

ATKINSON PLANNING BOARD  
Regular Meeting  
Atkinson, New Hampshire  
Wednesday, October 20, 2010

**Present:** Sue Killam, Chairwoman, Paul DiMaggio, Vice Chairman; Bill Bennett, Ex-Officio, Regular Members: Tim Dziechowski, John Wolters, Ted Stewart, Alternate Member: Mike Turell

**Others:** Julie La Branche, RPC, Gary Witley, 46 Main Street, Christine Cornelius, abutter to 56 Island Pond Road, Timothy Winings, Surveyor, Ken Walsh, Designer/Builder, Steve Fisichelli, agent for the Seller

**Sue called the regular meeting to order at 7:38 pm.**

**Correspondences:**

Incoming:

Town & Country Magazine  
Calendar for Legislative Dates  
Notice form Haverhill Meeting Nov. 16th Special permit to build w/i 500' of water - Amesbury Rd.

Outgoing:

None

**Approval of Minutes:** Minutes were deferred until after the New/Old business  
October 6, 2010 minute

**Paul motioned to approve the minutes as written. The motion was seconded by John Wolters the Board unanimously approve the minutes as written.**

September 22, 2010

**Paul made motioned to approve the minutes as written. The motion was seconded by John Wolters the Board unanimously approved the minutes as written.**

August 18, 2010

**Bill Bennett made a motion to accept the minutes as corrected. Mike Turell seconded the motion and the Board voted unanimously to accept the minutes as corrected.**

**New Business:**

Gary Witley: Request for Extension of Conditional Approval granted on October

21, 2009 for lot line adjustment and the subdivision of property at 46 Main Street, Map 4 Lot 16.

Sue gave an overview of what was proposed for the property. There are 2 dwellings on the lot and Mr. Witley wanted to create a second lot so each lot has a house to correct the problem. Some reasons for the extension:

- series of title issues that have taken time and research to resolve and they are near the end. There was a lien holder which delayed the process.

- this was a "conditional" approval and this was sent in a letter one year ago

Board vote to approved to the application to subdivide the 35.85 acre lot and the lot-line adjustment to correct the abutter encroachment. Property located at 46 & 50 Main Street Maps 4 Lots 14 & 16 conditioned upon the following:

- 1) Final plan would have Mr. Evans signature (next door neighbor)
- 2) Final plan is to be accompanied by the deeds to reflect the lot-line changes
- 3) Letter of certification that the monuments have been set (Lavelle)
- 4) additional notes defining side lines (Lavelle)
- 5) Approval of final plan by Stan-Tec Engineering and the Rockingham Plan

Mr. Witley asked for 6 month extension to get everything resolved.

**Ted Stewart made the motion to grant a 6 month extension on the conditional approval. Mike Turell seconded the motion and the Board voted unanimously to grant the extension**

### **Public Hearing:**

#### **Sue opened the Public Hearing at 7:53pm**

Commercial Site Plan on property owned by Richard and Athena Melucci, Sue Mar Realty Trust, to be developed by JJMK Realty Trust, to create a 2178 SF addition to an existing 5398 SF commercial building located at 56 Island Pond Road, Map 20 Lot 2 in the CI and CP Zones.

Abutters: Richard and Athena Melucci as Trustees  
Southern NH Commons, LLC  
Waterwheel Estate  
Q & D Realty Trust  
Christine Cornelius - present  
Rockingham Realty LLC  
Timothy Whinnings, TJW Survey - present  
Ken Walsh, Designer/Builder - present

Mr. Winings, of TJW Survey, proposed an addition to the existing structure at the site.

- the addition would be primarily within the existing pavement - little change to the impervious area
- water would be from an existing on site well
- septic system is existing on site can handle the addition
- a new parking scheme to accommodate 25 spaces which is 4 more than required
- Stantec comments were received that evening and would be addressed

Sue mentioned that property had a "storied" past. She gave an overview of the history/legal issues that follows the property. Ted questioned the "use" and if the past applies to the present use. Sue wanted to make sure that the property's legal issues are dealt with in the proper manner.

