

PLANNING BOARD

Town of Waterboro

***PUBLIC HEARING
THE MILK ROOM
AUGUST 25, 1994
7:30 P.M.***

Hearing called to order by Chairman, John Roberts. There were seven Planning Board Members present and approximately 60 area residents.

John Roberts opened the hearing at 7:40 p.m. and explained to those present that a legal opinion regarding the Conditional Use Request stated that the Board did not have authority to grant the request. The Milk Room would need to seek a variance.

Mr. Winslow wanted to know why the meeting was not canceled since the date on the letter was August 15, 1994. Dwayne Morin stated that the letter was faxed to him on Monday, August 22, 1994 at 2:43 p.m. The copy of the letter that Mr. Winslow had was from the copy of the letter forwarded by mail, which was received on Tuesday, August 23, 1994.

Mr. Winslow also asked who initiated the letter to the attorney? Noted that Dwayne Morin has contacted the attorney on the Planning Board's behalf.

Discussion followed regarding the length of time it took for a response from the attorney.

Comments requested:

Tim Goodrich: Mr. Goodrich believed that Mr. Pelletier would be okay because he would not be placing a structure on the property. He believed that gas pumps was not a structure.

John Roberts read Paragraph #3 of Attorney's letter dated August 15, 1994 as follows:

The fact that Mr. Pelletier proposes to merge the optioned lot with the lot currently containing the Milk Room structure does not solve his problem because S9.01 prohibits an existing non-conforming structure from being converted to a new use or structure which will also be non-conforming. The Milk Room is a Retail & Service Store II, which is permitted in the Village zone. The sale of gasoline is allowed in the Village Zone as a conditional use. The existing and proposed uses are consequently not non-conforming uses, although the lots are substandard. By adding gas pumps, however, the use of the Milk Room structure is being expanded. That expansion is prohibited under S9.02 of the ordinance "unless such nonconformity is minor and meets all requirements for the issuance of a variance.

Lori Gilman stated the house would be gone.

Mr. Goodrich asked if he would have the right to tear it down and place something else there? Just because something says it, makes it a difficult situation, this seems a bit narrow minded.

It was explained that the ordinance was voted in March 1977 and the Planning Board must go by the peoples wishes.

Art Gilman: Asked why wait so long before informing the Pelletiers?

Mr. Philbrick: Thought the Public Hearing was to sway the decision of the Board.

Deb Miles: Asked if those present would show who was for the proposed use and who against? All those in favor of gas station? Brenda Charland noted that she was here for information and not to vote. No vote taken.

Brenda Charland: Asked if the lot was substandard and by how much? Was the Zoning Board of Appeals governed by a certain percentage when granting a variance. Dwayne Morin noted that a guideline of 15% was used but it was not set in stone.

Chuck Thornton: Asked if Mr. Pelletier did not merge the lot with the present lot then the request would be reviewed as a change in use. Wouldn't this require Planning Board approval not Zoning Board of Appeals?

It was explained that Mr. Owen had requested this and the legal determination was that a non-conforming lot with a non-conforming structure could not be replaced with another non-conforming use and structure.

A change of use is reviewed by the Planning Board and if approved by the Zoning Board of Appeals or allowed by zoning the Board would need to act on a request. As the application from the Milk Room is proposed the Board would be able to condition the use.

Lori Gilman asked if Mr. Pelletier did not propose the merger would it make a difference? If changes were made to the road it would be an improvement.

Tim Goodrich: Is the Public Hearing going to be of use or benefit to the Town. Felt that the finished project should be the issue. Stated we have not had to depend on other towns to provide services. In his opinion it would be a major benefit to the Town to allow the proposed use. This is a minor change they are not asking to level an entire block of town. The big picture once finished could be granted without a lot of hassle.

John Robert noted that the Board was not in disagreement with those present. Right now the Planning Board has to follow the Zoning Ordinance and changes cannot be made at this meeting.

Douglas Foglio: If this has to go to the Zoning Board of Appeals the Public Hearing is held then a denial of either the Code Enforcement Officer, the Planning Board or the Board of Selectmen must be made in order to proceed through the proper channel. The Board needs to take action on the request under the section which pertains and then forward the party to the Zoning Board of Appeals.

After the hearing the Board will act on the request. In order to go to the Zoning Board of Appeals the appellant must be sent by someone. Doug Foglio asked if this was correct? Informed that his synopsis was correct.

