

**TOWN OF TUFTONBORO
PLANNING BOARD
October 4, 2018
MINUTES**

Members Present: Matt Young, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Jack Parsons, Tony Triolo, Laureen Hadley, Members.

Members Absent: John Cameron, Chairman, Kate Nesbit, Russ Steensma, Alternate.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Vice-Chairman Young opened the meeting at 7:01 PM.

I. Public Comment

None.

**II. Consideration of Minutes
September 20, 2018**

It was moved by Tony Triolo and seconded by Jack Parsons to approve the September 20, 2018 Tuftonboro Planning Board minutes as submitted. All members voted in favor. The motion passed.

**III. Scheduled Appointments/Public Hearings
Scott & Christine Bailey
Site Plan Review; Home Occupation
Tax Map #14-2-41**

Matt Young noted the applicant is seeking site plan review approval for a home occupation; noting the property is located in the Neighborhood Business District. He stated the application has been reviewed and deemed complete.

It was moved by Bill Marcussen and seconded by Tony Triolo to accept jurisdiction of the application. All members voted in favor. The motion passed.

Scott Bailey stated his business included septic design, shoreland permitting and engineering and noted that he will be storing equipment related to his business that includes two trailers, two excavators and a 550 dump truck. He stated the equipment would be parked on the side yard in a 60'x80' area. He stated there would not be any customers coming to his house therefore, there would not be an increase in traffic.

Vice-Chairman Young opened the public hearing.

Steve Hunter questioned the size of the lot.

Scott Bailey replied 11 acres.

Jack Parsons stated the applicant will be required to apply for an amended driveway permit to NHDOT for a change of use from residential to commercial.

Bill Marcussen concurred.

Scott Bailey noted the Fire Department uses the driveway to access the fire pond.

Christine Bailey asked if the Fire Department is exempt from the change of use.

Jack Parsons stated the change of use is required by the State, NH DOT District 3.

Bill Marcussen asked if gravel would be placed in the area the equipment will be parked.

Scott Bailey stated the area is currently sand and that no gravel is proposed. He stated he currently mows the area.

Tony Triolo questioned signage.

Scott Bailey stated there will be a sign.

Matt Young noted such would be subject to a sign permit.

Laureen Hadley asked if the equipment can be seen from the road.

Scott Bailey replied yes.

Laureen Hadley asked if screening is proposed.

Scott Bailey stated that if screening is required then he could plant shrubs or a stockade fence.

Christine Bailey stated shrubs have been planted.

Mary Louise Eaton, 409 Governor Wentworth Highway, requested stockade fence be installed to shield the equipment from her property and that the Board impose such to be constructed within six months. She noted the applicant also stores a boat and jet skis in addition to the equipment.

Ladd Eaton, 415 Governor Wentworth Highway, stated that will the amount of acreage of the property that things could be organized better so that it is not so unsightly.

Steve Hunter stated he welcomes all new business to the Town and requested the applicant keep the property neat for the neighbors.

There being no further questions or comments, Vice-Chairman Young closed the public hearing.

Jack Parsons recommended screening and buffering and restricting the storage of equipment to the set area proposed. He questioned the distance between the dry hydrant and parking area; noting clearance is required by the Fire Department and recommended the applicant speak to the Fire Department.

Matt Young asked if the parking area could be relocated to the rear of the property; noting screening could be avoided by doing such.

Jack Parsons replied no; noting the rear of the property is located in the LDR District.

Scott Bailey stated there is a 30' area between two trees in the front yard where shrubs have been planted. He asked about the storage of items other than his business equipment.

Jack Parsons informed Mr. Bailey that he is allowed to park his boat and jet skis on the property. He recommended a condition of approval include screening on two sides of the property and NHDOT Driveway Permit.

The Board discussed type of screening and

Scott Bailey questioned the setback for fences.

Jack Parsons stated there is no setback from the lot line as long as it is no higher than six feet.

Christine Bailey questioned whether natural forest would count as a buffer.

Jack Parsons stated it would if it hid the equipment.

Christine Bailey asked what happens in the winter when the leaves fall. She confirmed the screening has to be 365 days/year.

Don McWhirter asked what is being hidden.

