

Town of Albany, New Hampshire  
Planning Board Monthly Meeting Minutes –DRAFT  
PUBLIC HEARING  
Wednesday, April 10, 2013 7:00 P.M.

Next Meeting Master Plan Work Session - Saturday, April 27, 2013 9:00 A.M.

The Planning Board Public Hearing Meeting was held at the Albany Town Hall.

Present: Chairman Steve Knox, Vice Chairperson Josephine Howland; Tara Taylor, Adrian Simons, Mike Helmers, David Maudsley, Technical Advisor; Selectmen Representative Jack Rose, Theresa Ann Gallagher, Recording Secretary

Absent: Selectmen Representative Sara Young Knox

Also attending were Town of Albany Attorney, Jae Whitelaw; Town of Albany Code Enforcement Officer, Peter Carbone; Jack Whigham, owner of Almost There Restaurant, Dan Sdankus, representing Mark and Lori Lundblad, Jeff Gagnon, Leah Valadares, Richard Lake; Suzanne Brown from the Institute of Agriculture and Forestry, James Pitman, of David Haines Real Estate, James Everson, abutter

Chairperson Steve Knox called the Planning Board Public Hearing to order at 7:00 P.M.

Approval of the Agenda: Chairperson Steve Knox asked for a motion to approve the proposed agenda for the April 10, 2013 Public Hearing meeting. Tara Taylor made a motion to approve the agenda; seconded by Vice Chairperson Josephine Knox. Chairperson Steve Knox asked all those in favor of accepting the agenda as proposed signify it by saying "Aye". All were in favor. None opposed.

PUBLIC HEARING 7:00 PM

This public hearing continuance was called due to previous procedures of public comments regarding the changes on the property of Almost There Restaurant, having been brought before the Planning Board at the monthly meetings, and it was decided to approve the Plot Plan Changes under certain conditions to be in compliance with the Town of Albany Zoning Ordinances. Attorney Jae Whitelaw was present.

Jack Whigham presented to the Planning Board his Plot Plan, which was approved in 1995, with the changes he made since then. He also said that he made a pact with the Lundblads about the issues that came up over the past several weeks, and he will keep his side of the agreement. Chairman Steve Knox commented that that's fine for now, but in six years things may change; the Planning Board would like to get that agreement in writing, signed by both parties and a witness. Dan Sdankus said he would get that for the Planning Board. Jack Whigham pointed out the changes he made on his Plot Plan pertaining to the conditions set by the Planning Board:

1. The patio is backed out 3 feet to make it 43 by 24, which is 1,032 square feet.
  2. Jack Whigham said he will be having music on Saturday nights, due to the fact that he does a lot of fund raisers. The music will be from 4 PM to about 7 PM . The Lundblads are fine with that.
  3. The Plot Plan also shows the parking spaces needed to be in compliance with the State Laws.
  4. Music will be Friday, Saturday, Sunday; the neighbors agree with that.
  5. Jack Whigham said he could not get the written statement from the State about the septic system.
- Chairman Steve Knox said he spoke with Rick Trece twice; he is the Field Representative of the NH

Water Services. Rick stated that they could not find any evidence in their computer system that a septic system was approved for Almost There Restaurant or any other restaurant that existed on the property before that. Therefore, there is nothing that they can do. The system is working fine and they have no problem with it. They approve septic systems under parking lots all the time, so that is not an issue.

6. Mike Helmers spoke with Nels Liljedal about the wetlands situation, and they would not render an opinion due to these facts: 1) They only work by contact with an owner so the owner has to call him 2) In the absence in any determination the Albany Planning Board cannot render an opinion. The stream is exactly the same as it was when Jack Whigham bought the property 25 years ago.
7. The trash and the rubbish in the back of the building is already picked up and taken care of; Jack Whigham paid someone to pick it up.
8. The seating is for 86 people, and in the warmer months a lot of the seating goes outside; the Planning Board wants to make sure that it does not exceed 86 seats. Jack Whigham agreed.

Attorney Jae Whitelaw asked about the music; the hours of playing the music may be an issue if he sells the business in the future. Jack Whigham stated that there are no hours; no other business in this area has hours as far as the noise ordinance goes. He only stated 4 to 7 because those were the hours he allowed music. In the agreement it will be noted that music is allowed according to the ordinance of the Town of Albany. Chairman Steve Knox stated that the Town of Albany has no noise ordinance, and therefore it falls under the State Statute. Attorney Jae Whitelaw summed up the agreement stating that the two parties will work out what is best for each of them. However, the issue will return if someone else complains. The Town of Albany will have to put into place a noise ordinance and enforce it in the future.

The Planning Board asked Jack Whigham to write on the Plot Plan "Revision Dated" and initial it with today's date, which he did.

The Planning Board had another request that Jack's agreement with the Lundblads about the noise be as specific as it can be. In the absence of no Town Ordinance on noise, the Planning Board will have some basis to know exactly what is going on. Jack Whigham said he can't do that right now, because he doesn't know what the decibel level of the speakers will be. He cannot state a specific time because sometimes it may go on to 8:30 PM. The Lundblads are all set with the agreement. The volume will be kept down.

