

**TOWN OF ALTON PLANNING BOARD
MINUTES 2017
JULY 18, 2017**

APPROVED

Members Present:

Peter Bolster, Chairman
Russell Wilder, Clerk
David Collier, Member
Scott Williams, Member
Virgil MacDonald, Selectmen's Rep.

Others Present:

Nic Strong, Town Planner
Jessica A. Call, Planning Secretary

CALL TO ORDER

Peter Bolster called the meeting to order at 6:00 p.m.

APPROVAL OF AGENDA

Peter Bolster asked if there had been any changes in the agenda. Nic Strong stated, there were none.

**Scott Williams moved to accept the agenda as presented.
Dave Collier seconded the motion, and it PASSED unanimously.**

CONTINUED FROM THE JUNE 20, 2017 MEETING

Case # P17-12 Karen Anne Kimball	Map 12 Lot 63	Minor Site Plan Rural (RU) Zone 128 Powder Mill Road
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Present was Karen Anne Kimball, Owner.

Peter Bolster mentioned that there were some completeness items to go over before accepting the application, which were the floor plan of the home business area and the septic plan. Nic Strong stated that those items were part of the content of the plan and not completeness items. She referred to page #2 on the Planner Review, which showed what was submitted or not applicable.

**Russ Wilder moved to accept Case # P17-12 as complete.
Scott Williams seconded the motion, and it PASSED unanimously.**

Karen Anne Kimball came to the table and explained that she met with Nic Strong last week and was told that she would need to contact DES to get the information about the capacity of the septic system, because there was no information available in the building file. Karen Anne Kimball stated that she contacted the draftsman who did the original layout of the building and he will re-do the plan and she will get it submitted. Peter Bolster stated that the Board could make a conditional approval pending submission of the septic system loading and the building layout. Karen Anne Kimball shared that she received her State license in the mail today that certified her as a marriage and family therapist.

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Russ Wilder noted that Karen Anne Kimball designated 832 s.f. of floor area for the business, which was within the regulations required for a home business. He also noted the location of the sign was not clear, and it needed to be correct on the final site plan. Karen Anne Kimball also stated that the hours were not indicated anywhere, and then shared that the hours of operation would be from Monday through Saturday, 9:00 am to 9:00 pm, and would be indicated on the final site plan. Nic Strong asked where Karen Anne Kimball would be posting her sign. Karen Anne Kimball shared that instead of placing her sign at the beginning of her driveway, in order to keep her business somewhat discreet, she was going to place it closer to her house near the picket fence, therefore, her clients would know they were at the right location. Russ Wilder asked if there was a number for the house, Karen Anne Kimball stated there is one at the street on her mailbox. Russ Wilder noted that the Executive Summary indicated that appointments would be made one at a time throughout the day and not more than two (2) cars would be expected for each appointment, however, it did not indicate how many appointments per day would be scheduled. Karen Anne Kimball stated that Nic Strong pointed that out to her and she would make the modification on the Executive Summary to include not more than five (5) appointments per day, which would consist of approximately 10 cars per day.

Russ Wilder pointed out that the Planner Review mentioned that the Board's approval would require that the business comply with the Site Plan Regulations and any changes to the business proposal would require a Site Plan Review by the Board. Karen Anne Kimball agreed. Russ Wilder noted that the Fire Department did not send back any comments. Scott Williams stated that NHDES had a flow chart for septic capacity that Karen Anne Kimball could look at, and then she could figure out how many gallons per day were required. Russ Wilder then mentioned lighting, and how no changes were proposed, but they should be shown on the Final Site Plan.

Karen Anne Kimball shared that she was not going to advertise publicly, but would be getting referrals from local Pastors. Russ Wilder stated that all of the outstanding items could be addressed in the Final Site Plan, and if her application was approved, it should state that there are conditions to be met.

Russ Wilder reviewed the items to be added to the plan, which were the final sign location, include the number of customers generated daily, a letter or record of conversation from DES indicating septic capacity, specify location of lighting, and the hours of operation.

Peter Bolster opened up public input. No public input. Peter Bolster closed public input.