Scott Bailey replied business equipment.

Don McWhirter stated a fence is a permanent thing and in his opinion feels it is out of place in a country setting.

Matt Young confirmed the dry hydrant is on the applicant's property and confirmed the applicant will continue to allow the Fire Department to utilize such.

Matt Young reviewed the following conditions of approval;

1. The approval is subject to approval of a NHDOT Driveway Permit for Change of Use and any conditions attached thereto.
2. The applicant shall install solid screening or 365 day/year screening within six months to the date of this approval.

Christine Bailey asked how the length of the fence is determined along the sideline of the property.

Matt Young replied the length of the parking area.

It was moved by Tony Triolo and seconded by Jack Parsons to approve the Christine and Scott Bailey Site Plan Review application, Tax Map #14-2-41, subject to the conditions of approval. All members voted in favor. The motion passed.

**Clark House Family Trust
Condominium Conversion
Tax Map #2-1-67**

Staff distributed the State Subdivision approval for the Clark House Family Trust application.

Matt Young distributed an opinion from Roger Murray III, Planning Board Town Counsel, as to whether the application requires a variance based on a question raised that was legal and technical in nature; noting the opinion is considered privileged and confidential. He requested the Board to vote to release the opinion.

It was moved by Jack Parsons and seconded by Tony Triolo to release Planning Board Town Counsel's opinion relative to Clark House Family Trust, dated October 4, 2018. All members voted in favor. The motion passed.

Matt Young read the opinion and distributed the opinion to members of the public, dated October 4, 2018. He confirmed that jurisdiction was not previously taken and noted the application is complete.

Jim Rines, White Mountain Survey & Engineering, Inc., stated he is representing Clark House Family Trust Subdivision application via a condominium conversion. He stated the property consists of two two-bedroom year round homes on 1.73 acres and is located in the MDR District. He stated the proposal is to create two

ground condominium units; noting both have approved septic systems and wells. He stated unit boundaries are polygons on the ground and Unit 1 is 0.19 acres in size and is roughly 76'x107'. He stated Unit 2 is 0.20 acres in size and 95'x92. He noted the units' access, frontage, use and lot area will remain unchanged and there are no visible/physical changes proposed. He stated State Subdivision approval has been received for condominium conversion. He submitted two letters of support; noting he is seeking conditional approval with the condition being the setting of the four corners of each unit. He noted such becomes the As-Built.

Matt Young read letters of support from Diane McKenzie, dated 10/2/18, and Mary G. Smith, dated 10/3/18, see attached.

It was moved by Jack Parsons and seconded by Tony Triolo to accept the letters of support from Diane McKenzie and Mary G. Smith. All members voted in favor. The motion passed.

Matt Young stated the application has been reviewed and is complete.

It was moved by Tony Triolo and seconded by Laureen Hadley to accept jurisdiction of the application. All members voted in favor. The motion passed.

Jack Parsons asked if there is anything the units share in common such as electric.

Jim Rines replied no.

Matt Young confirmed there would be no change in use of the property and confirmed each unit would have their own entrance from Allen Road.

Jack Parsons asked if counsel has reviewed the condominium documents.

Staff replied no and noted such would be a condition of approval.

Vice-Chairman Young opened the public hearing.

Bob McWhirter, 1 Allen Road, submitted photographs and a letter he prepared, dated 10/4/18, see attached. He asked how the Board could take jurisdiction without hearing his concerns.

Matt Young stated the State requires the Board accept jurisdiction.

Bob McWhirter asked what would happen if the Board doesn't have jurisdiction.

Matt Young stated the Board could continue the application and forward the question to counsel.

Bob McWhirter read his letter, dated 10/4/18. He stated he provided multiple photographs of both winter and summer conditions. He stated Mr. Rines' presentation doesn't paint the whole picture and doesn't think that relying on an approved condominium project from another property is a reason to approve this project. He stated this particular application is nothing but an end run around subdivision regulations and doesn't think that it's fair that the issues he noted in his letter not be addressed as part of the application.

Guy Pike, Middle Road, asked if the project should go forward, are the two units going to be taxed separately.

Matt Young replied yes.

