



Town of Troy

Planning Board Meeting Minutes

Wednesday, April 7, 2021

7:00 p.m.

Members Present: Steven Sawyer (Chair), John Collins (Vice Chair), Curtis Hopkins (Select Board Representative), Henry Underwood (Secretary), Kyle Smith, Matt Meacham, Tristan Hopkins, Mary Guild (Town Administrator)

Members of the Public: Jed Paquin

1 **Call to Order:**

2 **The meeting was called to order at 7:03 p.m. by Steven Sawyer.** Mary Guild and Henry
3 Underwood are joining via Zoom. Mr. Sawyer stated that the last meeting the Board elected
4 officers, however there was one position remaining of Vice Chair. Mr. Sawyer nominated John
5 Collins and asked Mr. Collins if he would accept the position. Mr. Collins stated “yes,” Curtis
6 Hopkins seconded the nomination.

7 **All voted in favor. John Collins is the Vice chair for the Planning Board.**

8 **Correspondence:**

9 **Granite Roots Brewery owned by Anthony Levick and located on 244 North Main Street**
10 **(Map 17, Lot 19).** The question of whether there should be a Site Plan Review. Mr. Hopkins stated
11 that in his opinion “yes.” Mr. Sawyer explained that they are expanding but they have also changed
12 the use from a Garden Center to a Tap Room, and Tavern. The operation hours are different than
13 what the Garden Center was, there is more traffic, and more noise. Mr. Sawyer stated that a Site
14 Plan Review is needed the Board agreed and will notify Granite Roots Brewery of a Site Plan
15 Review.

16 **New Business:**

17 Jed Paquin met with the Planning Board for clarification regarding a Variance for the property
18 located on Tolman Road (Map 23, Lot 1). Mr. Paquin represents the prospective buyer, Daniel
19 Fougere. Mr. Paquin stated that he was asked to fill out a Variance but was not certain of what the
20 request for a Variance is because the lot is grandfathered; and does not know what the non-
21 conformity is. The lot was created in 1962 and the Zoning Ordinance was adopted in 1974. The lot
22 meets the frontage requirement but not the area requirement. Mr. Paquin particular question he had
23 is in reference to is Zoning Ordinance **Article 13 item C: Non-Conforming Lots of Record**
24 **(Grandfather Clause)** “in any district a vacant lot that was a lawful lot of record. Is the parcel a
25 vacant lot, as the Zoning Ordinance does not define a Vacant Lot. Mr. Sawyer asked if there is a
26 garage on the property, Mr. Paquin stated that there was.

27 Mr. Paquin’s understanding is that the garage is an accessory building and that the use of the garage
28 would be an accessory to something. If the parcel is not considered a vacant lot, then the use would
29 come into question, or is the lot only used to host the garage?

30 Mr. Sawyer inquired as to when was the last time the garage was used. Mr. Paquin was uncertain.
31 Mr. Sawyer than continued to elaborate if the garage has not been used for more than one year or
32 it has been storage or used for repairs so you are purposing a change of use to residential so that
33 would change the use the grandfather clause would not be applicable in this case. As far as a non-
34 conforming lot the Planning Board cannot say yes or Nay.

35 Mr. Paquin understands that however, he is looking for clarification of the definition of a Vacant
36 Lot and stated that reason being is that if the residence is not able to be built on it; it is a taking
37 from the landowner; something relevant to immanent domain.

38 Mr. Sawyer's opinion he believes plan where everything fits on the lot, would be fine if the ZBA
39 okays it but in this point, it would be in the hands of the Select board to approve or disapprove of
40 a Building Permit.

41 Mr. Paquin was asked of the location of the garage. He stated that the garage is on the north side
42 of the property on the right as you are going down the hill. It is a one car garage; Mr. Paquin needs
43 clarification on whether it still falls under vacant lot status?

44 Mr. Paquin stated that the parcel is assessed as a Vacant Lot with an accessory structure, and the
45 Tax Card states it as a Vacant Lot with improvements. Improvements being the garage.

46 Mr. Collins asked if he found any definition of Vacant in the Zoning Ordinances, Mr. Paquin replied
47 that he could not find anything on vacant lot in the Zoning Ordinances? Mr. Paquin stated no, and
48 that is why clarification is needed on the Zoning Board because it does not define vacant. If the
49 Planning Board can make an opinion, then the Select Board can understand what is defined by
50 vacant.

