

TOWN OF CONCORD PLANNING BOARD
Town Hall

April 4, 2023
7:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Chairman Karl R. Lux, at 7:00 p.m.

ITEM #2: Roll Call

Present:

Karl R. Lux, Chairman
Bruce Luno
James Jozwiak
Julie Zybert
Michael Cochran

Not Present:

Ray Hilliker

Also Present:

Darlene Schweikert
Clyde M. Drake, Council Liaison
Thomas Roberts, CEO
George Donhauser
Derek Filighera
David Filighera
Jerry Thompson. Century 21
Kevin Thie

ITEM #3: Citizen Participation

There was no one for Citizen Participation.

ITEM #4: Approval of Minutes

a) March 7, 2023 – J. Jozwiak made the motion, seconded by M. Cochran, to approve the Minutes as presented. All in favor. Carried.

ITEM #5: This Special Use Permit - Firewood

Kevin Thie addressed the Board. He lives on Emerling Road and has had a firewood business there for six years. There was an issue back in 2018 when he was working on building his own kiln and a neighbor filed a complaint; the Town didn't like it so he didn't do it at that time but after all of that he spoke with the USDA. The USDA told him that he would not have a problem and sent the Town a letter dated January 13, 2020. The CEO at that time (CEO Singleton) received the letter and advised Mr. Thie that he thought he was good and just let it go. There had been no contact from the Town since that time. Chairman Lux noted that there had been a change of CEOs in the Town and then COVID during that time as well but at this point the Board is looking at a Special Permit for Mr. Thie to operate the firewood business at the location where the zoning is R-Ag. J. Jozwiak was on the Board when Mr. Thie came in 2018 and for clarification recalls that the Board determined that because he was bringing wood in to an R-Ag zoning, the property should really be C-1. There was discussion at that time trying to find a place with the correct zoning of C-1 because it is not your own agricultural stuff,

he is bringing stuff and then you are processing it. J. Jozwiak wanted this clarification included in the Minutes. Chairman Lux and J. Edbauer also recalled this information. J. Edbauer stated that the Board told him he really could not do it, that it wasn't allowed in the R-Ag district. Mr. Thie recalls that someone kept saying he was kiln-drying lumber and that wasn't allowed and he has nothing to do with lumber. The members did recall that he brought wood in and that made it a process and it was a business then. CEO Roberts personally feels that it is an agricultural product and he is located in an agricultural community so he has no objections to it. If the Board feel that Mr. Thie should file for a business certificate, he would agree to that. CEO Roberts did ask Mr. Thie to come into his office to review his construction project and the enclosing of his shed; paperwork needs to be completed. M. Cochran asked Mr. Thie if he was doing this business all on his own or do you have employees? Mr. Thie noted that his sister acts as a secretary but he does 99% of everything himself. He does have neighbors that help a little but there are no actually employees; his sister is the only one and she works from her home. J. Edbauer tagged on to what J. Jozwiak said; he is processing something. You are not just cultivating something. Mr. Thie advised that he does lease property from a friend and he does take some trees from that property. He questioned about leasing land about 15 miles away, does that count? J. Edbauer noted that it is not really about that, it is about the processing. There is equipment that you are processing the logs; that's where everything is coming from. Mr. Thie noted that the old CEO (Singleton) had told him that if he owned his own property (8-10 acres), that he would definitely then be a farmer and would be harvesting your own stuff. J. Edbauer advised that Mr. Thie is changing it; converting it. Mr. Thie is bringing logs in and no longer harvesting on his own land; it's not on his parcel. J. Edbauer is concerned that the Board told him several years to try to do something and now years later we are here. J. Edbauer saw the USDA letter and that letter is just saying that the USDA has no objection but you still have to follow any local laws, zoning. You are not exempt from the Town code. J. Jozwiak questioned if the Special Use Permit would let Mr. Thie continue his business? Chairman Lux noted that it would. B. Luno advised that when Mr. Thie stops his business, this cannot continue. Any Special Use Permit would cease to be valid with a change of ownership or any change in the type of business. CEO Roberts also noted another stipulation: If Mr. Thie were to discontinue his work for a year or more, it nullifies the Permit. The Special Use Permit is renewable annually without a fee but Mr. Thie would need to work with the CEO for compliance annually. This gives the Town a little bit of control. M. Cochran would like to accept the Special Use Permit as a business for firewood only.