After due hearing, Scott Williams approved Case #P17-12 for Karen Kimball for a Final Minor Site Plan Review for a Home Business from 832 s.f. of the existing apartment over the attached garage as a counseling/therapy home business at 128 Powder Mill Road, Map 12 Lot 63, with the following conditions:

CONDITIONS PRECEDENT

The following conditions must be satisfied prior to the Planning Board Chair signing of plans:

- 1. Submission of revised plans in the number required by the Site Plan Review Regulations and that include all of the checklist corrections and any corrections as noted at this hearing, including the location of the business sign, the addition of lighting locations, the hours of operation (Monday to Saturday 9:00 a.m. to 9:00 p.m.), the number of anticipated customer trips per day.**

2. **Addition of a note to the site plan prior to plan signing by the Planning Board Chair: This site plan contains a total of one sheet: "Site Plan Karen Kimball 128 Powder Mill Road Alton NH Scale: 1/16" = 1'0" Date 05/24/2017, revised _____"; along with Site Location plan, Site Conditions Subdivision of Land for Alexander & Paula L. Gagnon Scale: 1" = 40' June 17, 2003, copy of Subdivision of Land for Alexander & Paula L. Gagnon Powder Mill Road Alton Belknap County New Hampshire Scale 1" = 40' June 17, 2003, section copy of Map Showing Saturated Thickness, Transmissivity, and Materials of Stratified-Drift Aquifers in the Winnepesaukee River Basin, Central New Hampshire, Southeastern Part 1996 Scale = 1:24,000 Based on USGS Contour Interval 20 ft., received May 30, 2017; and, floor plan of office apartment over garage received July 3, 2017. In combination, these plans constitute in their entirety the site plan as approved by the Town of Alton Planning Board. All sheets are on file at the Town of Alton Planning Department.**
3. **Addition of a note to the site plan prior to plan signing by the Planning Board Chair: This site plan is subject to the Conditions of Approval itemized in the July 18, 2017, Notice of Decision on file at the Town of Alton Planning Department.**
4. **Receipt of NH DES confirmation of the size of the septic system and its adequacy for the proposed home business use in terms of design flow/gallons per day.**

SUBSEQUENT CONDITIONS

The following conditions subsequent shall be met during construction and on an on-going basis:

1. **All site improvements are to be completed as per the approved site plans, prior to the issuance of any Certificate of Occupancy per this Notice of Decision and Section 1.22 of the Site Plan Review Regulations.**
2. **The approved hours of operation for the counseling/therapy home business are Monday to Saturday 9:00 a.m. to 9:00 p.m.**
3. **The applicant shall comply with all of the Town of Alton's Site Plan Review Regulations.**
4. **The approval is based upon the plans, specifications and testimony submitted to the Planning Board. Any alterations, additions or changes to the plans are not authorized and require additional Planning Board approval.**
5. **A site plan which has been approved, conditionally or otherwise, may be revoked, in whole or in part, by the Planning Board when an applicant or successor in interest to the applicant has performed work, erected a structure or structures, or established a use of land, which fails to conform to the statements, plans, or specifications upon which the approval was based, or has materially violated any requirements or conditions of such approval.**
6. **Once any and all conditions of approval have been met and the Chairman of the Planning Board or his designee signs a site plan, the applicant has twelve (12) months from the date**

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of signing to start construction and, unless a different schedule is approved by the Board, must complete construction within twenty-four (24) months.

7. **Site plan approvals that have not started construction within twelve (12) months shall automatically expire, at which time no building permits shall be issued, unless an extension has been formally requested and granted by the Board. Normally the Board shall not grant more than one extension per project, shall only grant an extension for reasonable cause, and shall normally not grant an extension for more than six months.**
8. **No site may be occupied or used until a Conditional or Permanent Certificate of Occupancy Permit has been issued by the Code Official in accordance with Section 1.22 of the Site Plan Review Regulations.**

Unless otherwise approved by the Board, the applicant shall have one (1) year from the date of the meeting at which the application is approved with conditions to complete any conditions that are required prior to signing the site plan. Failure to complete any conditions within the one (1) year timeframe shall invalidate the Board's approval, unless an extension is approved by the Board per Section 1.14 of the Town of Alton Site Plan Review Regulations.

Russ Wilder seconded the motion, and it PASSED unanimously.

