

TOWN OF FITZWILLIAM

PLANNING BOARD

Minutes

October 17, 2023

Planning Board Present: Suzanne Gray, Chair; Tom Rothermel, Vice Chair; Barbara Young, Secretary; Ed Goodell; Kevin Woolley (remote); Richard Mays; Martin Nolan, Selectmen's Representative; and Josh Joslyn, Alternate.

Planning Board Absent: Robin Peard Blais, Alternate.

Staff Present: Lori Nolan, Land Use Coordinator.

Guests Present: Mark Anderson; Linda Anderson; Mike Piquette; Clare Rose Howard; Catie Casse (remote); Chelley Tighe; Dave Tighe; Sandra Millar; Carol Ogilvie; Rik Ekstrom (remote); Dana Pinney; Kim Arel; John Bordeleau; and Krissy LaPorte (remote).

Working Session – ordinance review

Gray welcomed Carol Ogilvie to the meeting. Gray explained that the goal is to have updates to the Accessory Dwelling Unit and Floodplain Overlay District ordinances, a new ordinance covering Short-term Rentals, plus various small housekeeping corrections for the 2024 warrant. The Workforce Housing Overlay District ordinance would then be worked on for the 2025 warrant.

The group reviewed comments and questions raised by Ogilvie in regards to Accessory Dwelling Units.

- There is a need to define mobile and manufactured homes;
- The Board felt 800 square feet was adequate;
- Gross Floor Area should include all habitable/heated spaces. Utility closets and general storage closets would all count towards the gross floor area; however, garages would not be part of the area;
- The Board was agreeable to changing the requirements from a Special Exception to a Conditional Use permit;
- Language needs to be updated around non-conforming structures;
- The Board was not agreeable to allowing short-term rentals in ADUs, as that would limit housing supplies; and
- Ogilvie would research if there can be restrictions to short-term rentals without a short-term rental ordinance in place.

Ogilvie will read through the comments and suggestions prepared by the Planning Board in regards to short-term rentals and will be back with more.

Ogilvie felt that discussion on Workforce Housing could happen at a later date. Without a density bonus, it is not economically viable to developers. In order to have a successful density bonus, public water and sewer needs to be in place.

At this point, Ogilvie and Ekstrom leave the meeting and the other guests arrive.

Chair Suzanne Gray called the public meeting to order at 7:03pm and held roll call.

Public Hearing

Case #23-09: Mark and Linda Anderson – Conditional Use Permit – to permit construction of a 12x14 foot shed within 75 feet of a wetland at 354 NH Route 119 East. [Map 12, Lot 34-2-2 – Rural District]

Gray welcomed Mark and Linda Anderson to the meeting.

Ed Goodell motioned to approve the site walk minutes of October 6, 2023 as written. Martin Nolan seconded. Motion passed.

Yes: 6 [Gray; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 1 [Rothermel]

The Planning Board reviewed the comments submitted by the Conservation Commission. The Commission recommended gutters leading away from the wetlands and planting of native vegetation, along with a prohibition of bringing in any new fill, should be application be approved.

Goodell asked if the shed will be pre-built or constructed on site. M. Anderson stated it will be a pre-built shed on a concrete slab with no wood floor. It will be used for general storage of yard equipment. They will not be storing any bulk fuel or oil; just what one would need to run a mower and/or chainsaw. M. Anderson agreed to install a spill pallet, which is like a tote with a mesh top. If anything leaks, it will go into the tote. He also would like a concrete floor, which will show a spill before plywood.

Barbara Young had concerns with wetlands surrounding the shed. The wetland vegetation is more or less at the door. The well head is also in the same area. She felt there was potential for an alternative location. M. Anderson explained that the left side of the property contains the pond and drainage. Their lot is 5 acres, but two-thirds of the lot is on the other side of the wetlands. They also do not want a shed in the middle of their front yard, which would alter the neighborhood's character.

Goodell asked how to determine the size of the gutters into drywells. Josh Joslyn explained that with the wetlands right there, there is most likely a high water line. This may cause the drywell to be one foot above grade from the driveway. Joslyn commented that this application is not increasing flow as the shed location is already impervious. M. Anderson stated that he is willing to install gutters on both sides, which would lead to the front into drywells or the equivalent.