51 Mr. Collins stated that without knowing the intent when they wrote that section of that ordinance
52 "a vacant lot that is a lawful lot of record," vacant is not necessarily unoccupied but a vacant lot
53 would be a lot that has no structure. Mr. Collins went on to say that the parcel would not be a legal
54 lot.

55 Mr. Paquin asked if the parcels only use could be that of the garage? Mr. Smith went on to say that you can
56 only replace the garage on that one lot in its existing footprint. If you meet all the setbacks, the lot across
57 the street could be built on.

58 Mr. Collins went on to say that the parcel does not meet the status of the Vacant Lot, but if Mr. Paquin can
59 find the definition in the State's Zoning Regulations it would help his case when he goes before the Zoning
60 Board. This type of ordinance was written because people had small plots of land so when the new
61 requirements were written they did not want to alienate those individuals from building. Not necessarily
62 people who had structures on them but wanted to build in the future.

63 Mr. Paquin stated that he found a partial answer and a definition of Hardship in the ordinance. It addresses
64 it in part and defined as "**special condition of the land which distinguishes it from other land in the
65 same area with respect to its suitability for the use for which is zoned.**" It specifically is talking about
66 use and its zone. The parcel is zoned as rural, residential. It is a single-family dwelling and is allowable in
67 that zone; so that the strict application of the ordinance would effectively prevent the owner from making
68 any reasonable use of the land and financial loss does not constitute a hardship. Reasonable use of the land
69 is in the prospective of the beholder.

70 Mr. Underwood feels that the non-conforming language in **Article 13** says something about this issue, but
71 it could be interpreted in different ways. The key one is **Discontinuing Use for a Year**; states "**land and
72 buildings there after shall be used only in conformity to this ordinance**" Grandfather Clause only works
73 if you do not abandon or discontinue the use. The next step to develop the property is to do a Variance for
74 the yard and lot requirements for that district. Also, there is stuff that allows natural but limited expansion
75 under some circumstances; but it does not explain any examples of circumstances

76 Mr. Sawyer went on to provide an example of "Natural but Limited Expansion." School Street had a natural
77 expansion occur. A gentlemen had a home and then applied to put up a garage. According to Carol, our
78 Land Use Consultant that was a Natural but Limited Expansion. This is the opposite the garage is put up
79 before the house.

80 Mr. Underwood agreed with Mr. Sawyer.

81 Select Board representative Curtis Hopkins stated that according to the **EPA.gov** website, it states that a
82 Vacant Lot is a neglected parcel or property that has no building on it. Vacant lots are an issue of concern
83 because they tend to attract or be subjected to dumping of illegal waste

84 Mr. Meacham commented on the presence of a structure on a lot would not necessarily disqualify it from
85 being a vacant lot; but inquired as to the condition of the garage.

