



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Planning Board Meeting

October 20, 2010

Roll Call Planning Board:

Phil LoChiatto, Chairman – Present

Nancy Prendergast – Vice Chair- Excused

Kristi St. Laurent, Member –Present

Pam Skinner, Member - Present

Louis Hersch, Alternate - Excused

Bruce Richardson – Alternate –Present

Rick Okerman, Member – Present

Ruth-Ellen Post, Member – Present

Sy Wrenn, Alternate – Excused

Bruce Breton, Selectman Member – Present

Lee Maloney – Alternate - Excused

Ross McLeod, Selectmen Alternate Member – Excused

Staff:

Laura Scott, Community Development Director – Present

Elizabeth Wood, Community Planner - Present

Tracey Mulder, Planning Assistant – Present

Call to Order/Attendance/Pledge of Allegiance

The meeting was called to order by Phil LoChiatto at 7:00 pm, followed by the Pledge of Allegiance.

Bruce Richardson is seated for Vice Chair Nancy Prendergast.

Chair LoChiatto recognized that Case#2010-31 WWPDP Special Permit Application for 81 Searles Road has been postponed to the October 27th Planning Board Hearing.

Public Hearing: Case #2010-37 Minor Site Plan Application & WWPDP Special Permit

Mr. Richardson read the hearing into the record.

An application for a Minor Site Plan and WWPDP Special Permit has been submitted for Lot 16-L-1 & 16-L-450 (Indian Rock Road/NH Rt 111), which is located in the Village Center District & the Wetland and Watershed Protection District. The applicant Edward N. Herbert Associates, on behalf of 32 IRR Realty, LLC and Cafua Realty Trust XL, LLC, is proposing a Minor Site Plan and WWPDP Special Permit for previously approved developments located on these lots. The Minor Site Plan Application is to reconfigure the driveway and drive-thru on Lot 16-L-1, connect the two parking lots, adjust the landscaping on the two lots, and redesign the parking spaces on both lots. The WWPDP Special Permit is for Lot 16-L-1 to allow a portion of a driveway, drive-thru, parking, drainage, and grading within the WWPDP.

Ms. Scott said there are two memos dated October 17th, one to the Planning Board and another to Mr. Peter Zohdi of Edward Herbert and Associates included in the Board's packets. In addition, she included a memo dated October 20th from the Conservation Commission with comments about what type of landscaping and plantings are required. Ms. Scott pointed out on the memo to the Planning Board the seven points of concern listed, and mentioned that items 2, 3, and 5 have been resolved. However, the following items still need to be resolved:

- The Planning Board needs to determine if the application meets a Minor Site Plan criteria
- Add a note to the plan regarding the September 14, 2010 ZBA Variance granted.
- All TRC comments have been addressed through the revised set of plans.
- The Keach Nordstrom comments need to be addressed, which the Planning Board can include as part of a conditional approval if they choose, since the comments are all minor in nature.

Mr. Peter Zohdi of Edward Herbert and Associates addressed the Board explaining how the connectivity between the two properties will be completed. All items in Keach- Nordstrom memo dated October 14 can be addressed with the exception of the two properties applying for an alteration of terrain permit.

Ms. Scott noted that the application is complete and the only difference is that the Alteration of Terrain all could be addressed with approval from the Planning Board if the Board assumes this a Minor Site Plan.

Motion by Mr. Okerman to hear case 2010-37, lot 16-L-1 & 16-D-450 as a Minor Site Plan application per September 22, 2010 meeting the Minor Site Plan Classification criteria in the Zoning Ordinance for Sections 306-306.12 into the record. Second by Mr. Breton.

Discussion. Ms. Post asked about the net change in number of parking spaces. Mr. Zohdi said there will be 7 additional parking spaces. They are proposing 6 additional for the Glynn Plaza and 1 more for Dunkin Donuts.

The Board had further discussion regarding what parking spaces were removed and where the new parking spaces would located.

Motion passed 7-0.

Mr. Zohdi addressed the Board and said he previously appeared before the Board regarding the two sites and explained that the Planning Board wanted connectivity between Dunkin Donuts and Howie Glynn's new site. After both sites were approved the applicants came together and agreed to have connectivity via a driveway.