The Planning Board agreed that Jack Whigham does not need a Minor Site Plan Review. There is no need for a sight plan approval. Chairman Steve Knox asked for a motion to approve the change in the size of the deck as indicated on the Plot Plan and to approve the location of the parking spaces, including handicap, as indicated on the Plot Plan; Tara Taylor made a motion to approve the change in the size of the deck as indicated on the Plot Plan and to approve the location of the parking spaces, including handicap, as indicated on the Plot Plan; seconded by Adrian Simons. All were in favor. The Planning Board agreed to sign the Plot Plan and Jack Whigham could pick it up at the Town Hall.

Suzanne Brown of the NH Institute of Agriculture and Forestry was present with her Site Plan Review application and Plot Plan. Chairman Steve Knox asked for a motion to accept the Site Plan Review application; Tara Taylor made a motion to accept the Site Plan Review application from the NH Institute of Agriculture and Forestry; seconded by Selectman Representative Jack Rose. All were in Favor.

Suzanne Brown thanked the Planning Board for the opportunity to come before the Board. The plan is to preserve the green space, allowing the institute to start a farm on the land, and allowing them to open a gateway to agriculture in Mount Washington Valley. Everything will be done as environmentally

sustainably as possible. Haying and mowing will be the first step. The Town of Albany will have an opportunity for its residents to purchase locally grown food.

The building on the property will be a 25' x 36' salt box style building. It will have a porch on the front, a deck on the back and two overhangs – one for deliveries and one for stacking firewood. Five parking spaces will be included for the size of that building. A residential driveway permit is in place, but they are putting in an application for a commercial driveway permit. Most of the traffic will be coming from the south, so the driveway has one entrance from the south; but the exit is in both directions. This will be a year-round operation... fall pumpkins, Christmas trees, etc. The NH Institute of Agriculture and Forestry will bring in as much local products as they can.

On the south end will be greenhouses; it will give the neighbor privacy. This year they will only have a little farm stand. The septic permit is currently being worked on. A perk test was done on the sight. The building will have a full basement to be used for cold storage. They will also have vegetable washing from the overhang. They will make sure the water is clean. Much of the property not being used will be put into conservation land. They may put in more greenhouses to be more productive. They will put in a walking trail for the kids. Anything they do will support the store. They have not yet closed on the purchase of the property.

Richard Lake brought up a problem pertaining to the Town Ordinances... farm stand allowance is only for 200 square feet. The Planning board pointed out that that ordinance is for “seasonal” farm stands. This one is year round, so it does not pertain to this situation. Jeff Gagnon asked if there is a difference between farm stand approval and commercial site plan review. The Planning Board remarked that this is a change of use, therefore a full Site Plan Review is necessary.

A question came up about the raised bed for the septic; the plan is being reviewed to make sure it doesn't interfere with the neighbor's property. The NH Institute of Agriculture and Forestry will be going before the Board of Selectmen for the building permit. There will be indoor plumbing in the building. James Everson expressed concern that it does not interfere with his well water. His well is encased for protection. The water for washing the vegetables will be recycled rain water, and will be very minimal.

The issues of concern for the Planning Board are the septic system, driveway permit, and water runoff. The water run-off will be from a simple spray to keep the consumption down. A dry well would do for the water run-off. Suzanne Brown commented that they are certified agricultural farmers, so they have to comply with other regulations such as water testing, water distances etc. The location of the well needs to be put on the Plot Plan.

The Planning Board would like to see:

1. An approved septic permit from the State
2. The location of the well, septic, building and driveway on the Plot Plan
3. The State approved commercial driveway permit

Chairman Steve Knox asked the Planning Board to make a motion to have a conditional approval of the Site Plan Review subject to the three necessary updated documents outlined above; Selectmen Representative Jack Rose made a motion to conditionally approve the Site Plan Review provided that the above document requirements are received; seconded by Vice Chairperson Josephine Knox. All were in favor. The Planning Board commented that the Plot Plan will be signed when the conditions are met.

Suzanne Brown confirmed that the building permit will come from the Board of Selectmen. The residential driveway is in place; the only person using the driveway during the spring farming activity will

be the farmer. It will not be used for commercial until the commercial driveway is in place. A vendor cart may be put on the property; however the farmer can sell right out of the field. Attorney Jae Whitelaw pointed out that under the statute for special protection for agricultural use of land the farm stand is not considered commercial use. A certain percentage of the produce that was grown on the land can be sold.

James Everson, abutter asked about the foundation for the brook that passes between the properties; is there anything being done with that? Suzanne Brown said she will have to take a look at it. This is a community project and she wants the neighbors involved, so they can get together to review the brook.

Public Hearing closed at 8:00 P.M.

Public Comment:

Leah Valadares presented her issue about the ordinance that was recently passed by the Town; Chairman Steve Knox explained that some of the steps in the process of putting the two ordinances changes before the voters were flawed; therefore those two changes are void.

