

**Walpole Planning Board
Town Hall
Minutes Tuesday, August 14 2018
7 pm**

Presiding Members: Jeffrey Miller (Chair), Robert Miller (Vice-Chair), James Aldrich, (Secretary), Jason Perron, Jeff White, Steve Dalessio (Selectboard Representative). Alternates: Jeff Colley, Joanna Andros. Absent: Board member Dennis Marcom.

Recording: Marilou Blaine. These minutes are unapproved and will be reviewed at the September 2018 meeting for corrections, additions and/or omissions.

Meeting Opened: Mr. J. Miller called the meeting to order at 7 pm.

Roll Call: Mr. Marcom was absent so Ms. Andros was asked to and agreed to take his place on the Board.

Minutes: July meeting and July workshop. Mr. R. Miller made a motion to approve the regular meeting minutes and workshop minutes as presented. Mr. Aldrich seconded the motion and the motion carried.

Old Business:

Public Hearing: Avanru Development Group LLC, Jack Franks, Amended Site Plan, Retail Store Front, Map 12, Lot 1, 504 Main Street. Commercial District. Submitted were: a previously approved site plan, recorded as-built survey, Amended Site Plan with landscaping design, architectural drawing, floor plan and elevation, AoT permit, photometrics with cut sheets.

Mr. Franks passed out a driveway permit and before and after drawings of the site plan. With Mr. Franks was Civil Engineer Chad Branon of Fieldstone Land Use Consultants in Milford, NH. Mr. Franks showed the previously approved site plan, approved in 2012 and that, he said, had extended site approval in 2017 for the next five years. This project was approximately six years ago and due to economic conditions, Mr. Franks said, he hasn't been able to sell the project. Things are picking up, especially on the other side of the state, he said, but it's still a challenge on this side of the state.

Originally the projected plan that was approved was a 6500 square foot, two-story building. There was going to be a bank and an eatery plus multiple offices on the second floor. The two-story building concept was a little tough to sell, Mr. Franks said.

The new plan is a different concept and the end result is a 9100 square foot building, 15 feet high. That's a reduction of 39 feet 6 inches and 13,500 square feet to 9100 square feet and the traffic flow is now two directional, Mr. Franks said.

Mr. Branon said the traffic flow was quite restrictive in that it was in one direction and that's not appealing to consumers and retail establishments don't feel it's as welcoming to consumers. It works with a bank but not when there are multiple retail stores.

He explained that what Fieldstone came up with is a new layout, shifting but still complying with a building setbacks that had three drive-thru lanes. They positioned the building so it increased the green space along Route 12 and Red Barn Lane. In general it allows for a better appearance and entry to the project and with 9100 square feet it is a much better approach and would probably appeal to one or two tenants and be a lot more marketable, Mr. Branon said. Everything that is being proposed does not changed the previous drainage and utilities but does reduce the Impervious cover. Lot I exceeds the green space by almost double the amount. Traffic flow works better. It comes in off Red Barn Lane and reduces tenants from six down to two, which means less of a traffic impact. It reduces traffic flow, reduces the height of the building. It's a better fit.

Mr. Branon said the plan shows parking but the catch basin will be moved to the curb. He said he talked to AoT

and will have to amend that permit. Since there is a reduction in impervious sections, the storm water management plan will have to be addressed again by AoT. But the project can have conditional AoT approval and AoT will review the placement of catch basins.

Utilities, drainage, lighting, landscaping plans were all included in the packet, Mr. Franks said.

Mr. J. Miller asked if there will be a special turnoff. It may or may not happen, Mr. Franks said. The Department of Transportation is reviewing Route 12 and there's going to be re-stripping that is similar to Jiffy Mart. There's going to be a widening of the road and it will start considerably up the hill from the south. DOT didn't think traffic lights were going to be needed at this point.

Mr. R. Miller asked Mr. Franks if he said the footprint was the same. Mr. Franks said the footprint is increased by 2500 square feet but the overall square footage of the building is reduced by over 4,000 square feet. Mr. R. Miller asked if the green space is at least 30 percent? The green space on Lot 1 is 56 percent, Mr. Franks said.

Mr. Franks said he spoke to Mark Houghton of the Walpole Fire Department about the sprinkler plan. It wasn't included because the project needed conditional approval and Mr. Franks didn't want to pay for it until he knew the project could be done. However, he said, the sprinkler plan can be put together rather quickly.