Mr. Zohdi explained the Minor Site Plan Application is to reconfigure the driveway and drive-thru lot for Dunkin Donuts, lot 16-L-1; and on lots 16-L-1 and lots 16-D-450 connect the two parking lots, adjust the landscaping on the two lots, and redesign the parking spaces on both lots. A WWPD special Permit for Lot 16-L-1 to allow a portion of the driveway, drive-thru, parking, drainage, and grading within the WWPD was granted on September 17, 2010.

Chair LoChiatto read into the record from the Conservation Commission memo dated September 26, 2010 from Dr. James Finn approving the connectivity the Notice of Decision from the Zoning Board of Adjustment for the approved variance from Section 601.3 of the Zoning Ordinance.

Mr. Zohdi noted that all requests from the Keach-Nordstrom, Town Engineer and the Conservation Commission have been approved.

Mr. Zohdi noted that the owner of lot 16-D-450 received an NHDES Alteration of Terrain permit prior to commencement of the work that is now underway on the site. Since the site plan amendments now proposed under the current application modify the scope of the work, previously approved by the NHDES, it will be necessary for the applicant to apply for and receive an amended Alteration of Terrain Permit.

Mr. Zohdi explained where the cross easement would be on the plans making it easy for the public to go back and forth from the Dunkin Donut site to the new Howie Glynn site.

In addition, Mr. Zohdi is asking for an awning for the Dunkin Donuts and that the signage requested falls under the sign ordinance regulations. Ms. Scott asked Mr. Zohdi if he submitted a sign application and he said not at this time but will do so in the future. Ms. Scott stated that no sign permit had been submitted and this request was not included in the notice for the meeting and should not be heard. Mr. Zohdi asked if they could approve the connectivity tonight and come back later for the awning approval. Due to the inclement weather coming, Mr. Zohdi would like to get the connectivity done as soon as possible. The Board noted that Mr. Zohdi needs to submit a sign application and present to the proposed awning size and design before the Planning Board.

Ms. Post referenced the memo from Keach-Nordstrom dated October 14, 2010 and asked about the consideration of item 2 regarding the cross easements. Mr. Zohdi said that both parties have agreed and a final Site Plan will be recorded with the easement to the registry of deeds once it has Planning Board approval. In addition, both parties will be responsible up to their property line. Mr. Zohdi will submit the document of agreement to Ms. Scott. Ms. Post thought since properties change hands and she would like to see a boundary and cross easement of both properties and have both recorded with the registry.

Ms. Post thinks it protects everyone's interest to have DES decide now if an AOT permit is required. Mr. Breton said the plan needs to state all permits must be attained.

Chair LoChiatto and Mr. Zohdi had a discussion regarding moving the menu board so that the stop sign would be more visible.

Ms. St. Laurent asked about the turn radius from tuning into the property from RT 111 and wondered if it would be too tight of a turn for cars. Mr. Zohdi said they were in compliance with NHDOT and the new turning radius is an improvement.

The Chair opened the hearing to the public and receiving no public comment closed the hearing.

Motion by Ms. Post to approve the application for a Minor Site Plan change to lot 16- L-1 and 16-d-450 case 2010-37 subject to the following conditions:

- **Cross easements and plan satisfactory to staff and town legal council and signed by parties and recorded with registry of deeds prior to Certificate of Occupancy for 16-D-450.**
- **Verification from DES that an AOT permit is not required for lot 16-L-1.**
- **Resolution of remaining items of items 3-9 of Keach Nordstrom October 14 memo to be addressed.**
- **Plantings as described in Conservation Commission memo dated Oct 14, 2010 to be added to the plans.**

Second by Mr. Okerman.

Mr. Richardson said the Board is fortunate that Mr. Zohdi is the engineer for both parcels and appreciates his efforts bringing both parties together an agreement.

Motion passed 7-0.

The Board took a brief recess from 8:00 -8:15PM

2011 Town Meeting Workshop

The Board decided to move fence Section to the end of the workshop hearing.

SB2/Official Ballot Town Meeting-Deadlines

Ms. Scott provided deadlines for Town Meeting and noted that citizen's petitions must be provided to the Board of Selectman and/or taken to the Town Administrator who will then give it to the Board of Selectman to make it official. The deadline information is on the Town's website.