Deb Miles stated she thought this was a good idea for gas station as long as safe standards were used during installation.

Lori Gilman asked how long the process would be from here? Board answered that the ordinance allows 30 to 60 days to act on the request. The Zoning Board of Appeals has been acting within 2-4 weeks.

Board asked how they felt about the project. Cindy Allen stated that personal feelings have to take a back seat to the legalities, no matter what, history cannot be disregarded.

Tonight the Planning Board's hands are tied. The Pelletiers have been very accommodating. They have said they would meet the Board's requests. If this were to go through the Board of Appeals John Roberts stated he would not have a problem reviewing the request.

Lawrence Jacobsen stated that if the Board did not uphold the legal recommendation the Pelletiers could spend the money for the project, and if challenged, the Pelletiers could have wasted money. Basically this relates back to the 1988 court case.

David Benton had been informed that the previous applicant was denied for other reasons other than those previously stated.

Other than the zoning issues have the Pelletiers met other requirements from the Board? John Roberts stated again the Pelletiers have been extremely cooperative.

It was asked if this project were resubmitted as a separate entity would this be viewed as a change of use? The court case was forthcoming from a like proposal. The Board cannot deny an applicant because of an individual.

Only the Board of Appeals can act on a request for an expansion of a non-conforming use on a non-conforming lot.

Judi Carll asked of those present, if anyone saw anything on the plan that might be a concern that the Planning Board might have missed.

Millard Genthner was concerned with the opening on Pearl Street since it appears to be very close to the corner. Possibly one way traffic only.

It was noted that the Road Review Committee had completed an on site inspection and the following was suggested as adjustments to their plans:

- *The Milk Room must meet the 50' setback from the intersection
- *The corner of Pearl Street and Goodwins Mill Road must have a radius
- *No parking signs be placed on both Pearl Street and Goodwins Mill Road
- *The driveway opening on Goodwins Mills Road comply with the 50' setback and be nor more than 40' to 50' in its opening
- *Questions were raised regarding the entrance/exit onto Pearl Street. This should be reviewed.

Dale Witman was present and is Chairman of the Board of Appeals. He asked without seeing the plan if setbacks could be maintained for the gas pumps. Yes they would.

If the building were to be purchased by someone else and the building torn down would building permits be allowed. Doug Foglio stated that a lot under 10,000 sq. ft. would go before the state to get approval. This would be for a residence only. Other uses Doug did not know.

Planning Board will take steps necessary to insure public safety. The Board has the right to refuse is public safety becomes an issue. The property in question drains directly into the stream which could endanger public safety therefore the Board has asked in the past and currently for installation of a oil and water separator.

The issue of the oil and water separator was never ruled on by superior court since the lot size took precedence over other steps taken by the Board in 1989.

Dwayne Woodsome noted that the under drain runs directly to the brook. Proper drainage would take care of most of the problem.

Chuck Thornton: Made recommendation that the Board deny the request and forward the Pelletiers to the Zoning Board of Appeals.

Hearing adjourned at 8:28 p.m.

Regular Meeting re-convened at 8:30 p.m. by Chairman, John Roberts.

Roland Denby moved and Cindy Allen seconded a motion to deny the request of Mr. Pelletier of the Milk Room under section 2.08, 9.01 and 9.02 as per attorney's recommendation. Vote was 6-0-0 in favor

Cindy Allen moved and Roland Denby seconded a motion that if the Pelletier's are successful with the Zoning Board of Appeals that they be allowed to fall under Old Business at the next available meeting. Vote was 6-0-0 in favor.

The Pelletiers asked if the Zoning Board of Appeals meet downstairs. Dwayne Morin would request the hearing be held downstairs.

VI NEW BUSINESS:

1. Election of Officers

VII OLD BUSINESS:

1. James Peverill Map 29 Lot 22 AR Zone

The Road Review Committee made the following recommendations:

- *Owner request work be conditional to the work which the Road Commission will complete on the adjoining culvert and ditch
- *Said Owner lay support filter fabric under the rip rap
- *The rip rap be 6" - 8" rock
- *The work be inspected by the Road Review Committee upon completion
- *Doug Foglio and Glenn Bean will meet with the Selectmen for fund disbursement and allocation.

