

MINUTES
Re-Hearing – Site Plan Review
Sanbornton Planning Board

Meeting Date and Time: Monday, November 18th, 2019 at 5:00 PM

Meeting Place: Town Offices, 573 Sanborn Rd, Sanbornton NH

The meeting was called to order by Chair Deb Schneckloth at 5:08 PM

Roll Call

Regular Members present: Will Ellis, Selectman John Olmstead, Chair Deb Schneckloth, Jody Slack

Alternate Members present: Andy Sanborn

Absent: Kalena Graham, Don Bormes, Justin Barriault

Others Present: Planning Board Assistant, Stephen Laurin

New Business

Chair Deb Schneckloth explained that this meeting is for a re-hearing regarding the site plan approved on October 17th, 2019; the Planning Board voted to re-hear this at a special meeting on November 6th.

She stated that the first reason for requesting a re-hearing was because Don Bormes was asked to recuse himself and he did not, instead he voted to approve the application which opened it to possible litigation. She also noted that she spoke to Michael Klass of the Office of Strategic Initiatives who informed her that the Planning Board can put any reasonable conditions on an application approval, such as allowing an approval to go with the land and not the applicant, though NHMA says no case law regarding the condition. Chair Schneckloth also stated that the safety of the building needs to be addressed in the conditions of approval as the barn is technically changing use, which may require inspections separate from what the Fire Chief would normally perform.

Chair Schneckloth stated that there were complaints brought to the Board of Selectmen regarding this case; it was requested that four members recuse themselves at this meeting: Chair Deb Schneckloth, Will Ellis, Selectman Olmstead and Andy Sanborn. She stated that this is not feasible as it would only leave one member to vote.

Tara Stewart stated that there is no formal complaint process in the Town and requested Chair Schneckloth read the letter Tara had drafted regarding her complaints, which she already brought to the BOS where she was told she could read at this meeting. In the letter, she explained that she feels Chair Schneckloth has been unfair and influenced other Board members, asked Don Bormes to recuse himself without providing reason, and obtained opinions from OSI which are only opinions and not included in any State statute. Tara also noted that this site plan has been in front of the Planning Board for almost a year and was already accepted, yet concerns about parking are still being discussed. She stated that the Board has recently talked about adding additional language about parking in the Site Plan Review Regulations which she feels is directly related to her application.

Chair Schneckloth stated that she doesn't feel anyone needs to recuse themselves but read the RSA related to reasons for member recusals under 674:1; this RSA references RSA 500-A:12 related to jurors. One of these reasons for recusal is that the party "has directly or indirectly given his opinion or has formed an opinion". Andy Sanborn stated that he has formed and voiced his opinion regarding this case and will recuse himself. Chair Schneckloth stated that she feels that opinions are formed because that is the job of the Board and she will not recuse herself. Will Ellis and Jody Slack did not feel the need to recuse themselves based on these reasons either.

Selectman Olmstead stated that he has received advice from Town Counsel and does not need to recuse himself as was requested in the complaint letter to the BOS. Chair Schneckloth asked Tara if she would like to proceed with this site plan review even though only four members are present instead of five (a full board). Tara responded that she would not; Chair Schneckloth stated that she and the Board are not sure how rescheduling would work in this case. Tara then stated that she has reconsidered and would like to proceed.

Chair Schneckloth read a letter from abutters Richard and Claire Mills in which they explain their concerns about the previous approval. Concerns included allowing eight hours of music per event when this should be per day, weddings being excluded as mentioned by the applicant the ZBA appeal hearing, and portable toilets being visible.

Chair Schneckloth stated that she emailed the State Building Code Review Board regarding compliance with safety codes. She received a response stating that if the building use is changing then it must comply with the 2015 International Existing Building Code and would also be affected by chapter 43 of the State Fire Code. Steve stated that he also asked the State Fire Marshall's Office regarding Sanbornton's codes as it has not voted to adopt the State's building codes and does not inspect for these. The Fire Marshall's Office responded that their recommendation is for the property owner to communicate with the State Fire Marshall's Office as part of the State's building permit process; they also proposed having the Planning Board make a condition of approval to hire a third-party inspector at the applicant's expense to make sure the building complies.