Commercial Antenna Structures

Ms. Scott said Mr. Richardson brought this to commercial zoning task group consisting of two Planning Board members, two Economic Development members and the Community Development Director and after reviewing existing language the task group decided the current language was unclear. The proposed language is to eliminate from section 701.3 'all commercial zones' and replace it with 'Commercial A, Limited Industrial, and Professional, Business and Technology zoning Districts'.

Mr. Richardson addressed the Board and noted they were looking at non residential zones and said there are other zones that are multi family such as neighborhood business and thought this would not be appropriate. He explained the rationale behind the focus group's decision for the zoning. Mr. Richardson said that the Gateway District serves more people coming off the highway seeking services.

Mr. Breton said that defining Commercial Antenna in the Ordinance would be useful.

Chair LoChiatto opened the discussion to the public.

Mr. Joel Dube, 4 Beacon Hill Road, addressed the Board regarding the ordinance saying when Mr. Skinner wrote the initial ordinance he said that it was important to keep commercial activity in the Commercial zone Mr. Dube said the cell tower issue and the Telecommunications Act of 1996 is an extremely technical matter and if the Town restricts the zoning on Towers and does not allow cell tower providers to fill significant gaps in coverage it will lead to variances which will be won in federal court. This will take control over the site of the towers from the ZBA and the Planning Board and put it in the hands of the federal court overriding local controls. He believes the federal court will order cell towers in and this could mean land owners could have cell towers on their property in residential areas.

Mr. Dube's proposal is to try and clarify Windham's current zoning ordinances which leave room for conflicting interpretation for where commercial antenna structures are permitted. In addition he said clarifications are required to ensure adequate amount of zoning in permitted areas, particularly where

there are significant gaps in coverage. Mr. Dube read his proposed changes to 701.3, leaving the proposed language as is and adding Gateway and Neighborhood Business.

Mr. Dube went on to say if the permissible use is not allowed by zoning ordinances where significant gaps in coverage exist, then the Telecommunications Act of 1996 will drive cellular providers pursue zoning variances through the federal court systems making it easier for cell tower providers to obtain variances thus affecting Windham residences.

Mr. Richardson asked Mr. Dube why he thought that it would be appropriate to put cell towers in rural or residential area. Mr. Dube said his preference is to eliminate antenna structures near any homes; however, if he had to choose an area it would be neighborhood business rather than residential districts and the duty of the Town is to keep the impact as low as possible.

Mr. LoChiatto said the proposed zoning changes have nothing to do with gap in coverage. The effort is to provide allowed use in majority of zones that are appropriate.

Mr. Dube would like the ordinance to make it clear that the gap in coverage needs to be cited in specific site data. Mr. LoChiatto thought the ordinance could be changed to require the applicant to show a significant gap in coverage. Ms. Scott said this would have to be provided when they are applying for a variance because they would need to explain as why there is hardship. Ms. Scott said there is nothing in the regulations that require them to show gaps in coverage. Ms. Scott said that this language is under the height ordinance and if the Board wants to write an ordinance specific to Cell Towers time is running out.

Mr. LoChiatto said that the Board can make minor changes this year, knowing that next year they can tackle a Cell Tower ordinance when they have more time.

Mr. Wayne Morris, 14 Jordan Road, said that the proposed non-residential zoning map amendment proposes to change 5 parcels to neighborhood business and 11 parcels are proposed to be changed to Commercial A and one parcel is proposed to be changed to Limited Industrial.

Brian McDade, 6 Beacon Hill Road, addressed the Board saying he is not aware of all the new proposed districts but the other problem the Town seems to be fighting is that the commercial districts that are available are long Route 111 and is concerned about extreme north and southern sections of town. In addition, he wonders how to address these with ordinances to hopefully prevent homeowners from spending thousands of dollars to defend cell towers from being built where they don't belong. He thinks we should look at neighboring communities and other cell tower ordinances that are in effect and have been effective and he is interested in seeing some data.

Mr. Richardson said if you read the Telecommunications Act of 1996, it is overbearing on communities as far as what they can and can't do and limits communities and to come up with an ordinance to counteract this act is a waste of time because it is a federal law and takes precedence over the Town of Windham and the Town will have difficulty trying to overpower federal law.