Chairman Lux made a motion, seconded by M. Cochran, to recommend to the Town Board the issuance of a Special Use Permit to Kevin Thie of Buffalo Firewood to operate, process and store kiln-dried firewood at 10257 Emerling Road. This recommendation is proposed per the compliance letter from USDA dated January 13, 2020. All in favor. Carried. Secretary Schweikert advised Mr. Thie that the Planning Board makes a recommendation to the Town Board to act. The next step would be that the Town Board would set a Public Hearing date, the Notice of the Public Hearing will be published and mailed to your neighbors as well as Erie County Development of Planning.

The Town Board will set the date for the Public Hearing at their April 13th meeting. Mr. Thie thanked the Board at left the meeting at 7:13 p.m.

*R. Hilliker was not in attendance but had reviewed the Thie Special Use Permit and would approve the application as submitted.

ITEM #6: Subdividing Lands

CEO Roberts advised that he was contacted by Jerry Thompson, Century 21 realtor, that he is listing two parcels for sale; large ones. Initially they were trying to sell them as one large property and they also proposing that they may want to subdivide the property. Eight times on one of the parcels and five on the other. Each parcel would be a large parcel. A parcel cannot be subdivided more than five times; then it becomes a process. CEO Roberts referred the members to Section 129-17 of the Code: Variances and Waivers. The Code also notes that a residential lot is anything 5 acres or less; so after the sub-parcels, that is where it would get limited. These parcels are larger. J. Edbauer noted that this subdividing of lands section was put into the Code to try to keep farms bigger so they were not chopped up? B. Luno said that that was part of the reason for it.

Realtor Jerry Thompson is representing the Estate of John Sullivan who owned about 265 acres that functionally has been split into three different sections by the extension of the 219 Expressway and has two different SBL numbers. It runs along Transitline Road just past Adams and then goes towards Middle and turns back into Transitline Road. He owns both sides of the road there; one SBL number has about 40 acres and the other SBL number is about 225 acres but this parcel is split by the 219 Expressway. The other part fronts on Belscher Road. The estate has multiple heirs and initially thought they would try to sell the whole parcel at once for \$1.2 million which would include the fixer-upper 2100 sq foot house, two car garage and all the acreage. He noted that our Code defines residential lots as anything less than 5 acres. He then showed CEO Roberts his plan for parceling. One side of Transitline Road has 2200 feet of frontage, one has a gas line through it, a gas well at the front, so some are less attractive than others but it could easily be split into five parcels that are all above five acres. Realtor data of the Town of Concord, it seems that most people are not buying 300 acre lots; they are buying 25-acre, 30-acre or 10. Not 2-acre lots. They are buying parcels with space. Mr. Thompson is here to see if this could be done. The estate has not yet made any final decision. There is also the possibility the house and about 125 acres could be one sale and the Belscher Road chunk could be another. Mr. Thompson noted that it serves the benefit financially for the estate to be able to sell some of the chunks off and he is here to ask if this could be done. B. Luno asked if by doing the subdividing, would it create landlocked parcels. Mr. Thompson said it would not, all lots have road frontage.

