

BETHLEHEM PLANNING BOARD

DRAFT

PUBLIC HEARING MINUTES

BETHLEHEM TOWN HALL MEETING ROOM

March 26, 2014

Present: Andrea Bryant, Peter Roy, Mike Bruno, Dave Wiley, Jeanne Robillard, Chris McGrath, Sandy Laleme, Don Lavoie, and Kevin Roy

Excused: Alecia Loveless

Absent: Neil Brody

Andrea called meeting to order at 6:05 and appoints Jeannie as full board member for Alecia, and Mike as full board member because he has not been sworn in as a full board member yet.

Andrea begins discussion regarding new board business and questions whether or not the board would like to appoint the new chair and co-chair tonight, or next meeting. Sandy felt the board should wait until next meeting, when all the new members had been sworn in, that way if Mike wanted to be the chair he would have the option of doing so. All agreed.

Minutes from 2/26/2014 were reviewed. Andrea motioned to accept the minutes as is. Dave seconded and all were in favor. Sandy abstained from voting because she was absent from the 2/26/2014 meeting.

Andrea explains to the board that the items on the agenda for the cancelled board meeting from 3/12/14 were not carried over to this meeting due to the heavy schedule of public hearings on the agenda for this evening. These items will be back on the agenda for the next meeting on April 9, 2014.

Dave and Sandy both mention they will not be attending the next meeting. Andrea feels it might be better to talk about new board business tonight with everyone in attendance. Mike assures everyone he has not interest in being chair, and so he has no objection to the vote taking place tonight.

Andrea feels Dave Wiley should be chair, and makes a motion to nominate Dave Wiley to be chair of the Bethlehem Planning Board. Peter Roy seconds. All in attendance were in favor and the motion carries.

Sandy Laleme motions that Mike Bruno be nominated for vice chair; Peter seconds. The floor is open for discussion. Jeannie questions whether or not Andrea would like to be vice chair. Mike Bruno nominates Andrea for vice chair, Dave Wiley seconds.

A discussion takes place, and the motions are put out for vote. Sandy, Chris, and Peter vote in favor of Mike Bruno for Vice Chair. Jeannie, Dave, Andrea and Mike vote in favor of Andrea for Vice Chair. Andrea Bryant is appointed Vice Chair of the Bethlehem Planning Board.

6:15 Pease Sub Division Public Hearing

Dave reads the public hearing notice. Gardner Kellogg is present to assist in locating items on the checklist.

Mike points out that the notice reads the property is on South Road, but should read it is located on Parker Road. Sandy feels the administrative error is not worthy of holding off. Don feels any ruling on this matter could be over turned because of incorrect noticing.

Jeannie suggests the board close the public hearing, the matter become a sub-division conceptual, and it get re-noticed for the next meeting on April 9, 2014. Dave closes the public hearing and continues through the checklist as a conceptual. Don suggests the planning board waive all fees for the next public hearing. Mike Bruno motions that all fees are waived for the public hearing on April 9, 2014. Andrea seconds. All present in favor, motion carries.

6:30 Swanson/Thoma Lot Line Adjustment

Dave reads the public hearing notice. Gardner Kellogg presents the map. Dave reads through the checklist. Gardner gives current dimensions of each lot, and what the new dimensions will be after the lot line adjustment. Dave asks if they will still be conforming lots. Gardner states they were non-conforming to begin with. Dave points out that the lot was non-conforming prior to the lot line adjustments, and becomes even more non-conforming, less than 80,000 square feet, with the adjustment. Gardner points out that these 2 lots use to be 5 much smaller lots and the sub-division was prior to the 80,000 square footage requirement. Dave asks Don Lavoies's advice; can the planning board create a lot that's more non-conforming than it currently is? Don's feeling is no and states the ZBA has the authority to grant the variance. The planning board can waive a regulation, but can't waive a zoning ordinance.

Sandy reads from the Town Zoning Ordinances, page 7, Article IV - Non-conforming Uses, Structures, and Lots:

- A. Any lawful building or other structure, or any lawful use of a building or other structure or land, existing on the effective date of this Regulation, which does not conform with the provisions of this regulation shall be considered a lawful

non-conforming building, structure, or use, and may be continued, except as otherwise herein provided. (1971)

This speaks to the structure, but not the lots. Dave thinks the sub-division regulations might have a more specific answer. Mr. Swanson feels this is no different than when this land was its own lot and added to the Thoma lot, and adds that many lots in the neighborhood are less than 40,000 square feet. Dave feels the merger from previous years makes this not so black and white, and feels the Planning Board does not have the power to grant the lot line adjustment and feels this matter should go to ZBA for a variance, and then come back to the planning board to finish the lot line adjustment.

