Planning Board Meeting Minutes

April 10, 2023

Members present: Chairman Keith Emery, Scott Warchol, Craig Lefebvre, Chris Baldinelli, Jere Ross.

Members absent: none

Meeting minutes: Kelly Willey

Attendees: Andy Morrell (BH2M), Hanna King, F. Nick Cortina, Eric Haberski, Brian Berube, Kiana Kane, Brittany Berube, Paul Surgiewich, Dave Johnson, Tim Pothier, Jason Ruginski, Karen Sharples, Cliff Thomas, Dave Field, CEO Patti McKenna, Administrative Assistant Kelly Willey.

Chairman Keith Emery advised this is a continuation of a public hearing on March 27, 2023, regarding the conditional use application of Brian Berube, 22 Ripple Lane, tax map 3, lot 1-1A-1. Attorney David Johnson spoke and addressed the board’s prior concerns. He advised that spill kits have been added and the above ground oil storage tank has been removed. The DEP addressed a possible spill that was reported and advised the property was “well kept with no spills”. Regarding the property being called an auto graveyard, Attorney Johnson said there was one employee vehicle left that was inoperable and that vehicle was being moved on April 11. The employee parking area has been relocated according to the parking plan. With regard to the property being located on a prime aquifer, according to the 1991 comprehensive plan the property is not located in the area of a prime aquifer. He also noted that the 2003 comprehensive plan refers back to the 1991 plan.

Maine DEP was notified to review the application. They did not make the application under Maine DEP as they didn’t believe the property was over an aquifer. There was a law passed in 2008 to protect well heads and aquifers that regulates sighting of potentially hazardous uses above sand and gravel aquifers. The email he received from DEP advised this property was potentially above an aquifer and potentially a hazardous use under the law. The 2008 statute specifically exempts facilities in operation prior to September, 2008. This garage was built in 2004 by Berube’s predecessor in order to maintain his fleet of vehicles and falls under this exemption.

Attorney Johnson also mentioned that the prior owner of the property (Fardon) ran very similar operations at this location – maintaining his own fleet of heavy duty vehicles.

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Scott Warchol disagrees with this as Fardon was maintaining his own few vehicles. Attorney Johnson says it was a very similar use – heavy duty vehicles were being maintained. Jere Ross said Fardon was maintaining his own vehicles, Berube is being compensated to maintain other people’s vehicles.

Craig Lefebvre questioned if any wells in the area have been deemed under the well head protection. Attorney Johnson advised he has not received any information on that. Craig Lefebvre said any area within 300’ of a well can’t be used. Attorney Johnson re-stated that this property doesn’t apply as it was in operation prior to September 20, 2008.

Jere Ross asked if Fardon was approved as an in-home occupation or repair garage. Keith Emery advised there is no record of what was approved from a previous (2008) code enforcement officer. CEO McKenna advised there are no approvals at all on file, and that it would be a change of use. Keith Emery believes the 2008 rule applies. CEO McKenna said DEP will have to decide. Attorney Johnson disagrees as the facility was in existence prior to 2008.

CEO McKenna wanted it on record that it was not the town that reached out to Maine DEP, they contacted us based on people calling them, so we were aware of the Chapter 700 rule.

Jere Ross said on March 25, 2004, Fardon obtained a building permit for a 30’x50’ garage. On September 20, 2007, the road commissioner at the time granted Fardon authority to use Rick’s Way. Nowhere in the record was the property ever approved as an auto repair facility.

Attorney Johnson reminded that Berube is here to make it right. He has invested a lot of money in this business and wants to be sure it’s run correctly. Scott Warchol asked then why no action by the applicant? There was a 2018 noise complaint and was notified at that time that he needed a permit, and he never applied for one. Attorney Johnson said the stop work order was never put into order and was not specific. Keith Emery noted that the prior code enforcement officer didn’t follow through on things like this in an effort to help people out. He also asked how the property was listed on the tax bills for Fardon and for Berube.

Jason Ruginski said he was working with the DEP. The applicant’s property sits on top of a sand and gravel aquifer and is unsure how a business was allowed to open there as per the ordinance it isn’t allowed. Keith Emery said the only maps that are allowed to be used are the maps approved by the town.

Tim Pothier said he’s unsure why the previous use (on the property) is even an issue as Berube purchased the land and the building, not the business. Additionally, Pothier states that he isn’t trying to close Berube’s business; Berube’s business is growing and needs to relocate to a larger, commercially zoned area. Regarding the well ordinance, his well head is well within 300’ of Berube’s property. Pothier wanted to add that if the town follows it’s ordinance, the application will get denied. If the application gets approved, the town is setting themselves up for an appeal, if not a lawsuit.