Doug Foglio spoke on behalf of the Road Review Committee and they would like to place a new culvert across East Shore Road and rip rap 120 ft. from the East Shore Road along the property of Mr. Peverill bordering Townhouse Road. Doug believed this would stop water running under Mr. Peverill's garage. Mr. Peverill asked if the ditch that goes through the property could be relocated?

If the Planning Board approved your request and you gave the town the right to rip rap 120 ft. they would set a larger culvert . Eventually the Webber Road would be built up.

Mrs. Peverill asked why a culvert couldn't be placed across Townhouse Road so the water could drain towards the gravel pit instead of the lake. Dwayne Woodsome said the Town had no right to place a culvert across a state road.

Mrs. Peverill also noted that during the spring the area by the blue cottage had been re-ditched without permission of the owner. Mr. Foglio noted they were only cleaned out. Mr. Peverill had contacted the previous owner and had been informed that nothing had been done and in 40 years the area has never washed out.

Mr. Peverill would like to know what he would be allowed to do. Forty feet from the water back is all he would like to repair. From that point there are maple saplings, a pile of debris, logs and pine needles. Mr. Peverill has no problem keeping the drainage there but would like to be able to make the ditch safe.

The Peverill's also felt that the ditching along East Shore Road has added to the runoff that seems to be in question. Doug Foglio stated that he had worked for the town for many years and about 3 years ago the town had maintained the existing ditch. The Peverill's noted they had purchased the property last August. Doug noted that during the spring the heavy rains created a flash flood effect.

Doug Foglio also noted that the Selectmen had been asked if the Road Commissioner could transfer money to be able to stone rip rap 120 ft. of ditch. The Peverill's asked what can be done at the end of the ditch at the waters edge to cap off the ditch? Dwayne Woodsome noted possibly a culvert might be used. Asked what size culvert under East Shore Road. Doug believed a 3 ft. culvert. Doug further explained that with static pressure the need for a 4 ft. culvert might be necessary.

Mr. Peverill still not sure what he can do with the ditch problem. There is approximately 16 to 18 ft. drop in elevation from Townhouse Road to the waters edge. At the waters edge the ditch is only 1 ft. deep and as it goes away from the water it gets steeper. It was suggested that Mr. Peverill contact DEP to see what could be done. Dwayne Morin will give Mr. Peverill the telephone number and will also give them a call to see if they can do a site walk. No on site inspection has been done by the Planning Board. On Site to be completed on Wednesday night at 5:30 p.m. August 31st.

Dwayne Woodsome moved and Roland seconded a motion to allow Mr. Peverill to come back before the Board under Old Business> Vote was 6-0-0 in favor.

2. Old Mill Grove Subdivision

Road Review Committee looked at the lot and recommended the following:

Request from the developer for driveway envelopes be approved under the following conditions:

- *A written Easement of 25 ft. from the center of Thyng's Mill Road be given to the Planning Board. If need be, a deed should be obtained.
- *Lot #1 driveway envelope must be 200 ft. from the intersection and be no more than 100 ft. wide
- *Lots #2 through #5 driveway envelopes are approved as submitted
- *A cross culvert in front of Lot #1 must be enlarged
- *Permission must be obtained from Andrew Woodsome, Jr.
- *Larger culverts must be installed under Andrew Woodsome, Jr.'s driveway
- *Cross culverts by the Fox Valley Farm must be replaced with a larger culvert
- *All cost must be born by the developer

Dwayne Woodsome noted that the width between stone walls is not 50 ft. Easement could be given but not land by deed since each lot is exactly 5 acres in size to deed any land would make the lots non-conforming.

Bill Speed asked to review the plan for Final Plan Approval prior to going over the Road Review Committee Report. The plan denotes setbacks well within the Road Review Committee request. Culverts could be darkened, lot #1 specific envelope. Bill asked about a greenbelt, he did not have a problem if the town requested this. Dwayne Woodsome noted that many times there is no place to put the snow. Bill noted that the houses will probably be 200 to 300 ft. from the front property line.

Roland Denby moved and Judi Carll seconded a motion that the Board not require a greenbelt. Vote was 5-0-1 in favor.

Bill Speed noted that at a previous meeting it was stated that the drainage has been an ongoing problem. If an engineers study were to be performed it could get expensive and the developer felt that productivity is the key for money being spent.

Bill asked if the town owned the culvert on the private property and is the town asking developer to maintain private property? Dwayne Woodsome stated that they could redirect the water to the edge of the road and then the contractor would have to be concerned with the rip rap expense.