Chris motions that the Planning Board continue this matter once the ZBA has ruled on the variance. Andrea seconds, all were in favor.

Don reads from **RSA 674:33a-Equitable Waiver of Dimensional Requirement:**

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

When there is a dimensional issue the zoning board has the authority to waive the ordinance, which is not a variance. RSA gives the ZBA guidance in determining the waiver. Don also points out that the ZBA has to be consulted first, and then the matter can come back to the Planning Board. Don feels the matter can't be continued, and has to be closed. He also suggests the fees be waived for the ZBA. Chris

withdraws his motion to continue, Andrea withdraws her motion to second. Andrea then motions to close the public hearing and waive the future fees for the ZBA application. Mike seconds, all in favor. The public hearing is now closed.

6:55 Crowe Lot Line Adjustment

Dave reads public hearing notice and goes through the checklist with Chris Crowe. David Van Houghton and Roger Gingue are present to view plans. Chris Crowe explains that his intention with this plan is to put both lots into current use. A brief discussion takes place between Chris Crowe, Mr. Gingue, and the Planning Board. All parties are supportive of the plan. Mike motions the Planning Board accept the plans for the lot line adjustment. Chris seconds. All board members in favor, motion passes. Dave motions to close public hearing, Peter seconds, all in favor, public hearing closed.

Douglas Drive

Dawn presents items submitted by Mr. Ingerson on Tuesday, March 18, 2014 to the Planning Board, which include:

- Copy of his NH DOT Application for a Driveway Permit, dated 3/16/2009.
- A copy of the Construction plans.
- A letter of certification signed by Mary Jackson, Town Clerk, stating, "The following is a letter of certification stating we possess a copy of the construction plans and Driveway permit plans to the Ingerson property in the Town of Bethlehem."

Dawn explained how she found these items in her mailbox on Wednesday afternoon with no further information regarding their significance. Dawn called Mr. Morneau to inquire about the documents, and the letter of certification. Mr. Morneau explained he dropped these items off, and received a signature on the letter of certification to come into compliance with DES. Sandy stated the town already had all this information. Dawn agreed, but stated that Mr. Ingerson needed a signed letter stating he submitted this information, and the town of Bethlehem possessed this information. Dawn is just informing the board the items were submitted, Mary Jackson signed the letter certifying that the town possessed the information, and that Mr. Ingerson was submitting the signed letter to DES.

Jeannie and Andrea express concern that Mary Jackson signed the letter of certification. They feel this was a Planning Board matter, and the items should have been submitted directly to the Planning Board, and any signature should also have come from the planning board. Jeannie questions at this point what relationship this signing off on this letter has on our request to Mr. Ingerson to come in for site plan review. Dawn states, that during the conversation with Mr. Morneau she did remind him that the Town of Bethlehem's last correspondence with Mr. Ingerson was a request to come in for Site Plan Review. Mr. Morneau stated that they felt they didn't need to come in for Site Plan Review because there was no change to the site. Andrea points out on the driveway permit it does say change of use. Sandy questions the letter the Planning Board sent in August. Dave reads letter dated August 28, 2013.

On Wednesday, August 28, 2013 after discussing our attorney's advice the Bethlehem Planning Board came to the following conclusion.

"Upon our research, Douglas Ingerson should apply to the Bethlehem Planning Board for site plan review for the section on Douglas Drive that extends from Rout 116 to the Dalton town line. This is according to town regulations pertaining to change in use and pursuant of RSA 674:53IV since Douglas Drive is the sole maintained access."

You can find the application for Site Plan Review and a complete list of Site Plan Review Regulations on the Town of Bethlehem's website; www.bethlehemnh.org.

A public hearing date is set once we have received an application for Site Plan Review, application fees, and a complete list of the names and addresses of all abutters, not limited to Bethlehem. Please be advised that notices need to be made at least 10 days prior to the public hearing.

The letter clearly states that Douglas Ingerson should apply to the Bethlehem Planning Board for site Plan Review. Sandy asks for a refresher as to where we stood with the Site Plan Review. Did the Planning Board determine they could ask Mr. Ingerson to come in for SPR. Peter reminds the board, that yes, as far as the driveway was concerned the Planning Board had the authority to ask for SPR. Sandy feels it is "bite the bullet time" and thinks this should be referred to the Select Board for enforcement.

