

**Town of Windham, Maine
Zoning Board of Appeals
August 2, 2007 Meeting**

MINUTES

The meeting was called to order at 7 p.m. by Chair Brenda Wasowski. Other Board members present: Marge Govoni, Fred Turner and Fred Panico. Board members absent: Michael Stultz (in Iraq) and Felicia Cummings, Alternate.

Others present: Roger Timmons, Code Enforcement Officer and Community Development Director; Atty. Natalie Burns, Town Counsel.

AGENDA

1. Request for Reconsideration:

07-13 River Road Common, LLC A Conditional Use permit for a 14 unit Motel. The property location is 1004 River Road Map 52 Lot 17. Zoned Commercial One (C-1).

This item was before the Board at the July 19, 2007 meeting. Applicant was asked to return with several items.

Chair Wasowski explains that after giving further thought to the application and Board action, it is her opinion that the Board “got away from” the subject of Land Use – perhaps because the application did not need to go through the Planning Board. She stated that the applicant is expanding upwards, the footprint doesn’t change and as to the question of setbacks, the site had already been evaluated. Ms. Wasowski has asked that town counsel (Attorney Natalie Burns) be present to respond to any questions the Board may have. She states she would encourage the Board to stay within the scope of what it is supposed to do.

Wasowski made a motion to reconsider the Board’s request for information from Edward Woodbury d/b/a River Road Common, LLC, application 07-13, and that the information required be limited to the scope of what the Board needs and that the survey not be a requirement.

Marge Govoni seconds the motion.

Comments from the Public

DAVID TOBIN, from the audience. States he watched the meeting of July 19 and thought the Board was going through the Conditional Use criteria (A-K) but this was not done; he felt that the Board got a little “carried away”.

Comments from the Applicant

ED WOODBURY, applicant: Says he shares the concern that the Board got into quite a bit more than was required; regarding the survey, if it was a Condition of Approval, then it appeared he would have his approval. He was left with no commitment other than to spend \$2,000 and come back and then be faced with the situation where the application might not be approved. He felt that the Board thought this should go to the Planning Board. He has amended the plan to show exactly where the boundaries are. Building location, location of septic and in response to Fred

Turner's comment, he feels he could swap the stairway for a walkway. He has done all which was asked except the survey.

Comments from the Board

Fred Panico says he agrees with the comment that the Board felt it was going to the Planning Board but he did not make the motion based on that. He says he did not ask for a survey.

Govoni reviews her original comments at the July 19 meeting that the application did not meet the "list", which, it was explained, is a checklist provided by the Code Enforcement Office of all items which must be included to make an application complete.

Wasowski: Since it was not going to the Planning Board, she feels the Board members each felt it should be scrutinized more thoroughly. She calls for a vote on the Motion to Reconsider.

Fred Panico voiced his objection because he did not see a survey.

Vote: 4-0

Board discusses whether they should take up the application this evening and Atty. Burns reminds them they can only vote on whether or not to reconsider, since the application is not on the agenda and has not been publicly announced.

Board now discusses what they want applicant to provide instead of the previous Conditions of Approval.

Fred Panico said his main problem was #4 on the checklist and that is why he made the motion.

Wasowski reviews the application and asks Panico what is not on there.

Panico: setbacks are not shown

Roger Timmons: He states he sent a Code Officer to site to make sure it met setbacks which were given originally. It is noted on the plan. When he comes in to get a permit, the plans will be certified that it meets the building code which includes set backs whether it is one, two or three stories. He said the plan does show the setbacks, as it exists today.

Govoni said she had asked for clarification originally on the parking and septic and thinks it would meet requirements.

Ms. Govoni makes a motion that 07-13 be reconsidered with the following conditions for approval:

1. Parking location for all uses including the business (Triple Nickel), the apartment and house, and the motel.
2. Location of the septic system be shown

Motion seconded by Brenda Wasowski.

Comments:

Fred Turner asked where these fit into the Performance Standards (for Conditional Use)

Ms. Burns said these items are included -- under general topics for parking and water -- how the new use works with existing uses and does it meet the Conditional Use criteria?

Fred Panico wants to add a friendly amendment adding:

3. Identification of use of structures.

There is no second to the friendly amendment.

Fred Turner offers a friendly amendment to add to Ms. Govoni's motion:

4. Show 15 ft. green space
5. Identification of use of structures be shown on the plan

After discussion the 15 ft. green space identification was removed since it is already in place.

Marge Govoni seconds Mr. Turner's friendly amendment.

Vote on friendly amendment: 4-0

Vote on amended motion: 4-0

For clarification, the Motion is to require applicant to provide:

1. Parking plan for all businesses on site, on the plan
2. Identify location of septic system
3. Identify use of structures shown on plan

Applicant would like to appear at the next Zoning Board meeting on August 16 and is told if he has amended application in the next morning (Aug. 3), it's likely he could be on the agenda.

2. Public Hearing

07-16 Cross Insurance. - Asking to amend plan, which had previous ZBA approval. They would like to remove trees in the green strip area at 745 Roosevelt Trail. Map 67 Lot 55. Zoned Commercial One (C-1).

Chair Wasowski states that the application fee has been paid, abutters notified and the notice of public hearing advertised in accordance with the law. The Board did an on-site inspection on Aug. 1, 2007.

Mr. Royce Cross of Cross Insurance introduces himself and Laurie Noel who runs the local business.

Cross has purchased the property (Boody's Corner) and they would like to redo the landscaping to "match" Walgreen's across the street. This may mean removing two trees which were planted by the state many years ago.

Past history of the site was discussed including the lack of landscaping by former owner resulting in going to court.

Cross wants to clean up the site, making it attractive and allowing his business sign to be visible which might include tree removal. He said he will meet all the requirements for “green” and the ordinances, but “We just don’t like the plantings and would like to have our own landscaper plan it out.”

Timmons suggests that the ZBA instruct the applicant to get a landscaping plan to show the Board.

Brenda Wasowski wants to focus on the trees – do they stay or go?

Natalie Burns: If the applicant wants to remove (them) he needs to show the Board what he means.

Fred Panico makes motion to postpone until applicant returns with a revised plan for the landscaping including some visuals of what is proposed.

Marge Govoni seconds motion.

Vote: 4-0

OTHER BUSINESS

Board had asked for legal opinion on its authority when applicants did not carry out conditions of approval imposed when they received board approval. Town attorney Kenneth Cole provided a letter explaining that the Board has no authority for enforcement; that it is up the courts. Copy of his letter attached to and forming a part of these minutes.

Minutes July 19, 2007

Brenda Wasowski made motion to accept minutes of July 19, 2007, as presented.

Motion seconded by Marge Govoni.

Vote: 4-0

Meeting adjourned.

Respectfully submitted,

Kay Soldier, Clerk