Mr. Dalessio asked about sewer. Mr. Franks said the sewer connection has already been paid. Mr. Dalessio said if it becomes an eatery in any way, that permit will change. Mr. Franks said he understood that.

Do you have tenants? Mr. J. Miller asked. Mr. Franks said "no." However, things are beginning to move somewhat and he has been getting more calls about the property. Brokers think this type of building will be a lot easier to fill.

How much of the parking lot will be built? Mr. Franks pointed to an outlined area on the map and said about 30 to 35 parking spots.

When do you plan to start construction? Mr. R. Miller asked. Mr. Franks said it depends on amending the AoT and that takes anywhere from 3 to 4 weeks so it could be as early as this fall or next spring.

When you get approval from the state are you going to build then or wait until you have a tenant? asked Mr. R. Miller. Mr. Franks said he would like to have at least one tenant in hand before moving forward but it really depends on how confident he feels about the market.

Mr. Dalessio said he hoped Mr. Franks would look at the design guidelines in Walpole's site plan and look at the store front of Tractor Supply. Mr. Franks said he would.

Mr. Dalessio addressed lighting. It's very dark on the corner of Red Barn Lane, he said. The plan is to have dark sky night lighting and submitted a multiple page document on lighting. Mr. Dalessio said you also have to address lighting coming from the interior of the building spilling out through the windows. Mr. Franks said he would discuss that with the tenant. He said glass work can be tinted.

With no further questions from the Board or the public, the Public Hearing was closed.

Public Hearing: Two-Lot Subdivision Mary McMahon – 58 Adams Lane off of Whipple Hill Road. Ms. McMahon is proposing to subdivide off a lot of 14.48 acres labeled "NOT TO BE DEVELOPED" leaving a remainder of 143.09 acres with Tax Map No. 3 Lot No. 1. The parcel is located in the Timberland District. Lot #2 of 14.48 acres is accessed solely by a class VI town highway. The house is in the Rural/ag District and is Lot #1.

Joe DiBernardo, surveyor, represented Mary McMahon and explained the subdivision is on a Class VI road in the southwest corner of property. The house is on the remainder of the property.

Mr. J. Miller asked whether the lot ought to be called "unbuildable." Mr. DiBernardo said "not to be developed" was the terminology he used with Alyson's property.

The ordinance states that a lot needs 200 feet frontage on a Class V to build a home. In the Timberland District there are already guidelines of what is permitted – use of a trailer, hunting camp or logging camp as long as it is shown to the Board of Selectmen that the use is temporary and it will comply with Article IV section C of this ordinance, in which case a permit may be granted for a period not to exceed six months.

Also a building may be constructed in this District provided a permit is obtained from the Board of Adjustment whose duty it shall be to grant such permit only on the recommendation of the Planning Board and when they are satisfied that it shall meet certain qualifications. One of those conditions is building off a Class VI the town had no liability.

Why would you say it's not developable if they had approval from the Selectboard? Asked Mr. DiBernardo.

Mr. DiBernardo said that subdivide and building are two different things. "Not to be developed" makes it clear that 20 years down the road you can't put a house on it. When someone says developed, Mr. DiBernardo thinks of sewer and water. Does that include power? Jeff White asked.

Mr. DiBernardo said that the Board can stipulate any conditions they want on the property. The intent is to have a hunting camp.

Mr. Aldrich said that the use of hunting is temporary so he thought "Not to be Developed" should be removed.

Ms. Barbara Spivey, an abutter, had these comments, which she provided in an email. The words in parentheses are the secretary's words.

"We are an abutter, Spiveys, and purchasers of a previous subdivision of Mary McMahon's to protect our interests. We didn't expect any further subdivision because (we) didn't think (the property) could (be developed) with no frontage. As I understand it, subdividing land needs to meet zoning requirements: under Walpole Zoning Ordinance need minimum of 200 feet frontage on public street - Article XVII: Definitions E. Public Street means any highway, street, road, avenue, land or other right-of-way over which the public has a right to pass and repass, and which the State, County or Municipality has a responsibility to maintain.

" This proposed subdivision does not have such frontage and I would think this is a scattered subdivision that the Town would prevent. What benefit is it to the Town to approve this? There is a lot of recreational area already. At the June 12 (Planning Board) meeting Mr. DiBernardo said (there are) 2 precedents but (we're) not sure if he is referring to subdivision or building on Class VI?

There is a big distinction between Board of Selectmen giving permission to build on lot on Class VI vs. Planning Board giving subdivision approval on Class VI. Mary McMahon is asking for subdivision on Class VI road, which according to WZO (Walpole Zoning Ordinances) doesn't meet requirements because (it is) not maintained by State, County or Municipality.