Gray motioned to approve the following Findings of Fact. Rothermel seconded. Motion passed unanimously.

Yes: 7 [Gray; Rothermel; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 0

Findings of Fact:

1. The application is for a 12x14 foot pre-built "Reeds Ferry" shed sited within 75 feet of a wetland.
2. The applicants have obtained a variance with conditions from the Zoning Board of Adjustment.
3. The property has a small run-off stream leading from an adjacent lot's small spring-fed pond.
4. The proposed location is at the end of an existing driveway and has an impervious surface.
5. The proposed use is to store yard and household equipment.
6. The wetland vegetation begins approximately 10-15 feet from the proposed location.
7. The Planning Board and Conservation Commission conducted a site walk on October 6, 2023.
8. The Conservation Commission recommended installation of gutters, if application is approved.

Gray motioned to include the following conditions, should the application be approved. Rothermel seconded. Motion passed unanimously.

Yes: 7 [Gray; Rothermel; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 0

Conditions:

1. Roof gutters leading into downspouts must be installed, with water directed towards the west side lawn and away from the wetlands;
2. The area must be re-seeded and re-vegetated on the sloped land (turn-around area);
3. No back fill is allowed or any additional fill brought in;
4. Gas and/or oil must be contained in a spill pallet or fuel containment tote.

Conditional use approval may be granted by the Planning Board (RSA 674:21) provided that the proposed activity complies with all of the Wetlands Protection Overlay District criteria. The Planning Board then voted on the WPOD criteria.

Criterion a. The activity is a productive and reasonable use of the land and is in compliance with the purpose of this section.

Yes: 7 [Gray; Rothermel; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 0

Criterion b. Design, construction and maintenance methods are established to minimize detrimental impacts to the wetlands and/or associated uplands, and restoration is provided for.

Yes: 7 [Gray; Rothermel; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 0

Criterion c. No reasonable alternative exists which would avoid wetlands alteration or lessen the impacts.

Yes: 5 [Gray; Goodell; Mays; Woolley; M. Nolan]; No: 2 [Rothermel; Young]; Abstained: 0

Criterion d. The use for which approval is sought is not feasible on a portion of the lot which is outside of the WPOD.

Yes: 3 [Gray; Woolley; M. Nolan]; No: 4 [Rothermel; Young; Goodell; Mays]; Abstained: 0

Due to the application not complying with one criterion, the Fitzwilliam Planning Board voted to deny the Conditional Use Permit for Mark and Linda Anderson to permit construction of a 12x14 foot shed within 75 feet of a wetland at 354 NH Route 119 East. [Map 12, Lot 34-2-2 – Rural District].

M. Anderson commented that the ZBA felt there was nothing to stop parking a truck in the area or storing equipment under a tarp anywhere on the property. L. Anderson commented that having a shed down the hill is not reasonable with their increasing age. Young replied stating that she felt there are other places on the property for the shed; they are just not in a desirable location.

Gray advised the Andersons that they can appeal this decision to the ZBA.

Preliminary Consultation

Kimberly Arel – Site Plan Review – to permit operations of a doggie day care and a food truck at 27 NH Route 12 South [Map 34, Lot 26 – General Business District]

Gray welcomed Kimberly Arel and John Bordeleau to the meeting.

Arel explained that she is interested in purchasing the property for a doggie day care. She has a vision to expand to include boarding and grooming as well in future years. They feel this is a missing service in town. They would also like to use the area where the existing shed is for a food truck/shed in about 2-3 years. The food truck would be open on weekends from 12:00pm to 6:00pm with barbeque style menu.

Gray asked about the apartment. Arel confirmed that there is an existing apartment but she is not looking to rent it at this time. She explained that the building is basically three rooms. She is envisioning using the middle room to board and the far side room to groom and feed the dogs. However, she has not planned it out yet.

The plan is to initially offer doggie daycare, but expanding to include boarding for a maximum of 20 dogs. She would need to renovate the property including replacing the perimeter fencing and possibly replacing the windows. For boarding, the dogs would be let out at around 8:00pm and then put in crates for the night. She would need to look into dog waste disposal. Arel explained that the closest residential house is on the other side of the tree line.

