

**PLANNING AND ZONING COMMISSION
REGULAR MEETING – MINUTES
OCTOBER 9, 2013 – 7:00 PM
NEW HARTFORD TOWN HALL- 530 MAIN STREET**

PRESENT: Chairman James Steadman, Daniel LaPlante; Alternates Robert Moore, Martin Post, and Peter Ventre; Land Use staff Certified Zoning Enforcement Officer Rista Malanca and Recording Secretary Stacey Sefcik.

ABSENT: David Krimmel, Gil Pratt, Ted Stoutenberg.

Chairman Jim Steadman called the meeting to order at 7:00PM. All regular members present were seated for the evening. Alternate Robert Moore was seated for David Krimmel, Alternate Martin Post was seated for Gil Pratt, and Alternate Peter Ventre was seated for Ted Stoutenberg. The proceedings were recorded digitally and copies are available in the Land Use Office.

1. PUBLIC HEARINGS CONTINUED:

A. WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (*Opened 7/24/13 and Continued to 10/9/13 at Applicant's Request*).

The Recording Secretary read into the record the legal notice for this public hearing. Ms. Malanca asked Mr. LaPlante for proof of notice to abutting neighbors, and Mr. LaPlante stated that he did not have the certificates of mailing with him. Ms. Malanca explained that, as all time available for extensions had already been used, this public hearing had to be closed at this meeting in order to meet statutory requirements. She suggested that the applicants proceed with their presentation, and then the Commission could continue the public hearing to later in the meeting in order to allow Mr. LaPlante time to get the certificates of mailing; as long as proof of notice to abutters was submitted prior to the end of the meeting, there would be no issue. However, if the certificates were not submitted by the end of the meeting, the public hearing would have to be closed and the Commission would have to deny the application due to improper noticing. Mr. LaPlante and the Commission members agreed to this suggestion.

David Whitney, PE, addressed the Commission on behalf of the applicant. Mr. Whitney explained that this 3.27-acre lot was an existing lot of record, and the applicant was requesting a special exception in order to widen the driveway to 18 feet as required by the Section 3.5F of the Zoning Regulations. Mr. Whitney explained that this property and the adjoining property at 65 Winchester Road had been created as a result of a first cut in the 1980s. The wetlands were delineated at that time, and a deed restriction was filed on the land records stating that both properties would be served by a shared driveway. A house was constructed at 65 Winchester Drive; however, the property at 81 Winchester Drive had remained vacant to present day. The driveway in use by 65 Winchester Road had originally been an old farm road and was improved to be approximately 10 feet wide; it was located mostly on 81 Winchester Road. As 81 Winchester Road had remained vacant, the shared driveway had not then been necessary, and therefore the owners had never widened it.

Mr. Whitney said that Mr. LaPlante had purchased the property with the intention of constructing a house and selling the property. However, his prospective buyer did not wish to have a shared driveway and wanted the property to have its own driveway. Because of this, they had originally applied for an Inland Wetlands permit to construct a separate driveway on the west side of the lot and had hired Tom Stansfield to update the delineation of wetlands on the site. As a result of Mr. Stansfield's report, it had been determined that more wetlands were onsite than originally thought; the driveway would therefore require additional wetlands crossings and 6900 square feet of wetlands disturbance. Mr. Whitney explained that after the initial public hearings on this matter before the Inland Wetlands Commission (IWC), Mr. LaPlante had decided to modify his proposal in order to use the shared driveway on the eastern side of the lot. However, in order to be able to do this, Mr. LaPlante required a special exception for a shared driveway from the Planning and Zoning Commission. Under the Zoning Regulations, a shared driveway was required to be 18 feet wide with 2:1 side slopes and 2-foot shoulders. The area of the existing driveway had therefore been re-surveyed, and the plans were updated to reflect this proposed work. While the existing driveway would require work in order to be compliant with the Zoning Regulations; it would nonetheless only require 2100 square feet of wetlands disturbance. The IWC approved their application for work to widen the existing driveway to be shared by both properties as it required significantly less wetlands disturbance.