86 Mr. Paquin stated that the garage building is fully functional and structurally sound

87 Mr. Meacham stated that it would be less likely to meet the general definition of what a Vacant Lot is.

88 Mr. Tristan Hopkins stated that it will come down to what the Planning Board figures out the definition to
89 be and then our decision thereafter. He also stated that right now we are not making any decisions but
90 providing our explanations of the definition. We need to find the best reference
91 Mr. Paquin stated that the one thing that is important is that it is an accessory building. It is not a primary
92 building that is a particular note as it relates to anyone. Mr. Paquin's understanding of what the Board is
93 suggesting best use of the land is the present use at the time the Zoning Ordinance is adopted.
94 Mr. Sawyer reiterated that he personally does not think that the ZBA will have any issue with it. Mr. Sawyer
95 stated that he is not trying to give Mr. Paquin a hard time but just want to make sure that we go through the
96 correct procedures and channels. Every year we get definitions that are pointed out to us that we do not
97 have or need to be amended. Mr. Sawyer used his lot as an example and stated that if he wanted to expand,
98 he would have to go through all the channels that Mr. Paquin is going through right now. Again, Mr. Sawyer
99 stated that if you have a plan that meets all the requirements for the setbacks than he did not believe the
100 ZBA would have an issue with that.
101 Mr. Paquin asked if it is about use for this variance or a non-conforming lot of record?
102 Mr. Sawyer and Mr. Underwood stated that it is the lot and yard requirements; acreage that you are asking
103 the variance for.
104 Mr. Collins asked Mr. Paquin if he applied for a Building Permit?
105 Mr. Paquin stated that he tried to do that, but I was automatically deferred to the Zoning Board.
106 Mr. Collins asked that for which he was denied.
107 Mr. Paquin stated that its conundrum. He represents the buyer. The buyer is buying a parcel assuming it is
108 a building lot. The buyer can not actually submit a Building Permit so Mr. Paquin asked Mary for a Building
109 Permit so that the prospective buyers may get one in the works.
110 Mr. Collins inquired to Mr. Paquin if he was applying for a relief for the parcel on Tolman Road (Map 23
111 Lot1). Advised him to ask for a written denial
112 Select Board Representative Mr. Hopkins asked Administrator Mrs. Guild if she remembered a Building
113 Permit Application being submitted.
114 Administrator Mrs. Guild was unaware of any Building Permits for this parcel.
115 Mr. Paquin stated that he requested to submit one.
116 Mrs. Guild asked Mr. Paquin who referred him to the Zoning Board in the first place?
117 Mr. Paquin responded that it was when he spoke to Mrs. Guild and Henry Underwood.
118 Select Board Representative Hopkins went over the process of the procedure with Mr. Paquin stating that
119 first submit a Building Permit and then the Select Board will decide to approve or deny it. If the Select
120 Board denies it, they will send a letter out saying "stating that for which you got denied. In this case it was
121 a non-conforming lot and the acreage size for that district.
122 Mr. Paquin stated that was the answer he was looking for tonight.
123 Mrs. Guild advised Mr. Paquin as to where he could access the Building Permit online, off the Troy website.
124 Mr. Paquin asked if
125 It could be submitted afterwards and inquired as to if the owner needed to sign it. does the owner need to
126 sign it? Mrs. Guild replied yes.
127 Select Board representative Hopkins notified Mr. Paquin of the next Select Board meeting, April 15th.
128 Advised Mr. Paquin that if you go on the website to get the Building Permit, that there is a cost, and that
129 there will be denial. Also, Mr. Paquin will need authorization from the owner, or they will need to fill the
130 permit out.
131 Mr. Paquin stated that he has authorization. Also, For the purpose of the meeting tonight per the request of
132 the owners; to submit a Building Permit to be approved or denied. However, the question of a Vacant Lot
133 and what constitutes a Vacant Lot has not been answered.
134 Mr. Sawyer felt that Mr. Collins addressed the issue well as far as the Vacant Lot meaning stating no
135 structures on the lot.
136 Mr. Underwood pointed out that the word "vacant" only appears once with the respect of the non-
137 conforming lots of record and that should be the only context that the Board should be concerned about for
138 that purpose. Mr. Underwood thinks that is a little plainer when it is a Vacant Lot of record when no one's

139 developed. Mr. Underwood had a question for Mr. Paquin that he felt was relevant inquiring as to when the
140 garage was constructed?

141 Mr. Paquin stated that he believed it was the 1980s, he tried find out the period but was not certain. As far
142 as Mr. Paquin could tell it was a vacant lot at the time when it was it was created. He did not go as far as to
143 see if there was a Building Permit was issued for the garage.

144 Mr. Underwood asked if it was safe to say that it was after the Town created the Zoning Ordinance?

145 Mr. Paquin stated that he was going off the Deed. When the land was subdivided in 1962 it says land in the
146 Deed, later it says land and buildings.

147 Mr. Underwood stated that the reason he was pointing this out is that if the original owner was using the
148 Grandfather Clause to put the garage on the property because it was vacant before the adoption of the
149 Zoning Ordinance. He noted that that would be important because after the Zoning Ordinance was adopted
150 for the Rural District; one- and two-family dwellings; and accessory uses are permitted uses. What is
151 happening is the accessory use came before one or the other permitted uses.