J. Jozwiak advised that the proposed plan would meet the 200 foot frontage and over five acres. M. Cochran thinks it meets all the descriptions. CEO Roberts thinks that the point of this whole section is to prevent cul-de-sac developments

and make sure there is proper sewage and appropriate roads. CEO Roberts believes that this Variance and Waiver meets the intent of this matter and recommend the Town Board to grant a waiver under this section, that the plat review subdivision requirements would not be necessary. Chairman Lux noted that all of these parcels would have road access. J. Edbauer advised that this section was to try to keep bigger parcels from getting chopped up. The Code is meant to try to keep it spread out. He would think that because there are two SBL numbers, there could be four on each SBL. Mr. Thompson noted that this would mean there would need to be bigger parcels and go a little smaller but he knows where the end result economically is. Chairman Lux noted that a hardship would be that the 219 Expressway split the parcel. J. Edbauer agreed with that; that that could be a separate parcel but would like to see it manageable. J. Jozwiak noted that if somebody purchased one of the 25-acre parcels and then wanted to split it into smaller parcels meeting the 200-foot frontage; that would be three parcels and questioned whether a stipulation could be put on the parcels so this could not happen. CEO Roberts said there is; he thinks it is three or four years. J. Jozwiak thinks people move to this area to have land and get away from everyone; people don't live close. J. Edbauer's concern is chopping it up smaller and smaller and putting wells in. George Donhauser asked what the five-acre rule is? Chairman Lux stated that he did not know what the five-acre part of it is, but the rule is that land cannot be split more than four times without following the subdivision rules. Mr. Donhauser noted that if it is five acres or more, you can split it as many times as you can get five-acres or more and 200-foot frontage.

Chairman Lux asked if anyone wanted to make a motion to pass this on to the Town Board for their review and Town Attorney review. J. Edbauer made the motion, seconded by J. Jozwiak, to present this to the Town Board so the Town Attorney can review the matter and how the Code is actually written. All in favor. Carried. Secretary Schweikert advised Mr. Thompson that this will go on the Agenda for the April 13th meeting. Mr. Thompson thanked the Board and left the meeting at 7:30 p.m.

ITEM #7: Filighera – Front Yard Setback

Derek Filighera owns the property at S 11737 Allen Road which is the corner lot at Allen and Route 240. A survey of the property was provided to the members and a drawing showing the proposed location for a garage he would like to build. There is 50-feet from the house to the edge of his property and then there is a right of way 10-15 feet off of that. Everything is close to the road. David Filighera advised that this is the old Wittmeyer house that has been in the family for years. Derek Filighera noted that it is on a corner lot so whichever you go, the road is pretty close. One section of the Code 150.50 (A) Front yard: 50 feet, with the exception of a garage minimum requirement for setback from the edge of a right-of-way of 20 feet when approved by the Concord Town Board. Mr. Filighera reviewed his drawing. There is 11-foot from the corner to the property line and then there is a purple shaded area on the survey which is the actual right-of-way; which would give him another 10-15 feet. That should give him more than 20-feet. J. Edbauer asked if the garage could be moved to the other side and Mr. Filighera said no, there's a house there. Years ago, the road came closer to the property so the right-of-way was changed. The house address is on Allen Road. Mr.

Filighera advised that there would be more than 20 feet from the right-of-way in the Code with the approval of the Town Board. Chairman Lux asked CEO Roberts the reason why Mr. Filighera was here. CEO Roberts noted to have the Planning Board make a recommendation to the Town Board to approve the garage to be built with a setback of at least 20 feet minimum; Section 150.50(A). George Donhauser recalled this was done years ago for a parcel on Zoar Valley Road. Mr. Filighera stated that right now there is 23 feet from the right-of-way and it doesn't block Route 240. It is about 90 feet from Route 240. It would not be on the Country right-of-way. There is 11 feet to his property line and then 10-12 feet to the actual right-of-way. M. Cochran asked CEO Roberts if he is familiar with this and if the survey was accurate. CEO Roberts noted it is a survey from 2022. J. Jozwiak questioned if the garage could be turned a little bit he could gain a bit to improve the distance but CEO Roberts noted that he would never reach 50 feet. M. Cochran asked Mr. Filighera to show him the location of the other house he mentioned.

J. Jozwiak made the motion, seconded by B. Luno, to recommend this to the Town Board. All in favor. Carried. Secretary Schweikert advised Mr. Filighera that this would be on the April 13th Town Board agenda. The Filigheras thanked the Board and left the meeting at 7:40 p.m.