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Mr. Steadman questioned how long the shared driveway would be, and Mr. Whitney stated that it would be 260 feet to the point at which the driveway split; from the split to the proposed house would be approximately 200 feet. Mr. Post questioned what the grade of the driveway to 81 Winchester Road would be after the point at which the driveway split; Mr. Whitney stated that it would be at most 10% grade. Mr. Post asked what the pitch of the entire driveway would be, and Mr. Whitney stated that the proposed house would be located on a knoll; the driveway would be reasonably flat for the shared portion, would go down to a low point, and then slope up toward the house. Mr. Whitney stated that the Town's engineering consultant, Roger Hurlbut, PE, had reviewed the revised proposal and issued a report to the IWC dated September 23, 2013.

Mr. Whitney then reviewed the application against the shared driveway requirements listed in Section 3.5F of the Zoning Regulations. He noted that the regulations required a shared driveway to be 18 feet wide and constructed of gravel or asphalt in order to permit access by emergency vehicles. He stated that the existing driveway was compacted gravel, and the widened driveway would be constructed the same way. Mr. Whitney then noted that the regulations also required an easement for a shared driveway that was either modeled on the sample in Appendix 3 of the Zoning Regulations or reviewed and approved by the Commission's attorney; this deed was then required to be filed on the Land Records. He explained that the property owners at 65 Winchester Drive had not, to date, agreed to a shared driveway easement with Mr. LaPlante; however, he noted that the shared driveway requirement was detailed in the deeds for the two properties. Ms. Malanca explained that she had emailed copies of the deeds to the Commission's attorney, Matt Willis, for his review. Mr. Whitney read into the record the pertinent section of the deed; Attorney Matt Willis' email response to Rista Malanca, dated October 1, 2013, was also read into the record. Mr. Willis' email expressed his opinion that the Commission could proceed with a deed restriction in lieu of a shared driveway easement, and he recommended that the deeds be attached to the maps and plans for this project. Mr. Whitney stated that he had put the deeds on the maps and plans as suggested. Lastly, Mr. Whitney explained that the regulations required that the applicant prove each lot could be served by a driveway compliance with Town Ordinance 02-2, An Ordinance Concerning Driveway Standards and Permitting, but that it is preferable to have a shared driveway in order to preserve existing topography, reduce adverse impacts on natural resources, or provide better sight lines at the Street Line. Mr. Whitney reiterated that the two lots had always been intended to share a driveway, as the deeds demonstrated. He also noted the Inland Wetlands Commission's preference for a shared driveway as it significantly reduced the total amount of wetlands disturbance.

Mr. Whitney then reviewed the application against the special exception requirements in Section 8.5E of the Zoning Regulations. He noted that this was an existing lot of record. The house and shared driveway were in harmony with the neighborhood as there were other shared driveways in this area of Town. Mr. Whitney pointed out that widening the driveway to 18 feet would improve traffic circulation, and he noted there would be no increase in traffic other than that which would be common to two house lots. He also pointed out the widening the existing driveway as opposed to creating a second driveway would decrease disturbance to the wetlands and would enhance preservation and conservation, which were stated goals in Section 8.5.E.5. Mr. Steadman asked for more information regarding the report issued by the Town's engineering consultant. Mr. Whitney read Mr. Hurlbut's report dated September 23, 2013 into the record. He explained that foundation and roof drains would be discharged to the southern side of the property as required by the Inland Wetlands Commission, and that Mr. LaPlante would be the responsible party for installation and maintenance of the Sedimentation and Erosion Control Plan; the plans had been updated to include these modifications. He stated that the Inland Wetlands Commission had specifically not required the applicant to install intermediate rip rap at the outfall of the proposed culvert. Mr. Whitney also informed the Commission that the driveway construction sequence had since been included on the maps and plans as well.

