

**TOWN OF HENNIKER
PLANNING BOARD**

October 8, 2008
Approved Minutes

Members Present: Kristin Claire, Chairwoman; Gary Guzouskas, Vice Chairman; Ron Taylor, Selectman, ex-officio; Scott Osgood; Kellie Dyjak; Terry Stamps; Jim McElroy; Leon Parker, Alternate Selectman, ex-officio

Members Absent: Edward Miner, Alternate

Others Present: Laura Scott, Planning Consultant; Jennifer Astholz, Recording Secretary; Donald Duval; Greg Michael; Jennifer McCourt; David Eilenberger; Wayne Patenaude; Lauren Joyner; Paul Shields; Rick Patenaude; Jeff Roach; Alan Stevens; Luke Webster; Gregory Michael.

Chairwoman Claire called the meeting to order at 7:02 pm.

Continued Public Hearings

Case #2008-001. Excavation Application.

Map 1 Lot 552-A located at 1236 Old Concord Road in the Heavy Commercial (CH) Zoning District. The applicants, Daren and Kellie Dyjak, are proposing to excavate the property to allow for the future development of the site.

As Ms. Dyjak is the applicant, she recused herself from the Board for the duration of this case.

Laura Scott, Planning Consultant, stated that new topography plans were presented to the Board. Ms. Dyjak stated that their surveyor has backed out of the project. She stated that Foster's will do the work and pay the associated costs. She stated that they think it will be three to five years to excavate all of the sand. Ms. Dyjak stated that it should take about a month to get the necessary information in order.

There was discussion about continuing the case for another month or withdrawing the application until they are ready. Ms. Dyjak decided to request that the case be continued for one month. Terry Stamps **MOVED** to accept the applicant's request for continuing the case to the November meeting. Gary Guzouskas **SECONDED** the motion. Motion **PASSED, 6-0.**

Case 2008-008 Lot Line Adjustment and Major Subdivision Application

Map 1 Lots 351 & 349-H located on Western Avenue and Patterson Hill Road in the Rural Residential (RR) Zoning District. The applicant, Don Duval of Duval Survey Inc.,

on behalf of A&T Forest Products and Jeffrey & Rebecca Roach, are proposing the following actions:

1. Lot Line Adjustment between Lot 351 and Lot 349-H, which would alter Lot 351 from 83.48 acres to 80.45 acres and from 97.89' to 500' of frontage on Western Avenue and Lot 349-H from 2.94 acres to 5.97 acres and from 1330.13' of frontage to 928.02' of frontage on Western Avenue. Lot 351 will be subject to a driveway easement for Lot 349-H.
2. Major Subdivision (4-lot subdivision) of Lot 351. Lot 351-A is subject to a driveway easement to benefit lot 351 and Lot 351-B is subject to a driveway easement to benefit Lot 351-C. An easement will be granted to the Town for future road widening of Patterson Hill Road.

Ron Taylor, Selectman, ex-officio, has recused himself from the Board for the duration of this case. Leon Parker, Alternate, Selectman, ex-officio, will be voting in Mr. Taylor's place.

Laura Scott, Planning Consultant, stated that all of the property owners involved in this case have not given authorization for Don Duval to represent them. They were contacted and were en route to the meeting. The Planning Board proceeded to review the minutes of the Site Walk that was done on September 24, 2008 on said property.

The minutes were reviewed and corrected. Ms. Stamps **MOVED** to approve the 9/24/08 site walk minutes as amended. Jim McElroy **SECONDED** the motion. Motion **PASSED, 6-0-1.** (Ms. Claire, Mr. Guzouskas, Mr. Parker, Ms. Dyjak, Ms. Stamps and Mr. McElroy voted. Mr. Taylor is recused from this case and Mr. Osgood abstained,

Case 2008-008 was reopened at 7:19 pm. Ms. Scott reviewed her memo dated 9/16/08. Mr. Duval stated that some of the suggested administrative changes to the plans were fixed, but the plan is essentially the same as what was discussed at the prior meeting. Ms. Scott stated that she asked DES to clarify their regulations regarding the driveway permitting process. DES approval is required when driveways change from forestry to residential use.

