

PLANNING BOARD
Selectman's Meeting Room
RINDGE, NEW HAMPSHIRE
August 6, 2013

DATE: August 6, 2013 **TYPE: Public Meeting** **APPROVED: 8-20-2013**

TIME: 7:00 pm

CALL TO ORDER:

Planning Board Members: Chairman Kirk Stenersen, Vice Chair Kim McCummings, Hank Whitney, Phil Simeone, Bruce Donati, Charlie Eicher

Planning Board Alternates: Holly Koski, Burt Goodrich

EX OFFICIO: Roberta Oeser

PLANNING DIRECTOR:

PLANNING SECRETARY: Susan Hoyland

APPOINTMENT OF ALTERNATES

OTHERS PRESENT : Dominic Lance Muscara-BRR Architecture, Heather Monticup-Greenman-Pedersen, Inc., Matt Snyder, Sulloway and Hollis, Counselors at Law, John Kucich, Bohler Engineering, Kale Stenersen, Keith Halloran, Richard Mellor, David Drouin, Dick Drew, Robert Duval-TF Moran (for Hannafords), Steven Johnson, Gisela Johnson, Peg Anderson, Robb Anderson, Roberta Gordenstein, Rick Sirvint,

1. ANNOUNCEMENTS

2. APPROVAL OF MINUTES

a. July 16, 2013 Public Session

MOTION: Roberta Oeser moved to approve the minutes of July 16, 2013 as written. Kim McCummings seconded the motion. Vote: 6-0-1 Kirk Stenersen abstained

b. July 25, 2013 Public Session

MOTION: Phil Simeone moved to approve the minutes of the July 25, 2013 Public Session. Roberta Oeser seconded the motion. Vote 6-0-1 Hank Whitney abstained

3. OLD BUSINESS

a. Continuation from July 16, 2013: CONSIDERATION OF an application for a Minor Subdivision submitted by Kohlmorgen Housing -2 LLC. The property is located at Tax Map 8, Lot 7-4 Wallace Road. The applicant is seeking approval for a two lot subdivision.

The applicant has requested additional time to gather necessary information.

MOTION: Roberta Oeser moved to continue this Public Hearing until August 20, 2013. Phil Simeone seconded the motion. Vote 7-0-0

Chairman Stenersen recuses.

b. Continuation from July 16, 2013: **CONSIDERATION OF:** an application for a Minor Subdivision submitted by Richard P. Drew LLC on behalf of Daniel Ketola. The property is located at Tax Map 5, Lot 9-5-1, Abel and Bean Hill Roads. The applicant is seeking approval for a two lot subdivision.

Vice Chair Kim McCummings appointed Burt Goodrich to sit for Kirk Stenersen.

Richard Drew, representing Dan Ketola, presented this evening.

Mr. Drew provided an update on requests made by the Board which included:

- Re-numbering the lots
- Showing rights on Gillis Lane
- Putting entire Right of Way on the plan
- Providing easement language
- Removing the fill in the wetlands buffer

Roberta Oeser said that although this Board accepted this plan as complete, it appears that it is not complete. She said she is not in favor of granting approval for a subdivision which contains a lot to which you do not have legal access.

Mr. Drew asked the Board to consider a conditional approval this evening.

Roberta Oeser and Burt Goodrich spoke in opposition to a conditional approval and asked Mr. Drew to return with the completed and corrected plan and other requested information.

Vice Chair Kim McCummings asked the Public for input.

Speaking in opposition to this proposed subdivision were Sean Dwyer, of 158 Able Road and Steven Johnson of 162 Able Road. Their concerns included

- Increased traffic on Able Road which could lead to public safety issues.
- The number of subdivisions that have taken place in this area and the potential for future subdivisions.
- Gillis Lane being not a driveway, but another road .
- Questionable work - the amount of fill added which may be in the wetlands buffer.
- The perception (from the Planning Board in years past) that no more subdivisions would take place and disappointment that this is being considered now.
- A request that the Board honor the intent of the prior Planning Board and not allow this subdivision

The Planning Board discussed these objections and came to the conclusion that while there may not be enough frontage at this time to further subdivide these proposed lots, should Bean Hill Road be upgraded to a town road, there could be further subdivision. Mr. Ketola said the cost to upgrade that road would be quite high.