Don McWhirter stated he reviewed the plan and noticed the lot loading calculations called out for the potential of eight bedrooms on the property. He asked if the application is approved would it allow for the doubling of the two houses vertically.

Mel Jackson, 18 Lanes End, expressed concern regarding the drainage; noting such is dangerous at times.

Jim Rines asked if Mr. Jackson enters his property through Allen Road or Lanes End Road.

Mel Jackson stated he has access from both roads; noting the drainage is not a good situation in the winter and summer.

Steve Hunter asked if the road is a private road or Town road.

Bob McWhirter replied private.

Jack Parsons asked who maintains the road.

Bob McWhirter asked whoever coughs up money and hires someone, noting there is no maintenance agreement.

Bill Marcussen confirmed there is no homeowners association.

Jack Parsons stated he conducted a site visit and confirms the photographs accurately depict its conditions.

Bob McWhirter stated the plan don't depict impact to his lot and noted the property is a nonconforming lot and the drainage needs to be addressed. He stated the runoff from the property has an impact and requested review of the drainage issues.

Jim Rines stated the drainage issues are separate and distinct from the application. With regard to condominiumization, he stated it was approved as two, two-bedroom condominiums at the State level. He stated capacity was shown however, what was approved is what is shown.

Don McWhirter stated according to the soil data it shows 8 bedrooms can go on an acre of land and finds it unbelievable. He stated if he was his brother he would request review by an independent party.

Jim Rines stated the units cannot be more than two-bedroom homes per the State approved subdivision.

Don McWhirter asked what would preclude the owners to go back to doubling the number of bedrooms per unit.

Jim Rines stated they would need subdivision approval again.

Don McWhirter stated that by accepting the soil data, it is four bedrooms per unit.

Jim Rines replied not with condominiums. In response to the "end run" comment, he stated the property is medium density residential, one-acre zoning and two dwellings on one lot of record is allowed. He stated the condominium statute as referenced by Roger Murray says you can't discriminate simply because of the form of ownership and if it's allowed in any other form of ownership (which the Town's regulations allow two dwellings) then you must allow it under the condominium form of ownership. He stated as far as Museum Lodges not being equal, it's exactly equal. He stated in that case it was a far worse density and was 2.3 acres with eleven units.

Bob McWhirter stated it was nonconforming and probably had been like that for years.

Jim Rines stated a question was raised regarding density and he is speaking to that. He stated the question being raised about density is that this application can't be equated to Museum Lodges because it was pre-existing; noting such is not true. He stated that if a property is being condominiumized then in theory the existing regulations have to be met, just as in this application. He stated that because it existed in another form of ownership it did not have to go to the ZBA, the State granted the subdivision approval and the Town granted the condominium conversion. He stated the drainage issue sounds like it's an issue but, has nothing to do with this application before the Board and is something that is going to exist whether it is approved or denied.

Bob McWhirter stated the form of ownership is somewhat irrelevant. He stated the property is being subdivided into two distinct parcels with a different form of ownership. He stated 356 is not a substitute for local zoning and local zoning doesn't allow for the subdivision of a substandard lot.

Jack Parsons stated it does allow for such. He stated a person is allowed to build a home on an existing substandard lot.

Bob McWhirter stated that it cannot be subdivided.

Jack Parsons stated he is speaking to a nonconforming lot that can be built on.

Bob McWhirter stated there are other issues that have been permissible along the way; noting there was no mention in the application or in the presentation that there is a commercial operation on the property (beauty salon). He asked how it can be said that the drainage issues don't matter. He stated that because it is nonconforming, the zoning regulations push it to the ZBA for a variance and to Planning Board for site plan review.

