

Town of Albany, New Hampshire  
Planning Board Monthly Meeting Minutes –DRAFT  
PUBLIC HEARING  
Wednesday, March 13, 2013 7:00 P.M.

Next Meeting Wednesday, March 27, 2013 7:00 P.M.

The Planning Board Pubic Hearing Meeting was held at the Albany Town Hall.

Present: Chairman Steve Knox, Vice Chairperson Josephine Howland; Tara Taylor, Adrian Simons, Mike Helmers, David Maudsley, Technical Advisor; Selectmen Representative Jack Rose, Theresa Ann Gallagher, Recording Secretary

Absent: Selectmen Representative Sara Young Knox

Also attending were Town of Albany Attorney, Jae Whitelaw; Town of Albany Code Enforcement Officer, Peter Carbone; Mark and Lori Lundblad, abutters of Almost There Restaurant; Bill Lake; Suzanne Brown from the Institute of Agriculture

Chairperson Steve Knox called the Planning Board Public Hearing to order at 7:00 P.M.

Approval of the Agenda: Chairperson Steve Knox asked for a motion to approve the proposed agenda for the March 13, 2013 Public Hearing meeting. Tara Taylor made a motion to approve the agenda; seconded by Adrian Simons. Chairperson Steve Knox asked all those in favor of accepting the agenda as proposed signify it by saying "Aye". All were in favor. None opposed.

**PUBLIC HEARING 7:05 PM**

This public hearing was called due to previous procedures of public comments regarding the changes on the property of Almost There Restaurant, having been brought before the Planning Board at the monthly meetings, and it was decided to hold a public hearing to be in compliance with RSA 675:6, to provide for the change or expansion of use of the site and include compliance with the Town of Albany Zoning Ordinances. Attorney Jae Whitelaw reminded all present to speak to the Planning Board when called upon and not to each other during the Public Hearing.

Chairman Steve Knox opened the public hearing by presenting the Site Plan Review application which was submitted on February 21, 2013 by Jack Whigham of Almost There Restaurant. Chairman Steve Knox asked the Planning Board for a motion to accept the Site Plan Review application. Tara Taylor made a motion to accept the application; seconded by Adrian Simons. Chairperson Steve Knox asked all those in favor of accepting the Site Plan Review application signify it by saying "Aye". All were in favor. None opposed.

Jack Whigham presented to the Planning Board his Plot Plan, which was approved in 1995. Jack Whigham pointed out the markings he added in red to the Plot Plan indicating where he has put in additional parking spaces, allowing the 25 feet buffer zone to be in compliance with the Town Ordinances, and where he has expanded the patio, which is not more than 1200 square feet. The parking spaces were added about 10 years ago. The patio has been increased to be 48' x 24' = 1,152 square feet, which includes the original size of the patio. The previous size was 40' x 24'. 200

square feet has been added to the originally approved temporary structure. The State of NH owns the islands in front of the property, leaving 75 feet from the center line of Route 16 to the patio.

About 17 years ago Jack Whigham came before the Board of Adjustments to receive a variance for the 20' x 20' side addition to the building. A waiver was approved to have the setback reduced by 8 feet for the addition. Currently the edge of the patio is 75 feet from the center line of Route 16, and 32 feet from the State right-of-way line. The outside eating area seats 44 people and Jack Whigham shuts down the back dining room when it is opened.

Mark and Laurie Lundblad presented their issues:

Laurie Lundblad presented to the Planning Board a copy of the E-mail received from the Liquor Commissioner, stating that The liquor license is for Almost There Restaurant did not allow for serving outside the building and expired in 2002. No liquor license has been issued since that time.

The outside patio was permitted under the liquor license as a permanent assembly for 26 seatings, which is a special events circumstance and not a weekly event.

Parking on top of the septic system is in question.

There is an apartment above the restaurant, which also adds to the septic intake.

Wetlands on the property may have been impacted by a river on the south side that was diverted and now causes an overflow onto the Lundblad's property.

There is garbage on the property behind the restaurant, which can be viewed from the Lundblad's property.

Noise from the outside band on Fridays and Saturdays, and on special occasions is an issue for them causing a nuisance for their home and business. Sometimes it has lasted to 11 PM. The noise is unbearable since they live next door. Even in the winter the noise reaches a decibel of 56. Police have come to the restaurant in the past for control of the noise.