Steve read the opinion he received from Sanbornton Fire Chief Paul Dexter regarding this case (Chief Dexter was also in attendance at this meeting). Chief Dexter explained he has reviewed this site with the property owners and the barn would require an assembly permit as it will be hosting more than 50 people; he would make sure the building conforms to NFPA Fire Prevention Code, NFPA 101, Life Safety Code and any code other than 1 or 101 that is referenced within these two codes. He noted that the barn was recently updated and the electrical is fairly new, according to the 2003 and 2006 tax cards; the Health Inspector has noted that he would be concerned about plumbing. Will Ellis asked who would check for ADA compliance and Chief Dexter responded that the Health Inspector would do this. He also explained that he is not concerned with egress doors and windows in the barn but may require that the barn doors are propped open during events to meet fire code which may affect noise. He stated that the PB could make a condition that every event is inspected, or just inspect one event and use that as a blanket inspection for all events.

Tara Stewart read an excerpt from an article authored by PB attorney Christine Fillmore which stated that towns can only act on a State statute. She also explained that there had been seven meetings regarding this site plan prior to October 17th yet the Planning Board had not discussed the plan with Timothy Lang, Sanbornton ZBA Chair and co-sponsor of the agritourism bill amendments. She noted that RSA 672 states that the PB cannot make unreasonable restrictions on agritourism, including asking for gravel to be added to the paddock for parking, as this would interfere with farm activity which is also prohibited in the State statute. She stated that she will exclude weddings completely from the proposed plan and does not mind planting a six-foot tree buffer but cannot do that until the spring.

Selectman Olmstead asked how many lights would be used in the parking area. James Westlake-Toms responded that these can either be inserted in the ground or free-standing; they will use the free-standing version so they can be removed and will be no higher than six feet tall and dark-sky compliant. There will be four lights situated around the parking area and walkway and the lights will meet the candles-per-foot recommendation per the manufacturer.

Will stated that he would still like to see fireworks completely prohibited. Deb Schneckloth stated that fireworks at an event would require a special permit and could only be performed by professionals, and this is allowed in Town so therefore should not be prohibited. Will asked about the number of guests allowed at any event; Tara responded that they will exclude weddings and only allow up to 75 guests. Chief Dexter noted that the assembly permit he would issue would only allow for up to 75 guests if that is what the Board votes on but may be less depending on results of the building inspection. He also stated that he is not concerned about gravel in the paddock versus grass because emergency vehicles would not go in there anyway, a hose would be used for a fire and a stretcher would be used to bring out a patient if there was a medical emergency.

Abutter Claire Mills requested that she would like events to end at 8:00pm instead of 10:00pm. Rich Mills asked what people would use for water and bathrooms if they are visiting the property; Tara responded that there is water in the barn and that portable toilets and wash basins would be required for paid events, but having people come to the farm that are not paying, i.e. 4-H kids, would not qualify as an event. In this case, Tara explained that she would have guests use the bathroom in her home.

Chair Schneckloth asked if Tara would consider adjusting the hours of operation; Tara responded that she has already taken a lot of other items off the table and will keep the hours the same. Clean-up time for catering employees will still not exceed 11:00pm.

Both Chair Schneckloth and Selectman Olmstead noted that the site plan approval should go with the land itself and not the landowner per advice they received from NHMA and Christine Fillmore.

The Board discussed additional conditions to the original Notice of Decision and decided upon the following:

- The number of events hosting 25 or more people shall be limited to 6 per season, June through September, inclusive;
- There will be no wedding events;
- Events to be allowed only between the hours of 9 am and 10 pm, with a maximum of 75 guests;
- No more than 8 hours of music shall be allowed between the hours of 9:00 am and 10:00 pm; all music sources to be located in the barn only;
- Maintain the existing vegetative buffer as shown on the plan;
- All parking shall be limited to on-site only;
- Portable toilets shall be screened with fencing on the north side of toilets;
- Install 6' high, opaque visual buffer consisting of vegetation and/or fencing along Davis Road between the applicants second driveway and the start of the Class VI section of road;
- To ensure that concerns of public safety and welfare have been met, inspections shall be performed by the Sanbornton Fire Chief, Health Inspector, and Police Chief to verify compliance with all relevant life, safety and health codes prior to the proposed use of the property and related buildings, in addition to third party inspections, as may be required by the Fire Chief and Health Officer;

- The property and related buildings shall remain compliant with all relevant life, safety and health codes as determined by the Sanbornton Fire Chief, Health Inspector, and Police Chief.

Selectman Olmstead made a motion to approve the site plan with these conditions. Will Ellis seconded the motion and the motion passed, with Chair Scheckloth and Selectman Olmstead voting Yes and Will Ellis and Jody Slack abstaining. The Town Administrator was present to read an excerpt from Robert's Rules of Order which states that abstentions are not counted in the final vote tally, therefore the motion passed.

Respectfully submitted,
Audry Barriault