Jim Rines read Section 3.7.4 of the Town's Zoning Ordinance which states the following; "Any lot that can support a Duplex residence without a zoning variance and without waiver by the New Hampshire Water Supply and Pollution Control Division will be allowed up to two (2) Dwelling Units. The second Dwelling Unit shall be subordinate in scope and scale to the main residential Dwelling Unit. The second Dwelling Unit may stand alone or be incorporated into an auxiliary structure such as a garage or a barn." He stated therefore, the proposal is conforming. He stated the statutes are clear, the Supreme Court case law is clear that if it can exist under some other form of ownership then it can be condominiumized. He stated this is simply a conversion of what exists. He stated he is not saying that the drainage doesn't matter, rather he is saying that it is not material to the application of subdivision. He stated the drainage has nothing to do with the application before the Board; noting it is lines on paper and a form of ownership. He stated if the application was for site plan review then the Planning Board has the opportunity to look at landscaping, screening, drainage, etc. He stated this is an application for a two-unit subdivision and the reason the applicant applied under subdivision is by both the State and Town definition a condominium conversion is a subdivision.

Bob McWhirter stated he disagreed.

Don McWhirter asked if a condominium conversion considered a residential or commercial use.

Jack Parsons replied residential use.

Tony Triolo stated the question he hears is how the Board requires the owners to correct the drainage if the application is approved.

Matt Young stated there are two questions; is the condominium subdivision legal and permissible in this case; noting such is a technical question. He stated the question was forwarded to counsel and the Board was provided a clear response that in his (Attorney Murray) opinion that it is allowed and is legal.

Bob McWhirter stated Attorney Murray does not have the benefit of his concerns and objections and his opinion is based upon what he knew. He stated approval of this opens up the flood gates for a line of people at the door to take substandard lots and subdivide them into condominiums and questions whether such is the intent of zoning.

Jack Parsons stated that since he has been employed there has been four.

Bob McWhirter asked if they existed before zoning.

Jack Parsons replied no.

Bob McWhirter stated State zoning doesn't wipe out local zoning and at minimum it requires site review which would address drainage issues. He stated he doesn't understand how the Town can move forward approving a project knowing it would continue to have an adverse effect on surrounding properties.

Jim Rines stated the drainage concern/issue wouldn't change Attorney Murray's letter and the legality of the application. He stated the drainage is not related to this application.

Bob McWhirter asked if someone could come in today to put two residential units, one subservient to the other, on a 1.73 acre parcel and subdivide it.

Jack Parsons replied not if they are both substandard without a variance.

Bob McWhirter stated a variance would be required and possibly push it to site plan review. He stated he is not saying it can't be done rather, it needs to go through the proper process well established through the Town's own zoning. He stated 356 pushes it back to local zoning and a variance and site review is required.

Jack Parsons stated site review is not required because it is not a commercial property or use. He stated under condominium rules it is allowed this way and allowed to be a condo. He stated that if the Town didn't allow for two dwellings on the property then the condo would not be allowed. He stated that if it is allowed locally as it sits then it can be condominiumized.

Bob McWhirter asked if other subdivisions would require site review.

Jack Parsons stated a traditional subdivision when breaking up land may require road and drainage review. He stated the application doesn't include roads or dirt work therefore it doesn't require drainage study as it currently sits.

Matt Young stated Mr. McWhirter's objection is that the restrictions are less this way however, it's allowed.

Don McWhirter asked if it is a change of use.

Matt Young stated it is a change in ownership. He stated a home occupation is allowed.

Don McWhirter stated he thinks it is a technical change of use by definition.

Jack Parsons stated it is a change of ownership; noting it is a residential use.

Don McWhirter stated it is a clear abuse of the ADU statute.

Matt Young stated the first question is whether the condominium is allowed and noted yes, it is. He stated the second question is whether in this form any drainage improvement can be required.

Mr. McWhirter and the Board continued to discuss statutory and zoning requirements.

Bill Marcussen stated that when cases have required clarification of the RSA the Supreme Court has upheld condominiumization in every case that has been brought forward.

Matt Young stated Planning Board counsel provided a very clear opinion as to whether it's permitted or not.

Jim Rines referenced a 1991 court case Cohen v. Town of Henniker; noting court specifically said "statute requiring that condominiums receive the same treatment in zoning matters as physically identical projects or developments under a different form of ownership." He stated that if a person doesn't like what the Town's Zoning Ordinance permits then the Zoning Ordinance needs to be changed. He stated denial of the application is setting the Town up for a lawsuit.

Jack Parsons stated the only way it could be changed in the Zoning is to not allow two dwellings on a nonconforming lot.