"The Spivey residence was not subdivided, it was already a lot, and previous owner got permission from Selectboard to build. Not sure about Lot 3 at Alyson property off Wentworth in 2004 - what he is referring to - there is a right-of-way over lots with shared maintenance.

"(We are) looking for Planning Board to protect our interest. We understand that people have a right to use their land, but Mary McMahon will not be the using the land and it won't affect her unless access is over her Lot 1. She is giving it away and says it won't affect us, although she said we would have more traffic. Inevitably it will affect us. We have invested a lot of money over the years with our eyes open and when we built we understood and accepted that we were the only ones on the road, but public could use it and it is our obligation to repair damage, but we didn't expect someone else using property and adding to wear and tear.

"There is a bridge that needs to be crossed to get to this back lot that is not safe to pass over with a vehicle - does this mean it has to be adequate for emergency vehicle access?

"We have minimal traffic in winter because (the road is) not plowed beyond our driveway - does this mean it is going to be plowed up to that land = additional traffic. If the PB approves this, looking for fairness, quiet enjoyment, cost sharing in expense of road.

"If PB approves this, I would ask that they consider a private restriction by us as owners of Tax Map 3 Lot 1-2 to enforce restriction in future - not to be developed. If allowed to subdivide now, which shouldn't (happen) with no frontage on maintained road, then 10 years down the road (a) new owner applies for permit to build. It should certainly be denied because "not to be developed" was the only reason it was allowed to be subdivided in the first place. This is why we would ask for a private restriction. Not sure we would get future notices if that lot is allowed as wouldn't be abutter.

"If PB approves this, I would ask that on the plan and in the deed more clarity of "not to be developed" i.e. "not to be developed - no permanent fixture/building/camp/shed - for recreational use only" - and what does that mean? One recreational camper going to be used by one individual, 5 people...it's the unknown..., but the known is it means use of road, so I would ask that the town enforce a share in costs. Until something affects someone personally, people don't understand. We live there year round and pay taxes - now possible back lot in current use paying little tax, but access by Class VI road we maintain."

**See also another letter that was submitted by Shane O'Keefe at 5 Adams Lane the afternoon of the Public Hearing. It is at the end of these minutes.

Ms. Spivey asked if this was the last process. Mr. J. Miller said, "Yes." " So it doesn't go to the Zoning Board of Adjustment? The reply was "no."

Ms. McMahan said she was gifting the land to a friend, someone who is a hunter and would be putting up a hunting camp. The camp would be a tent over a wagon. But it's not temporary. Perhaps it should be stipulated that he could have the hunting camp but not a trailer, she suggested.

The use of land is defined by ordinances, Mr. Dalessio said. The question tonight is whether or not it can be subdivided. It was suggested that Mr. J. Miller contact the NH Municipal Association.

There being so other questions, the Public Hearing was closed.

Public Hearing: Three-lot Subdivision: Rascal Baby, LLC is proposing a Lot Line adjustment off Valley Road. This adjustment involves 3 lots of record all owned by Rascal Baby, LLC. Tax Map No. 13 Lot No. 51 will expand from 0.55 acres to 6.45 acres. The additional land is being taken from Tax Map No. 13 Lot No. 50. Tax Map No. 13 Lot No. 50 is acquiring 2.18 acres from Tax Map No. 11 Lot No. 29 giving Lot No. 50 a total area of 21.13 acres. Tax Map No. 11 Lot No. 29 is being reduced to 18.66 acres after adjustment.

Surveyor Joe DiBernardo represented the owners of Rascal Baby, which owns multiple parcels. There are three parcels to which they wanted to adjust the lines. It would expand the tiny lot in the bottom left hand corner and it would 4.9 wrap around the Kimberly property to make 6.45 acres. Another lot would take a 20-foot slip out of a lot on map 11 in order to conform to the road frontage. It would reduce that lot to 18.66 acres with 1200 plus feet road frontage.

Mr. DiBernardo explained that the lots are now conforming, having the required amount of square footage and road frontage. Mr. DiBernardo was asked what are they going to do with the property and he said build a couple of homes.

There were several abutters, Wayne and Jackie Croteau and Barbara Plumley who live across the street from these properties. Mr. Croteau would like to make repairs to the pipes that gives them access to water from a spring. The pipes are located on property owned by Rascal Baby LLC. They have rights to the water and a right-of-way in their deeds.