Ken Walsh, stated that the use was light manufacturing business and there would be no outside storage.

Sue asked Ms. Cornelius if there were any lighting issues. Ms. Cornelius stated that the property is not in compliance with the zoning regulations. Ms. Cornelius present a letter dated 7/29/94. She read "The Structure sits within the buffer and that no commercial activity will take place outside the building..." Also, she stated that there was paving done that was not approved."

Discussion on the growth of the buffer. Ms. Cornelius made reference to the property being a historical land due to the archaeological site that is between the barn and her property. Also, she noted that there are wetlands.

Sue read a 2000 letter from the ZBA to give some background with regards to Cornelius vs. Town of Atkinson and Masoni vs. Town of Atkinson - the 2 cases were combined by the court. The ruling sent it back to the ZBA with the following conditions which Sue read from a letter by the ZBA from a hearing held on January 11, 2000 that made conditions to the property based on the court rulings.

Steve Fisichelli, agent for the seller, asked if the zoning lot-line was one of the "questions" that was an issue with that property owner and if the law suit goes away with the new owner and new use of the property. Sue stated that the "resolution" continues with the property forever.

Sue stated that the Letter of Intent was missing from the Application and that it would help clarify the use of the property.

Sue read the letter from Stantec, the Town's Engineer firm (see file). Julie asked what was the reference to the 150' boundary. Sue defined the question that there is a CP, CI and Residential zones all within close proximity,

and regulations require 150 buffer where Commercial abuts Residential. Ms Cornelius presented another letter dated 8/12/94 signed by Mr. & Mrs. Cornelius, Charles George, Board of Selectman, Paul DiMaggio, Planning Board and Mr. Masoni. Sue read the letter and stating the conditions that were agreed upon by all parties involved regarding buffering, ramp, sliding door, window, bulk head, paving, parking lot screen, lighting/removal and no commercial activity. Ted stated that the letter is a non-binding resolution but did show good will. Paul stated that this issue would have to be started at the beginning, with this new Application.

Sue read the buffer area 690:1 from the Site Plan. 15' from the buffer zone needs screening. Julie made reference to page Z 2 in the Zoning (Section 240) there is a stipulation about 30' "wobble room" into the less restricted zone and made the clarification of the use.

Julie also asked what the new addition would be placed on. It was stated by Mr. Walsh that there would be a 30,000 gallon tank for water for the sprinkler system that would have a slab placed over. Julie also gave suggestions on blasting and put some debris barriers up to catch sediment from the catch basins. Julie also made mention that no legal site plan exists for that previous use. So it was null and void and to make it a new application rather than an "amendment."

Sue read in Section 530 of Zoning- Set-Backs - 150' where a CP abuts a residential zone to clarify a point for Ms. Cornelius. Sue stated to Mr. Walsh that they need to stay 150' out of the buffer zone and 75' from the street and if parking in the front of the building is removed it would be 50'.

Discussion on the parking, calculation of parking, retail/warehouse/offices.

Sue brought up Jurisdiction and a discussion arose and the lack of information/letter of intent.

**Paul made a motion to not take it under Jurisdiction until all information is presented to the Board and to continue the Hearing until November 17, 2010. Bill Bennett seconded the motion. The Board voted unanimously to not take it under Jurisdiction and to continue the Hearing on November 17, 2010.**

Julie brought up a question about the ZBA decision to grant a variance to the 150' setback to the building from the residential zone; She questioned the records be reviewed, since ZBA cannot issue a Variance to Site Plan Regulations.. This is to make sure that everything is correct and no further issues arise from it.

**Paul made a motion at 9:01 pm to close the Public Hearing on November 17, 2010. Mike Turell seconded the motion and the Board voted unanimously to close the Public Hearing**

**New Business:**

Julie LaBranche stated that she was working on the draft of the Master Plan chapters. Tim asked Julie about the report of the NRI he never received and Julie stated that she would resend them.

**Ted Stewart made a motion to adjourn the meeting. The motion was seconded by Mike Turell and the Board voted unanimously to adjourn.**

**The Planning Board meeting was adjourned at 9:58 p.m.**

respectfully submitted by Patty Power