

**Durham Planning Board  
Meeting Minutes  
May 6<sup>th</sup> 2015**

**Call to Order:** Vice Chairman Beaulieu called the meeting to Order at 7:00 p.m.

**Members Present:** Vice Chairman Todd Beaulieu, Anne Torregrossa, Michael Fitzpatrick. Mindy Woerter Excused.

**Also Present:** Jill Toher, Admin/Secretary Paul Baines, Codes Official.

**Establishment of Quorum:** Vice Chairman Beaulieu announced a Quorum has been met with three (3) members present.

**Public Present:** Kelly and Robert Burnham, Meadow Road; Arielle and Sebastian Leclerc, Pound Road; Faith Baker and Robert Smith, Pound Road; Robert T. III and Wendy Gardner, Pass Brook Road.

**Pledge of Allegiance:** Completed

**Amendments to Agenda:** None.

**Acceptance of Minutes:** **Mike Fitzpatrick Moves** to Approve the Minutes as presented. Vice Chairman Torregrossa Second. Motion Carried 3-0.

**Informational Exchange – at Request of Codes Official:**

a. Kelly Burnham wanted clarification as to which is correct: the thirteen plantings reported in the March, 2015 minutes or the fourteen plantings listed on the Conditional Use Permit. She also asked as to the whereabouts of the additional photos taken by the Landscape Architect. A brief discussion followed, during which Ms. Burnham was advised that since an Appeal (based on the water quality issue) has been filed by Michael Sundberg's Attorney, all questions must be addressed to that forum. After the Appeals Board has made their ruling, the Burnhams can come back to the Planning Board for a re-determination on the plantings, should the plantings aspect not be addressed. It was the general consensus to Table until the Appeals Board makes their ruling.

**Continuing Business: Conditional Use Permit – Arielle and Sebastian Leclerc, Map #7, Lot #75-E – Pound Road:**

Faith Baker, an abutter of Arielle and Sebastian Leclerc stated her contention that Durham's Ordinances and the State Statutes do not agree. She contends that horse boarding and riding lessons is the primary business and should come under Commercial Business and not

Agricultural and/or Non-intensive Recreational Use. She raised the question as to whether Durham's Ordinance is pre-empted by State Statute. Ms. Baker provided the Board with copies of documentation supporting her contention. She stated it is her hope that both parties can come to a compromise.

During a discussion, Sebastian Leclerc stated their primary use is for horse boarding which he considers is a non-intensive recreational use and is exempt from permitting, with riding lessons being secondary use. Mr. Leclerc raised the question as to whether the Town's Ordinance has been updated since 2005 and referred to an update performed by the Town of Freeport in 2013.

The Codes Official stated he found no evidence of the Town's Ordinance being updated since 2005, in which case the State Statute prevails. He also stated that he did not find any prior record of stables being permitted in the past and followed up by visiting two stables in Town to confirm that a permit was sought and/or granted.

Vice Chairman Torregrossa stated her opinion is that horse boarding falls under Agricultural and that providing riding lessons falls under a Commercial use. A lengthy discussion followed.

Chairman Beaulieu referred to the site walk of the driveway at the Leclerc property performed by Board members earlier this evening and asked if both parties can come to a compromise regarding the need for a buffer past pole 1.2. Mr. Leclerc stated the driveway is part of his land and does not want to have any restrictions placed on the Conditional Use as a condition that may limit the Leclerc's use in the future or have an adverse effect, should the Leclercs want to sell in the future.

As a result of the site walk and the Leclerc's providing a copy of their deed as requested in the April, 2015 meeting to complete the Application Check List it, was the consensus of the Board to waive the need of a plan of the driveway.

The Codes Official distributed copies of the Maine Revised Statute, Title #7. Chapter 6: Maine Agricultural Protection Act and referred the Board to section #155: Application – Municipal Ordinance for Board members to review for clarification. A discussion followed.

**Mike Fitzpatrick Moves** that the primary use is not non-intensive recreational for the reason that money is being exchanged, making it feel like a Commercial Use and for other reasons previously stated. Chairman Beaulieu Second. Motion Carried 2-1, with Vice Chairman Torregrossa opposing.

**Vice Chairman Torregrossa Moves** to find that with the other requested information being provided and the site walk complete, the Application for a Conditional Use Permit is complete. Mike Fitzpatrick Second. Motion Carried 3-0.

**Pending from Application Check List : Item I: Vice Chairman Torregrossa Moves** to find that with the condition as discussed, the use is in conformance with the Subdivision Ordinance, Comprehensive Plan and Zoning Ordinance. Mike Fitzpatrick Second. Motion Carried 3-0.