Tom Rothermel had concerns about noise (barking). Arel explained that the building was built in 1961 and needs renovating. She was thinking of having hours from 6:00am to 6:00pm, with last potty at 8:00pm, but it will be a trial and error. Better windows and fencing should help with noise but she will look into that further.

Arel described the driveway as being horseshoe shape. She envisioned drop-off and pick-up would occur at the car and customers would not enter the building for safety reasons. If they hire employees, she envisions no more than 5 total employees.

Clare Rose Howard suggested speaking with the restaurant on the adjacent property in regards to hours and noise. The two business may be able to help each other out.

Gray stated that these proposals would fall under Commercial Kennel and Restaurant. The Commercial Kennel would require a Special Exception. Both would require a Site Plan Review and each would be treated as separate businesses.

REVIEW OF MINUTES

After a brief discussion and two minor edits, **Young motioned to approve the minutes of October 3, 2023 as amended. Gray seconded. Motion passed.**

Yes: 6 [Gray; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 1 [Rothermel]

NEW BUSINESS

CIP Representative

Gray nominated Josh Joslyn to be the Planning Board representative on the CIP Committee. Young seconded. Motion passed unanimously.

Yes: 7 [Gray; Rothermel; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 0

OLD BUSINESS

Gray recused herself and Josh Joslyn was seated as a voting member. Tom Rothermel chaired the meeting.

After a brief discussion and several edits, **M. Nolan motioned to approve the site walk minutes of October 6, 2023 as amended. Young seconded. Motion passed.**

Yes: 6 [Rothermel; Young; Goodell; Mays; Woolley; M. Nolan]; No: 0; Abstained: 1 [Joslyn]

Edits:

- L26, L70, and L76 – the group pointed out the zoning district change;
- L37 – this facility is smaller than the other two facilities and Turnkey was aware they would need to expand;
- L47 – materials will be ground on-site and separated off-site; and
- L81 – underground power line, which is most likely dead.

Fitzwilliam LLC (Turnkey Lumber)

The Board reviewed the report submitted by NHDES, following their inspection of the oily substance. NHDES determined there was no spill or leak. There was a new complaint made to the BoS from a member of the public, in which the BoS have 14 days to respond. Mike Piquette asked that the Board review his letter, and requested a letter be sent to the BoS and ZBA stating that Turnkey is out of compliance with their approved Site Plan. Rothermel would like the BoS to handle the complaints before moving to conduct an updated Site Plan Review. The Board requested a preliminary consultation with Turnkey at their next meeting on November 7. The LUC is to invite Turnkey Lumber. However, the Board will wait until the BoS have concluded their investigation into the complaints before conducting the updated Site Plan Review.

The LUC explained that Turnkey will be conducting a grinding test. It will last approximately 15-20 minutes. If the test works, then the materials in the debris pile will be trucked off-site and ground off-site.

The Board then reviewed the BoS memo and prepared their response.

Dana Pinney and Dave Tighe both stressed to the Board that Turnkey Lumber was told numerous times in the Site Plan Review that they are required to come back before the Board if their business expanded. Pinney further commented that the BoS have the duty to enforce the people's vote, in this case the zoning ordinances. Pinney felt that the business knew the rules. If they cannot follow the rules, then go somewhere else. Piquette mentioned that several neighbors are thinking of filing abatements due to the noise.

D. Tighe asked where the surveyor would find the zoning district lines. Joslyn stated from the town maps. Gray added that the BoS have access to the maps and to the zoning ordinance. In Appendix A, it specifically states that the side/rear setback would be 100 feet for this property. Young commented that the approved Site Plan called for all materials to be stored inside and only loaded onto the trucks outside. Piquette mentioned that the president of the company stated they are a lumber yard in a court deposition. Lumber yards are not allowed within this zoning district.

Gray rejoined the meeting as chair; Joslyn returned to the audience.

With no further business to discuss, **Rothermel motioned to adjourn the meeting. Young seconded. Motion passed unanimously.**

Yes: 7 [Gray; Rothermel; Young; Goodell, Woolley; Mays; M. Nolan]; No: 0; Abstained: 0

The meeting was adjourned at 8:50 pm.

Respectfully Submitted,
Lori Nolan
Land Use Coordinator

Minutes approved as amended on November 7, 2023.