Mr. LoChiatto said we do not want to shape zoning for a special use in Town.

Motion by Mr. Breton to move Section 701.3 striking the language “all commercial zones” and adding “Commercial A, Limited Industrial, and Professional, Business, and Technology Zoning Districts” to public hearing as amended. Second by Mr. Richardson.

Discussion: Ms. Post said she is not sure this can be dealt with between now and the public hearing but she is concerned about the inconsistency in language regarding the antenna structure and tower height could be changed to structure height.

The Board decided to amend the motion in Sections 701.3-701.3.9 replacing the word ‘tower’ with ‘commercial antenna structure’ along with crafting a definition.

Motion passed 7-0.

Wetland and Watershed Protection District, Section 601

Ms. Wood addressed the Board explaining the changes to the WWPD draft ordinance. Last year, the Town contracted Steve Keach of Keach Nordstrom Assoc., to draft the ordinance for the 2010 Town Meeting. There were two (2) workshops and a public hearing held last year to work on this ordinance; however, the ordinance was not moved to a public hearing by the Planning Board because the Board felt that more public input was needed. The current draft reflects the changes that were recommended by the public and the Board at the workshops and public hearing from last year. This year, the Board is picking up where it left off.

Mr. LoChiatto also addressed the Board providing a history of the ordinance and said that Steve Keach worked to try and make the ordinance more in line with current state standards, make it more enforceable and easier to understand to the general public.

Mr. LoChiatto opened the workshop to the public.

Mr. Bernie Rouillard, Conservation Commission addressed the Board and said that many of edits he suggested last year did not get into the proposed ordinance and he has provided the Board with the changes again.

The Board went through the edits proposed by the Conservation Commission and decided they would take them under consideration and address these at future workshops.

Mr. Wayne Morris, addressed the Board and said under definitions of Water Dependent Structure and said most are covered under the Shoreland Protection Act and not sure how the definition fits with the WWPD Ordinance. Chair LoChiatto said there are some ponds and small bodies of water that don't fall under Shoreland Protection Act. Mr. Morris said swimming pools are a water dependent structure and thinks they should be added to the definition and often swimming pools are in the WWPD. Ms. Scott said that swimming pools are addressed in another section of the Ordinance.

Ms. Kathleen DiFruscia, Horseshoe Road, addressed the Board making noting that she concurs with Mr. Rouillard's comments under section 601.8C Conditional Uses that the term “other uses” seems too vague and she would like to know what constitutes ‘other uses’. Ms. Post was glad that the Conservation Commission is proposing to omit the language because she sees it as a loophole.

The Board agreed to strike that language in 601.8 C.

Mr. Karl Dubay, addressed the Board, and said the point Mr. Morris made about Water Dependent Structures and read the definition noting that it reads "built over, on, or in a Brook, Stream or Pond which he believes further defines the word 'structure' and eliminates the worry about a swimming pool. In addition, he said that under Conditional uses, the term 'other uses is vague but pointed out to the Board that he likes the way it is written but is fine with the Board removing.

The Board agreed to take the changes and have another workshop.

Motion by Ms. Skinner to move Fences and non residential zoning, meeting minutes to October 27, 2010 Planning Board meeting. Second by Mr. Breton. Motion passed 7-0.

Motion to hear new business after 10PM by Mr. Breton. Second by Ms. Skinner. Motion passed 7-0.

Cobbetts Pond Watershed Overlay Protection District, Section 616

Ms. Wood said that she provided to the Board with two versions Ordinances, one with the edits shown and one with the edits accepted. She noted this ordinance came to the Town as a citizen's petition last year and was accepted by the Town in March 2010 and since that time there have been some recommendations from staff and the Board. The goal is to create an ordinance for applicants and the public that is easier to interpret and for staff to enforce. The proposed changes do not alter the intent as some of the changes include reformatting to be in line with other land use ordinances. All documents referenced in the Ordinance were checked to ensure they reflect the most recent drafts available. In addition, Ms. Wood checked to make sure there were no contradictions with state law or other Town ordinances and the Cobbett's Pond Ordinance. She also noted that she added an Emergency Exceptions section.