152 Mr. Paquin pointed out that it is not an accessory use if there is no accessory

153 Mr. Underwood agreed to as to what Mr. Paquin was saying.

154 Mr. Sawyer stated that that would have been the primary use for that property.

155 Mr. Underwood looked to see if the permitted uses in the district as allowing a residential home to be
156 developed afterwards and questioned then what does the chronology matter if one comes after another, at
157 the end of the day it is a one family dwelling to the accessory of a one family dwelling. If you assume the
158 development used the Grandfather Clause to get going that could be seen as permitted and continuing to
159 fall into the Grandfather Clause

160 Mr. Sawyer stated that he understands where Mr. Underwood was going however if there was a permit
161 someone says that they are going to build a garage and a house and its never followed through with the
162 house than I could agree with that, however you build a garage and you're using it for storage or to work
163 on your vehicle that's primary use not accessory use.

164 Mr. Paquin stated given that thought process of Mr. Sawyer, he inquired as to how the Assessing Data base
165 accounts for lots of that nature; like the garage lot; assessed as a lot that cannot be developed verses house
166 lots that has been developed it is a residential lot. Mr. Paquin asked if the land itself was assessed
167 differently? Mr. Paquin felt that it would answer what we are trying to get at

168 Mr. Sawyer agreed.

169 Mr. Underwood explained that the Assessing Cards are for a specific purpose for assessing how much a
170 property is worth and not for land use regulations.

171 Mr. Smith stated that values would be assessed differently when somethings on it

172 Mr. Collins stated that the Planning Board has nothing to do with Assessing and vice versa so they can
173 assess whatever they like and be completely different from the intent of the building ordinances. It would
174 not really help your case either way with the Zoning Board. It is a question for the Assessor on how they
175 came to that conclusion.

176 Mr. Sawyer asked if the card says that the land is assessed at this amount with no garage, is it a Vacant Lot?
177 Select Board Representative Hopkins stated that any changes to the property are not always noted; if the
178 owner does not dispute it, taxes, Demo Permit, or Building Permit the changes are not picked up.

179 Mr. Smith asked Mr. Underwood if there is someone, he can email at the stated to get the States definition
180 of a Vacant Lot?

181 Mr. Underwood will check into it.

182 Mr. Smith told Mr. Paquin that hopefully by the time he gets his application in the Board will have an
183 answer on that and then the Select Board can give their Letter of Denial.

184 Mr. Paquin referenced the Town of Jaffrey's Town website regarding ZBA Variance Guidelines. It
185 summarizes recent decisions to the use of lots. They had similar questions regarding variances given. They
186 broke down the concept of use verses lot in simplistic terms also as it relates to prominent Supreme Court
187 cases in the state. A lot was granted a variance but then denied a use variance, so it ended up creating a non-
188 conforming lot and a Variance was granted for that. They said OKAY we are going to grandfather the lot

189 but would not allow use on it. Then the state said we are not intending to take the right of landowners, so
190 they reworked it in the 2000.
191 Mr. Underwood asked Mr. Paquin if there was a specific part of the document that he was referring to?
192 Mr. Paquin stated page 11 and an editor's note
193 Mr. Underwood told Mr. Paquin that it is a state resource that is meant to help Zoning Boards, if there was
194 something pertinent it would be good to know where it is since it is a long document.
195 Mr. Underwood also mentioned that the Board could not find anything on google which means that the
196 State does not address "Vacant" to much maybe, but as a first stop Mr. Underwood will reach out to Carol
197 Ogilvie.
198 Mr. Paquin inquired as to who Carol was. Mr. Sawyer advised him that she is the Land Consultant for the
199 Planning Board, worked for the state, and SWRPC in Peterborough for many years.
200 Mr. Underwood advised Mr. Paquin that if there was a case law in the document that relates to this, let the
201 Board know.
202 Mr. Paquin stated that in speaking to Code Enforcement Officers the general census is that the garage is an
203 accessory use. Pointed out that the garage is an accessory building, if it were a larger garage that could be
204 a machine shop or mechanic shop than Mr. Paquin could easily understand the position of primary use but
205 a 12'x20'single car garage it seems clear to Mr. Paquin that it is an accessory building.
206 Mr. Sawyer reiterated to Mr. Paquin that when any existing non-conforming use of land or building has
207 been discontinued for one year the land and building shall be used in conformity to this. It has been unused
208 for over a year. Has anyone done any maintenance?
209 Mr. Paquin stated that he could not answer that.
210 Mr. Sawyer reiterated that Mr. Paquin would have to go through a Site Plan Review if changing the use
211 from a garage to residential. It is a non-conforming lot that would need to come up to current standards or
212 get a Variance. Mr. Sawyer used the bank as an example.
213 Mr. Paquin asked the Select Board will suggest as to what the Variance request would be, depending on the
214 denial.
215 Mr. Sawyer stated yes and went on to say that he personally did not think that this would be an issue with
216 the ZBA. Unfortunately, it is an extra step to take. Everyone agrees that the ZBA needs to make this
217 decision.
218 Mr. Paquin Thanked the Board for their time.

