



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**PLANNING BOARD
MINUTES
MAY 10, 2007
(Approved as amended 5/24/07)**

PRESENT: Paul Morin, Chairman; Frank Bolton, Vice Chairman; George Malette, Secretary; Tom Clow, Exofficio; Craig Francisco; Neal Kurk, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Dennis & Kyle Dupuis; Chip Meany, Code Enforcement Officer; Louis A. Maynard; Jeff & Tom Lewis; Harry Hadley.

I. CALL TO ORDER:

Chairman Paul Morin called this meeting to order at 7:00 PM at the Town Office Building.

II. WORK SESSION:

DISCUSS NEWLY ADOPTED SIGN ORDINANCE: Chairman Morin stated that initially the board was going to discuss the new ordinance as it pertains to code enforcement and what Mr. Meany should and should not do. He is looking for our opinion on these things. Grown out of that is a particular case involving two individuals. Chairman Morin asked the boards opinion of how to proceed, should the board have the overall discussion with Mr. Meany and then get into specific situation with the two individuals. The board felt that the overall discussion should be held first. Chairman Morin stated that the board did talk about this in the meeting prior and came to the conclusion that application of this really had to do with signs that are going up or signs that had been put up that were in violation of the ordinance as it was at that time and really did not pertain to those that went up without a permit that were in compliance, but simply just did not have a permit.

Chip Meany, Code Enforcement Officer was present. Mr. Meany stated that what he specifically needs and it has been precipitated by this complaint is Article 34 the sign ordinance. Article 34 relates to signs that were previously in existence as legal signs. He would like clarification of what a legal sign was or is. We have had a sign ordinance as long as we have had zoning. That means to him that any sign that is erected needs to be permitted. Any sign that needs to be permitted especially a commercial venture needs to be reviewed as part of a site plan review. Mr. Meany stated that he needs clarification as to whether we wish to pursue the enforcement of the sign ordinance as legal signs or make every sign

that is now in a vertical position in the Town of Weare a legal sign and therefore the sign ordinance only goes from this point forward. That is his question.

Neal Kurk stated that he needs some more information to understand the question, because Mr. Meany has come up with two alternatives and there are three or 4 more that are possible. A sign can be legally in place if they did all the things that were mentioned. The question is what happens if “technicality” the sign is legally in place. For example, let’s assume that no permit was requested and no permission was given, but the sign conforms to whatever requirements were in the ordinance at the time in terms of lighting and size. One could say that while there was a technicality and no permit was given, it’s just a technicality and could be overlooked.

Chairman Morin stated what he was saying is that the correction would be minor and they would have to obtain an after the fact permit, then it would become legally in place and the enforcement mechanism there is much simpler than the enforcement mechanism of making them take it down and re-erect it.

Mr. Meany responded that he is fine with that but his question is, if signs are erected in violation of the original zoning ordinance do they become legal because of the wording of this new ordinance or do any signs that are vertical in the Town of Weare have to comply with the existing sign ordinance, be it 64 square feet, 2 signs per business.

Chairman Morin asked, when you say “not legally in place” are you talking about, in excess of the maximum square footage. Mr. Meany responded, yes. Chairman Morin continued and stated that he felt it is clear, that is put up in violation of the ordinance, whether or not it was enforced at that time or sometime after, it is in violation of the ordinance. Mr. Meany stated, so that signs that are now in the air, as long as they comply with the 64 square feet, anything over the 64 square feet has to go away. Mr. Kurk responded, as one example, yes. Mr. Kurk added, imagine as if this ordinance never passed.

Mr. Meany added, the problem that we have at the moment is this particular complaint and legitimizing of signs that are already up in non-compliance. Mr. Kurk stated that this ordinance is very specific on that and on this point he felt can’t be interpreted differently. This article did not legitimate, specifically did not legitimate prior signs that were in violation. It says that it doesn’t apply to signs legally in place. If there is an obvious violation, the sign was oversized or it was placed in a place where it couldn’t be. If it doesn’t meet those criteria then it is not legally in place and it has to be changed, removed, relocated, and resized. If that is the case, since it was illegally in place at the time it would have to comply with the ordinance in affect at the time you determined it was illegal, which means that if it done today, article 34.

Chairman Morin stated that on a case specific basis, if they were led to believe that this was ok and it was not. In general he stated that he would agree with how Mr. Kurk described it.

