

# TOWN OF FITZWILLIAM

## PLANNING BOARD

### Minutes

December 19, 2023

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

**Planning Board Absent:** Tom Rothermel, Vice Chair; and Robin Peard Blais, Alternate.

**Staff Present:** Lori Nolan, Land Use Coordinator.

**Guests Present:** Carol Ogilvie; Mike Piquette; Dave Tighe; Chelley Tighe; Corinne Marcou; Valerie Gill; Mark Anderson; Linda Anderson; Dana Pinney; Daniel Stark; Kathy Stark; Kim Arel; John Bordeleaux; Sade Adams; Susan Bemis; Julie Cordatos; and Christine Pierce.

#### **Working Session** – ordinance review

The Planning Board met with Carol Ogilvie and reviewed the draft ordinances. Tasks and follow-ups include:

- Schedule public hearing for January 2, 2024 at 6:00pm for Accessory Dwelling Units, Short-term Rentals; Floodplain; and Non-Conforming Structures.
- Create a checklist and application for ADUs and STRs.

Questions asked include:

- Historic structures are defined but not mentioned elsewhere. Research need for definition.
- "Section 10" is referenced but not part of ordinance. Reference correct citation.
- Reason behind change from Flood Insurance Study to Floor Elevation Study.

At this time, Ogilvie leaves and the other guests arrive.

#### **Public Meeting**

Chair Suzanne Gray called the public meeting to order at 7:09 pm and held roll call.

With the absence of one member, Josh Joslyn was seated as a voting member.

#### **Public Hearing, continued**

**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 gave an update on how the case came back to the Planning Board. She wanted to correct the record that all members of the Planning Board attended the site walk. Gray explained that the Planning Board should have completed their deliberations on the CUP criteria. The applicants appealed the CUP denial to the ZBA but the ZBA did not have jurisdiction to hear CUP appeals. The ZBA remanded the case back to the Planning Board to finish their WPOD deliberations.

Linda Anderson asked for clarification between Criterion C and Criterion D. Gray gave an explanation.

L. Anderson stated that feasible is not defined in the zoning ordinance but the dictionary defines feasible as convenient or easily achievable. Of the three areas that were identified as possible alternatives on the site walk, none are feasible. Each location is within the wetlands or wetlands setbacks. The property has wetlands in the front, a manmade pond, along with a brook and spring, which limits options. The one location by the road is not within the WPOD but has a 14 foot elevation change, plus it is in the area of the septic and underground utilities. There is also visible ledge.

Young asked if the shed could be located where the dumpster was located. Mark Anderson stated that is within the WPOD and not 75 feet from the road.

L. Anderson stated they have agreed to all conditions set so far. She felt it is better to store equipment inside rather than outside under a tarp.

Goodell had concerns with the well location and water contamination. M. Anderson stated that the house and garage are closer to the well head than the shed. M. Anderson commented that they are in agreement to add gutters shedding water towards the front. The elevation also slopes towards the back.

Young did not feel that the shed helps the situation, placement wise. She felt there were other possible locations by the road. L. Anderson explained that it would require extensive site work and tree work. She felt the proposed location is the most reasonable.

Goodell asked if there is any place other than 10 feet from the wetlands. M. Anderson stated that one side of the driveway is very wet. M. Nolan commented that a RV was previously parked there. There will be no increased run-off with gutters shedding water away from the wetlands. He felt this was an improvement. He also mentioned that the applicants agreed to a containment tote. Gray agreed with M. Nolan. She felt this would take any contaminants away from Scott Pond Complex. L. Anderson commented that water crosses three roads before it enters the Scott Pond system. There are also no identified hydric soils on the lot. Gray commented that the proposed location is already an impervious surface. Run-off will be controlled as it is currently uncontrolled.

Kevin Woolley agreed with the Conservation Commission comments. Gutters will improve the situation, along with revegetation.

Josh Joslyn commented that there is a gully by the stone wall where the water will flow. The newly submitted map shows that topography. M. Anderson stated that they have already planned out the gutter system. He commented that the ground is mainly clay.

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

Yes: 7 [Gray; Young; Goodell; Mays; Woolley; Joslyn; 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.
9. The applicants submitted a site map detailing all required setbacks and non-feasible locations for the proposed shed.

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; Young; Goodell; Mays; Woolley; Joslyn; 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; Young; Goodell; Mays; Woolley; Joslyn; M. Nolan]; No: 0; Abstained: 0

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

Yes: 6 [Gray; Goodell; Mays; Woolley; Joslyn; M. Nolan]; No: 1 [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: 5 [Gray; Mays; Woolley; Joslyn; M. Nolan]; No: 2 [Young; Goodell]; Abstained: 0

**Criterion e.** The design and construction of the proposed use will, to the extent possible, be consistent with the purpose and intent of this section.