Don McWhirter stated or, it could be made that no further subdivision is allowed.

Bob McWhirter stated he thinks the application needs to go to the ZBA and requested the Board send it to ZBA for a variance and site review.

Jim Rines stated it is illegal to require site plan review for anything that is single family or a duplex; noting site plan review is only required for commercial use and for multifamily over a duplex. He stated everything proposed is permitted and is a subdivision allowed by both the State and Town regulations.

Bob McWhirter asked if the Board is certain it does not need further review or variances because nobody is arguing that it's not a subdivision.

There being no further questions or comments, Vice-Chairman Young closed the public hearing.

The Board discussed whether the Board can impose a condition on a condominium subdivision relative to the correction of existing drainage conditions and agreed to request an opinion from Attorney Murray and continue the application.

Matt Young confirmed there are no easements proposed.

Jack Parsons asked if the transformer is privately owned or owned by the Co-op.

Jim Rines stated he did not know.

Matt Young asked Mr. Rines to convey to the owners to try to work with the abutters regarding the resolution of the drainage issues.

It was moved by Tony Triolo and seconded by Laureen Hadley to continue the Clark House Family Trust application to October 18, 2018. All members voted in favor.

**Robert & Jennifer Brennan
Subdivision
Tax Map #46-2-9**

Matt Young stated he is an abutter to the property however, does not feel conflicted and asked the Board if they have an issue if he does not recuse himself.

The Board noted they do not have an issue with Mr. Young sitting on the application.

Matt Young stated the application has been reviewed and deemed complete.

It was moved by Tony Triolo and seconded by Jack Parsons to accept jurisdiction of the application. All members voted in favor. The motion passed.

Ted Wright stated 3 lots are proposed on Mountain Road and one lot on Durgin Road; noting Lot 1 would consist of the remaining land of 93.38 acres with frontage on Durgin Road, Lot 2 would consist of 23.88 acres with frontage on Mountain Road, Lot 3 would consist of 11.17 acres with frontage on Mountain Road and Lot 4 would consist of 17.59 acres with frontage on Mountain Road. He stated test pits, soil data, drainage and wetland analysis has been conducted on the property.

Vice-Chairman Young opened the public hearing.

Steve Hunter asked if each lot would have a separate driveway.

Ted Wright stated Lots 3 and 4 would have a shared driveway and Lot 2 would have a shared driveway with TM #46-2-23.

Jack Parsons asked if the applicant is required to reapply for a driveway permit.

Ted Wright replied yes, due to the change of use.

Jan Sanders, 7 Lady Slipper Lane, questioned the location of the housing placement on the lot.

Ted Wright stated such is the decision of the owner.

Matt Young noted the parcel currently has an approval for a 21-lot subdivision and noted the current proposal represents much less than the existing approval.

Steve Hunter asked if the individual lots would be able to be subdivided in the future.

Ted Wright replied yes, if the lots meet the criteria for subdivision.

Mark Howard, Mountain Road, questioned the location of the driveway for Lot 4 and whether such would be at the location of the existing logging road that is on the property.

Referencing the plan, Ted Wright showed the location of the proposed driveway.

Matt Young asked if there are any easements, existing or proposed.

Ted Wright stated there is an easement that was previously proposed as part of the original subdivision approval that is proposed to be abandoned. He stated there is also a NH Electric Co-op easement located on Lot 4 that is proposed to be abandoned.

Jack Parsons asked when the easement will be abandoned.

Ted Wright stated he doesn't know but, will determine such.

Matt Young asked if the monuments from the previous subdivision approval were set.

Ted Wright replied yes. He noted a driveway permit for Lot 1 (Durgin Road) is required and noted such would be addressed at the time a building permit is issued.

Matt Young reviewed the following conditions of approval;

1. The applicant shall remove the interior monuments that were set as part of the Emery Farms Estates Phase II 8-Lot Subdivision approved on January 16, 2014 and the Emery Farms Estates Phase III 11-Lot Subdivision approved on February 20, 2014.
2. The applicant shall set the boundary monuments for the current proposed 4-lot subdivision and submit a Certificate of Monumentation.
3. The applicant shall submit four (4) copies of the final plan and a Mylar for recording at the Carroll County Registry of Deeds.
4. The applicant shall include the date of abandonment of the NH Electric Co-op Easement on the plan.
5. This approval is subject to receipt of NHDOT driveway permits and any conditions attached thereto.