Hearing no comments or questions from the Commission, Mr. Steadman opened the floor to public comment. Joe Douaihy, 65 Winchester Road, addressed the Commission. Mr. Douaihy expressed concern that widening the driveway to 18 feet would require cutting down trees and open a wider swathe of the property to view from the street. He stated he was concerned that this would adversely impact his property values, and he suggested that this concern might be exactly why Mr. LaPlante's original buyer did not wish to have a shared driveway. Mr. Post noted that Mr. Douaihy's deed noted the shared driveway requirement. Mr. and Mrs. Douaihy explained that they had been under the impression that any shared driveway would be the same size as the existing driveway; this proposal was for a significantly wider driveway.

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Mr. Post pointed out that the current driveway, at 10 feet wide, would not be acceptable as a single driveway under the current regulations. Ms. Malanca explained to the Commission and to Mr. Douaihy that the shared driveway had never actually been approved by the Commission; since the two lots were created as the result of a first cut, they had not undergone the subdivision approval process; the driveway would only have had to comply with the regulations in effect at the time of development. At the time the lots were created, the regulations required a driveway to be 10-feet wide with pulloffs every 150 feet. Since the second lot had not been developed, the driveway did not need to meet the shared driveway requirements at that time; however, even at that time, a shared driveway was required to be 18-feet wide.

Mr. Douaihy then noted that Section 3.5F required a shared driveway easement in order for the Commission to grant special exception approval. He asserted that, while a deed restriction had been in place for both properties, Mr. LaPlante had purchased the property as the result of a foreclosure when the Town had seized the property to pay for back taxes. Mr. Douaihy questioned whether the deed restriction was still valid because of this. Ms. Malanca noted that all of this information had been forwarded to the Commission's attorney when his opinion had first been requested. Ms. Malanca asked Mr. Douaihy if he had read the language of the sample easement in Appendix 3, and he responded affirmatively. She then asked Mr. LaPlante if he would like to use the model shared driveway agreement or the deed restriction, and Mr. LaPlante stated he believed the deed restriction was sufficient.

Mr. Whitney informed the Commission that the applicant had offered to build a new, separate driveway for Mr. Douaihy on his lot prior to this proposal, and Mr. Douaihy had refused. The applicant had then tried to build his own separate driveway on the western side of his lot, and the Inland Wetlands Commission had made it clear they were not in favor of that much wetlands disturbance. He stated that the applicant was stuck and had limited options in terms of what he could do to create a means of accessing the proposed house site. Mr. Post questioned whether Mr. LaPlante would be bearing the full cost of the improvements necessary to widen the driveway. Mr. Whitney stated that all work necessary to widen the driveway was occurring on Mr. LaPlante's property, and Mr. LaPlante stated that it was not his intention to "stick" Mr. Douaihy with the bill for this work.

Hearing no additional comments or questions from the public or the Commission:

MOTION Mr. Post, second Mr. LaPlante, to continue the public hearing in the matter of **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway** to later in this meeting, in order to allow time for the applicant to obtain and submit proof of notice to abutting neighbors; unanimously approved.