<p>Case # P17-15 Donald R. & Darlene E. Demers</p>	<p>Map 65 Lot 49, Lot 52, and a portion of Alpine Way</p>	<p>Voluntary Lot Merger Lakeshore/Residential (L/R) 36 Elm Street</p>
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Peter Bolster noted that no one was present to speak on behalf of the application and wondered if they should move forward. Nic Strong stated that they did not necessarily have to be present because this type of application did not need a public hearing and could be decided upon by the Board if they chose to do so. She noted that State law stated that if the merger did not violate any zoning ordinances, then the Planning Board shall approve it. Scott Williams pointed out that the applicants requested this and they signed the application. Virgil MacDonald was concerned because there was a right-of-way involved.

Russ Wilder asked if the Demers' had their taxes paid up to date, Nic Strong stated they had been paid in full. Virgil MacDonald noted that the Demers' were looking to build a garage on the merged lot. Peter Bolster felt uncomfortable taking action on this merger when the applicant was not present because there might have been some things that the applicants wanted to share, or there could be issues that the Board needed clarification on. Virgil MacDonald stated there was no letter in the application packet that released all the other parties from the right-of-way. Nic Strong stated that the deeds to the property released all four interested parties.

Scott Williams noted that there was a small 50 foot portion of land that he was unsure what it was designated for, and then asked for some clarification on what Street 72 was. Nic Strong stated that Street 72 was formerly known as Elm Street on the plan that the ZBA approved. Nic Strong also noted that at the June 1, 2017, meeting, the ZBA approved the request for a Variance for a garage to be built.

Peter Bolster noted that the merger was between Lots 49 and 52, and there was presently a right-of-way between the two lots. Virgil MacDonald thought that the right-of-way went all the way to Street 72, and wondered how could the Board approve taking that piece of the right-of-way out. Nic Strong stated that the

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release deeds released the portion of the right-of-way in between Lot 49 and 52. Peter Bolster was concerned about the portion of the right-of-way that led out onto Street 72 and asked if it was released to somebody. Nic Strong stated, no, that it was still shown on the existing plan.

Scott Williams asked who owned Lot 51, which was the former right-of-way. Nic Strong stated that it belonged to the Demers' and their proposal was to merge Lots 49 and 52, and the small portion of the former right-of-way.

Scott Williams was concerned that there was no comment from the Fire Department because the way they would enter the property, left them nowhere to turn their trucks around. Russ Wilder noted that in the ZBA approval, the Fire Department mentioned that they were concerned about access to the property. Nic Strong read the minutes from the ZBA meeting, it stated that "Steve Miller noted there was a comment from the Fire Department, which stated that they reserve the right to review the actual building plan for fire code compliance". Scott Williams stated that the building plan and the right-of-way were two different things. Nic Strong stated that the Fire Department did not comment on the right-of-way, only the building. Peter Bolster stated that the access to any of the lots was still viable. Scott Williams stated that fire trucks ordinarily like to drive straight through as much as they could, because if they would currently drive into the property, they would be dead-ended with no means of turning around because there was no cul-de-sac. Scott Williams thought that was concerning enough to hold the approval until that issue was cleared up.

Russ Wilder thought the Board should do a site walk. Scott Williams thought they should table the application until the Board received a report from the Fire Department. Virgil MacDonald read more from the minutes and it stated that the Fire Department could come in from either the driveway or the Alpine Way access. Peter Bolster read that Tim Morgan asked if there was access off Elm Street, which was Street 72, and the answer was yes. Tim Morgan then asked if a fire truck needed to get to the house, how would they get there, he was answered that they could either come in from the driveway or from the Alpine Way access. Virgil MacDonald stated that the right-of-way was blocked and the Demers' could use it, but nobody else could.

Peter Bolster stated that the Board would continue the application until the next meeting and to request that the applicants appear to answer the questions that the Board has.

**Scott Williams moved to continue Case #P17-15 to the August 15, 2017, meeting.
Virgil MacDonald seconded the motion, and it PASSED unanimously.**

Other Business:

1. Old Business:

- a. Motions from the June 20, 2017, Planning Board meeting requiring final action:
 - i. Case # P17-12, Karen Anne Kimball, needed a second and a vote.

Virgil MacDonald seconded the motion, and it PASSED unanimously.

- ii. Case # P17-13, Holmes Realty Trust/Holmes Land Trust, needed a vote on granting the waivers.

Motion PASSED, with Virgil MacDonald opposing.

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- iii. Letter sent to the American Legion needed a vote to have Roger Sample sign the letter, and since the letter was mailed, have the Board ratify that action in their vote.