**Findings of Fact and Conclusions of Law – re: Arielle and Sebastian Leclerc, Map #7, Lot #75-E – 12 Pound Road, hereinafter referred to as Attachment #1, is attached hereto and incorporated herein and made a part of these Minutes.**

**Vice Chairman Torregrossa Moves** to find to Approve the Application with the single condition that the applicants not use the driveway past pole 1.2 unless a screening buffer past pole 1.2 be sufficiently screened from residential view as previously discussed Mike Fitzpatrick Second. Motion Carried 3-0.

**New Business: Conditional Use Permit – 2 Car Garage With 2<sup>nd</sup> Floor Apartment – Robert T. III and Wendy Gardner - Map #4, Lot #032-1 – 75 Pass Brook Road:**

Mr. Gardner stated that he and his wife would like to build a two car garage with an apartment above so that his in-laws can reside there. Plans include attaching the garage/apartment to the dwelling with a breezeway.

The Board next reviewed the Application Check List. Findings are as follows:

- A. Complete.
- B. Complete.
- B-1. Complete.
- B-2. Complete. The Codes Official represented documentation is contained in his file.
- B-3 Complete.
- B-4. Not Applicable.
- B-5. Complete. Rural Residential Zone.
- B-6. Complete.
- B-7. Complete.
- B-8. Complete.
- B-9. Complete.
- B-10. Complete.
- B-11. Complete.
- B-12. Complete.

B-13. Complete.  
B-14. Non-Applicable.  
B-15. Complete.  
B-16. Complete  
B-17. Complete.  
B-18. Complete.  
B-19. Complete.  
B-20. Complete.

**Vice Chairman Torregrossa Moves** to find that the Application Check List is Complete. Mike Fitzpatrick Second. Motion Carried 3-0.

The Board next reviewed the Accessory Apartment Standards contained in Article #7, ss #5, page #69. Findings are as follows:

L-1(4).       Complies.  
L-1(5).       Complies.  
L-1(6).       Complies.  
L-1(7).       Complies.  
L-1(8).       Complies.

**Findings of Fact and Conclusions of Law – re: Robert and Wendy Gardner, Map #4, Lot #032-1 – 75 Pass Brook Road, hereinafter referred to as Attachment #2, is attached hereto and incorporated herein and made a part of these Minutes.**

**Vice Chairman Torregrossa Moves** to Approve the Conditional Use Permit as presented. Mike Fitzpatrick Second. Motion Carried 3-0.

#### **Other Business – Codes Official (by request)**

**a. Update on Burnham Conditional Use Permit:** The Codes Official reported that in the matter of the approved Burnham Conditional Use Permit, that abutter Michael Sundberg's attorney has filed an appeal based on the water quality issue. He stated he believes that the Burnhams may also have a case with regard to screening. He stated he contacted Landscape Architect, David Truesdale to provide the remainder of the photos taken during the site visit. David Truesdale represented that Michael Sundberg instructed Mr. Truesdale to submit only two of the photos and not supply the remainder of the photos taken. The Codes Official stated if the Appeals Board does not consider the issue of screening, then after the Appeals Board Decision is rendered, the Burnhams can come back to the Planning Board.

The question was raised as to whether the Appeal will be Denovo of an Appellate. Vice

Chairman Torregrossa suggested that the Appeals Board consult with the Town Attorney to determine which type of Appeal will be heard. Chairman Beaulieu stated he intends to be present when the Appeals case is heard.

**b. Ordinance Review Proposals:** The Codes Official reported that a quote was received from GPCOG for \$5,000.00 and one from Nicole Briand charging \$30.00 per hour working an average of 20-25 hours per month which would include a two to three hour workshop meeting per month with the Planning Board.

It was the consensus of the Board to have the Codes Official set up an interview workshop meeting on June 3<sup>rd</sup> 2015 from 6:00 p.m., to 7:00 p.m., with Nicole Briand and will confirm her availability.

A brief discussion followed regarding the need to set up a Comprehensive Plan Committee as the current Comprehensive Plan needs to be updated as it is more than ten years old.

**Status on new E-mail addresses:** PIT Ricker reported that he in the process of setting up the new e-mail accounts.

**Chairman's Comments:** Chairman Tomm announced the following:

- a. **Next Meeting – Wednesday, June 3<sup>rd</sup> 2015 at 7:00 p.m., preceded by Ordinance Review Workshop Interview from 6:00 p.m., to 7:00 p.m.**
- b. **Applications Due – Nine (9) sets due by Friday, May 22<sup>nd</sup> 2015 at 4:30 p.m. at the Town Office**

**Adjournment:**

**Vice Chairman Torregrossa Moves** to Adjourn at 9:30 p.m. Mike Fitzpatrick Second. Motion Carried 3-0.

Respectfully submitted,

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Jill S. Toher, Admin/Secretary

Attachment #1: Findings of Fact and Conclusions of Law re: Arielle and Sebastian Leclerc, Map #7, Lot #75-E, 12 Pound Road.

Attachment #2: Findings of Fact and Conclusions of Law re: Robert and Wendy Gardner, Map #4, Lot #032-I, 74 Pass Brook Road.