Mr. Meany stated that the reason for these questions, I really do not feel that your board or myself needs to be a judge, we really just need to define the ordinance. In this particular case, there are a plethora of signs which are in obvious violation on the side of the building that have been up for a long period of time. There was a statement that he heard, whether it is true or not, that any sign that was up automatically became legal.

Chairman Morin agreed, that has been paraphrased and he believes that Melanie Gordon asked a question at the public hearing and it was answered. Chairman Morin further added that he has heard that paraphrased and boiled down to "if it is up it is ok and everything going forward" and he recalled the context and what was meant by the answer was, if it is legally up now we are not making it illegal now by placing this ordinance in. The grandfathering thought carries through there but if it was illegal already there is nothing in a new ordinance that is now going to make it legal and forgiveness is given.

Mr. Kurk asked if he could give a specific example. Prior to this ordinance as he understood from Mr. Meany, it is legal to have a sign in the Commercial zone that was internally lighted. Mr. Meany responded, yes. Mr. Kurk continued, under this ordinance you cannot have a sign in the Commercial zone that is internally lighted. Mr. Kurk stated that just because this ordinance says that there will be no internally lighted signs in a commercial zone, does not make a sign that was in the commercial zone prior to this ordinance, had internal lighting, and been permitted by Mr. Meany it does not make that illegal and does not require the owner of that sign to change anything. Mr. Meany added, but if it had not been permitted that would make it illegal.

Chairman Morin stated that he would strongly suggest that since this ordinance is automatically repealed as of April 1, 2008, with the strong presumption that it will be replaced by another sign ordinance, those that have un-permitted signs probably ought to get them permitted, because we are in a gray area and we are being charitable right now. It is not this boards determination it is our advice to you because you are the enforcement mechanism for the Town. It is our advice and up to you.

Mr. Meany stated that in the case of this particular complaint (Louis Maynard and Dennis Dupuis – both of who were present), who are arguing with one another that particular business, per the site plan that is on file, are allowed to have two signs not equaling more than 64 square. They have gone before the Zoning Board for a variance on the sign that already exists. They both have signage on the sign. There was to be no verbiage of any kind on the sign facing the road and there is signage there, so that part is illegal. The other part is the banners and the rest of

the metal signs, the wooden pole stuck in the ground are all illegal, anything that is over the 64 square feet are illegal signs.

Mr. Kurk stated that moreover as he understood it was that the 64 square feet had to be on a sign that was approved which meant something that was permanent and affixed to the ground. Mr. Kurk asked if it was legal at the time to have a sign with flashing lights. Mr. Meany stated that he didn't think flashing lights were legal, but internally lit signs were legal.

Chairman Morin asked Mr. Meany if he was aware of the special exception that was granted in 2005. Mr. Meany stated that was for the sign that is in place now. The main sign complies with the special exception. Chairman Morin stated there is a complaint here, is it a question of enforcement that you are being asked to enforce something and there is a claim of a violation or is it simply a referee situation. Mr. Meany responded that it is a little bit of both. I've been asked to enforce the sign regulation by Mr. Maynard. The main question comes into play here is all of the signs and banners on the side of the building which obviously exceed 64 square feet as well as a 4 x 4 post with the Uhaul sign on it. There are an awful lot of signs. There is a portable back lit sign that is not lit. There all parked in the 50 foot right of way. Chairman Morin stated that those arguments would be germane in front of the ZBA considering a variance or special exception but not here for clarification.

Chairman Morin stated that as far as we are concerned you are asking us about enforcement and what our opinion might be as to where the line is drawn. Mr. Meany asked, shall I enforce both the previous ordinance and the existing sign regulations. Mr. Meany stated that the original site plan was for a real estate office and gift shop. Over the years those businesses have changed and there format has become a restaurant, when the sign was put on the roof. Those signs were permitted. The only sign that is permitted now is the one that Mr. Maynard received from the ZBA. Chairman Morin stated there is no site plan approved. It was more application to the building department for a sign permit. Mr. Meany stated that there is no site plan approval for any business other than Mr. Maynard's.