Vice Chair McCummings and Mr. Drew agreed that this case would be continued and that Mr. Drew would return with:

- Permission from Alan Choquette for his half of the right of way.
- Entire right of way shown on the plan
- Correct the lot numbering on the plan
- Provide easement language.

MOTION: Roberta Oeser moved to continue this hearing until August 20, 2013. Charlie Eicher seconded. Vote: 7-0-0

Chairman Stenersen returned to the table.

4. NEW BUSINESS

a. **CONCEPTUAL DISCUSSION:** Keith Halloran and Dick Drew as it pertains to a potential two lot subdivision of Map 16, Lot 1 on Paradise Island Road (Class V town road)

Richard Drew is representing Keith Halloran this evening for a non-binding discussion with the Planning Board. Mr. Halloran currently owns approximately 9 acres of land on Hubbard Hill Road, Paradise Island Road with the lake to the south. Mr. Halloran lives in a house shown on the plan. He would like to subdivide this lot, following four stone walls as closely as possible (a sliver of land beyond one wall would need to be added to meet the 2 acre requirement. This subdivision will require state approval. Mr. Drew and Mr. Halloran are here this evening to see if the Planning Board sees any outstanding issues with this conceptual subdivision.

Chairman Stenersen asked if the frontage would be on Hubbard Hill Road and if the septic system would be on the owner's land. The answer was affirmative.

The Planning Board had no further questions about this proposal and thanked the applicant for coming this evening.

b. **CONCEPTUAL DISCUSSION:** Sam Bouchie for Woodmore Campground. Map 42 Lot 2, Existing ball field and plans to demolish and replace existing recreation building.

Mr. Bouchie discussed his plans for Woodmore Campground which included demolishing the existing recreation building and replacing it on a different footprint. The Planning Board determined that Mr. Bouchie would need to apply for a Use Variance from the ZBA and a Site Plan Review with the Planning Board

c. **CONSIDERATION OF** an application for a Major Site Plan Review submitted by Wal-Mart Real Estate Business Trust c/o Bohler Engineering. The property is located at Tax Map 6, Lot 98 at 750 US Route 202. The applicant is seeking approval for an expansion of an existing retail store in the Business/Light Industry District.

Chairman Stenersen said that he, Charlie Eicher and Bruce Donati had reviewed this application regarding completion. He said that there were three waiver requests and that the application appeared to be complete. The three waiver requests included:

- plan sheets that are not 22x34, but rather 30x42;
- waiver for percentage of green space;
- waiver for wastewater treatment.

Matthew Snyder of Sulloway and Hollis presented this evening. He said that Peter Imse was unable to attend this evening. He introduced Dominic Lance Muscara-Bar Architecture, Heather Monticup-Greenman-Pedersen, Inc. and John Kucich, Bohler Engineering,

Mr. Snyder said that this application was originally submitted in 2011. The process stalled when discovery of soils issues on the site arose. Mr. Snyder said that these have now been resolved and a new application has been submitted. He said that the previous application included requests for waivers that were unanimously granted by the Planning Board 2011 and he asked that this board reaffirm the 2011 ruling. Mr. Snyder asked that the Planning Board accept this application as complete even though there are two matters pending:

- **Outdoor Sales**. (Mr. Snyder requested that a future discussion take place about Walmart's desire to have seasonal outdoor sales)
- **Signs** (Prior Variances have not been located. Mr. Snyder was referred to the Town Clerk. There is also a federal requirement regarding "Pharmacy" signs that Mr. Snyder is still researching.)

MOTION: Kim McCummings moved to grant a waiver to Section VI-A-2, maximum size of plans. Roberta Oeser seconded the motion. **Vote 7-0-0**

Mr. Snyder said that Section VII-11, '...area of impervious cover shall be limited to 50%...' was not a regulation at the time that Walmart was built. He said that currently, the impervious cover is 54% and they are asking that it be increased to 57% in this new plan. Mr. Snyder referred the Board to Bohler Engineering Drainage Report and NewFields Engineering Soils Report that were filed with the application. These reports demonstrate that there will be no negative impact to the property or surrounding areas as a result of the proposed building addition.