There was much discussion about the slopes and curves of the driveways. Alan Stevens, applicant, stated that the common driveway on Western Avenue has about 40 feet of 16% grade. He stated that the paved area will be 16 feet wide. He showed where the grades are marked on the plans. He also showed on the plans where he could straighten out some of the curves. There was concern about the ability of a fire truck to make the curves. Mr. Stevens showed the area that he proposed to straighten; he stated that there is still a small section at a 16% grade. Ms. Scott commented that slope standards for roads are set at 10%, but there is no slope requirement regulating driveway grades in the Planning Board regulations.

Mr. Guzouskas stated that he is concerned about water flow in this area running into Western Avenue. He stated that you can see where there has been sheet flow and has taken out the edge of the pavement. Mr. Stevens stated that paving will help the runoff

problem. He stated that there is a length of 15 feet at a -2% grade to allow water to run off the sides of the road. The Board stated that there had been some discussion as to why a culvert system in that area would not work well.

The 9/4/08 memo from HTA was reviewed. Mr. Stevens stated that 12" and 15" culverts will be used. He stated that there are two 8" culverts on Patterson Hill Road. He also stated that the ditch lines will be rip-rapped. Mr. Stevens stated that the driveway has been designed with a 40-foot turnaround but could be altered to meet HTA's suggested 42 feet.

Jim McElroy **MOVED** to find the application for Case 2008-008 complete. Gary Guzouskas **SECONDED** the motion. Ms. Claire opened the floor for Board discussion.

There was discussion about the outstanding DES driveway approval. The Board decided that all of the details can be handled at the approval phase.

The motion to accept the application as complete **PASSED, 7-0.**

Chairwoman Claire opened the public hearing at 7:44 pm. Hearing no comments from the public, the hearing was closed.

Ms. Stamps asked about the calculation of buildable area as the table is somewhat confusing. Mr. Duval explained the calculations to the Board's satisfaction.

There was discussion about the road and driveways. Mr. Osgood stated that there needs to be some assurance that water flow will not be a problem. Mr. Stevens said that the State asked for negative grade and pavement. He stated that he has also spoken with the Town Road Agent about this area. Ms. Scott stated that the Road Agent and the Fire Department will have to sign off on the driveway permits at the time that the houses are built. The Police Department has already reviewed the sight distances.

Mr. McElroy reminded the Board that this is already an existing driveway, and the Board does not regulate driveways. He also stated that no houses are proposed at this time.

Mr. Guzouskas stated that the Board's concerns about the driveways and water flow into the road have been made clear. He stated that there should be some way on the plans to address the crown of the road. He stated that there are road standards in place for these types of things, and there are many conditions that make this driveway like a road.

Mr. Osgood stated that the Planning Board wants the driveway to be built so that it does not adversely affect Western Avenue. A note can be added to the plans stating, "The Western Avenue common driveway shall be built to acceptable engineering standards to ensure that the water flow does not adversely affect Western Avenue."

Mr. McElroy **MOVED** to approve the application for Case 2008-008 with the following conditions:

1. Plans
 - a. Existing Conditions Plan
 - i. Move Note #1 to Referenced Plans
 - ii. Note #3 is not consistent with Area Table on Lot Line Adjustment Plan
 - b. Lot Line Adjustment Plan – Area Table figures are inconsistent with Note #3 on Existing conditions Plan
 - c. Subdivision Plan
 - i. Approval block needs to be revised since there is only one property owner that needs to sign.
 - ii. The Patterson Hill ROW area needs to be shown on the Plan since this is referenced in the easement;
 - iii. Detail Sheet 5 of 5
 1. Remove 351 from the title block
 2. Add 351-B and 351-C to the title block
 - d. Final plans are to have all original signatures, stamps and seals
2. Shoreland Protection Act
 - a. NH DES Subdivision approval for new lots is required.
 - b. NH DES approval for paved driveways is required.
3. Receipt of DES wetlands permit for driveways.
4. Addition of note to the plans: “The Western Avenue common driveway shall be built to acceptable engineering standards to insure that the water flow does not adversely affect Western Avenue.”
5. Fire Department to sign off on the final plans.