Ms. Scott said they reviewed the legal opinion from Atty. Campbell that came in when the Ordinance was proposed as well as questions after the fact that came up with ZBA applications and staff implementation of the process. In addition, they took into consideration and included some language from the CPIA and removed any unenforceable language.

Ms. Scott there is no substantive changes other than removing the 10% lawn language and put in provisions for emergency exceptions section. In addition, the language regarding the Planning Board's ability to waive certain items that do not fall under their purview and also cleaning up unenforceable items.

Ms. Post thanked Ms. Scott and Ms. Wood for working on this Ordinance and commended their hard work.

Chair LoChiatto asked for clarification regarding Section 616.4 E, regarding the definition of "development". A subdivision doesn't necessarily change the physical character on a parcel of land and since Site Plans and subdivisions are discussed in another part of the ordinance, they would not fall through a loop hole if they were removed from this definition. A piece of land can be subdivided without changing the physical character of the land. At the point when a building permit is submitted,

it would need to be reviewed. Mr. Richardson said that subdivisions may cause a change to the physical characteristics of the land, but not necessarily, and the definition is meant to encompass any activity that *may* change the physical characteristics of the land. Ms. Post said it is not a development under this ordinance unless it results in the physical character of the land. The definition lists possible examples of this and notes that if they do not change the character, they are not covered. Chair LoChiatto is okay with the explanation of the definition under Development with regard to physical character of the land.

Mr. Richardson and Ms. Skinner discussed other scenarios that might constitute development. Ms. Scott said that it is impossible to list every single scenario that constitutes development.

Kathleen DiFruscia addressed the Board and said she believes the intent of the Ordinance is the same. She is pleased with the revised draft that is being presented. In regards to the definition of "development," she concurs with Mr. Richardson that an installation of a well or septic tank and does not see this as development. She does not feel that an agriculture use, such as plowing land, constitutes development. She also does not feel that pipe laying should be included in the definition. In addition she would like to see the term road building kept in the definition. There are many dirt and gravel roads in the pond district. In addition, she is fine with removing the 10% lawn regulation however she does not want to see in the lawn area increased if someone, for instance, takes down a shed and wants to turn the land into lawn. The goal should be to minimize lawn and add vegetative buffers.

Ms. Scott said that it is difficult for staff to enforce the lawn area requirement.

Mr. Breton suggested that the Cobbetts Pond Association monitor this, and require that all members sign a pledge when they join the Association stating that they will use acceptable fertilizers. Ms. DiFruscia said that something of this sort is already being done.

Ms. DiFruscia referred to Section 616.11 and said that rather than use the words "surface waters", change the term to "Cobbetts Pond and any of its tributaries."

The Board agreed to adopted recommendations from Section 616.11, and the definition of development.

Ms. Post asked to have the word commercial in front of the word agriculture under the definition of Development. Ms. Wood also mentioned that the word commercial could also be added in front of the word forestry.

Mr. Dubay supports the proposed changes and suggests the Board support pervious pavement, and add the word 'conventional' before the word 'asphalt'. In addition, he would like to have the language under Section 616.11 changed to 'Commercial Agriculture Activities'. He would like to have the word 'roof' removed from impervious surface.

Board agreed to have another workshop on the Cobbetts pond Watershed Protection Ordinance.

Meeting Minutes Review and Approve-

October 6, 2010 Minutes postponed to October 27, 2010 Planning Board meeting.

CTAP Grant Application-Marketing

Ms. Scott addressed Board noting there is \$500 remaining in the Windham CTAP account and she is requesting the remaining funds be used to augment the Marketing proposal. Ms. Scott provided the original proposal from Final Details Marketing Design, which the Town and NHDOT have approved.

Ms. Scott is proposing to use \$359 to fully fund the approved marketing proposal with \$141 to be used to increase the number of information packets or promotional materials. Ms. Scott is asking the Planning Board to support her request and is submitting the applications to Chair LoChiatto for signature.

Motion by Mr. Breton for Chair LoChiatto sign the application in support of the CTAP Funding and move \$500 to the marketing campaign. Second by Ms. Skinner. Motion passed 7-0.

Adjournment

Motion to adjourn at 11:30 by Ms. Skinner. Second by Mr. Richardson. Motion passed 7-0.

Tracey Mulder respectfully submits these minutes in draft.