Bethlehem resident Mary Lou Krambeer offers an explanation as to why DES needed a certified letter stating the Town of Bethlehem possessed these items. She explains there is an appeal in front of DES regarding the proposed drag strip. It's before a board and that board is requiring that Mr. Ingerson get all his permits in order. Mary Lou feels it is interesting that the permit he is supposed to be getting in order is the Town of Bethlehem Site Plan Review, Change of Use. The submittal of this certified letter will be very confusing to DES. Jeannie concurs. Mary Lou questioned the series of events again. Sandy and Dawn reiterated what took place; Mr. Ingerson submitted these papers to the Town, Mary Jackson, town clerk, signed a letter certifying the town possessed these items, and presumably Mr. Ingerson submitted this letter to DES. Mary Lou feels that if DES has a copy of this letter, they may think it appears Mr. Ingerson has satisfied the requests from the Town of Bethlehem. Mary Lou feels it would be helpful if the Town sent a copy of the August 28th letter saying we are still in the process of this matter and nothing has been resolved. She feels this is misleading. Sandy feels we should also send a copy of the minutes from the previous meeting, along with this evening's minutes stating that Mr. Morneau stated in the conversation with Dawn that they did not feel they needed to come in for Site Plan Review. Don feels the board has to take some sort of action with the state to notify them that no local approval has been granted.

Andrea states, at first look, it appeared Mr. Ingerson was submitting the paperwork we requested. We had asked for a copy of his permit. On closer look she realized this wasn't for us, but for the state. Jeannie points out that at first glance this could look as if he has a driveway permit for the Town of

Bethlehem. She does not like how this all unfolded at all. Don feels he could go to the appeals board and say look, here is a letter from Bethlehem stating everything is ok with them.

Dave would like a letter crafted to Mr. Mauck at DES to notice DES that the Town of Bethlehem is not satisfied yet, this is what we have asked for, and here is a copy for your file. Jeannie adds the letter should affirm that Mr. Ingerson has not been before the board for Site Plan Review and does not have approval. Dave states again that the minutes should reflect that Mr. Morneau, the engineer on the project, stated during a phone conversation that he did not feel it necessary to come before the Town of Bethlehem for Site Plan Review. Jeannie questions whether or not Dawn should prepare the letter for DES for approval at the next meeting. Sandy agrees, there should be a vote as Mr. Ingerson has already been in front of the board with legal counsel. Andrea would like the board to give the go ahead for Dawn to send the letter without board approval. Mike feels strongly that the board should have the opportunity for input and know exactly what the letter states. Dave does not feel the board is under a time crunch and the letter can wait until the next meeting on April 9th. Mary Lou Krambeer requests that an email get sent to DES just to inform them a letter is being drafted. Don suggests the Planning Board send the minutes and the letter from August 28, 2013 in an email stating the Bethlehem Planning Board wishes to contribute to the appeal process and will be putting together a packet of information. Jeannie feels we should go one step further and state in the email that Mr. Ingerson does not have local approval, and we will be following up with further material. There's a time clock ticking and it would be very unfortunate for us to miss that mark. Don feels we should also add that he does not have a change of use permit. Dave, the letter should ask that the Planning Board be included in the loop. Don feels the minutes from August, the letter from August, and the minutes from tonight are reflective of the discussion that has taken place regarding this matter.

Jeannie motions to have Dawn craft an email that contains the information that Mr. Ingerson does not have local approvals and we will be following up with more detailed letter and we would like to be included in the appeal process, and to attach the minutes from August, the letter from August, and the minutes from tonight. Peter seconds, all in favor, motion carries.

Andrea would like Mr. Ingerson and Mr. Morneau to be cc'd on the letter. Jeannie asks Dawn to cc the Planning Board on the email.

Mary Lou thanks the board. Feels this will give the matter context.

Dave asks if anyone else has any other business. Kevin inquires what's going on locally for Mr. Ingerson and should the planning board send this to the select board for enforcement. Don feels that for the Select Board to take action there would have to be some sort of violations, and feels it might be premature to begin enforcement action.

Andrea motions to have Dawn and Dave write a letter to DES informing them formally that Mr. Ingerson does not have local approval, and to have the letter cc'd to Mr. Ingerson and Mr. Morneau with a return receipt. Mike seconds, all members in favor, motion carries.

North Country Council Liaison

Dawn informs the board that former Planning Board member Harold Friedman had been the Planning Board Liaison to North Country Council and wonders if anyone would like to step up to the plate and take Harold's place. Sandy feels it is in the Board's best interest to have someone attend the meetings. A discussion ensues regarding regionalization and the benefits the town receives from NCC. Sandy feels someone should attend the meetings, We should be careful and monitor regionalization. It would be good to get the information. Mike suggests as meeting come up the information could be sent out to all board members with the option of attending. Chris offered that he will be attending the Wetlands meeting on 3/27/2014, and Dave states he would like to attend the Scenic Roads meeting later on in April.

Peter motions to adjourn at 7:44. Mike seconds, all in favor, meeting adjourned.

Respectfully Submitted,

Dawn Ferringo
Planning and Zoning Clerk