Leon Parker **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (7-0)**.

Ron Taylor rejoined the Board as a voting member.

There was discussion about who within the Fire Department has authority to review Planning Board applications and how that authority is granted. The consensus was that Mick Costello currently has that authority and that it is given to him by the Fire Chief.

New Public Hearings

Case 2008-009 Site Plan Review Application

Map 1 Lot 604 located at 1310 Old Concord Road in the Heavy Commercial (CH) Zoning District. The applicant, Curtis Richmond, on behalf of Randy Cousineau of Cousineau Forest Products, is proposing to convert the first floor of an existing 100' x 30' storage building to a garage, four offices and a lobby. The second floor of the structure (50' x 30') will remain open for storage.

Lauren Joyner stated that she would be presenting the application for Curtis Richmond as he was called out of town. Ms. Scott stated that there is no letter of authority from the owner that allows Ms. Joyner to represent them.

Mr. McElroy **MOVED** that this case be continued to the November 12, 2008 meeting. Ms. Stamps **SECONDED** the motion. Motion **PASSED, 7-0**.

Case 2008-010 Site Plan Application

Map 1 Lot 589 located at 711 Flanders Road in the Commercial Recreational (CR) Zoning District. The applicant, David Eilenberger, on behalf of Wayne Patenaude, is proposing to build a 178 sqft addition onto the existing Idlewild North Restaurant for a larger kitchen prep and storage area.

Leon Parker recused himself from hearing this case.

Ms. Scott reviewed the materials in the packet. The applicant and property owner were present.

Mr. Eilenberger stated that they will have to use the back door as an alternate means of egress which means they will have to shovel the deck to get out in the winter. Mr. Eilenberger stated that no plumbing is involved. The proposed area will be used for storage and additional kitchen prep work.

Mr. McElroy **MOVED** to find the application complete. Ms. Stamps **SECONDED** the motion. Motion **PASSED, 7-0.**

Chairwoman Claire opened the public hearing at 8:31 pm. Hearing no comments from the public, the hearing was closed. There were no further questions from the Board.

Mr. McElroy **MOVED** to approve the application as submitted. Ms. Dyjak **SECONDED** the motion. Motion **PASSED, 7-0.**

Case 2008-011 Excavation Application

Map 1 Lot 44 & 99 located on NH 114 (70 Bradford Road) in the Medium Commercial (CM) and Rural Residential (RR) Zoning Districts. The applicant, Jennifer McCourt, on behalf of Wayne Patenaude of Mink Hills, LLC, is proposing a commercial excavation operation on Lot 99 with access through Lot 44 to NH 114.

Leon Parker rejoined the Board.

Ms. Scott reviewed the materials relevant to this case. Ms. Scott recommended that the Board address the questions about her interpretation of the Zoning Ordinance requiring a special exception from the Zoning Board of Adjustment first.

Chairwoman Claire stated that she would like to begin with Board discussion. She stated that legal counsel states that the applicant should go to the ZBA prior to the Planning Board hearing the case.

Mr. McElroy stated that if there is a violation of a zoning ordinance, the Planning Board is not to hear the case. He stated that zoning issues have been raised in this case where there would be cause for a special exception or a variance.

Ms. Stamps stated that this could be interpreted in a variety of ways but feels that it should start with the applicant going to the ZBA.

Mr. Osgood stated that this case involves a land-locked lot that the owner wants to excavate. He stated that the applicant wants to use a lot that they own to travel across to reach the other lot. He asked what would be gained by their going before the ZBA.

Chairwoman Claire stated that it is a formality and a question that should be answered first by zoning.

Ms. Scott stated that she advised the applicant that they needed a special exception to cross Lot 44 to excavate Lot 99 because a Special Exception is required for excavation in the RR Zone, which is where lot 44 is located. The applicant did not agree and wanted to ask the Planning Board. Ms. Scott asked legal counsel for their interpretation. The applicant could appeal her administrative decision. She stated that it would go before the ZBA, and they could handle it however they wish.