2. PUBLIC HEARINGS:

A. Julie Harwood, 19 Robbins Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit.

Julie Harwood addressed the Commission regarding this matter. Ms. Malanca stated that proof of notice to abutting neighbors was in the file. Ms. Harwood then submitted one letter that had been returned to her. Ms. Harwood explained that she wanted to add a 3rd bay to her existing garage and construct an accessory apartment above the garage for her elderly mother. She noted that Farmington Valley Health District approval had been submitted to the Land Use office, which Ms. Malanca confirmed. Ms. Harwood then reviewed her proposal against the requirements listed in Section 3.6C. She noted that she was the property owner and would still be living in the primary residence. Ms. Harwood submitted the property card for 19 Robbins Road, which stated that the lot was 2.1 acres. She said that there would only be one accessory dwelling unit onsite, and that the apartment would have the same exterior appearance as the rest of the house. Ms. Harwood then submitted pictures of her house and property as viewed from various angles. She also referenced plans submitted as a part of this application depicting the proposed elevations and floor plan of the apartment. Ms. Harwood stated that the gross floor area of the apartment would be 826 square feet, while the total area of the house was 2544 square feet; the apartment would be 32% of the area of the main house, so it was clearly subordinate to the main house. Ms. Harwood said that the apartment would be accessed via a new door through the garage. As an additional bay was being added to the garage, she stated there would be adequate parking. Ms. Harwood referenced the pictures she submitted to show that the house was set back from the road, and the apartment would therefore not be visible from the street.

Mr. Post questioned whether any changes to the septic tank had been required. Ms. Harwood responded negatively, noting that the FVHD had approved the use of her existing system for the accessory apartment.

Hearing no further questions from the Commission, Mr. Steadman opened the floor to public comment; however, no one present expressed a desire to speak.

MOTION Mr. Post, second Mr. Moore, to close the public hearing in the matter of **Julie Harwood, 19 Robbins Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit**; unanimously approved.

B. Lisa Cushman, 88 Indian Meadow Road – Special Exception per Section 3.6E for a Home Occupation (Private Psychotherapy, Counseling, and Life Coach Practice).

Lisa Cushman addressed the Commission regarding this matter and submitted proof of notice to abutting neighbors. Ms. Cushman explained that she wanted to operate her private psychotherapy, counseling, and life coaching practice from an office at her residence. She explained that she planned to use a 225 square foot sunroom on the first floor of her house as her office. The total square footage of the house is 4467 square feet. Ms. Cushman stated that the sunroom to be used as her office had a separate entrance. She informed the Commission that she anticipated approximately 10 clients per week, with her hours of operation being 10AM to 5PM Monday through Friday. Ms. Cushman said that her family parked in the 3-car garage; only one client would be coming at a time, so there was ample parking in the driveway. She stated that she did not plan to have any signage outside her residence. Ms. Cushman then submitted pictures of her home to the Commission. She stated that there would be no retail sales, and she would not have any employees.

Hearing no further questions from the Commission, Mr. Steadman opened the floor to public comment; however, no one present expressed a desire to speak.

MOTION Mr. Post, second Mr. Ventre, to close the public hearing in the matter of **Lisa Cushman, 88 Indian Meadow Road – Special Exception per Section 3.6E for a Home Occupation (Private Psychotherapy, Counseling, and Life Coach Practice)**; unanimously approved.

3. PENDING APPLICATIONS:

A. Julie Harwood, 19 Robbins Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit.

Ms. Malanca informed the Commission that the application was in order, and she recommended approval.

MOTION Mr. Post, second Mr. Moore, to approve the application in the matter of **Julie Harwood, 19 Robbins Road – Special Exception per Section 3.6C for an Accessory Dwelling Unit** as per all oral and written testimony; unanimously approved.

B. Lisa Cushman, 88 Indian Meadow Road – Special Exception per Section 3.6E for a Home Occupation (Private Psychotherapy, Counseling, and Life Coach Practice).

Mr. Post stated this appeared to be a very straightforward application, and he observed that businesses such as Ms. Cushman's helped the Town.

MOTION Mr. Post, second Mr. LaPlante, to approve the application in the matter of **Lisa Cushman, 88 Indian Meadow Road – Special Exception per Section 3.6E for a Home Occupation (Private Psychotherapy, Counseling, and Life Coach Practice)** as per all oral and written testimony; unanimously approved.

C. WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (Opened 7/24/13 and Continued to 10/9/13 at Applicant's Request).

The Commission agreed to table this matter to the end of the meeting.

