

MINUTES OF THE MEETING
OF THE
CANTERBURY PLANNING BOARD

February 25, 2014

The Chair called the meeting to order at 7:00 p.m. It was determined that a quorum was present.

BOARD MEMBERS PRESENT: Art Rose, Chair, Jim Snyder, Assistant Chair, Doug McCallum, Chris Blair, and Tyson Miller, BOS Representative.

BOARD MEMBERS ABSENT: Alice Veenstra, Seth Cohn, Joshua Gordon

OTHER PARTIES PRESENT: Eric Spofford, Attorney David Lefevre, Joshua New, Dan Smith, Mill McCullough, Timothy Meeh, Hillary Nelson, Teresa Wyman, Attorney Amy Manzelli, Jeff Kevan from TF Moran, Inc.

Draft Minutes of February 11, 2014: Jim Snyder made a motion to approve the minutes. Tyson Miller seconded the motion.

Discussion of minutes: None.

Vote: Unanimous. Minutes of February 11, 2014 were approved.

Public hearing for Site Plan Application for Change of Use for 367 Shaker Road, LLC, Tax Map 225, Lot 6: Jeff Kevan from TF Moran introduced the site plan for map 225 lot 6 stating it is a 14 acre property in the rural zone. He stated the owner, Eric Spofford, received a ZBAA special exception pertaining to use. The use is a rehabilitation type facility for about 20 male residents ranging in age from 18-28. There are currently seven buildings on the property. The only proposed construction would be to add a small gravel parking lot. There is a housing facility, dining hall, office space, workout area and 2 other buildings used for storage. The hours of operation is: the dining hall is open for meals only from 6-8:00 am, 12-1:00 pm and 5:30-630 pm. The administrative building is open 8:00 am-6:00 pm, meeting space is open a few times throughout the day, but basically from 9:00 am-8:00 pm. Resident cannot have vehicles and there will be up to 25 employees working there. They are looking at roughly 29 parking spaces: 25 staff, 2 spaces for vehicles operated for the facility, and 2 visitor spaces. They are requesting an additional 11 spaces. Some additional work to be done is LED lighting which is shown on a photometric plan in the package.

41 They have requested waivers regarding wetlands and topographical survey. They
42 received approval by the State to reactivate the well (3,600 gallons per day); septic
43 system; 2 environic systems approved, and a stone and pipe system for dining facility.

44 Eric Spofford owner of 367 Shaker Road LLC and his attorney, David Lefevre are here.

45 Jeff Kevan reminded the Board that no new buildings can go up on the property without
46 coming back to the board, so what is on the property is it.

47 Attorney Lefevre said the ZBAA's first condition of approval was to work with the
48 abutters to address concerns and agree on conditions.

49 At this point, Jim brought up the issue of RSA 36:56 which requires us to determine if
50 the project has regional impact. Jim read the parameters of determining regional
51 impact.

52 Jeff Kevan felt the Board should focus on traffic and impact to services when
53 considering regional impact. There is private well and septic, and only a small number
54 of employees every day. It is a similar use that has occupied this property in the past.
55 They don't feel it has any regional impact.

56 Jim made a motion that the Board determines that this project does not have regional
57 impact sufficient to trigger requirements of RSA 36:56. Doug seconded the motion.

58 Discussion on the motion: Attorney Lefevre felt it was important to understand that the
59 residents will be on site and not coming to and from in any fashion. Jim suggested on
60 any motions that we give abutters a chance to weigh in and Art agreed.

61 Amy Manzelli from BCM Environmental & Land Law and represents many of the
62 abutters including Hillary Nelson, Greg Meeh, Jill McCullough, Tim Meeh, Victoria
63 Dodge, David Booth. Attorney Manzelli spoke for her clients to say they do not feel this
64 project has regional impact.

65 With all discussion completed, the Board held a vote on the motion.

66 Vote: All voted in the affirmative. It was determined there is no regional impact.

67 Tyson brought up the fact that when they bought property it was dilapidated and the
68 buildings will require work. Eric Spofford confirmed that fact and said the facility has
69 current sprinklers systems, functional pull down fire alarms that meet fire code. The
70 property does need considerable work, mostly cosmetic, due to sitting vacant for a long
71 time.

72 Tyson has not seen the facilities in a long time and in the past the Board has done site
73 visits. He thinks we should have a site visit. Doug felt the facility needs to comply with

74 current building code and wondered about a building inspection. Jim said any state
75 licensed facilities have a form that has to be signed by fire, building code etc. and this is
76 a case where the State is probably more restrictive than the town. Jeff Kevan stated the
77 buildings are there, the only work being done is upgrade of septic, lighting and the
78 parking lot.

79 There was general discussion about traffic, the surface of the parking lot, and possible
80 runoff issues. After discussion, Doug felt there was a pretty minimal physical impact.
81 Jeff said there have been negotiations with neighbors focusing more on policies and
82 how the facility would operate.

83 Jim asked exactly where this project is with the Zoning Board. Jim's opinion is that if
84 they came to the Planning Board first the Board probably would have said they needed
85 a variance for this project. Jim wants the Board to be satisfied that no further ZBAA
86 action is needed.

87 Attorney Lefevre said they had originally appealed an administrative decision regarding
88 the special exception. The ZBAA denied that. They filed an application for special
89 exception and then an application for variance. The ZBAA denied the request for
90 special exception and agreed to re-hear a very small component of the special
91 exception. As a result an appeal was filed in Superior Court. The whole Superior Court
92 case is on hold and held in abeyance. On rehearing the ZBAA granted the Special
93 Exception. The abutters filed a motion to rehear the decision to grant the special
94 exception and ZBAA, on advice of town counsel, said it's ok not to rule on that. Now the
95 ZBAA denied the motion to rehear with regard to everything except the federal law,
96 which then started the time clock to appeal. When the ZBAA heard the one federal law
97 question, they granted the special exception. Everyone has preserved all of their rights
98 to make all appeals. If the Planning Board approves the site plan with the conditions
99 everyone agreed upon, everyone withdraws their appeals. Amy Manzelli agreed with
100 AttorneyLefevre.

101 Jim asked where we stand now, there is no un-appealed ZBA action? Attorney Lefevre
102 said sort of. There are a bunch of things that the ZBA hasn't done, but if the Planning
103 Board approves this site plan, everything goes away and everyone withdraws
104 everything. Attorney Lefevre said just because it doesn't have ZBA approval doesn't
105 mean the Planning Board cannot approve this. It's statutory. You can do both at the
106 same time. The Planning Board approval would be contingent upon everyone
107 withdrawing our appeals.

108 Jeff Kevan said they do have a special exception granted by ZBA for special use. The
109 Planning Board has a right to act on the ZBA's approval. Attorney Lefevre told the
110 Board that statutorily the Planning Board can't refuse to act just because the ZBA

111 approval hasn't been obtained yet. You can condition your approval on the ZBA
112 approval. Jim asked for the RSA.

113 Attorney Manzelli wanted to clarify the status. The special exception for use was
114 granted by ZBA. The decision to grant the special exception is not final right now. She
115 filed a motion for rehearing of that decision. She has also agreed with applicants that
116 they will withdraw the motion for rehearing if the Planning Board approves the site plan
117 with the conditions they have all agreed on. The special exception will become final
118 here tonight if the site plan is approved as requested, and they will withdraw the motion
119 to rehear and not challenge the special exception.

120 Doug asked why. Attorney Manzelli explained that they wanted a constructive dialogue
121 to prevent lots of fighting. Doug asked if the neighbors would like the Planning Board to
122 approve this, just so everyone was clear on the abutters position. Attorney Manzelli
123 stated, on behalf of the abutters she represents, that she is here to urge the Board to
124 approve the site plan with conditions. Tyson asked, if we were to approve this, if we
125 would add a condition. Art said he feels the special exception is in limbo. Attorney
126 Manzelli said they have the special exception. Chris' interpretation is that the appeal
127 goes away if we approve the site plan. Jim stated if we approve the site plan and for
128 whatever reason, negotiations fall apart and they appeal again, they can't move ahead
129 without the ZBA approval being final. He thinks the only issue we have is whether a
130 variance should have been considered. If we feel there should have been a variance,
131 it's problematic if another issue comes up.

132 Attorney Lefrvere gave Jim the RSA he was looking for (the cite is 676:4). If the
133 Planning Board disagrees with the decision of the ZBA, they had 30 days to appeal it,
134 and they didn't. The Planning Board doesn't have the ability to appeal the decision
135 now.

136 Doug wondered if the Board needs to include the conditions agreed upon between
137 Attorney Lefevre and the abutters as part of our record? It was felt we need to attach
138 that to the motion. Attorney Lefevre said you include it by reference. Your condition of
139 approval would be all of the conditions agreed upon by the application and neighbors.
140 Doug confirmed that the abutters are encouraging us to approve this plan one last time.
141 Jeff Kevan said if we approve with these conditions, we would go back and add the
142 notes to the plan, approval would be in place, the two parties withdraw with ZBA, we
143 hand over a plan for signature by the Planning Board Chairman, and the ZBA item
144 would be addressed with that plan before it gets signed.

145 Attorney Manzelli has a couple caveats to throw in and clarifications. The abutters have
146 three caveats: 1. Reserving right to go ahead with appellate action if the Planning
147 Board doesn't approve the site plan with conditions; 2. Hillary and Greg Meeh, David

Booth and Victoria Dodge did not receive notice of tonight's meeting. They are here to very strongly encourage them to approve the site plan.

The Board stopped the meeting to address the accusation of abutters not being notified. Attorney Manzelli stated this could be grounds for appeal but this is a potential issue that goes away if site plan approval is granted tonight. Lori Venie, Planning Board Secretary, went through the list of abutters who stated they were not notified: Greg and Hillary Meeh: The address of the owner of record for the lot referred to was "Timothy Meeh Revocable Trust and notice was mailed to 341 Shaker Road, Canterbury. The signed certified mail return receipt card was received by the secretary. Hillary Nelson also called Lori Venie to inquire and was told the same information over the phone. Hillary advised over the phone that Tim Meeh did not provide them the notice. The secretary pulled out the letter to David Booth and Melor Rush and confirmed the mailing address with Attorney Manzelli. No return receipt card was received to date, and no letter was returned, but the notice was mailed to the appropriate address by certified mail. The certified letter that was sent to Victoria Dodge was mailed at the Concord Post Office on February 14, 2014. The postal clerk apparently input the incorrect amount of postage on the letter and the letter was returned to the Town Office. Lori called Victoria Dodge as soon as she received the returned letter and offered to email it over to her. Ms. Dodge stated not to bother, she was leaving for vacation and would not be in attendance at the public hearing anyhow.

The Board seemed satisfied that all abutter notices had been sent out and followed up on.

Attorney Manzelli clarified to the Board that there was a second version of condition and that was emailed to the Board on January 8, 2014, and that was the version that should be used. The next clarification is that abutters and applicant agreed that all of the conditions listed apply to both this property, and additionally to the Solar House property, 225-7. Attorney Lefevre said the condition is the right of first refusal condition. Attorney Manzelli said the plans would be revised to include the conditions.

Art stated the application has asked for noise and traffic study waiver, and we would look at the merits of the site and parking for the use. Lighting for safety was addressed, parking was addressed. Art hasn't checked if driveway width is wide enough for fire equipment. Jeff Kevan said the driveway width is 15 feet wide. Art stated a minimum width is 22 feet. One of the conditions he read was to provide additional fencing and confirmed that is shown on the plan. Art would like Board members to understand that there are two sets of conditions that people have asked to be placed on project. One is there are 9 conditions of ZBA. There are an additional set of conditions by agreement of the abutters and applicant. Chris stated there are 17 conditions. Art said they can go through and look at them item by item. Art asked the Board to look at the plan aside

186 from the Zoning issue. Doug questioned lighting on the site. Jeff Kevan explained the
187 layout and pointed it out on the plan. The standards for this type of property was
188 discussed. The goal is to keep lighting on site and not affect the abutters.

189 Chris confirmed that the abutters are not concerned about the plan as long as it
190 contains the conditions. Tyson asked what the hurry was that we can't wait to put the
191 conditions on the plan and then revisit it. Tyson would also like to see the site. The
192 remaining Board members did not feel the need to visit the site.

193 Jeff Kevan said they've gone through the state for sewage and water. They've
194 reactivated the well and have 3 approvals on septic for the 3 separate systems. The
195 dining hall has the approvals it needs.

196 Art said the other step is they need to get licensed by the State of NH to function. That
197 process is a little grueling and the NH Health and Human Services has a stringent list of
198 requirements.

199 Jeff Kevan said they are hoping for conditional approval, they'll add the notes, resubmit,
200 everything would be in order, and the Board would review it and sign it. You would be
201 approving it and confirming that all is in order and then sign the plan. The Board would
202 not sign until they're assured that the conditions of approval have all been met.

203 Attorney Manzelli said this is all administrative. You'll make your operative approval but
204 it doesn't become effective until your conditions are satisfied and you would sign off.

205 Lefevre said the Board has all the conditions in front of you, it's just not on the actual
206 plan yet.

207 There was discussion about the conditions and the effect on the solar house property.

208 It is owned by the same people, but is a separate lot and not part of the application.

209 Attorney Manzelli said part of the use that had existed and is proposed to exist includes
210 parking access on and across from the solar house. Attorney Lefevre said it's a shape
211 of the lot access issue.

212 Tyson asked if the abutters are happy. Hillary Nelson said they are content. Jill
213 McCullough appreciated that Mr. Spofford waded thru a lot of the issues. She would
214 like to see the site plan before it is signed. She thanked Mr. Spofford for working with
215 the neighbors. Theresa Wyman, not an abutter stated she is glad everything has been
216 worked on, but she wished the whole thing would go away, she doesn't feel good about
217 it. Maybe it is a good thing they're doing, but previous meetings led her to feel very
218 skeptical. She is also speaking for her father who owns property in the neighborhood,
219 but not a direct abutter. She hopes she's wrong and things work out.

220

221 There were two requests for waivers:

- 222 1. Art read the first waiver relating to Section VI.B.22 of Subdivision Regulations. After
223 discussion, it was decided that this waiver was mute as this is not a subdivision
224
- 225 2. Art read the second waiver a noise and traffic study, Section IV.11 and IV.12. Jim
226 moved that they grant the waiver. Doug seconded. Discussion: There was
227 discussion about the size of previous uses. Art discussed parking needs. Art felt
228 this is not transient traffic, just twice a day of in and out traffic. He feel Shaker Road
229 can handle that traffic. Doug said it isn't much different from the past use. Art
230 agreed. Attorney Manzelli said the conditions do address noise, nuisance concerns
231 and they are satisfied. A vote was held on the motion: All in favor, the waiver was
232 granted.

233 There was discussion on the appropriate wording for a possible motion to approve the
234 site plan. Art felt it had to reference the letter of January 8, 2014 with 17 conditions by
235 the abutters, and the notice of decision by ZBA that contained 9 conditions, dated June
236 17th, 2013.

237 Jim said this is an unusual situation with an outside settlement coming in to be
238 incorporated into our decision. He thinks it might be a good thing for everyone if we
239 have the final plan, including everything that has been agreed to and have the attorney
240 for the abutters look at it prior to signing. Attorney Lefevre said TF Moran will get that
241 plan to Attorney Manzelli and she will email Lori that they are all set. Attorney Manzelli
242 agreed to this approach.

243 There was further discussion as to the wording of the motion. Attorney Manzelli said
244 they are requesting that the solar house property be part of the site plan approval, but
245 wouldn't necessarily need to be printed on the plan. Jim and Art said this is problematic
246 to go down this road. Attorney Lefevre said the plan will come in with the conditions
247 regarding the solar property. Art stated that if Attorney Manzelli does not advise him
248 that they have an agreement, he will not sign it

249 Jim said in the end, if the parties are not happy with each other, the appeals are still out
250 there. Attorney Manzelli stated they are not prepared to commit to withdrawing the
251 appeals if the conditions regarding the solar house are not agreed to. All parties are
252 confident that issue will be worked out.

253

254 Regarding the Change of Use Plan, New Freedom Academy, 367 Shaker Road,
 255 October 10, 2013, revised 12/11/13, Chris made the following motion:

256 To approve site plan for New Freedom Academy on Shaker Road, with the following
 257 conditions:

2581. Add 17 conditions listed in revised addendum dated 1/8/2014 to Planning Board
 259 application on the plan in writing;

2602. Add nine conditions from ZBA notice of decision dated 6/17/13 to the plan in writing.

261 Motion seconded by Tyson.

262 Discussion: Jim moves to amend the motion to include the date for the revised
 263 addendum which is January 8, 2014.

264 Tyson seconded the amendment.

265 Vote on amendment: approved.

266 Further discussion on motion: Tyson asked if for some reason, they pull out, what
 267 happens. Art reminded him it's in appeal, and the appeal will go on. There was
 268 discussion about what happens if this all fell apart and at the end of discussion,
 269 everyone was satisfied moving forward with a vote on the motion.

270 Vote: Unanimous. Motion approved.

271

272 **Other Business**

273

274 Chris Blair met with Chris Moultroup from Unitil and looked at all four trees, three are
 275 dead, one is a live tree on Hackleboro across from the store and it surrounds wires.

276 Chris B. said it would look bad to trim it, and he recommends all four trees to be cut.

277 Art said the owner voiced objection. Chris said we can't override the owner. Art felt the
 278 landowner would come around once they see the top cut off. Lori will get the approval
 279 letter to Art for signature.

280 Tyson mentioned the email he had the secretary forward to the Board referring to City of
 281 Concord's ordinance of recreational vehicle parks and there are items we may want to
 282 consider. He thinks it will come before us at some point. In the paper there was a story
 283 about the battle between a campground and the Town of Henniker. Art felt the email
 284 was good as an educational piece but when the time comes to review this, we can set
 285 conditions for approval but the things we want to do are: 1. Look at things and ask if it
 286 fits well in the neighborhood, and 2. Safety. We do not have a Zoning ordinance that
 287 addresses this particular item. We'll look to see if it fits, if it's an allowed use. Tyson
 288 said we don't need to go to zoning to enact steps. Art felt it would take several months

289 to get this all situated. Tyson asked how the Board feels about not having ongoing
290 control. Art said campgrounds have to be licensed and the Board could place
291 conditions on any approval. Any condition would be enforceable. Doug asked if we can
292 put the item on the agenda. Tyson felt we need to enact something on the books to
293 prevent problems and asked that it be tabled for the next meeting. It will be added to
294 the next agenda. Tyson is in favor of a permit process for campgrounds. Jim doesn't
295 think it's a Planning Board function to set up a permit process.

296 Tyson informed the Board that it's recent amendment to the Zoning Ordinance has
297 people arguing against it. There is controversy.

298 Jim made a motion to adjourn. Chris seconded the motion.

299 Vote: approved.

300 Meeting adjourned at 9:10 p.m.

301

302 Lori Venie, Secretary

303

304 **Next meeting: March 11, 2014, 7:00 p.m.**