Motion PASSED unanimously.

- b. Discussion on Case # P17-13, regarding grandfathered setbacks that have non-conforming structures.

Nic Strong stated that there was an email from John Dever, III, Code Official, that was in the Board's packet. She stated that the existing building had been rendered non-conforming due to a change in the zoning ordinance, which came into effect with the Lot Line Adjustment being done, which the Town of Alton considered creating a new lot of record. Nic Strong stated that John Dever, III, Jim Sessler, Town Counsel, and herself had a prior conversation about the application and the building was rendered non-conforming by the zoning change, and not by the Lot Line Adjustment. Therefore, until such time as a change to the building was proposed, it could remain as it was.

- c. Discussion regarding Town Engineer RFP process.

Nic Strong stated that at the last meeting, the Board asked to see the current contracts for the three consulting engineers, but there are no existing contracts. She was not sure how the current engineers were hired, but she suggested to start an RFP process to make sure that the town engineers have similar price ranges, and to ratify the process in which who gets to pick which engineer for which project. She also noted that this was a good time to get this done because in the near future Peter Julia, P.E., was going to discontinue working for the Town of Alton. Peter Bolster asked who made the appointment, Nic Strong stated that the Planning Board would work with the Board of Selectmen to put out the RFP, the Planning Board would interview the consulting companies, then the Selectmen would be the ones to sign the contracts. Russ Wilder confirmed that the Board would recommend to the Selectmen which engineers they were interested in. Russ Wilder noted that this process should be done soon, hopefully by September. Nic Strong stated that she would put together the ad and present it to the Board to look at for the next meeting. Scott Williams suggested having a small engineering company along with two other larger firms. SFC Engineering and Mike Vignale were the current engineering firms, with SFC being one of the larger firms. Peter Bolster asked if the Board was going to have the two current firms sign a new contract. Nic Strong stated, no, that the RFP was going out and everyone would have to re-bid.

- d. Discussion regarding rights-of-ways/easements as part of the Subdivision and Site Plan Review Applications.

Russ Wilder mentioned that the Board should be receiving some information regarding how to handle rights-of-ways/easements fairly soon, due to a previous case that was before the Board that involved building within a right-of-way. He also stated that Nic Strong brought up a good point in regards to who would do the research to see if they were correct, and how would it be paid for. Peter Bolster asked if was the responsibility of the Board to review the validity of a right-of-way. Scott Williams stated that as a Planning Board, they needed to respect the right of that right-of-way for all parties involved, but as nonprofessionals, he did not think the Board could make a determination on how it would impact the property or how it would impact an individual. Peter Bolster stated that when an engineer or planner came before the Planning Board with an application, they were usually a registered site planner, and therefore, they should be doing the research on rights-of-ways/easements as to what they were

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designated for. Scott Williams suggested that there should be a legal opinion. He stated that currently there was no process to handle reviewing deeds. Russ Wilder stated that it boiled down to whatever was represented on the plan. Dave Collier stated that the Board had to look at what was presented to the Board and make their decisions based on that. Peter Bolster suggested having the applicant explain what the right-of-way was created for. Scott Williams stated that the deeds do not always reflect that there was a right-of-way on the property.

Dave Collier noted that the Board should write into their regulations that they require rights-of-ways/easements to be included with the application. Nic Strong stated that if that was going to be a requirement, would the Board be comfortable with requiring the applicant to pay for a legal review of them, or have them submit a document that stated that what they were proposing, in their opinion, did not violate any rights-of-way or easements on the property. The Board agreed with this approval, noting that the onus was on the applicant and their professionals to certify that their proposal was in compliance with any restrictions or easements on the property.

Scott Williams suggested that Jim Sessler, Esq., Town Counsel, come up with some language to be added to the application form for now. Nic Strong stated that when it was time to amend the Site Plan Regulations, it could be added at that time. Nic Strong mentioned that applicants may not want to sign a document, because if they did not do a title search on a piece of property, they might not know if any right-of-way/easement existed. Peter Bolster thought that the abutter's letters should ask if they know of any right-of-way that existed. Nic Strong stated that the notice letter invited abutters to come to the office and look at the plans before the hearing, and if there were any, they should state it then, or at the meeting.

- e. Memo dated July 14, 2017, from Nic Strong addressed to the Planning Board regarding Old Business items.