Mr. McElroy stated that the Planning Consultant helps people with their applications, but it is the Board's responsibility to determine if ZBA should be involved.

Mr. Osgood stated that he was disappointed that lawyers are already involved and it is the first time that the Board has even seen the application.

Ms. Claire stated that a zoning question is involved because they are crossing a Rural Residential (RR) lot to reach a Medium Commercial (CM) lot and excavation is not allowed in the RR zone.

Mr. Parker stated that the use is not listed under special exceptions. He stated that this is also a grandfathered lot.

Ms. Scott stated that she, and legal counsel, feels that crossing the RR lot is required to do the excavation. She stated that crossing the one lot is integral to the function of excavation. Since the access lot is specific to excavation, she thought it should be part of the application. Legal counsel brought in the piece about frontage.

Sections 133-5C and 133-39F of the Zoning Ordinance were discussed.

Mr. McElroy stated that this is a new use for this property. He stated that the Board had referred other cases to the ZBA for zoning rulings.

Chairwoman Claire stated that the ZBA should resolve zoning questions. They may decide that nothing is required.

Ms. Stamps stated that all questions relate to zoning. She stated that it is best to be fair to the applicant and to the Board and have them speak to the ZBA. She stated that it is important for the Planning Board to not pose a particular question to the ZBA but to let the ZBA hear the case on its own merit.

Mr. Guzouskas stated that the minutes of this meeting would give the ZBA members a fair representation of the questions at hand.

Mr. Taylor stated that he thinks that this case should go before the ZBA without the Planning Board hearing the case.

Mr. Osgood stated that he would like to hear from the applicant.

Mr. Taylor stated that he agrees with Chairwoman Claire that this is a zoning issue.

Ms. Stamps understands that the applicant has information about this case; however, there is nothing that they can present to answer this zoning issue.

Mr. McElroy stated that it is clear that the Planning Board may not hear a case when there is a zoning question. He stated that it is illegal for us to hear from the applicant.

Mr. McElroy **MOVED** that the Board not hear Case 2008-011 because of an outstanding zoning question arising in the application. Mr. Taylor **SECONDED** the motion.

There was further Board discussion. Mr. Osgood stated that he would like to amend the motion to say that we cannot hear the application—not hearing any discussion on the issue of the administrative decision. Ms. Scott stated that the applicant has to have a reason to go to the ZBA.

Mr. Patenaude asked to speak about the zoning issue.

Chairwoman Claire polled the Board during their discussion to see if they would like to hear from the applicant (5 – No; 2 – Yes). Ms. Claire, Mr. McElroy, Ms. Stamps, Mr. Taylor and Ms. Dyjak stated that they would not like to hear from the applicant at this time. Mr. Guzouskas and Mr. Osgood stated that they would like to hear from the applicant.

The applicant's attorney expressed concern that they are not being heard on an important issue. He stated that the Town's legal counsel is not accurate in this matter.

At this point, the applicant requested to postpone the application to the December 10, 2008 meeting.

Mr. McElroy **WITHDREW** the motion on the table with Mr. Taylor's approval.

The request was granted.

Meeting Minutes – Review and Approve

September 24, 2008 Meeting

Minutes of the 9/24/08 meeting were reviewed and corrected. Ms. Stamps **MOVED** to approve the minutes as amended. Mr. McElroy **SECONDED** the motion. Motion **PASSED, 5-0-2**. Mr. Osgood and Mr. Taylor abstained as they were not present at that meeting.

Miscellaneous

- ❖ “Court Update”, *Town and City* September 2008 was distributed to the board.
- ❖ Revised Town Meeting Schedule was reviewed.
- ❖ UNH Community Profile Memo: Ms. Scott stated that approximately one-half of the spots are filled. They still need two at-large representatives.

Adjournment

Ms. Stamps **MOVED** to adjourn at 9:34 pm. Ms. Dyjak **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Respectfully submitted,

Jennifer Astholz
Recording Secretary