Chairman Morin then asked Mr. Meany what exactly he needs from the board to do his job effectively. Mr. Meany stated, nothing, as long as you want him to enforce the regulations as they were before the inception of this one that is fine. The board agreed. Those signs were erected prior to this ordinance. Therefore the rules in place at that time would apply. Mr. Meany responded so that at this point in time he will be writing letters. The avenue that Mr. Dupuis has is, if he wishes to have any further signage is to go before the ZBA for a special exception.

RICHARD BALL LETTER DISCUSSION: Chairman Morin stated that there was a letter that was drafted that was simply try to take care of this in short order

at this meeting. There was a request from Chip Meany for the board to weigh in on the situation with Richard Ball and the lot that he owns on Perkins Pond Road. He applied for a building permit on this lot and got so far as to apply for a septic approval and we were alerted to the fact that DES, this was one lot of a four lot subdivision and subdivision approval from the State which is required was never issued for this lot for anything more than a timber lot. We looked up the record from 1985 and the minutes state a lot was created. A copy of the plan from the registry was included. Mr. Ball has since received State Subdivision approval and a State approved septic design, so they have demonstrated that the lot is build able. There is a cease and desist on this lot right now and Mr. Meany had asked the board to comment and Chairman Morin stated that he would think the board would comment in the way of this draft letter. Mr. Kurk stated that he would change the signature block to say Weare Planning Board, by Paul Morin, Chairman. The board agreed.

AVARD-HADLEY DRIVEWAY DISCUSSION: Chip Meany and Naomi were given paperwork from Mr. Hadley regarding a boundary issue between David Avard and Robert Hadley. Mr. Hadley wanted the board to resolve the issue at this time because Mr. Avard has his house up for sale and before the next owner comes in he would like to see the issue cleared up. When the Planning Board reviewed Mr. Avard's site plan nearly 10 years ago, the plan was to have a driveway that circled around the house showing the traffic pattern to do that. The circular driveway never got put in. The Hadley's have hired Mr. Dahlberg to survey their property and the existing house currently sits 2 ½ feet off the Hadley property line, so the drawing presented at the site plan review showing the driveway circling the house couldn't have happened with a surveyed plan. The site plan was done neatly by hand, but not a surveyed piece. Naomi sent all the information to Town counsel for his opinion to see what action the board should take. The legal opinion was shared with the board. Mr. Hadley was present and stated that he is not here to close the business down. He is looking to have the driveway issue corrected before the next owner takes over. After some discussion amongst the board the board felt that there may be some credible testimony. The board decided that Naomi should send a letter to Mr. Avard and follow the revocation process immediately and schedule a hearing as soon as possible. Naomi informed the board that it would probably have to be at the June 14th work session, because the time frame wouldn't allow for the discussion to take place at the next regular meeting in two weeks. The board was fine with that.

DISCUSS NH FISH & GAME LETTER: Frank Bolton stated that he had a visit from Fish and Game regarding a proposed subdivision. Mr. Bolton wanted to point out to the board that "fish and wildlife associated recreation such as hunting, fishing and wildlife viewing are New Hampshire traditions that provide not only recreation, but also a positive economic impact to New Hampshire's economy". The letter further went on to say that "landowners who provide access for hunting, fishing, trapping and wildlife watching are provided liability protection through RSA 212:34, commonly known as the Duty of Care statute". The letter also has a

lot of other facts about the value and use of the Town's open space lands for wildlife associated recreation that Mr. Bolton wanted to have shared with the Conservation Commission and the Board of Selectmen. Mr. Bolton asked Naomi to send a copy of this to the Board of Selectmen and George Malette will take care of getting the Conservation Commission copies.

FLANDERS MEMORIAL ROAD BOND FOR HOLLY HILL DEVELOPMENT: Naomi received a request to release the \$30,000 that is currently being held for Flanders Memorial Road for the Holly Hill Development. The development is almost complete, there are only 3 houses left to be built. The Town is now responsible for maintaining both Holly Hill Farm Drive and Winterberry Lane. Carl Knapp, Public Works Director sent a memo to the board approving of the release of the bond in the amount of \$30,000. Frank Bolton moved to release the \$30,000 bond for Flanders Memorial Road, Craig Francisco seconded the motion, all in favor.