They have tried to contact by telephone the caretaker of the property but the caretaker has not returned their calls. The residents made their complaint at this meeting. They were referred to the Selectboard for further assistance. These residents were told they were within their rights and the owners were ignoring their concerns. The owners cannot legally prevent them from getting water. One gentleman also added that shooting starts at 6 am and goes until dark.

With no further questions from the Board or audience, this hearing was closed.

Public Hearing for Subdivision for Hooper Golf Course and property will be held in September after the ZBA hearing this month for a variance for the cottage.

Public Hearing decisions:

After a short discussion it was decided that Mr. Franks had been at the last four meeting and this would be handled as an amended site plan.

Mr. J. Miller suggested the following conditions:

- A new permit from AoT
- A sprinkler plan sign off by the Walpole Fire Department
- A final design of the building
- A final sewage connection planning – catch basin placement
- A time frame of one year in which construction must start and construction would be defined as the foundation started. No construction/foundation must submit new site plan.

A motion was made by Mr. R. Miller and seconded by Mr. Perron to accept these as conditions of approval of the amended of the Avanru site plan. The motion carried.

McMahon Subdivision

Mr. J. Miller said the question is can we subdivide on a Class VI road. It will open a Pandora box and be a quagmire. He continued that the initial intent is okay but what happens five, ten years down the line and all of sudden the objective changes. That Board will have to think why did this ever pass.

Mr. Dalessio suggested calling the NH Municipal Association for advice and background on subdivisions in a timberland district.

Mr. Perron made a motion to continue the hearing until September. The motion was seconded and approved and not opposed by anyone on the Board.

Rascal Baby LLC Subdivision

Mr. R. Miller said that this was a pretty cut and dry presentation and made a motion to accept it as presented. Mr. Aldrich seconded the motion and it was approved by the rest of the Board.

New Business:

Request for a Public Hearing for a Recommendation to the Planning Board for a Special Exception.

Commercial business in a rural/ag district, Map 4 Lot 3-6 on Route 12 where the flea market was held. Mr. Joe Sawyer would like to lease his land to Andrew MacIntyre to store tractor trailer trucks and a couple of pickup trucks for his trucking business.

Mr. MacIntyre of Westminster, VT, said he would like to store 3 trucks 3 trailers and some pickups on Mr. Sawyer's land. He would be hauling mini excavators where one truck is doing a long haul, doing "box work" where one truck would leave on Sunday and be back on Friday and another truck that would make local deliveries. The space is 150 feet-by150-feet in the back of the lot, out of sight. The access is where the flea market entrance was.

Mr. White asked what he was hauling – anything hazardous? Mr. MacIntyre said he wouldn't haul hazardous stuff.

Mr. J. Miller asked about a Department of Transportation permit. He said trailer trucks coming out that property will take a while to get up to speed. Mr. Sawyer presented one to the secretary that was approved in August 2018.

Mr. J. Miller asked Mr. MacIntyre about growth of his business. He said he's added a truck every year and, of course, every business wants to grow. But his problem is getting drivers. Mr. J. Miller pursued the question and asked to give him a number – would it be 4 or 5 trucks, 6 or 8? Mr. MacIntyre said maybe 6 to 8.

Ms. Andros asked is this in rural/ag and he asking for a Special Exception? She wanted to see what kind of trucks he was talking about. He said tractor trailer trucks. There's a picture of them on his Web site, admhauling.com and he has a Facebook page.

Mr. R. Miller asked if he would be storing fuel. He said no and that all maintenance on the trucks is with auto body shops in Vermont. Mr. Colley asked if there were wetlands on the property. Mr. Sawyer said there's a swale, brook, stream, and a wash-out remedy was to put in loads of gravel fill that created a swamp at the far end the property and is not contiguous to where Mr. MacIntyre will be storing his trucks.

Mr. Perron made a motion to have a Public Hearing on a Recommendation for a Special Exception in a rural/ag district in September. Mr. R. Miller seconded the motion and it was approved by the Board.

Request for Public Hearing for a Subdivision on Ramsay Road.

Joe DiBernardo brought in an application for Neil and Judith Coughlin on Ramsay Hill Road, Map 11, Lot 11 in the rural/ag district. The Coughlin property is the last house on Ramsay Road and turns into a class VI road. The Coughlins want to take a sliver of land from an adjoining piece of property and add it to another property to make a conforming lot with 200 feet of road frontage.

A motion was made, seconded and approved to hold a Public Hearing in September for this subdivision.