4. **NEW APPLICATIONS:**

A. **Kenneth Roberge for Doris Berry, 519 East Cotton Hill Road – Special Exception per Section 3.4H to Install Emergency Generator and Above-Ground Propane Tank within the Front Yard Setback.**

Ms. Malanca explained that Mr. Roberge was not able to be present at this meeting. She informed the Commission that Mrs. Berry's house was pre-existing nonconforming as it was located within the front yard setback. Mr. Roberge wanted to install an emergency generator and above-ground propane tank within the front yard setback northeast of the garage. She reviewed with the Commission the sketch submitted by Mr. Roberge. She noted that the regulations usually require an A-2 survey; however, it was within the Commission's power to waive this requirement. Ms. Malanca questioned whether this sketch was acceptable to the Commission or if the Commission preferred to have Mr. Roberge submit an A-2 survey. After a brief discussion, the Commission agreed that the sketch presented by Mr. Roberge was acceptable.

MOTION Mr. Post, second Mr. Ventre, to accept the application in the matter of **Kenneth Roberge for Doris Berry, 519 East Cotton Hill Road – Special Exception per Section 3.4H to Install Emergency Generator and Above-Ground Propane Tank within the Front Yard Setback** and to schedule a public hearing for November 13, 2013; unanimously approved.

B. **John and Linda Casey for Main Stream Canoe & Kayak, 170 Main Street – Review Design of Building (Footprint Only Approved on September 14, 2011).**

Ms. Malanca explained that in September 2011, the Commission had approved the location and size of Mr. Casey's proposed 50 foot x 50 foot accessory structure on his property at 170 Main Street. At that time, Mr. Casey had been unsure of the style and appearance of the structure. The Commission had therefore conditioned their approval on Mr. Casey coming back for additional approval once he had selected the design.

She then reviewed with the Commission the plans submitted by Mr. Casey for his accessory building. The building was proposed to be 25 feet high with two stories. The main floor would be 2330 square feet. Ms. Malanca noted that the regulations permitted a structure as tall as 40 feet. Ms. Malanca explained that the building would be used for storage, repairs, and maintenance of kayaks and canoes. She said that Mr. Casey wanted to frame out the second story; however, he was not intending to finish it at this time. She also noted that the doors were not going to be installed at this time; however, they were drawn on the plans so the Commission could see where they would be located. Ms. Malanca stated that Mr. Casey had told her the building would be red.

Members of the Commission questioned whether this building could only be used for any other type of business. Ms. Malanca explained that this was an accessory building for a canoe and kayak shop; if Mr. Casey planned to use it for any other purpose, an application would have to be submitted and heard by the Commission.

MOTION Mr. Post, second Mr. Moore, to approve the application in the matter of **John and Linda Casey for Main Stream Canoe & Kayak, 170 Main Street – Review Design of Building** as per plans prepared by Natale & Stoutenberg, Architects entitled "Main Stream Canoe, 170 Main Street (Route 44), New Hartford, Connecticut" Sheets A1-A3, dated November 15, 2012; the motion carried 4-0-1 with Mr. Steadman abstaining.

At this time, Guy LaPlante returned to the meeting room with proof of notice to abutting neighbors. The Commission then agreed to amend the agenda to re-open item 1A, then address item 3C, and then return to the agenda as written.

1. **PUBLIC HEARINGS CONTINUED:**

A. **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (Opened 7/24/13 and Continued to 10/9/13 at Applicant's Request).**

Mr. LaPlante submitted proof of notice to abutting neighbors, which Ms. Malanca reviewed and then included in the file for this application. Hearing no further comments or questions from the Commission or the public:

MOTION Mr. Post, second Mr. Ventre, to close the public hearing in the matter of **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway**; unanimously approved.