ITEM #8: Craneridge Zoning

CEO Roberts has had contact with someone who is in the process of purchasing 28D Ridgeview Lane in Craneridge which is a .49-acre parcel. Our Zoning Map shows Craneridge as R-1. Zone R-1 in our current Code has a minimum acreage of 1 acre so these cluster houses would not be allowed in R-1. CEO Roberts has confirmed that this parcel is part of the Craneridge Homeowners Association and Craneridge has no issue with a new build going on this parcel. The zoning is still controlled by the Town. Secretary Schweikert is in the process of reviewing the Code and Zoning files for the history. Appears it was zoned AR-30 originally and that zoning district does not exist in our current Code. The R-12 district was passed in 1988 and Planning Board Member at that time, John Allan, noted that it was for the individual homes on lots located in Kissing Bridge and can only be built there. The members believe that if the owner wants to build on the lot currently, he would need to follow the R-1 zoning. The parcel is not an acre so he would have to go before the ZBA and ask for an area variance. CEO Roberts noted that all the parcels in Craneridge are zoned R-1 and under the current Code R-1 and would be non-conforming. J. Edbauer noted that it was a hardship because the lot as it was subdivided out years ago was not a buildable lot under the current R-1 zone and this owner did not create the situation. CEO Roberts does not believe the owner will be starting construction soon but is just trying to determine where he could build on the lot. Secretary Schweikert will continue research and advise the members, Town Board and Town Attorney of her findings to remedy this matter.

ITEM #9: Comments from Council Liaison Drake

Council Member Drake, Supervisor Drozd and Town Attorney Attea attended a meeting last Thursday, March 30, 2023, on the 94-c solar project on Genesee

Road. They will continue to have meetings. The project went from 350 megawatt to 250 megawatt. They are still getting property in Concord. They are looking to break ground in late Year 2025 and expect to have it up and running in Year 2027.

Council Member Drake also advised that the Town was just notified that there is a big wind turbine project going on in the North Collins-Collins area and a piece of that is dribbling over into Concord as well. This is on Genesee Road up by the gas transmission plant. There will be a meeting tomorrow at 9:30 a.m.

ITEM #10: Code Update

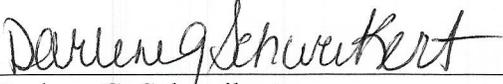
Secretary Schweikert noted that there has been no further input from General Code. General Code should be getting the Town their Editorial and Legal Analysis. Our General Code Editor is Dena. J. Edbauer noted that once we get everything from her, then the Board should start from the beginning and compare her notes and our notes. Items were discussed to be added to the Code: Airbnb, surcharges to be added to tax bills, back yard setback. M. Cochran questioned if the Zoning Map could be linked to this for convenience purposes; CEO Roberts can send the link to the members. This is an Erie County link.

ITEM #11: Business from the Members

a) B. Luno discussed the Schreiber & Winkelman Mining Permit on Genesee Road. They did not renew their mining permit and he asked if the Town would be requiring a reclamation process. The DEC does not have a permit for Schreiber & Winkelman because they were grandfathered; so they will not require any reclamation process. B. Luno noted that there are two mounds of dirt there and it should not be left like this. B. Luno questioned if there was a bond in place for this mining permit. This will need to be researched. The Town Board accepted Schreiber's response that if he did something in the future, he would be starting totally over again with the Town and the DEC; this was put on the record in the Town Board Minutes. Chairman Lux thought the Town should send a copy of the Minutes to the DEC saying that we know that there is no permit with the DEC but want the DEC to know that Schreiber & Winkelman ended their unpermitted use for now.

ITEM #12: Motion to Adjourn

J. Zybert made the motion, seconded by J. Jozwiak, to adjourn the meeting at approximately 8:20 p.m. All in favor. Carried. The next meeting will be Tuesday, May 2, 2023.



Darlene G. Schweikert
Planning Board Secretary