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

**Criterion f.** The total area of the altered WPOD does not exceed the lesser of five thousand (5,000) square feet or ten percent (10%) of the WPOD on the property.

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

**Criterion g.** Best practices for work adjacent to a wetland are to be followed for construction.

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

**Criterion h.** The proposed use will not create a hazard to individual or public health, safety or welfare and will not diminish the wetlands values identified in Subsection A.

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

**Gray motioned to attach the following conditions to the Conditional Use permit. Young seconded. Motion passed unanimously.**

Yes: 7 [Gray; Young; Goodell; Mays; Woolley; Joslyn; 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) with New England Wet Mix (buffer zone mixed seed);
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.
5. Applicants must provide Planning Board with proof of compliance of conditions.

Therefore, the Fitzwilliam Planning Board voted to approve 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], subject to conditions.

L. Anderson asked if the public hearing fees can be waived. The Planning Board agreed to waive the fees, except for noticing costs.

**Public Hearing**

**Case # 23-11:** Kimberly Arel – Site Plan Review – to permit operations of a commercial kennel at 27 NH Route 12 South [Map 34, Lot 26 – General Business District]

Gray welcomed Kim Arel to the meeting. Arel has since obtained a Special Exception for the use from the ZBA.

Gray asked Arel about the checklist. Arel stated that the only changes will be cosmetic and fencing. She did not think she needed to submit the checklist. Gray advised that the Planning Board will need to see a plot plan showing setbacks to property lines. Arel stated that the fenced area footprint will remain as is. They will only install a taller fence.

Joslyn asked about the septic plan. Arel stated that the septic failed inspection so a new system will be installed both internally and externally.

**Gray motioned that the application is not complete. Young seconded. Motion passed unanimously.**

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

Gray stated that the application will be reviewed for completeness on January 16, 2024 at 7:00pm. If the application is complete, the public hearing will continue immediately following.

**Public Hearing**

**Case # 23-12:** Ryan Robar – Site Plan Review – to permit operations of a tattoo shop and hair salon as a home business at 105 Matthews Road [Map 10, Lot 77 – Rural District]

Gray welcomed Sade Adams to the meeting. Adams explained that her partner owns the property and she resides there with him. They would like to open a tattoo shop and hair salon in the renovated garage.

Joslyn asked to see the septic plan. Adams explained their plumber said the system has one less bedroom than the approved load. M. Nolan felt an opinion from a septic designer is more appropriate than a plumber.

**Young motioned that the application is complete. Goodell seconded. Motion passed unanimously.**

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

Goodell asked where the driveway and parking are in relation to the road. Adams explained that they have crushed stone for driveway material. They have a retaining wall with drainage and plan for parking to be along the retaining wall.

Young asked about parking, lighting, and foot traffic flow. Adams explained that the garage has a separate entrance from the house with its own parking. They have an external light on that side. They have installed a fire escape with exit signs. They currently have three entrances/exits, plus windows.

Gray had concerns as this is zoned rural and is on a small dirt road. She would like to conduct a site walk as the Planning Board's first obligation is to investigate the impact on the neighborhood. Adams explained that it is just her and her partner working. There is a possibility of an apprentice down the road. All visits will be appointment only. She anticipates 2-3 customers a day for the hair salon. The tattoo shop works by the hour and he typically takes 1-2 hour breaks between clients. They would like to work with the Town. Their ultimate goal is to work for themselves and have more time with family. It would take them a few months before they could open after obtaining the permits.

Christine Pierce, 119 Matthews Road, explained that the road is atrocious. She had concerns that the added traffic would make the conditions even worse. The beginning part is the worst part.

Julie Cordatos, Matthews Road, stated she is okay with the business. Her concerns were with the road conditions.

Daniel Stark, Richmond Road, explained that Bob Corette had purchased additional land to act as a buffer to the road from any damage from heavy equipment. It is a cul-de-sac road in not good condition.

Adams agreed that the road is not in good condition. However, she felt that the construction company that operates on the road is not helping the situation.

Joslyn asked if there will be hair dying. Adams stated yes. Joslyn explained that the septic system needs special items like a holding tank. He would also like to see what the flow is for the system and what the expected customer level will be.

**Young motioned to conduct a site walk on Friday, January 5, 2024 at 3:30pm. Mays seconded. Motion passed unanimously.**

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

Cordatos asked if the DPW could attend the walk or if a report could be submitted on the road conditions. Gray stated that the members of the Planning Board will look at the road conditions and factor the extra traffic the home business may create to determine if the road can handle the extra load. M. Nolan stated that most dirt roads are not in good condition. If the conditions allow the roads to dry out, then DPW will grade again. The rains are not helping. But DPW will be adding more gravel to the dirt roads in town as conditions allow. Cordatos commented that there are no ditches for the water to go. Susan Bemis commented that originally there were only four houses on Matthews Road. Now there are 11. DPW does a good job at keeping up with maintenance.