Nic Strong stated that if the Board determined that an application was not complete, because items in the Regulations had not been submitted, then the Board should deny the application as incomplete so that a Notice of Decision was issued saying what the items were that were required to make it complete. Accepting an application as complete was supposed to happen within 30 days of it being delivered.

Nic Strong informed the Board that they should always accept an application as complete before waivers were granted, and until the Board accepted an application as complete, the Board did not have jurisdiction to talk about the application, unless it was a waiver to a completeness item. Russ Wilder and Dave Collier requested that the completeness waivers be listed on the Planner Review separately. Nic Strong stated that the Planner Review already reflected what waivers were for completeness and what waivers were for plan content.

2. **New Business:**

- 3. **Approval of Minutes:** June 20, 2017, Planning Board Meeting

Russ Wilder moved to approve the minutes of June 20, 2017.

Scott Williams seconded the motion, and it PASSED unanimously.

4. **Correspondence for the Board's review/discussion/action:**

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- a. Letter dated July 12, 2017, from Eugene F. Sullivan, III, Esq., on behalf of the American Legion, addressed to the Board of Selectmen and the Planning Board regarding the right-of-way between the American Legion and Right Field Development, LLC.

Peter Bolster stated that at this point, this was a civil matter between the American Legion and Right Field Development, LLC. Russ Wilder noted that in that letter, it stated that the American Legion was going to file a lawsuit against the Town of Alton for violating its rights, and then asked if that had happened yet, Nic Strong stated, no.

Virgil MacDonald stated that the Board approved the plan to allow Right Field Development, LLC, to build within the right-of-way, and since it was a commercial building, that made it a public right-of-way going in. Nic Strong stated, not necessarily. Scott Williams stated that the property was privately owned. Peter Bolster stated there was a wide access along the highway and when people turned into the driveway, at the end of the island, they could either turn towards the American Legion, or towards Right Field Development, LLC.

Russ Wilder stated that the American Legion has threatened to file a lawsuit and the Board was advised by Jim Sessler, Esq., Town Counsel, to send the letter, which was dated June 20, 2017, and he was concerned that if the Board had a lengthy conversation, whatever they said tonight could go either way on a potential lawsuit.

Virgil MacDonald thought that it was the Board that should not have approved the plans. Nic Strong stated that Jim Sessler, Esq., Town Counsel, advised her to send the letter, dated July 12, 2017, from Eugene F. Sullivan, III, Esq., to Right Field Development, LLC, for their lawyers and engineering team to look at, and then get back to Town Counsel and the Board with what they thought were the responses to the legal issues contained in that letter. It was also noted that there was room on the plan, should they decide to move parking spaces versus continuing down the path that this issue was headed. Nic Strong stated that until the Board heard back from Right Field Development, LLC, there really was nothing for the Planning Board to do. At that point, it would become apparent whether or not the Planning Board had anything else to do.

Russ Wilder thought that the Board should sit on the letter until they heard back from Right Field Development, LLC. Virgil MacDonald thought that it was not a good idea to wait until the Town was sued before the Board discussed the issue, or tried to fix it. Nic Strong stated that Town Counsel had advised the Board that this issue was a civil matter. Dave Collier stated that when the plan that Right Field Development, LLC, presented to them, the Board was told that they were working with the American Legion regarding parking. Dave Collier noted that Right Field Development, LLC, stated that he owned the back lot, and the reason for the creation of the right-of-way was to have access to that back lot because there was no frontage, but he could still access it. He stated that the Board should wait to hear back from Right Field Development, LLC, before they took any action. Russ Wilder stated that the Board did not cause the problem. Dave Collier stated that when the plan was presented to the Board, every abutter had a right to come to the Board and say if something wasn't right, but no one came to the meeting in which Phase II was being discussed. Peter Bolster mentioned that any abutter could come to the Planning Department to review plans before a meeting.

5. Correspondence for the Board's information:

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6. Any Other Business that may come before the Board:

Public Input on Non-Case Specific Local Planning Issues

Peter Bolster opened public input. No public input. Peter Bolster closed public input.

ADJOURNMENT

At 7:15 p.m., Dave Collier moved to adjourn.

Virgil MacDonald seconded the motion, and it PASSED unanimously.

The meeting adjourned at 7:15 p.m.

Respectfully submitted,

Jessica A. Call
Planning Secretary

Minutes approved as amended: August 15, 2017