It was moved by Tony Triolo and seconded by Bill Marcussen to approve the Robert & Jennifer Brennan 4-Lot Subdivision, Tax Map #46-2-9, subject to the conditions of approval. All members voted in favor. The motion passed.

IV. Action Items

N/A

V. Discussion Items

a. PB Membership

Matt Young stated John Cameron resigned from the Board and as chairman however, is willing to continue as an alternate. He stated Fenton Varney is willing to come back to the Board.

Staff stated the BOS will be considering the appointments of Fenton Varney as member and John Cameron as alternate at their 10/15/18 meeting.

b. 2019 Budget

The Board reviewed the memo Staff prepared for the BOS and Budget Committee, see attached.

Matt Young recommended consideration of increasing the Board's legal line to \$5,000.

The Board agreed to such based on estimated usage.

It was moved by Tony Triolo and seconded by Laureen Hadley to submit the proposed 2019 Planning Board budget to the BOS and Board of Selectmen including the increase to Legal to \$5,000. All members voted in favor. The motion passed.

c. Planning Board Town Counsel

Staff informed the Board that Attorney Murray is retiring as of December 31st. She stated she would research land use attorneys in NH and provide a list for consideration to the Board.

d. Excavation Operation; Mike Carleton

Staff stated Attorney Murray would have an opinion for the Board for its 10/18/18 meeting.

VI. Informational Items

N/A

VII. Other Business

N/A

VIII. Public Comment

Steve Hunter stated Matt Young did a good job chairing the meeting.

Guy Pike agreed.

It was moved by Tony Triolo and seconded by Laureen Hadley to adjourn the October 4, 2018 Tuftonboro Planning Board meeting. All members voted in favor.

There being no further business before the Board, the meeting adjourned at 9:07 PM.

Respectfully Submitted,

Lee Ann Hendrickson

Lee Ann Hendrickson



Lee Ann Hendrickson <hendrickson.leeann@gmail.com>

Clark House Condominium

1 message

Roger Murray

Reply-To: [REDACTED]

To: [REDACTED]

Cc: hendrickson.leeann@gmail.com

Thu, Oct 4, 2018 at 5:15 PM

PRIVILEGED AND CONFIDENTIAL

John,

The Planning Board has inquired of me as to whether the Clark House Family Trust must apply to the Tuftonboro Board of Adjustment in order to convert the two existing dwellings on the property to the condominium form of ownership. Based on the application filed by White Mountain Survey and Engineering, Inc., it is my understanding that no changes to the dwellings or the property are proposed, other than the form of ownership. For the reason set forth below, it is my considered opinion that the Trust is not required to apply to the Board of Adjustment in order to convert the property.

RSA 356-B:5 provides in part, "No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership." Since the Zoning Ordinance permits the existing use of the property, the conversion to physically identical condominium units does not require an application to the Board of Adjustment for a variance.

Should you have any questions, please let me know.

Roger

Law Offices of Roger F. Murray, III, PLLC

P.O. Box 235

Wolfeboro, NH 03894

PH: (603) 569-5454

FAX: (603) 569-5455

EMAIL: [REDACTED]

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10-2-18

Dear Tuftonboro Planning Board;

I have looked at
the survey plans and
talked to Meredith about
proposal on her property.

I agree with the
plans and think ~~you~~
that it should go
forward.

Thank you

Diana ~ Rod

Abutler

October 3, 2018

To Whom It May Concern:

I, Mary G. Smith, as a neighbor of Meredith Stanley, would like it known that I am in full support of Ms Stanley's condo minimizing of her property on Allen Road, Melvin Village, NH.

Sincerely,

Mary G. Smith

Mary G. Smith

525 101 W. Main Street
Melvin Village, NH

October 4, 2018
Mr. John Cameron
Chairman-Planning Board
Town of Tuftonboro
P.O. Box 98
240 Middle Rd.
Center Tuftonboro, NH 03816
RE: 1 Allen Rd.