Jack Whigham does not have a plan for the septic system; it was there when he purchased the property, long before 1981.

Jack Whigham stated that the apartment was there when he bought the property; the Town of Albany does not allow apartments, but it is a grandfathered apartment.

Jack Whigham explained that there was a stream alongside his property that was there when he purchased it. It runs down the side of the property and has always flooded in one area which is mostly sand, but it dries up in the spring.

Jack Whigham said he will pick up the trash. There may be customers throwing things out there. He apologized and said it will be cleaned up.

Mark Lundblad presented photos of the property from 2003, indicating how the stream flowed, and compared to where it currently flows as indicated on the Plot Plan. Work was done by Dan Stadanski to add parking spaces and to divert the stream.

In response to the noise issue, Jack Whigham proposed having music on Friday nights from 4 PM to 7 PM, and maybe a little after 7 PM at times; also on Saturdays occasionally, but not every weekend; on Sundays quiet music from 2:30 to 5:30 P.M.; special occasions 2 or 3 times in the summer on Tuesday or Wednesday from 4 PM to 8:30 or 9 PM. Attorney Jae Whitelaw commented that anything more than that would cause him to be in violation of an agreement and he would be shut down.

Mark Lundblad reminded the Planning Board of the Town Noise Ordinance, 4, 1. The Planning Board agreed that the ordinance is ambiguous, because it refers to motor vehicles and noise near the roads or campgrounds; it does not apply to private property. This ordinance is outside the jurisdiction of the Board of Selectmen; Mark and Laurie Lundblad will have to go before the Board of Selectmen to resolve this issue. Mark Lundblad said he did go to the Board of Selectmen, and it did not help. The Planning Board agreed that the Noise Ordinance is vague.

Mark Lundblad has an issue with the 1200 foot expansion limit, which grants Jack Whigham a waiver to having the complete Site Plan Review done, according to the Site Plan Review regulations. Mark Lundblad made an appeal to the Board of Selectmen, which was determined premature.

Mark Lundblad contended that changing parking spaces into an expanded patio is a change in use.

The Albany Planning Board explained that in 1995 a permit was granted for a seasonal patio, and that is what it currently is used for. However, cars were not parked there in the past, so it is not a change in use.

Chairman Steve Knox reviewed the parking issue; Jack Whigham has 57 parking spaces, three of which will be labeled "handicap", which brings him down to 54 parking spaces. The restaurant seats 86, so 46 parking spaces 11' x 18' are needed. The parking spaces are adequate according to state law. An 18' in and out right of way is also needed. The 46 parking space requirement will still be met.

Mark Lundblad commented that taking away the septic area for parking, ducts area, and snow removal area have to be considered before claiming there are enough parking spaces.

Jack Whigham said he had state officials from Concord come to his property to check the septic, and the parking and everything was approved. The Planning Board suggested that he receive a copy of that decision writing. Laurie Lundblad said that she spoke to the officials at the State level about the septic and they had questions about the apartment. They will do an investigation on the property to address that issue.

Laurie Lundblad spoke about the water having bacteria in it from somewhere, and she is concerned about it coming too close to their property. The report she presented was from about 15 years ago, testing the ground water. Mike Helmers asked to read the report, since he is an engineer. The report cites 6 drilled wells located on the Lundblad property, contaminated with benzene compounds, which come from automotive operations. The report does not relate to the artesian well shared by Jack Whigham and Mark Lundblad. Jack Whigham said he has the well tested by the State every quarter, and he has been doing that for the last 25 years. .

In summary:

Chairman Steve Knox summarized the facts: The Planning Board members all agreed that there is no change of use on the property. The Planning Board members all agreed that the expansion is under the 1,200 square feet requirement. The Planning Board members all agreed that the Site Plan Review application meets all other requirements of the Albany Zoning Ordinances, referring to setbacks and parking spaces not being paved. The Planning Board has waived the need of the full Site Plan Review for Almost There Restaurant, according to Site Plan Review Regulations III, B.

The current State Law provides that the Town Planning Board cannot refuse an application as being complete due to missing permits. However, The Planning Board will require certain conditions to be met before the application is approved.