3. PENDING APPLICATIONS:

- A. WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway. (*Opened 7/24/13 and Continued to 10/9/13 at Applicant's Request*).**

Mr. Post stated Mr. Whitney had done a more than adequate job in developing the plans for this proposal, and he noted that the application appears to conform to all pertinent regulations with the possible exception of the requirement of a shared driveway easement. He expressed concern regarding the legal ramifications of holding the neighboring property owners to the 2013 shared driveway regulations when they had agreed to what was in effect in 1986. Mr. Post questioned what regulations were in effect in 1986 and how long shared driveways had been required to be 18 feet wide. Mr. Moore also expressed concern as to whether or not the requirements of the deed restriction could pass to assigns in a situation where the property had been the subject of foreclosure. Ms. Malanca stated that, if the Commission wished, she could get another opinion from Attorney Willis regarding these questions in time for the October 23rd Planning and Zoning Commission meeting.

The Commission agreed with this plan and agreed to table the matter of **WFL Properties, Inc., owner/applicant, 81 Winchester Road – Special Exception per Section 3.5F of the Town of New Hartford Zoning Regulations for a Shared Driveway** to the October 23, 2013 regular meeting in order to allow time to receive a staff report from the Commission's attorney.

5. APPROVAL OF MINUTES:

- A. September 11, 2013 regular meeting.**
B. September 25, 2013 regular meeting.

MOTION Mr. Post, second Mr. LaPlante, to accept the minutes of both the September 11, 2013 and September 25, 2013 regular meetings as written; unanimously approved.

6. ZONING ENFORCEMENT OFFICER'S REPORT:

Ms. Malanca briefly reviewed with the Commission her enforcement activities over the previous month. She discussed with the Commission the status of restoration work on New England Development, LLC property at 69 and 85 Bruning Road. She stated that they were now substantially in compliance with the original plans, and a new sand and gravel application would likely be forthcoming within the next few months. Ms. Malanca stated that the older of the two stages of the sand and gravel operation at 97 Main Street was now reclaimed and closed; the newer stage was still ongoing.

Ms. Malanca also reviewed her efforts to contact property owners regarding possible inclusion of their properties in the Incentive Housing Zone the Commission is working to create. Jack Casey addressed the Commission from the audience to state that he would be interested in having his property considered for inclusion in the Incentive Housing Zone.

MOTION Mr. Post, second Mr. Moore, to amend the agenda to add item 8A - **John & Linda Casey/Main Stream Canoe & Kayak, 170 Main Street – Site Plan Approval for Temporary Use - 1-Day Public Event per Section 7.3B**; unanimously approved.

7. CORRESPONDENCE:

No business was discussed.

8. **OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:**

A. **John & Linda Casey/Main Stream Canoe & Kayak, 170 Main Street – Site Plan Approval for Temporary Use - 1-Day Public Event per Section 7.3B.**

Jack Casey addressed the Commission regarding this matter. Mr. Casey explained that he wanted to hold a one-day event at his business at 170 Main Street. He stated that the Democratic Town Committee wanted to start an annual Cider Press event, similar to the Republican Town Committee's Corn Roast. This year, the event would be held on Saturday, October 19th from 11AM to 4PM. Mr. Casey explained that approximately 15 to 30 people were anticipated to attend, and the event would be held at the front of the property in the existing parking area.

Ms. Malanca questioned whether barriers would be put up in order to protect people congregating in this area, and Mr. Casey responded affirmatively. He said that a 10-foot by 10-foot tent would be erected in the area, and the cider press equipment would be located on a table in the tent. Mr. Casey said that there would be no music or alcohol at the event, and parking would be on his property; there would be no on-street parking. Ms. Malanca then briefly reviewed with the Commission the pertinent regulations for this type of application.

MOTION Mr. Post, second Mr. LaPlante to approve the application in the matter of **John & Linda Casey/Main Stream Canoe & Kayak, 170 Main Street – Site Plan Approval for Temporary Use - 1-Day Public Event per Section 7.3B**; unanimously approved.

MOTION Mr. LaPlante, second Mr. Ventre, to adjourn at 8:56PM; unanimously approved.

Respectfully submitted,
Stacey M. Sefcik
Recording Secretary