Prior to 2004, 1 Allen Rd. had a single family residence as the only structure on the 1.7 acre lot.

In 2004, a valid building permit was issued for an accessory structure used as a single family residence. The accessory structure was permissible, but a subdivision of the 1.7 acre lot to 2 lots was not permissible.

Although a building permit was issued by the town, there is no record of any inspections or site review by the Planning Board or Code Enforcement Officer. (Jack was not the Code Officer at the time)

In later years, the use of the 2nd structure has been a beauty parlor.

No additional site work was done when that "Change of Use" occurred.

As a result of no inspections being done for the project, there was no site review to address storm water and drainage issues that have adversely affected our property.

Part of the construction of the accessory structure was excavation for underground electric, cable and telephone lines from the street, down through the Right of Way, across the applicant's driveway and yard, to a transformer that provides power to the new structure. As a result, drainage has always been an issue from the driveway of the primary structure, the driveway of the new structure and off the banking of the applicant's yard closer to the street.

In 2017, major work was done at the driveway of the primary residence. Excavation to the left side of the driveway was done and a large hole was filled with stone to receive runoff from the driveway area that was an

ongoing issue. Stone was placed in the driveway to improve drainage at the driveway.

The Right of Way in front of the driveway of the primary residence was leveled to install cobblestone around the stone placed in the driveway. As you enter the Right of Way off Rt. 109, there is a nice crown to the road, pitched to each side. As the road passes in front of the driveway of the primary residence, the difference in grading is distinct. It is flat.

Over the years, we have made several offers to allow drainage to flow to our lot. The applicant refused our offers.

As depicted on the applicant's blueprints, there are several "Poorly Drained Wetlands" as well as other wetlands.

There is also a PVC drain pipe at the Rt. 109 end of the property that drains into a swale that ends up draining onto our property.

The blueprints also depict an aged septic system at the primary residence that may be the source of periodic "suds" running down the road.

There is also a small stream that receives runoff from the applicant's property as well as the adjacent development. This runoff goes through a cement culvert, draining onto our property.

There are significant drainage issues affecting our property that are not depicted on the blueprints.

We object to the project for the following reasons.

1. We believe the request should be for a "Change of Use" from a "Home Occupied" business and "Single Family Residence" to a "Subdivision" which is not permissible based on the 1.7 acre lot. The 2nd structure was placed after zoning was in place and the applicant knew it was not possible to subdivide the property without a variance. This project requires a Variance from the ZBA.

The applicant references and relies on RSA 356-B as a basis for the request. RSA 356-B:5 reads as follows and is very specific about the condominium projects not being treated different than any other project request because it

is a condominium. The RSA is clear that the statute does not replace local zoning ordinances.

Section 356-B:5

356-B:5 Municipal Ordinances. – No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance in any city or town shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance is by its express terms made applicable thereto. Nevertheless, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof which do not conform to the zoning, land use and site plan regulations of the respective city or town in which the property is located shall secure a special use permit, a special exception, or variance, as the case may be, prior to becoming a conversion condominium. In the event of an approved conversion to condominiums, cities, towns, village districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

Source. 1977, 468:1, eff. Sept. 10, 1977.

The application is for a “Nonconforming” subdivision that requires a “Variance”. The Planning board does not have jurisdiction and this application should be moved to the ZBA, to be considered for a variance.

By virtue of the towns own definition of a subdivision, (Section 1.5.25 Pg. 5) in addition to what we believe to be the need for a variance due to the “Change in Use” and “Non-Conforming” use of the proposed project; we believe the application also requires a “Site Review” based on the towns own zoning requirements.

In particular, we are interested to see a “Storm Drainage Plan” as required by Section 3.3.3-F.


Attached are pictures of drainage conditions typical in the summer and the winter months.

Note pictures of drainage from the top of the applicant's property and driveway from the 2nd structure washing out the road.

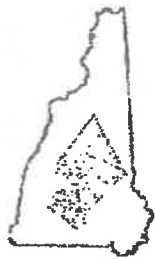
Of particular concern is drainage that was installed from the applicant's primary structure driveway to a stone pit to the left of the driveway. The driveway is filled with stone for water to leach to the stone pit next to the driveway. The water that goes to that stone pit surfaces during the winter months, drains down the Right of Way to our driveway and freezes!