MOTION: Hank Whitney moved to grant the waiver of Section VII-11, Impervious cover. Roberta Oeser seconded the motion. **Vote: 5-2-0** (Phil Simeone and Kim McCummings voted no)

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Mr. Snyder said that the third waiver request is for the Wastewater Treatment final design plan. This plan will need to be approved by NH-DES. Typically, this costs a considerable amount of money. He said it makes no sense to go through this prior to receiving site plan approval. He asked that the Planning Board grant a waiver allowing the wastewater treatment design plan not be finalized until after site plan review.

MOTION: Roberta Oeser moved to grant the waiver to Section VI-B-5 as it pertains to the design plan requirements for the Wastewater Treatment plan. Kim McCummings seconded the motion.
Vote: 7-0-0

Chairman Stenersen said that three waivers have been granted and based on the review, the application appears to be complete.

MOTION: Hank Whitney moved to accept the application as complete with the three aforementioned waivers. Roberta Oeser seconded the motion. **Vote: 7-0-0**

Chairman Stenersen opened the Public Hearing

Mr. Snyder asked the Board to reaffirm and readopt its prior interpretation of Section 4G of the Wetlands Conservation District Ordinance as it applies to the proposed project and to rule that the proposed construction of the access way, the replacement of the storm water drainage pipes and the installation of the new manhole within the wetland buffer areas all fall within the meaning of Section 4G of the Wetlands Ordinance.

A letter from ConCom to the Planning Board was read into the record and distributed:

To: Rindge Planning Board
From: Rindge Conservation Commission
Subj: Walmart Expansion, Proposed
Date: August 3, 2013

Attn: Chairman Stenersen

Dear Board,

The Rindge Conservation Commission was asked to review the Sulloway & Hollis memo of July 19, 2013 addressing the Planning Board's earlier interpretive ruling regarding the Town's Wetland Ordinance. We discussed this at our July 29, 2013 meeting and we have some questions, comments and concerns we'd like to share with you.

The Wetlands Conservation District, specific to this application, "is determined to be all wetlands as determined by the following criteria... . In addition, the District includes a zone 50 feet around all vegetated Wetlands..." There is no distinction in value, importance or allowed activities within the two parts of the Wetlands Conservation District. The two parts form one protected entity.

The Sulloway & Hollis memo, as well as the Planning Board minutes of June 7, 2011, appear to dismiss the buffer as not being of value, but in reality, per the Town ordinance, it is of equal importance and value as the actual wetlands. The questions asked at that June 7, 2011 meeting addressed the dredging, filling or otherwise altering surface configuration of any Vegetated Wetland were appropriate, but the answer was evasive and inaccurate. The answer "they

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are not directly impacting anything”, by definition, in Section, 1 is incorrect. Any work in the buffer is work in the Wetlands Conservation District. They are one and the same.

Regarding the fire lane/truck access lane within the buffer, the earlier plan of 2011 included a retaining wall, as it appears this plan does. We remind you that a precedent has been set in Rindge that a retaining wall is a structure, that interpretation and determination resulted in enforcement action elsewhere in Town. The construction of this retaining wall will require excavation and possible filling for the foundation, again within the Wetlands Conservation District.

The replacement of the storm water pipes, described in the memo as “a substantial upgrade”, and the addition of the manhole are also in the Wetlands Conservation District and involves excavation. In the memo of July 19, 2013 this seems to be dismissed as unimportant because it “will necessarily entail temporary excavation”. Isn’t all excavation temporary in reality?

The Wetlands Ordinance allows “access ways...if essential to the productive use of land not within the Wetlands Conservation District”. Walmart has this access now and has had for close to 20 yrs and with the proposed plan, will not be gaining access to new lands or more lands. That part of the ordinance is to allow for the naturally occurring limitations of the original property, not the engineered-in, man-made issues illustrated here. To say that Walmart needs this access way as designed, for the productive use of the land, is dismissive of the ordinance, as they have had productive use of the land since opening the facility, so productive that they now find it advantageous to expand the operation. The proposed design is to maximize the use of the land, which is not the intent of section 4G; though the maximum use of the land may not be unreasonable, that is an issue for the Board of Adjustment to decide. The productive use of the property has been established over the history of the operation, it cannot now be reset to zero in order to avoid complying with Town ordinances.