MAKE AN ACTION PLAN OF LAUNDRY LIST OF CHANGES FOR UPCOMING YEAR: The board went down through the list of proposed changes in an effort to narrow down to a manageable list that could possibly be undertaken in this coming year. The following list was discussed:

1. Underground utilities being a requirement – Paul wanted to have a joint meeting with the BOFW and Fire Chief and possibly a rep from PSNH to come and speak. The board is willing to pursue.
2. Impact fee ordinance – have SNHPC in to discuss
3. Amend roadway design standards to allow the Planning Board to allow narrower roads – have SNHPC in to discuss also have Carl Knapp, Public Works Director in on the discussion.
4. Make some changes to the cluster housing section and add the stewardship fee of \$10,000
5. Discuss amending the fire suppression system - make an attempt to have another meeting to try to get things worked out
6. Create subcommittee called the Farmland Preservation Committee with Frank Bolton and George Malette as co-chairs. Mr. Bolton stated that he has contacted Chris Hague, Jenny Chartier and Jan Hamilton for possible members. The board thought that creating a subcommittee was a good idea. The subcommittee would meet and report back to the Planning Board.
7. TDR's – City of Concord appointing a Housing Commission to look into this. The board felt this should be put on hold to see where Concord is going and their time frame.
8. Sign Ordinance – involving the Economic Development Committee has scheduled a meeting on 5/15 from 3-5 PM and 7-9 PM at Town Hall for input.
9. Historically appropriate Road names & Subdivision names – consider amending the ordinance to require consulting with the Historical Society versus the developer's name - contract to see if that is desirable with them.

10. Allocation of legal expenses – Chairman Morin was going to check with LGC to see if we can do this without amending the regulations
11. Petitions for rezoning - this goes to the general re-zoning - this should be done on a case by case issue.
12. Smart Growth – it has been brought up enough and we should move on it or possibly put it on hold. This could be put on hold until someone else might come up with a proposal. Take this off for now.
13. Work force housing and affordable housing – this may be an item that waits and that we might be able to piggyback and learn from.
14. Site Plan Review Regulations update – involve the Conservation Commission; Economic Development; Board of Firewards and Board of Selectmen, etc.
15. Revisit the zoning map – SNHPC?
16. Public on site parking areas in the village districts – Article 22.6.3 discusses this and the board felt that is should be added to the Site Plan Review Regulations to allow some flexibility

Chairman Morin stated that he put together a calendar of all these items and circulate it for everyone.

Naomi was asked to contact all boards and commissions to see if they have any zoning changes to be proposed for 2008 that they bring it forward in the summer. The Board also asked Naomi to add Economic Development to the other boards input list. George Malette is to forward email of Economic Development Committee to Naomi so they can get minutes and agendas for upcoming meetings. The board felt that the Economic Development Committee would be good help for site plan regulation update

III. OTHER BUSINESS:

GARY A. & CONSTANCE K. EVANS – VOLUNTARY MERGER, RIVER ROAD, TAX MAP 202-106, 202-108, 202-158: Naomi explained to the board that a voluntary merger was received originally to merge four pieces of property. Then Mr. Evans came into the office to have only three parcels merged. After further looking into the three parcels, two of them already have dwellings on them. Naomi informed the board that the Town doesn't allow for two dwelling units to be on one property. The board asked Naomi to contact Mr. Evans to let him know that only two of the properties can be merged and ask him to fill out a new form as well.

EXTENSION OF TIME FROM HIGH ROCK DEVELOPMENT: Naomi informed the board that she received a fax today from Attorney Scott Hogan requesting for another week extension to get together the information the board asked for. Naomi further pointed out that one week extension there is no way that Bill Drescher could possibly turn that around within a week. The board agreed to extend the time to May 17th as requested, with the understanding that this will not

be discussed at the 5/24 meeting . Naomi would notify Attorney Hogan of the board's decision.

APRIL 26, 2007 MINUTES: Tom Clow moved to approve the April 26, 2007 minutes as amended, George Malette seconded the motion, all in favor.

SNHPC REAPPOINTMENT AS A MEMBER FOR THE TOWN: Chairman Morin explained that his term is up June 30, 2007 and he is not interested in being reappointed. This will complete his second term. The board asked Naomi to circulate an email to the Conservation Commission, Board of Selectmen, Economic Development Committee and Zoning Board to let them know that there is an opening for a 4 year term and ask that any interested parties names be forward to the Planning Board for nomination.

IV. ADJOURNMENT:

As there was no further business to come before, Tom Clow moved to adjourn at 10:30 PM, George Malette seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator