

MINUTES OF THE MEETING
OF THE
CANTERBURY PLANNING BOARD

January 7, 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, Vice-Chair, Doug McCallum, Joshua Gordon, Seth Cohn, Alice Veenstra, and Tyson Miller, BOS Representative.

BOARD MEMBERS ABSENT: Chris Blair

OTHER PARTIES PRESENT: Hillary Nelson, Naomi Scanlon, Jill McCullough, Teresa Wyman, Luke Mahoney

Draft Minutes of December 10, 2013: Jim made a motion to accept and approve the minutes of December 10, 2013, seconded by Josh.

Discussion of minutes: Tyson made a motion to amend the minutes at line 94 to state the Town says "a majority should be grown on the farm" and that "all products should be locally grown". Jim seconded motion.

Tyson moved to accept the minutes as amended. Joshua seconded.

Vote: Unanimous. Amended minutes were approved.

Second Review of the resubmitted Site Plan Application of 367 Shaker Road, LLC:

Joshua recused himself. Art reminded everyone that this was a second review of the application to determine if it is deemed complete. If the application is complete, a public hearing will be scheduled. The last time the application was reviewed it was determined incomplete and the applicant was notified. Lori read the list of items that were missing from the initial application that was reviewed on October 22, 2013.

Art stated a waiver request was included in this packet for two items that will be discussed at the time of any public hearing: 1. From Section VI.B.22 of the Subdivision Regulations to allow relief from designating poorly and very poorly drained soils on a non-residential development; and 2. From Section IV.11 and IV.12 to waive the requirement of a noise and traffic study. A project narrative was also included in the application packet. Time was taken for the Board to review the new plan and documentation provided.

Art asked if a dumpster location was indicated on the plan. Seth confirmed yes. Art asked if there is an area described for snow storage. Seth confirmed yes. Art asked if the signage was indicated. Jim said it was referred to on the addendum and on the plan as well. Art asked if all buildings were identified and first floor elevations were detailed. Seth confirmed they were. Art asked if parking was addressed. Alice stated yes. Art asked if they outlined

parking requirements. Seth confirmed yes. Jim stated there is a road easement and asked if it was shown on the plan. Alice said there are rights to a right of way over the Old Woods Road. Art said it appears that all of the information that was missing from the initial application has been provided.

Jim asked at what point a decision is made about the requirement of a variance. This is the first instance that this question has come up. He is not sure if we address it now or at a public hearing. Art's thought is to wait for public hearing. Jim said it would be appropriate at the public hearing but we might want to make a statement about it prior. There is a question if the use may possibly require a variance and whether we would be deciding that at a public hearing. Tyson stated that the town attorney told him that once the ZBA makes a decision, it is binding on the Town and Board officials. Art stated this Board is the one that determines whether it requires a variance. If we determine if it is needed, we send them to the ZBA. Art then stated that it is his understanding that it's an either/or situation on the ZBA's end. They could have determined that it required a variance and dealt with it. That didn't happen. Instead a special exception was granted. The "either/or" should satisfy this Board's requirement. Jim is not sure a special exception was granted. Art stated at the present time, he believes they have nothing in hand. The vote was challenged during the appeal period and that has not been exhausted. Technically he believes they do not have a special exception. Tyson disagreed and stated the town attorney feels it has been granted and Tyson feels we should move forward with it in place. Art felt that any decision we make has no weight until they have a special exception. Tyson stated according to the town attorney, there are other requirements as well. Our approval is contingent on the special exception being in place. Art stated there are differences of opinion about the special exception right now. Jim stated advice from counsel is just that, advice. The Board agreed. Art mentioned the ZBA's conditions and thought the Board should look at those to see if there is something that should be included on the drawings. Art stated the ZBA's conditions will become conditions of the Planning Board. Jim said in the interest of fairness, it would not be fair to inform them later that based upon the ZBA conditions, there are, for example, four more things we need now. Seth asked if the required list of items was gone through at the time of the initial review of the application. Art stated yes and this review is only to determine if the missing items were provided in order to determine this application complete.

Jim made a motion to accept the application as complete and schedule it for public hearing. Alice seconded the motion. Discussion: Doug asked about the noise study, and Art stated they requested a waiver which is in itself addressing the topic, and that would be discussed at public hearing.

Vote: Vote was held and was unanimous; the application is accepted as complete as of today. Lori will notify the applicant and will schedule the hearing for February 25th.

Tyson asked if we determined that this issue does or does not have regional impact. The Board agreed it does not.

Art stated we just this evening received a summary of events from Hillary Nelson, which will be provided to the Board at the public hearing.

Proposal to Amend Zoning Ordinance RE: Farm Stand Issue: Joshua rejoined the meeting.

Tyson handed out a printout of the proposed changes to the zoning ordinance. Changes were made since the original handout. Wayne Mann (not in attendance) had previous comments that were now incorporated in this version. The primary purpose of this proposal is that the State's definition of a farm stand has a set of requirements that a minimum amount of product for sale has to be a percentage of the product grown on farm. The Town's requirement says a majority. The Board would like to change the language to conform with the State. Secondly, the DES put out Agricultural Incentive Zoning that has similar language about the products having to be locally grown, whereas the States wording is agriculturally related. Tyson would like to change the zoning to be "agriculturally related." Tyson read the proposed changes (see handout in file).

Wayne Mann previously objected to the requirement of providing sales information. He thought that was over reaching. Tyson agreed. The Town attorney had mentioned to Tyson that the financial aspect may be confidential. Joshua said only if challenged. Tyson stated some farm stands are mixed use. There was discussion about a person providing store vs farm stand information. Seth stated 35% of sales is very different than 35% of products offered. Tyson agreed. There was discussion about sales versus products offered. The RSA says sales. Tyson thought the code enforcement would have some leeway there and stated it's the Selectmen's decision to enforce this. Doug asked if this issue is already addressed by the RSA, why is the Board talking about it at this point. Tyson said our definition is too strict. Tyson also said the issue of it being agriculturally related is an issue. Doug stated if there were no town ordinance could the town officials just enforce the RSA. Tyson stated yes. Art stated that the zoning ordinance in Canterbury conflicts with State RSA. Joshua said it doesn't because a certain part of this is discussed under setbacks. Why the language is there, is unknown to him. Tyson stated that the ZBA just recently used the ordinance. Art said this would not have come up to the Planning Board if there wasn't a problem that exists. The Code Enforcement and Selectmen have an issue they're dealing with. They are coming to the Planning Board for a tool to help them deal with the problem. Tyson felt if we were to take someone to court to enforce the 50% requirement, we would lose.

Naomi Scanlon asked to speak. Art reminded everyone that we are discussing whether or not to hold a public hearing and that this meeting is open to public, but not a public hearing. Jim said we are not required to take public testimony at this point but could take questions or comments since we need the language as we want it.

Naomi Scanlon, is a member of the public and also on the Agricultural Commission. Naomi would like the Town to adhere with the State's RSA of 35%. She doesn't think anyone sells one item or grows only one item, they can't afford to. They need to be diversified. They never know what crop becomes that 35% and what you need for developing byproduct of that crop. Josh asked if it would be too onerous if it were increased to 50%. She said yes, you could lose one crop and then have to bring in someone else's product. Jill McCullough asked about the measure of 35%. Hillary Nelson brought up the idea of volume vs dollar amount, which is a problem. Art said the RSA is not addressing a dollar amount. Joshua suggested broadening the wording to "vicinity" so if Jill's product is not doing well, her neighbors product

could be used. Jim said it needs to be locally produced. Jill felt the challenging part is the difference between a farm stand and a commercial operation. Luke Mahoney asked if this proposal is trying to prevent farm stands from becoming a commercial operation. Luke mentioned Brookdale Fruit Farm and Wellscroft Fencing. Both produce agricultural entities and both have a side business of irrigation supplies and fencing supplies. Tyson pointed out they may be in a zone that is commercial. Luke stated both did it to supplement a very fragile agricultural situation. It's important to keep those instances in mind.

Jim pointed out that we can't change the State definition, so it seems that the two proposed changes make sense. Jim thought we should be deciding whether to put all the language in, or put in other language and cite the RSA and add "as changed from time to time." Seth felt "B" should be removed. Tyson made a motion to accept the changes as written, seconded by Joshua.

Discussion: Tyson said it protects the farmer and it's more loose than we have had. We had an issue where someone didn't get approved as a farm stand, but they meet these definitions. Tyson wants to prevent growing of non-agricultural products from getting through. Joshua agrees but is not sure this does it. Maybe it is too tight.

Jim asked about the clause "not to be considered commercial." It's a bit in conflict with our definition of residential use. Our site plan review requires anything not falling under that definition be subject to site plan review. Without a further change in our definition or an additional clause to say "exempt from site plan review" we're caught in the middle. Tyson asked if it were commercial if it would need site plan review. There was discussion about residential vs agricultural. Seth felt if we add "shall not be subject to site plan review" it would take care of the concern. Tyson suggested we move to public hearing and it can be amended there.

Naomi said keep it simple and go with the State.

Art held a vote on Tysons proposal to bring the proposed amendment to a public hearing. The vote was unanimous. The public hearing will be January 21st.

The issue of possible regional impact came up. In the past the Board talked about what is and isn't regional impact. Jim said the rule of thumb is if it enters your mind that it may be, then it is. Tyson said there is an RSA but we should talk about what the Board would look for to recognize if something is regional impact. He said if other towns are impacted, we have to invite them and they would have their abutter status. If we don't invite them, they can force us to go back to square one. Art stated if towns are affected by traffic, emergency services, a body of water, etc, we need to notify them. The Board will declare at application review time if it has regional impact and will notify appropriate towns. We would look at first emergency services, traffic, schools etc. Joshua pointed out that transportation issues are part of a consideration.

Tyson feels the Zoning Board should have made this issue a regional impact issue. Art said the Planning Board can do it.

Other Business: Draft/Final minutes. The Board feels that draft minutes should not be emailed to anyone but the Planning Board members when the final minutes and agendas are emailed. Art feels until we vote to accept the minutes, they should not go out but need to be available if requested. Seth read the RSA regarding minutes. Alice suggested that we consider a policy that the draft is only sent to the Planning Board, and that only final minutes and agendas sent to the parties that have requested them

Subject of "other business": Jim brought up the issue of his opinion about "other business" being limited to information and not new discussion of things that should be on the agenda. Art's feeling on other business is that if something came to the Board about regional items for example, it's other business. If we get notification/mail from Loudon or Gilmanton, then that item would be under other business. He doesn't think other business should be a recap of something we've discussed. Tyson said we shouldn't bring up things that we might discuss or vote on at another meeting. Joshua stated if it impacts somebody's rights or property it needs to be on the agenda.

Jim made a motion to adjourn, seconded by Alice. Motion was voted on and approved.

Meeting adjourned at 9:00 p.m.

Lori Venie, Secretary

Next meeting: January 21, 2014, 7:00 p.m.