The proposed resolution refers to the access ways “essential to the productive use of” the “remainder of the Walmart land”. They have access to that land now, it is productive, the limitation has been created artificially in that it is the building design that has created the encroachment, not the geography of the land.

We respectfully request that the Planning Board uphold the Wetland Conservation District Ordinance as written and historically interpreted, and inform the applicant that they need to follow the ordinance and seek whatever relief is necessary for work within the District. As always, the Conservation Commission will work with any applicant in the Zoning process to come up with the best plan that protects the natural resources interest of the Town, as well as the interests of the applicant. We feel that if the Planning Board were to once again issue the earlier interpretation, it will set a precedent that dramatically and negatively impacts the intended purpose, Section 2, of the Wetland Conservation District Ordinance.

We would welcome the opportunity to meet with the Planning Board, as well as the applicant, to discuss these very important issues further and we respectfully request that you keep the Commission up to date and informed of any scheduled discussions of this subject, as well as any decisions agreed upon.

Thank you for your time and consideration.

Respectfully submitted,

David G. Drouin
Chair, Rindge Conservation Commission

cc.
Board of Selectmen
Code Enforcement Officer

A lengthy discussion amongst the Planning Board, Richard Mellor and David Drouin (for ConCom) and the Walmart team ensued as it pertained to the following topics:

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- Man-made wetlands
- Definition of “Productive use of land”
- Site plan review/variances/special exceptions
- Wetlands District/wetlands buffer
- Interpretations of Sections 4G and Section 6 of the Wetlands Ordinance
- Possibility of a redesign of the building so that the access is not in the wetlands buffer
- Detention ponds for mitigations versus man made
- Need to speak with the Fire Chief about the road/access
- Use of pervious pavement versus maintenance costs

It was agreed between Mr. Snyder and the Planning Board that this discussion would be continued at the Planning Board Meeting of September 3, 2013.

The Planning Board viewed the architectural drawings, presented by Lance Muscara of BRR Architecture, Inc., and were quite pleased with the design that is being proposed.

Heather Monticup, of Greenman-Pedersen, Inc., said that the traffic study from 2011 does not need to be redone as no significant changes have taken place.

Chairman Stenersen opened the Public Hearing for comments from the audience.

Rob Anderson, abutting property owner, said that there has been a property dispute on the westerly boundary. He showed the Planning Board a map which shows his property extending to the other side of the railroad tracks. Matt Snyder said that he would have his surveyors review this and make sure that it is correct. Rob Anderson also spoke to noise from Walmart’s compressors being an issue to him and asked if they could send the noise out towards Route 202 rather than to his property.

Bob Duval, engineer from TF Moran spoke on behalf of Hannaford.

Mr. Duval had three requests:

- That the applicant provide him with documents for their engineering review
- That the Planning Board allow Hannaford reasonable time to review this application
- That the Planning Board allow Hannaford reasonable time to review the wastewater treatment plans before final action is taken.

Mr. Snyder asked if the Board if they have any further questions for Heather or Lance. He said they come from a long distance and he would prefer that they not have to return for the September meeting.

MOTION: Roberta Oeser moved to continue this Public Hearing to September 3, 2013. Kim McCummings seconded the motion. Vote: 7-0-0

5. Planning Department Report

b. DISCUSSION: SWRPC dues with Carlotta Lilback Pini and Richard Mellor

This discussion was moved to the August 20, 2013 meeting agenda.

6. WORK MEETING

a. Discussion: Impact Fees

This discussion was moved to the August 20, 2013 meeting agenda.

7. Non Public Session per RSA 91-A:3IIb for Personnel Matters

Adjourned at 10:10 pm
Respectfully submitted,

Susan Hoyland
Planning Secretary