

**TOWN OF TUFTONBORO
PLANNING BOARD
August 20, 2020
Tuftonboro Town House & Virtual Access
MINUTES**

Members Present (in-person): Roll call: Matt Young, Chairman – yes, Tony Triolo, Vice-Chairman – yes, Bill Marcussen, Selectmen’s Representative - yes, Gary Qua – yes, Carol Bush, Member - yes, George Maidof, Alternate - yes.

Members Absent: Kate Nesbit, Laureen Hadley, Members.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Chairman Young opened the virtual meeting at 7:00 PM.

Matt Young read the following preamble to the meeting:

As Chair of the Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor’s Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

a) *Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:*

We are utilizing GoToMeeting for this electronic meeting. All members of the Planning Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through logging onto <https://global.gotomeeting.com/join/136356229>. To listen via telephone call 1-866-899-4679, access code is 136-356-229. Please note that the public will be able to interact during the public input the online service however, will only be able to listen to the meeting via telephone.

b) *Providing public notice of the necessary information for accessing the meeting:*

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting telephonically.

c) *Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:*

If anybody has a problem, please call 603.486.2692 or email at: hendrickson.leeann@gmail.com.

d) *Adjourning the meeting if the public is unable to access the meeting:*

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

It was moved by Tony Triolo and seconded by Gary Qua to appoint George Maidof, Alternate, as a voting member. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Bill Marcussen – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

I. Public Comment

None.

II. Consideration of Minutes

August 6, 2020

It was moved by Tony Triolo and seconded by Gary Qua to approve the August 6, 2020 Tuftonboro Planning Board minutes as submitted. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Bill Marcussen – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

III. Scheduled Appointments/Public Hearings

YMCA Camp Belknap

Tax Map #39-1-13, Chase Point Road

Site Plan Review; Air Rifle Range, Bath House & Relocation of 2 Staff Houses

Public Hearing continued from July 16, 2020

Matt Young stated the public hearing was continued from July 16, 2020. He stated the applicant made a significant submittal to the Board; noting Planning Board counsel has not had time to review the information and has been unable to provide a legal opinion. He stated the Board would continue to hear additional input on the application.

Suzanne Brunelle, Devine Millimet, representing Camp Belknap, noted she attended the July 17, 2020 meeting remotely. Following review of the minutes from that meeting, she stated the gist of the concern is whether the use is a prior nonconforming use and when the ordinances went into effect. She stated the first ordinances became effective in 1972 and were amended in 1975 and 1978; noting the concept of a Special Exception was introduced for the first time in 1975. She stated a table of uses do not appear until 1988. She stated the camp has been there since 1903 therefore, there is no further discussion or issue as to whether it is a prior nonconforming use; noting the current use was in effect well before 1988. She stated the right to maintain nonconforming uses by property owners for retrospective applications and the right to continue a previously lawful use of one's property after an enactment of a zoning ordinance is a vested right (noting such is important by the State's Constitution, case law as well as statute) and can continue in the future especially when there is a substantial reliance placed on that use. She stated the nonconforming use may be expanded where it's a natural activity closely related in manner. She stated the use may not be an enlargement and noted that all of the uses the camp currently has, nothing has changed (cabins, bathrooms and shooting range). She stated the shooting range has been there since the 1940's and is a prior nonconforming use and the recommendation by the camp is only an improvement in safety. She stated the course of conduct of this particular Board and this town with regard to the camp since 1903 has been to allow these things. She stated bathrooms and housing for staff are not big asks. She stated the camp operates in a large area; noting there were some issues with different tax parcels and questioned the relevancy of such because they are all adjacent parcels. She stated the parcels could be merged into one tax lot however, such is very arbitrary to her and doesn't feel that argument bears too much weight.

Matt Young stated there are two issues; is the use a current nonconforming use and does the proposal constitute an expansion of use. He stated there are multiple lots owned by Camp Belknap; noting that if the lots were merged the lots would no longer be grandfathered as an existing nonconforming use. He requested Attorney Brunelle explain how the proposal does not constitute an expansion.