This Stone Drainage Pit is not depicted on the blueprints.

Sincerely,



Bob McWhirter-Trustee
Mountain View Family Trust



**TOWN OF
TUFTONBORO**
"The Diamond in the Heart
of New Hampshire"

Planning Board

Memorandum

Date: October 4, 2018

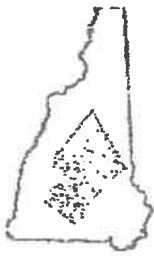
To: Board of Selectmen
Budget Committee
Diane Falcey
Karen Koch

From: John Cameron, Administrative Secretary

RE: 2019 Budget

The Planning Board proposes the following 2019 Budget;

- | | | |
|-----------------------|--|-----------------------------------|
| 01-4191-01-110 | Administrative Assistant
<i>The 2018 budget reflects an average of 6.5 hours/week. Based on the Pay Table adopted by the BOS on 8/28/18, Staff will be employed in 2019 at Paygrade 6, Step 15 (\$20.39/hour). Therefore, 6.5 hours/week @ \$20.39 equals \$6,892.</i> | \$7,025; increase by \$312 |
| 01-4191-01-240 | Tuition Reimbursement
<i>Four Planning Board members have registered for the annual NH Municipal Association Law Lecture Series (October 2018) which will over expend the line by \$60. The request reflects additional funding to allow for Planning Board members to attend the annual Planning and Zoning Conference.</i> | \$500; increase by \$200 |
| 01-4191-01-550 | Advertising
<i>The Planning Board is required by NH Statute to advertise public hearings for Planning Board applications in the newspaper; expense depends upon the number of applications received. The increase in the funding request reflects estimated usage for 2019 based on 2018 expenditure.</i> | \$900; increase by \$400 |
| 01-4191-01-560 | Lakes Region Planning Commission
<i>Payment of annual membership dues (due on July 1, 2019).</i> | \$4,496; increase by \$201 |
| 01-4191-01-620 | Supplies | \$500; level funded |
| 01-4191-01-625 | Postage
<i>Included in this appropriation is general mailing expenses for the Board in addition to the mailing of abutter notices for Planning Board applicants. An applicant submits payment directly to the Town for the cost of certified mailings of the abutter notices. The funds for such are deposited</i> | \$500; level funded |



TOWN OF TUFTONBORO

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Into the Town's General Fund. However, the appropriation is required to account for the expenditure of funds.

- 01-4191-01-670 Books & Periodicals \$150; level funded**
Estimated cost for the annual purchase of NH Land Use Regulations through LRPC.
- 01-4191-01-680 Recording Fees \$150; level funded**
As with Postage, this appropriation is required to account for the expenditure of funds. The Planning Board is required by NH Statute to record approved subdivision, boundary line adjustment and condominium conversion plats/plans, lot mergers and the Notice of Decision associated with those approvals. The applicant often submits payment directly to the Town when an application is submitted. Once the Board has given final approval of the application/project, the plat/plan and Notice of Decision are then recorded. The Board has decreased this line in the past several years by requesting applicants to submit the recording fees made payable directly to the Carroll County Registry of Deeds as part of their application.
- 01-4191-03-680 Master Plan Review \$1,500; level funded**
Due to continued extensions based on turnover of either Board members or staffing at LRPC, that have affected the status of work being done by former members of the Board and former staff at LRPC, the current Planning Board agreed to request LRPC for additional assistance in the completion of the Master Plan update. Due to the change in the scope of the project, the Town's contract with LRPC has been amended. Additional cost to print Master Plan once completed.
- 01-4191-04-310 Subdivision Engineering Fees \$2,000; level funded**
This line item is handled in the same manner as Recording Fees and Postage and usage is based on the number of subdivision applications submitted to the Board that require review by the Town's consulting engineer.

The Planning Board's 2018 budget reflects an appropriation of \$13,108. The Board has requested an appropriation in the amount of \$17,721 for 2019; noting a net increase in the amount of \$4,613.