CEO McKenna wanted to add that the 2003 Comprehensive plan was accepted by the town in November, 2003, with an 1199 yes / 947 no vote. The Comprehensive plan does not have to be approved by the state.

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Chris Baldinelli read the email from DEP, suggested the applicant may apply for a variance.

Attorney Johnson read responding email from DEP.

Jere Ross made a motion to close the public hearing, Scott Warchol seconded the motion, all were in favor. Craig Lefebvre advised he would like the information from DEP prior to voting. Are these wells protected? Keith Emery said either way the vote goes, he expects an appeal in court. Chris Baldinelli agrees with Craig, would like info from the DEP first. Jere Ross’s concern is whether or not the property sits on an aquifer – do we need a geologist? CEO McKenna advised the property is on an aquifer; the

2003 map confirms that, so we don’t need a geologist. Jere Ross asked CEO McKenna that as the CEO, is it her determination that this property sits on a prime aquifer? CEO McKenna advised she doesn’t know what a ‘prime’ aquifer is, but it sits on an aquifer. Jere Ross said then according to the Town of Buxton’s zoning regulations, this use is not permitted on that aquifer. CEO McKenna confirmed. The DEP said as of the date of this meeting that the location is over a moderate yield aquifer. Keith Emery asked what happens when the DEP gives the applicant a variance?

Attorney Johnson advised they aren’t disputing whether or not the property is over a moderate aquifer, however a ‘prime’ aquifer is 50 gallons per minute which in his opinion this is not. He argues that the Berube’s use of the property is the same as the prior owner’s (Fardon) use. He would like the opportunity to obtain the variance from Maine DEP. Scott Warchol agrees and Jere Ross would want a waiver from DEP. Keith Emery asked how long that would take. Attorney Johnson advised it would likely take a couple of months.

Scott Warchol asked Tim Pothier if the application was to move forward what would he like to see happen. Pothier advised he wished the applicant would be more proactive rather than waiting until there is a problem. He also said there’s no way for Berube to have sight, sound and odor barriers for this type of business. He also mentioned the fact that Berube works earlier and later than the allowed hours of operation. Brian Berube spoke and said occasionally he does have to work earlier or later to repair something. He also noted that he never received a stop work order from the previous code enforcement officer. He has tried being a respectful business owner while also running his business and is aware he isn’t welcomed by his neighbors.

Keith Emery asked if the board needed anything else other than the information from DEP.

Craig Lefebvre asked if they should delay the vote until the information on the variance is received.

Keith Emery asked if they could make that a condition.

Scott Warchol suggests waiting for the DEP information.

Jere Ross and Chris Baldinelli suggested the vote occur tonight.

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Jere Ross made a motion to read all sections of article 8.2.B, Craig Lefebvre seconded the motion. Jere Ross said he’ll read each one and vote on them individually.

8.2.B. The applicant shall present adequate evidence, where appropriate, in order for the Planning Board to find that:

-8.2.B.1. The proposed use will not adversely affect the value of adjacent properties. The proposed use will not have a significant detrimental effect on the use and peaceful enjoyment of adjacent properties as a result of noise, vibrations, fumes, odor, dust, glare or other cause.

All those in favor that the applicant **meets** that condition: 1 / Chairman Keith Emery

All those in favor that the applicant **does not meet** that condition: 4

-8.2.B.2. Access to the site from existing and proposed roads is safe and adequate. The proposed use will not cause or aggravate undue traffic congestion.

All those in favor: 5

-8.2.B.3. Any proposed development is in conformance with all flood hazard protection regulations as outlined in Article 14.

All those in favor: 5

-8.2.B.4. Adequate provision for the disposal of all wastewater and solid waste has been made.

All those in favor: 5

-8.2.B.5. Adequate provision for the transportation, storage and disposal of any hazardous materials has been made.

All those in favor: 5

-8.2.B.6. A storm water drainage system capable of handling a 25 year storm without adverse impact on adjacent properties has been designed.

All those in favor: 5

-8.2.B.7. An erosion and sedimentation control plan has been prepared by a qualified professional source.

All those in favor: 5

-8.2.B.8. There is adequate water supply to meet the demands of the proposed use and for fire protection purposes.

