
 - Clean up language in WWPD to make clearer
 - WWPD 100' setback exemption strengthen language

The Board agreed to take on the following items:

- Workforce Housing – make sure to protect conservation and town-owned land
- Sign Ordinance (Section 706)
- Workforce Housing
- Small Wind Energy Systems
- Housing for Older Persons (Section 610)
- Landscape Buffers (Appendix A-1, Note #9, 702.5; 612.3.1, 514.2.1)
- Continuance of Existing Uses (Section 400)
- Board of Adjustment (Section 900)
- Customary Home Occupations/Home Occupations (Section 602/603)
- WWPD (Section 601)
- Aquifer Protection District

The Board agreed to put on hold the following:

- Zoning Ordinance Re-numbering/formatting

Mr. Alan Carpenter addressed the Board regarding the Zoning Ordinances and the definition of seasonal residence versus year round residence.

Proposed Amendments

- Small Wind Energy Systems – postponed until 10/14
- Signs – postponed until 10/21

Planners Report

The Planners report was submitted in the packet the Board.

The Board commended Ms. Scott on organizing a very successful Economic Development Committee event.

Miscellaneous Items

Adjournment

Motion to adjourn at 10:32 by Mr. Kolodziej. Second by Mr. Okerman. Motion passed 7-0