**Gray motioned to continue the public hearing for Case # 23-12: Ryan Robar – Site Plan Review – to permit operations of a tattoo shop and hair salon as a home business at 105 Matthews Road [Map 10, Lot 77 – Rural District] until January 16, 2024 at 7:20pm. Young seconded. Motion passed unanimously.**

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

#### **Preliminary Consultation**

Fitzwilliam LLC – Site Plan Review – to discuss expansion of business footprint at 179 Route 12 North. [Map 15, Lot 29 – Light Industrial and Rural Districts]

Gray and Joslyn recused themselves from the case and sat in the audience. Young then chaired the meeting.

Young asked why Turnkey was not present at the meeting. The LUC explained that they requested a continuance as they were having trouble finding representation around the holidays. Young felt that the owner could have attended or given authority to someone else.

Young asked the LUC to compile a timeline of activities from the preliminary consultation to present.

Mike Piquette commented that he filed an appeal to an administration decision with the ZBA. He felt the case boils down to the photo showing the business from the spillway at Bowker Pond.

Dave Tighe asked where to send the list of zoning violations. Young suggested sharing them with the LUC with an explanation so the information gets to the correct boards.

Valerie Gill asked if they are expanding further to Bowker Pond by purchasing an adjacent property. The Planning Board did not know. Gill asked if they had been given approval for their Alteration of Terrain (AoT) permit. The LUC stated that they are working on the application now.

Dana Pinney asked why they would need a continuance as they already have an engineer on board for the AoT permit. Piquette commented they built a 30x30 foot outbuilding without permits.

Young had concerns that the case is being kicked down the road for one reason or another. The zoning ordinance states they need to end all activities but the Planning Board does not have the authority to stop the activities. She wants to ensure that the Planning Board has set up the proper structure to keep the case on schedule. M. Nolan felt even the Town would be hard pressed to get a lawyer before New Year's as it is a busy time. Goodell asked how to get Turnkey to comply when the Planning Board does not have the authority to enforce.

Young asked for the Planning Board to obtain legal counsel. M. Nolan questioned what they would be representing. Woolley would like legal advice on the Planning Board's options.

Chelley Tighe asked if the Planning Board can compel them to attend. She stated that the lumber piles were pulled back away from the property line for a brief period, but the piles are back to being stored right on the line.

Suzanne Gray stated that this business has known for over a year of the zoning problems. They stated they would look into a sound wall or electric vehicles but that never happened. They have a structure being used for a different use. There were zoning violations pointed out on the site walk. This is not a typical applicant. They are not working in good faith. She did not feel this situation will get any better by kicking the can down the road.

**Young motioned to request legal counsel in regards to options the Planing Board has for Fitzwilliam LLC site plan review and zoning violations. Goodell seconded. Motion passed.**

Yes: 4 [Young; Goodell; Woolley; Mays]; No: 0; Abstained: 1 [M. Nolan]

Gray had concerns that the BoS and the Planning Board are separate boards. She asked if the attorney will represent the Planning Board or the Town as the BoS and the Planning Board are not on the same page. M. Nolan stated that legal counsel represents the town as a whole and not separate boards. Courts determine who is right and wrong before the law.

Corinne Marcou asked how the BoS can say there are no violations when there are so many obvious zoning violations. M. Nolan stated that this would need to be brought up before the BoS.

D. Tighe had concerns that Turnkey will use NHDES approval for AoT permit as a basis to approve the site plan review. The AoT violation stated that they must stop work but they did not.

Young moved to continue this case until January 16. Mays suggested we should have the attorney on board before scheduling the meeting.

C. Tighe felt the delays are hurting their reputation as well as the abutters. Piquette commented that all the expansion matches up with the court cases timeline wise. D. Tighe commented they could be fined \$100 per day per violation. Gray stated that RSA 676:4a gives the Planning Board the authority to revoke a site plan that has been put in place. She suggested this is something that the attorney look into.

**Young motioned to schedule the preliminary consultation with Fitzwilliam LLC for January 16 at 7:45pm. Goodell seconded. Motion passed unanimously.**

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

M. Nolan commented that there is a lot of dissatisfaction with the BoS. If you are unhappy with the job being done, he suggested putting your name on the ballot for the election in March.

## **REVIEW OF MINUTES**

Gray and Joslyn rejoined the meeting.

After a brief discussion and several minor edits, **Goodell motioned to approve the minutes of December 5, 2023 as amended. Gray seconded. Motion passed.**

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

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

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

The meeting was adjourned at 9:58 pm.

Respectfully Submitted,  
Lori Nolan  
Land Use Coordinator

**Minutes approved as amended on January 16, 2024.**