Aumand property in North Walpole

Mr. Ray Aumand, on land near the school in North Walpole, wants to expand his garage but doesn't have enough property for setback. He owns some other property and Mr. DiBernardo, who is representing Mr. Aumand, asked if this property, which is his driveway in front of the house, could be a voluntary merger.

One problem is there is a portion of the driveway that is not being taxed. Mr. Aumand bought it as a separate parcel. It doesn't have a tax map number and hasn't been taxed. He has a deed to the property.

He was advised that the best thing to do is settle things up with the selectmen first and then do a voluntary merger and have the county register it. He was also advised to see Sarah Downing in the Selectboard's office and she can pull up the map.

Request for a Public Hearing for Recommendation from the Planning for a Special Exception in the Industrial District to move his auto repair business.

Peter Dexter, who has an auto repair business in the Industrial Park, wants to buy a building, originally the platform tennis building and now owned by Bensonwood, and move the auto repair business there. He is having a Public Hearing this month for a Special Exception with the ZBA. He needs a recommendation from the Planning Board. Mr. Perron made a motion to hold a Public Hearing for the Special Exception Recommendation in and Industrial Park in September. The motion was seconded and approved by the Board.

Workshop meeting It was decided that there would be a workshop meeting on solar energy ordinance in September.

Respectfully submitted, Marilou Blaine

cc: PB, ZBA, Selectboard, Town Offices, Walpolean. Minutes posted: Town Hall lobby, bulletin board outside Post Office, Walpolean, Town website walpolenh.us.

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August 14, 2018

Via Hand Delivery

Town of Walpole Planning Board
PO Box 729
Walpole, NH 03608

Re: McMahan Subdivision – Map 3, Lot 1

Dear Members of the Board,

I am writing to you as an abutter to the property being considered for subdivision this evening. While I have no objection to the subdivision, and hope that the Board in fact approves it, I am concerned about the designation that the newly established 14.48 acre parcel (Lot 2) as “NOT TO BE DEVELOPED”. I see no definition in New Hampshire Statutes or the Walpole Zoning Ordinance of what it means for property to be “not developed” (or “developed” for that matter). If it means that there can be no permanent or temporary structures or storage of any kind on the property, then I have no concerns. If it means that the property cannot be used for active recreational uses (as opposed to passive recreational uses such as hiking, hunting and camping), then again I have no issues. Should these not be the case, then approving the project as is could create a precedent that we all could regret in the future. Subsequent property owners, or those elsewhere in town, could point to this proposal to support like proposals.

My primary long-term concern has to do with the potential for increased vehicular traffic on Whipple Hill Road, which is a narrow (2 rod) gravel road subject to occasional washouts and mud holes and washboarding due to topography, despite the best efforts of our excellent Highway Department crew. By allowing for this lot, and potentially any number of additional lots by precedent, without some certainty that they will not generate undue vehicular traffic would likely spell trouble for the integrity of the road and hinder access for residents and emergency services. I therefore recommend including in any vote of approval the following condition set, which should be reflected in the meeting minutes:

“That the resultant 14.48 acre parcel shall not be developed in anyway, meaning it 1) shall not have any buildings or other structures, either permanent or temporary, of any kind placed on the property, 2) shall not be used for permanent or temporary storage of any kind, including vehicles, equipment or solid waste, 3) shall not be used for active recreational purposes other than hiking, hunting, trapping or occasional tent camping. Nothing in this decision shall prevent the lawful harvesting of agricultural or forestry products on the subject property. These restrictions are enforceable per RSA 674:21-A.”

Many thanks for your time and consideration.

Best wishes,



Shane O'Keefe

Cc: Mary N. McMahan

RSA 674:21-a Development Restrictions Enforceable. – Any open space designation or other development restriction which is part of a cluster development, planned unit development, village plan alternative subdivision, or other proposal approved under innovative land use controls, or which is lawfully imposed by a local land use board as a condition of subdivision, site plan, variance, or other type of approval, and which has been filed in the records of the local land use board in accordance with its established procedure, shall be deemed to create a conservation restriction as defined in RSA 477:45, I, which shall run with the land, and shall be enforceable by the municipality, or by the owner of any property which would be specially damaged by the violation of such restriction, regardless of whether any deed or other instrument conveying such restriction has been executed or recorded. For purposes of this section, an applicant's statement of intent to restrict development, submitted with or contained in an application which is subsequently approved, shall be deemed a condition of the approval. (*underlining added for emphasis*)