Suzanne Brunelle stated she is not saying it isn't an expansion but, arguing that there is an alternative. She stated the argument is that the proposed uses are not an expansion because the uses are already there and existing. However, if the Board views it as an expansion the argument is that it can be expanded and referenced the New London case. She stated the improvement of the shooting range is a natural expansion, natural progression, a natural change. She stated the three part test used by the NH Supreme Court is 1) to the extent to which the challenged use reflects the nature and purpose of the prevailing non-conforming use, 2) whether the challenged use is merely a different manner of using the original nonconforming use or whether it constitutes a different use and 3) whether the challenged use will have a substantially different impact upon the neighborhood. She stated the housing, bathrooms and shooting range are all existing uses and the uses are staying the same.

Matt Young asked what activities currently occur on site.

Seth Kassels stated there are 6 cabins and a lodge, staff who live on site (4 staff houses), campers, senior division, bathroom facility with a shower, an open field where games are played, multiple docks, basketball court, 4 tennis courts, ropes course, climbing tower, walking trails and internal driveways on the site. He stated the site is heavily used and noted the proposal includes the relocation of the rifle range and the relocation of where staff live.

Suzanne Brunelle stated historically this has always been done; noting the camp operates in totality and asked what difference it makes if the facility is being relocated and the use remains the same.

Matt Young stated the difference from previous proposals and this proposal is that historically the use has been proposed on the same lot.

Suzanne Brunelle stated she doesn't see from a practical or legal standpoint what difference it makes if the impact to the neighborhood is the same. She stated the camp operates in totality and spoke to an example she provided to the Board in her submittal. She stated the fact the Town sees it as a different tax lot doesn't mean anything and seems arbitrary.

Bill Marcussen stated Attorney Brunelle continues to refer to the properties as tax lots and noted the lots are individual legal lots. He stated each parcel has its own legal description and are recorded at the Registry as an entity. He stated the Town's zoning is keyed to legal lots regardless of whether or not a property owner pays taxes, whether or not the lots are referred to as a tax ID number. She stated the Town has a series of numbers allocated to the lots to assist with taxing therefore, the lots are legal lots and not tax lots.

Suzanne Brunelle asked what would change if the all the lots were merged; noting all the lots are adjacent to one another and the fact that they are described legally

Bill Marcussen stated he is only addressing the reference to tax lot.

Suzanne Brunelle stated it is the same argument to legal lots; noting the camp is operating in its totality.

Gary Qua confirmed seasonal buildings are physically being taken from one location to another location. He asked if any additional features are being added to those buildings.

Seth Kassels replied yes, porches are being added.

Gary Qua stated the Board needs to wait for a legal opinion from their counsel.

Matt Young stated historically, none of the previous approved uses have required a Special Exception however, the uses have always existed on the same lot. He stated no one on the Board is a land use attorney and the issue is complex therefore, the relocation of an existing use from one lot to another needs to be clarified.

Seth Kassels stated in 2016 a cabin was expanded on this lot and two bedrooms were added to the cabin and there were no issues or concerns. He stated in the 1990's two new cabins were built on the lot with a building permit and no Planning Board requirement. He stated tennis courts, basketball court and a ropes course has also been added to the lot. He asked what would be required if all the structures were to be built new.

Matt Young stated if the structures were built in kind he doesn't believe a Special Exception would be required. The relocation of the range brings to question the expansion of use.

Seth Kassels questioned the requirement if a new pellet range was constructed.

Matt Young stated the historic practice of the Town is that when the camp has come before the Board the application was granted and the Codes Officer in the past has administratively determined whether the proposal and issuance of the building permit requires review by the Planning Board.

Seth Kassels asked whether they should build new cottages if the Board feels that moving the two cottages is the problem.

Matt Young stated the relocation of the buildings is not the issue rather, the issue is whether the proposal constitutes an expansion of use.

Seth Kassels stated what is proposed is the same camp use; camp programming, staff houses and camper bathroom.

Matt Young stated the Table of Uses for the Town of Tuftonboro doesn't list "camps with air rifle ranges" or "camps without air rifle ranges." Therefore, when the use is reviewed, it is reviewed as a whole. He stated the property has been used extensively for the past fifty years.

Suzanne Brunelle stated the 3-prong test is clear; noting the proposal doesn't qualify as an expansion. She stated the proposal is a natural progression and the uses are staying the same.