219 **Selectmen's Update:**

220 Select Board representative Hopkins updated the Planning Board on current events in Town.
221 After further investigation Chad Brannon, of CWMA, owner of the recently subdivided portion of the mill
222 property, found out that the Village Pond Dam needed a little bit of work. The State was contacted
223 requesting information for grants. Mr. Hopkins stated that unfortunately privately owned damns are not
224 susceptible to any grants, but municipalities are. Troy took back the Village Pond Dam and we now have
225 an easement going to the dam to do the repairs. The Town has access to it as well. The reason for this
226 change was that there was a discussion with the Town over at the Community Center wanting to know who
227 owned the dam and things could be done with it as a privately owned dam. Everybody wanted the Town to
228 maintain the dam and keep it so as not to lose Village Pond. If the dam did breach the concern of how it
229 would affect those individuals. Currently the Select Board is discussing options and trying to get a hold of
230 someone in Concord. The Town is in violation for deficient dams, so the Town trying to find out if they
231 can get a bond, what is needed, and what is required as the Board does not know.
232 Mr. Sawyer asked if the Town was subdividing? Mr. Hopkins stated that they were not just an Easement.
233 Mr. Hopkins said that this year it is on the agenda to get the dams figured out and find a contact in Concord.
234 He also noted that the Core of Engineers, Department of Army Engineers 368th do project for Towns in
235 the areas. It can be lengthy and expensive. Their annual training could be utilized within the Town.
236 Currently the Select Board is waiting on information.
237 The Select Board has been working on a list of items that needs to be worked on for the future. The CIP is
238 back up and running, dams, and the Mill.

239 The Conservation Committee has appointed individuals however not everyone is sworn in. Mary will
240 provide paperwork to Marcy. Curtis Hopkins is the Select Board Representative for the Conservation
241 Committee, members noted so far are Kyle Smith, Tyler Bagster, and Richard HKS Thackston.
242 Individuals were appointed to the ZBA. At this time, it is a matter of everyone being sworn in so that a
243 meeting may be scheduled for a Lot Line Adjustment for the property owned by Kristen Tandy, and another.
244 State Representative Jennifer Rhodes notified the Town of a rule that was proposed in Concord; that if you
245 are working for a Town, that an individual can be held personally responsible for any bad decision
246 (Indemnification Clause). It was voted down and did not go well.
247 Governor Sununu passed an Executive Order that the State of New Hampshire will be prohibited from
248 enforcing any executive action taking by the president about gun control.
249 Bill #144. background checks route through the FBI. It is a good thing with a quicker turnaround time.
250 Mr. Sawyer stated that the Planning Board would need a couple alternate member.
251 Mr. Underwood said that he was working on setting up a schedule for the interview regarding Land Use
252 Secretary.
253 Select Board Representative Hopkins stated that Mary had done interviews with 2 individuals at least 2
254 weeks ago. Mary did notify the applicants that a member of the Planning Board would contact them.
255 Mr. Hopkins updated the Planning Board regarding upcoming events. The Recreation Department is having
256 a ham dinner on the April 17th \$5.00 a plate. The Recreation Department took over the Fishing Derby which
257 is scheduled for May 22nd with prizes and games. The community breakfast is starting back up in May. The
258 takeout menu is limited but is \$5.00. It is \$8.00 if you sit and eat.

259 Mr. Sawyer adjourned the Meeting at 8:04 P.M.
260 Curtis Hopkins seconded the motion.
261 All in favor.