- 1) Jack Whigham will present to the Planning Board an up-to-date Plot Plan drawing indicating the location of the handicap parking spaces marked with dimensions (11' x 18'), the in and out runway (18' or 24'), as well as the parking spaces in the back parking lot drawn with dimensions.
- 2) Jack Whigham will obtain a written statement from the State showing where the septic system is and approval of the parking spaces near or on it, and that the leach field is adequate for the facility with the apartment. The septic system is pumped twice a year. The septic system was repaired in the past.
- 3) Jack Whigham will obtain a statement from Dan, who did the work on his property pertaining to the area where the dirt was pushed back, to explain if there was an irrigation issue and what the remediation plan was to fix the drainage; he should include all the work he did and his observations.
- 4) Mike Helmers, of the Albany Planning Board, will contact the Conservation Commission person, Mr. Nells, and ask him to inspect the property to determine if there were any wetlands impacted when the parking lot was expanded; the Albany Planning Board will receive a written statement from the Conservation Commission to confirm his findings.
- 5) Jack Whigham agreed to have music outside the restaurant on the patio on Friday nights from 4 PM to 7 PM., and also quieter music on Sundays from 2:30 to 5:30 P.M. No music on Saturdays. Music is also provided for special occasions which happens once or twice a year, and takes place from 4 PM to about 9:30 PM. during the summer. Jack Whigham will provide this agreement in writing to the Planning Board.

Regarding the noise issue, the Planning Board suggested having music without amplification. Jack Whigham said the band uses the amplifiers.

Jack Whigham will contact Brad Allen of the DOT at the Conway Patrol Shed, to obtain a copy of his driveway permit for the record.

The Public Hearing closed at 9:08 P.M. The Continuation of this Public Hearing will take place at the Albany Planning Board monthly meeting on April 10, 2013 at 7:00 P.M. at the Albany Town Hall.

Suzanne Brown, of the Institute of Agriculture, was present for consultation. Suzanne has signed a contract with the Albany Conservation Commission to do some work on the Albany Town Forest field. She also would like to purchase some land in Albany to set up an agricultural education area with a working farm and a farm stand.

Suzanne will manage the land to put it into production for haying, and to clean it up with some plantings in the back. Suzanne would like to make this a retail center, having a farm stand called "White Mountains Farm Fresh", which will include produce from local farms. Suzanne presented a map of the property and discussed her plans: a driveway in, and a driveway out, a small farm stand, and a working farm of about 3 acres. The farmers are from Madison and are landscapers by trade, so the area will have a nice look. She would also like to put in a petting zoo. Eventually they will put in a commercial building 25' x 36', a shop with a porch, in the back of the property. Picnic tables will be put in the front. A tractor will be stored in a barn. If it is too difficult to obtain the Driveway Permit, the land will only be farmed this summer and will not have a farm stand.

The Planning Board informed her of the following steps that need to be taken:

- 1) Obtain a State Driveway Permit from Dave Sylvia of District 3 @ 524-6667; they may require paved entrances of 25 feet; the Route 16 roadway will need a right and left turn in that area. The website is DOT.gov and look for "project center".
- 2) Read the sign ordinance and apply for the sign permit.
- 3) A Porter John will be needed for the farm stand business.
- 4) A full Site Plan Review will be required; the current Plot Plan needs to be updated; a septic design and plan will also be needed. These can be obtained from Thorn.
- 5) Building permits will be needed before construction of any buildings.

Theresa will send Suzanne the Site Plan Review application.

Approval of the Minutes: Chairperson Steve Knox asked for a motion to accept the minutes from the February 13, 2013 Planning Board meeting; Vice Chairperson Josephine Howland made a motion to accept the minutes from February 13, 2013 meeting; seconded by Tara Taylor. Chairman Steve Knox asked if there are any errors or omissions. Correction: Tara Taylor gave Theresa some minor corrections to make. Chairperson Steve Knox asked all those in favor of accepting the minutes of the February 13, 2013 meeting, signify it by saying "Aye". All were in favor.

Chairman Steve Knox asked everyone to work on the Master Plan for the next meeting on March 27, 2013.

Adjournment: Chairman Steve Knox asked for a motion to adjourn the meeting at 9:50 P.M. A motion was made by Tara Taylor to adjourn the Planning Board Meeting at 9:50 P.M.; seconded by vice Chairperson Josephine Howland. Passed unanimously.

Respectfully submitted,

*Theresa Ann Gallagher*

Recording Secretary