Gregory Wirth submitted a summary of his testimony from the 7/16/2020 meeting. He stated the major issue that is being heavily glossed over is the fact that the Board is only reviewing Tax Map 39-1-13; noting any other parcel should not be heard because those other parcels, for the purpose of this argument, do not exist. He stated in June the meeting was noticed for lot 40-2-2 and at the end of that meeting the Board determined that the meeting didn't happen because the notice, pursuant to statute and pursuant to the Town's regulations, was bad. He stated if the argument being used is that 40-2-2 is part of the camp and it's the part of the camp that doesn't really matter then the Board's ruling was wrong. He stated the ruling wasn't wrong; noting the ordinances, regulations and statutes are based on legal lots. He stated the camp is only grandfathered for what is used or was used as of the point in time the camp was grandfathered, either 1972 or mid-80's. He stated the lots could be merged; noting the applicant has an absolute right to merge the lots; however, the applicant hasn't done such. He stated the proposal is an expansion; noting the property is currently an open field with lumber and wood chips. He stated the proposal is for four seasonal cottages, two of which are being relocated from a different lot, a rifle range being relocated from a different lot, constructing a new additional bath house, installing new electric and installing a new leach system.

Seth Kassels stated the leach system is existing.

Gregory Wirth reviewed the definition of enlargement; noting the addition of a porch on the cottage is considered an expansion. He stated an expansion, as defined by the Town's regulations, is any increase in the intensity of the use of the lot and an increase in a building or a structure. He stated the applicant has admitted they are increasing a building and bringing in new buildings therefore, as defined by the regulations the proposal is an expansion. He stated the plan is wrong as it doesn't take into account the boundary line adjustment from Mr. McWhirter's lot which is technically a violation of the regulations. He stated the stormwater calculations are off; noting there are cabins and disturbed areas that are not being taken into account and noted such are technical violations. He stated the grandfathered use can be argued and will leave it up to the Planning Board to determine such however, doesn't feel that it matters because the use is being expanded and enlarged and a Special Exception is required. He stated the a Special Exception application needs to be filed with the Zoning Board and following the determination of the Zoning Board the applicant can go before the Planning Board.

Suzanne Brunelle stated the NH Supreme Court uses a three part test to determine how much a nonconforming use may be expanded or changed; noting such is the Court's language and not her language. She stated a nonconforming use can be expanded as long as it reflects the nature and purpose of the prevailing non-conforming use, is merely a different manner of using the original nonconforming use or whether it constitutes a different use and the challenged use will have a substantially different impact upon

the neighborhood. She stated the proposal falls under that criteria for the expansion of a nonconforming use.

Randy Owen, 1 Farm Island, stated Ellen Fallon informed him that Camp Young Judea on Baboosic Lake built a pool to take pressure off the waterfront and take pressure off of excessive use of the water, eliminated pollution and remedied issues with swimmers ear and stomach bugs with the campers. He stated Ms. Fallon recommended the establishment of buffers and asked why the rifle range has to be 700' away from an abutter.

Gregory Wirth submitted a copy of a pamphlet produced by Camp Belknap from 1918 and noted the first rule was "no firearms or air rifles allowed."

Randy Owen stated there are bullet holes all over the property (Farm Island) from reckless operation of the .22 guns; noting the Winchester brothers are absolutely convinced the bullet holes are from the camp.

Bill Marcussen stated the Board needs a legal review by their attorney.

Carol Bush asked when the Board's attorney could review the documents.

Matt Young stated counsel received the documents on Tuesday and didn't have the time to review them.

It was moved by Tony Triolo and seconded by Gary Qua to continue the YMCA Camp Belknap Site Plan Review application, Tax Map 39-1-13, to September 3, 2020 at 7 PM; meeting to be both in-person at the Town House, 247 Middle Road and virtual. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Bill Marcussen – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

IV. Discussion Item

N/A

V. Other Business

N/A

VI. Public Comment

None.

It was moved by Gary Qua and seconded by Carol Bush to adjourn the August 20, 2020 Tuftonboro Planning Board meeting. Roll call vote: Matt Young – yes, Tony Triolo – yes, Gary Qua – yes, Bill Marcussen – yes, Carol Bush – yes, George Maidof – yes. The motion passed (6-0).

There being no further business before the Board, the meeting adjourned at 7:50 PM.

Respectfully Submitted,

Lee Ann Hendrickson

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