All those in favor: 5

-8.2.B.9. That all performance standards in this Ordinance, applicable to the proposed use will be met.

All those in favor: 5

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Jere Ross advised that based on the findings of the planning board on section 8.2.B.1, he made a motion to deny the application for Mr. Berube for a conditional use permit at 22 Ripple Lane, map 3, lot 1-1A-1. Scott Warchol asked about possibly giving a 1-year conditional use permit; Jere Ross advised not if 8.2.B.1 voted down, which it was. Jere Ross asked the board if they wanted to reconsider the vote on 8.2.B.1 – no board members wanted to change their vote. Scott Warchol seconded the motion to deny the conditional use permit. Four board members were in favor, one board member was opposed.

Mowry Brothers Pool, conditional use permit – 761 Narragansett Trail, map 6 lot 25: Andy Morrell from BH2M spoke regarding the application. This is a business commercial zone and the applicant is proposing to conduct his pool business at this location. There will be retail space on the first level and office space on the second level. Storage for pool supplies would be in the rear of the building. There are 8 parking spaces, one of which is ADA compliant. The access to the property will be from Route 202. There is a drilled well at the rear of the property and the septic is in the front. Electric is underground. There will be building-mounted and downward facing and would not disturb neighboring properties.

Jere Ross asked if they’ve discussed the project with the fire chief. They have, however only to ask whether the building needed to be sprinkled. Jere Ross also asked about the original building on the property and Andy Morrell advised that would be for storage purposes only. He will document the plans accordingly. Jere Ross also asked how big the lot is; Andy Morrell advised the lot is .79 acre and the abutting lot is 1.2 acres.

Chris Baldinelli asked about chemical storage as noted in the April 4 letter. CEO McKenna advised if the applicant was going to store bulk chemicals it would be considered hazardous, however the applicant is storing pre-packaged chemicals to sell as retail and that is not considered hazardous. Andy Morrell went on to say that if there was a spill of any chemical they would treat it as hazardous material.

Craig Lefebvre suggested deeding access to the other lot for the purpose of truck turning.

Scott Warchol asked what the use of the other units on the property are. Applicant Mowry said above the garage and the original house are rental units. He also asked about parking; the applicant advised trucks will be parked in the garage and employees will park beside the rental units.

Chris Baldinelli made a motion to schedule a site walk on Wednesday, April 12, 2023, at 6:00pm, Craig Lefebvre seconded the motion, all were in favor.

Caberski Industries, LLC, conditional use permit – 368 Narragansett Trail, map 10, lot 25D. Attorney Hannah King spoke regarding this application for a medical marijuana dispensary. This is a business commercial zone with no daycare, school, playground, library, park, church, or other place of worship within 500’. The building meets all required setbacks. All products sold will be pre-packaged.

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The building has an alarm, video surveillance and odor control in place. There is a commercial parking lot on the premises and will be 6 designated spots for retail customers. The residential building on the property is where the store will be. They will make some improvements to the interior of the building as well as paint and shutters on the outside. The barn will not be used for this retail business.

Jere Ross asked how many patients there are. Attorney King advised the business is open to the public. They expect 6-10 customers per hour. Customers need to be 21+ and have a medical card. Jere Ross also asked about consumption on site. Attorney King advised consumption on site by customers and employees is strictly prohibited. He also asked if the building was ADA compliant and was told it is not yet.

Craig Lefebvre asked about business hours. Attorney King said they would like to be open 10am-7pm, seven days a week. Jere Ross said the ordinance allows Monday to Saturday (no Sunday hours). Attorney King will amend the hours on the application. There was some discussion about employee count and it was clarified that although they have a number of employees, 2 employees will be working at all times.

Jere Ross asked if they have a business name; Attorney King advised the name is Hidden Greens.

Scott Warchol made a motion to schedule a site walk on Tuesday, April 18, 2023, at 6pm, Chris Baldinelli seconded the motion, all were in favor.

CEO Report: none

Approval of minutes: Chris Baldinelli made a motion to approve the minutes from March 27, 2023, Scott Warchol seconded the motion, all were in favor.

Approval of bills: none

Communications: Keith Emery received a copy of Maine Town and Cities magazine that will be available in the code enforcement office if anyone wants to see it.

Other business: none

Public comment: none

Jere Ross made a motion to adjourn the meeting at 9:22pm, Chris Baldinelli seconded the motion, all were in favor. Meeting adjourned at 9:22pm.

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Keith Emery, Chairman Date

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