Richard Lake spoke about his property. He handed out copies of the map of his land, explaining where the gravel pit is and the part of his property that he is planning to make changes to. He reported that this pre-application consultation is for his parcel of land 3-42-11; he has a parcel with a right-of-way, 3-41-11, which will not be used for workforce housing. That parcel belongs to his son, William Lake. Richard handed out a statement made by The Chocorua View Trust, of which he is a Trustee:

“This consultation is for 120 workforce housing units in separate buildings to be erected mainly on the parcel 3-42-11. The housing units are planned to be approximately 30’ x 22’ or equal to 720 square feet in size. The units will be constructed in 4 phases over a 10 year period of time, making 30 units in each phase. The whole project phase will be scheduled upon demand by the public and availability of financing. Richard Lake said he will instruct the project’s superintendent to remove sand, gravel and boulders and grade the removal so as to accommodate the remaining soils for level building sites. The units will be side by side, and they could be joined together or they may be separated by land. Richard said he reviewed the project with a professional engineer, who is convinced there is a need for these units and it will be a successful project.”

Richard Lake said he is going to pursue this project, because time is running out. He pointed out the location on his map. His son, William Lake also thinks it is a good idea. Children will be welcomed into the units. The units will be on a slab with no basements. He will install a large size septic for the first 30 units. Richard said he has frontage on all of his roads. Richard has a 64 foot right-of-way where there is some gravel and a culvert; it’s all approved by the State. This will be a restricted neighborhood, with little or no parties going on, to offer people a nice place to live. They will be rental units. He will put in underground electricity, water and a community septic system. He plans to put 7 or 9 units per acre. Maximum cars allowed will be two per unit.

Selectmen Representative Jack Rose pointed out that this is a departure from the current zoning laws – putting 120 units on 19 acres of land. He could only put in about 9 units, allowing 2 acres of land per unit. Richard reported that the State of New Hampshire will allow this under the Workforce Housing Law, and he suggested taking it up with the Town Attorney, Jae Whitelaw. Richard said he will be happy to send the information he has. This is a pre-application review. The Planning Board told Richard Lake he will have to get support to change the Town Zoning Ordinance. Richard Lake argued that the State of New Hampshire allows workforce housing for areas where the Town does not have an ordinance for workforce

housing; therefore it is an applicable use. Richard Lake said he is serious about this, and he is willing to send the Albany Planning Board the Supreme Court's decisions on workforce housing. Attorney Jae Whitelaw said she is very familiar with those decisions.

Attorney Jae Whitelaw said Richard Lake took the first step in notifying the Planning Board that he is interested in building the workforce housing project. The Planning Board will have to review the State's Workforce Housing Law and see what its obligations are. Richard Lake said the Planning Board will have to have a good reason for him not to start the project; otherwise he is entitled to completing this project. No decision will be made tonight. The Planning Board will be meeting in May and will have a lot more information for discussion. Chairman Steve Knox said the Planning Board will put Richard on the agenda, and he thanked him for coming before the Planning Board.

Comments from Attorney Jae Whitelaw:

The Planning Board needs to create a noise ordinance for the Town of Albany. She recommends that the Planning Board change the Site Plan Review regulations. Issues with the abutters should not involve the Planning Board. The Planning Board has nothing to do with the agreement between the Whighams and the Lundblads. The Planning Board either approves the Site Plan Review or does not approve it. The Planning Board also has to make sure the Town Zoning Ordinances are being followed. If there is no evidence to prove otherwise, then no conditions need to be set. The Planning Board decided a full Site Plan Review was not necessary, therefore there is nothing to approve. Therefore no conditions can be set, because nothing is being approved.

Regarding the workforce housing, the first step is for the Planning Board to decide if they meet their fair share of the workforce housing. Then look at what the zoning ordinances permit. If there is not an opportunity for a developer to come in and build a workforce housing unit, then the Town has to allow it. First, the community need is determined, and second it's determined what each town's fair share. The mobile home park in place may qualify for the Town of Albany. People who want to build workforce housing fall under the protection of the State Statute, unless they want to put 200 units on five acres. Jae Whitelaw will get information on this for the Planning Board.

In conclusion, the Planning Board thinks the agreement between the Whighams and the Lundblads was made to protect both parties. The Town has concerns about the underground water problem on the Lundblad's property, based on the document they presented to the Planning Board at the March 13<sup>th</sup> Public Hearing meeting (page 3 in the minutes), and there is a migration problem. If the Lundblads do not get the petroleum rescue funds to work on the migration problem, they will be in site. It will be a major problem, which will be a groundwater problem for the Town of Albany.

Adjournment: Chairman Steve Knox asked for a motion to adjourn the meeting at 9:10 P.M. A motion was made by Mike Helmers to adjourn the Planning Board Meeting at 9:10 P.M.; seconded by vice Chairperson Josephine Howland. Passed unanimously.

Respectfully submitted,

*Theresa Ann Gallagher*

Recording Secretary