Six acres of clearing would create additional run off. The culvert by Fox Valley should be a shared expense. Should the Town bear some of the cost? Fox Valley is the first in line. Notes do not indicate shared expense. Doug Foglio stated that the Road Review doesn't have moneys available. They have to request money from the Board of Selectmen from other accounts for target projects. Doug was asked the age of the culvert in question he did not know the age.

Bill Speed stated that it was not his decision regarding the expense from the recommendations but he felt that Mr. Burrows would rather see \$3500 would be their

share and the \$2000 on private property the towns share. It was noted that the developer could decide to wait and over a few years complete the project without going through subdivision process.

Estimate sheet given from Doug Foglio at Dwayne Morin's request. Doug stated it was a rough estimate only and it could be a bit high. Doug also stated he thought that \$1,000 - \$1,500 was a reasonable cost for the developer to put out per lot for the development of the lots. Bill Speed noted that he did not feel that \$5,000 is exactly equitable for a problem that seems to have been a problem for some time. Have the Selectmen approved money for sharing expense? The Selectmen did not vote but expressed it was a fair proposal to share cost.

If moneys were not available to share the cost the cost would not be available through regular funds then the developer had three options:

1. Developer bear all the expense,
2. Developer and Town could split the expense, or
3. Developer could wait for money to be available.

Dwayne Morin suggested if Bill Speed needs to get property owner's opinion and once the Planning Board has an idea of acceptable solutions then the Road Review Committee and the Board of Selectmen could be brought in.

The cross culvert on Thyngs Mill Road if not replaced would flow towards the people's property that attended the Public Hearing that expressed concern. Bill Speed asked why the expense on the culvert located across the driveway. Doug Foglio did a drive by survey since it was private property, also a plunge pool will need to be built. Dwayne Woodsome noted it was due to the manner it had been installed there is a lot of rock, cement and other rip rap material that would need to be moved.

Roland Denby noted the Board could not commit any money but could recommend a dollar figure to be placed in escrow. The Board can ask the Board of Selectmen if the project would go through as proposed if they would approve it?

John Roberts stated that a condition of approval could be that before Building Permits are issued culverts would need to be completed. Discussion previously that the Town would do the work. Bill Speed had a problem with holding the building permit if the town was completing the work. How critical was the installation of the culverts?

Estimate was prepared by Chairman of the Road Review Committee. Dwayne Morin suggested Bill Speed come in with an estimate from a reputable contractor. That would protect the developer by having two estimates for the proposed work.

Dwayne Woodsome noted that they might want to consider if Andrew Woodsome would grant permission to have the culvert upgraded? This could be tabled until the Selectmen are conferred with and Bill Speed to check with contractor for estimate. If figure is agreeable to both developer and the town then a time table could be set to upgrade the culvert so lots could be sold and permits issued.

Asked how soon developer was looking for final approval. Bill Speed hoped to have final approval at September meeting. Dwayne Morin noted the project seems to hinge on upgrade of culverts. What if Andrew Woodsome Jr. decides not to grant permission to change culvert would the project be scratched? Is there an alternative? Dwayne Morin stated in an effort to proceeding in a timely manner he would contact Andrew Woodsome Jr. and Bill Speed should proceed in getting an estimate.

Sharon to draft a letter with the Road Review Committee recommendations to Andrew Woodsome Jr. and also Dwayne to ask Selectmen how much (what percentage) could be made available for this project. If the developer placed money in escrow he could request 30 days to completion of replacement of culverts. Bill Speed noted he would not have a problem if the town held project off as long as needed as long as the issuance of Building Permits would not be held up. To be brought back under Old Business at next meeting.

Election of Officers

Lawrence Jacobsen moved and Cindy Allen seconded nomination of Roland Denby for Chairman.

Dwayne Woodsome moved and Judi Carll seconded nomination of John Roberts for Chairman.

Vote by Secret Ballot. Ballots counted Vote was 3 Roland Denby, 3 John Roberts. Since Everett Whitten had to leave early the members tabled the elections until the next meeting.

VIII ADJOURNMENT: Meeting adjourned at 10:27 p.m.

Respectfully submitted,

Dwayne Woodsome
Dwayne Woodsome
Secretary/Treasurer

Roland E. Denby

Lawrence Jacobsen

Judith Carll

Everett Whitten

