

**Zoning Board
Memorial Building**

**May 3, 2011
7:00 pm**

These minutes are considered a draft until they are approved by the Board at the next meeting.

Present: Bill Sullivan, Gene Hayes, Susan Chiarella, Katherine Richardson, Bryan O'Day

Absent: Steven Berkley (alt)

John Chiarella (selectmen rep.)

Also present: John Trachy, Mike Chiarella, Justin Hastings, Clayton Platt, Malcolm Patten, George McCusker, Kristen Patten, Kim Patten, Brian Patten, Bethany Pressman and William Huntoon

Bill Sullivan called the meeting to order at 7:00pm

Minutes of April 5th: remove double entry George McCusker and remove Katie Richardson. Add at request of Bill Sullivan to meeting being called to order. Change spelling of William Sullivan to Bill and Bryon to Bryan. 4 members voted in favor of Cynthia Hayes being an alternate not 5. Application checklist was looked at for a 2nd time and that a 3rd look was needed prior to final approval. Mailings included Office of Energy and Planning and the Local Government Center.

Kathy moved to accept minutes Susan 2nd board passed to accept minutes as revised.

Minutes of April 27th: remove double entry of George McCusker and William/Billy Huntoon. Walk started at 5:15pm not 5:00.

Susan move to accept minutes Gene 2nd board passed to accept notes as revised.

Bill reviewed actions taken so far concerning Patten hearing: the site visit on the 27th included the site in question and also a location off Cross Place and George Hill Rd.

Susan asked for verification as to who would be voting: Cynthia Hayes (alt) Kathy Richardson, Gene Hayes, Bill Sullivan and Susan Chiarella.

Cynthia Hayes stepped in as an Alternate.

Malcolm gave notice to the board that during the past week he has removed logs from the George Hill side of the property.

Bill opened discussion and stated that he would leave the public comment session open until later in the evening.

Susan: feels applicant should be allowed to use property, after an extremely wet winter the location had little moisture at the end of April, building a house at the location is in keeping with the neighborhood, and doing so is reasonable and not differing from the neighboring properties.

Malcolm: the Main St. location is better and dryer than anywhere else on the property. Susan agreed

Is the Zoning Ordinance fair? Overly restrictive, wetland area looks to be more seasonal

Gene: if Variance is granted a special exception will still be needed for the driveway?

Clayton: exception for the driveway will be easy to get, there are guidelines to follow

Cynthia: just because feet didn't get wet during the site walk does not mean there are not wetlands.

Rules/Ordinance says if there are wetlands at that location must go by the ordinance.

Kathy: what sets this property aside from all others? What makes this property unique?

Must look at physical reasons vs. aesthetic reasons to grant variance.

Kathy: page 517 NH Planning and land use regulation "For hardship to exist for purposes of obtaining zoning variance, deprivation resulting from application of ordinance must be so great as to effectively prevent owner from making any reasonable use of land: furthermore, hardship must arise from some unique condition of parcel of land, not plaintiff owner, determines whether hardship exists."

Cynthia: hayfield should not be considered because of farming activity both in Springfield and New Hampshire.

George Hill location has the possibility of 4 separate lots. Why did wetlands scientist not do entire parcel?

Clayton: budget reasons and they only wanted site on Main Street to be looked at.

Kim Patten: The location in front of Bradly Butcher's on George Hill Rd is always wet.

John Trachy: Wetlands scientist 100ft enough to filter 75ft of that should be left natural.

Gene: More information needed on section on George Hill Rd. section of property.

Bill: What would it take to establish the condition of section on George Hill Rd.

Clayton: More money.

Malcolm: Not putting a house on George Hill Rd. never had any intention of looking at that section of property.

Kristin: Site on Main St that the variance is asking the Board to look at is high and dry while the location on George Hill the Board is looking at is flat and wet.

Mike Chiarella: if you look at another location on the property and can't grant variance on this site are you creating an unbuildable lot?

Bill: public comment part of the hearing is now closed 7:40 pm

Facts

1. 130 acres
2. 3 potential building locations
 - a. Main Street
 - b. Cross Place
 - i. Construction would be in a hay field

- c. George Hill Rd
 - i. Woodlands, unknown soil and wetlands (if any)

#1 The variance will not be contrary to the public interest;

Susan: Not contrary to public interest

Gene: noting to add

Kathy: Not going to hurt but town's people voted on 100' buffer of wetlands

Cynthia: Need to protect wetlands

#2 The spirit of the ordinance is observed;

Susan: site is above wetlands

Kathy: if septic system failure will go to wetlands

Bill: There are potential options. Town did vote for 100' setback from wetlands because of this has a problem with approval

#3 Substantial justice is done;

#4 The values of surrounding properties are not diminished;

No issue, does not diminish the surrounding properties

#5 Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i.) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii.) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Susan made a motion to grant the variance

No seconds

Cynthia made a motion to deny based on section B of #5. Applicant has not shown he cannot use other locations on the property

The Board worded denial: Mr. Patten has not demonstrated that a denial of application would cause unnecessary hardship.

Bill asked for those in favor of a denial: Cynthia Hayes, Kathy Richardson, Gene Hayes, Bill Sullivan

Susan asked Bill to ask for a vote of those against.

Bill asked for those opposed: Susan Chiarella

Cynthia Hayes requested that the denial be sent to the Registry of Deeds.

Kristin Patten: asked why her/Malcolm's case was discussed after she, Malcolm and Clayton left the room after the first meeting.

Board responded that the specifics of their case were not discussed. Only used as an example to help others that will come to the board later.

But a letter was sent to Malcolm requesting he bring more information to the next meeting.

How was it that Cynthia came to be an alternate quickly?

Bill: Cynthia came to him requesting that she be appointed to be an alternate. The board was required to have an alternate if the hearing was to continue.

Bill: if you feel the Board acted wrongly you may appeal.

Kristin: may seek legal action

Kathy: the board did not act on opinion they must follow the rules.

Bill: the town established the 100' setback board must follow what the town voted.

Malcolm: his understanding was that the 100' was for around McDaniel's Marsh, Lake Kolelemook and bodies of water not for just wet areas.

Malcolm Patten, Kristin Patten, Clayton Platt, Brian Patten, Kim Patten, John Chiarella, Mike Chiarella, Bethany Pressman left the hearing.

Bryan back on board

3rd look at Application checklist: no changes

Gene moved to accept, Kathy 2nd, Board passed to accept Application checklist

Board discussed use of a tape recorder to record meetings.

Kathy moved to do so, Bill 2nd, Board passed to resume having minutes taped.

Susan: alternates

Ordinance states having 3

Rules of Procedure states having 5

Susan volunteered to look into the number Board could have, ask Cynthia Anderson what the original warrant stated.

Susan: name tags

Board decided there was no need.

Susan: attended Zoning meeting in New London.

Bryan: attended Zoning meeting in Sunapee.

Both found individual members walk sites on applications prior to first meeting, must ask property owner for permission, signing application allows for site visits to occur, this will give members more information at the first meeting. May still need site walk but may limit time needed for hearing.

Cynthia: handed out changes she is requesting of the website page

Cynthia moved to adjourned 8:55pm.

Respectfully submitted
Tamara Butcher

DRAFT