

**TOWN OF LOVELL
PLANNING BOARD**

**MINUTES OF THE REGULAR MEETING
November 5, 2008**

Members Present: Walter Grzyb, Bill McCormick, Dean Stearns and Chairman Ed Ryan. Lovell CEO, Ron McAllister, was also present.

Members Absent: Paul Bois, Steve Korth and John Donnelly

Noting that there was a quorum of the Planning Board present, Chairman Ryan called the meeting to order at approximately 7:33 PM.

APPROVAL OF THE OCTOBER 1, 2008 MINUTES

A motion was made by Mr. Grzyb to accept the minutes of the October 1, 2008 meeting that had been distributed previously to the Board. Mr. Stearns commented that the minutes relating to the Harmon Conditional Use Application on Page 3, neglected to indicate the action taken by the Board on Mr. Grzyb's motion to approve such application. Mr. McCormick indicated that the Board's unanimous approval of the motion had been inadvertently omitted and that the draft minutes will be amended accordingly.

Mr. Grzyb then made a motion to accept the minutes of the October 1, 2008 meeting, as amended. The Board through a show of hands unanimously approved such motion.

**ITEM #3 – CONDITIONAL USE APPLICATIONS
DAL-RUS CORPORATION (DALLINGER)**

The hearing of this application is a continuance of a preliminary review that had taken place at the October 1, 2008 regular meeting of the Planning Board. At that time, Mr. Dan Daniels of Dan Daniels Building Contractor, Inc., representing the owner corporation, summarized the project as one to raise the structure, move it back from the lake to the point that the lake side of the structure no longer cantilevers over the lake, which would permit a new proper foundation to be constructed on dry land instead of on the existing large rocks that are at the water's edge.

At that time, Chairman Ryan noted for the record and the Applicant that the Lovell Zoning Ordinance requires that in instances such as this where a new foundation is proposed, the structure has to be lifted and it lies within the 100-foot setback from the shoreline, the Board is required to ascertain that the distance that the structure is proposed to be moved back is to the greatest practical extent. He also noted that in order for the Board to make such a decision, it requires that it be provided with revised drawings to scale that would show the flood plain, contour lines, the existence of significant trees, provisions for parking, etc.

Mr. Daniels presented the Board with such drawings in the form of an undated Sketch Plan prepared by Bliss & Associates with a reference number of 08-013 (but which includes reference dates of 10/08 and 10/09/08) that depicts a proposed relocation of the building 20 feet to the East, which would be back from its present lake front location. At that distance, the Sketch Plan indicates that no portion of the structure would cantilever over the lake, there would be a 10 to 12 foot buffer between the structure and the lake and the portion of the structure in the floodplain would be reduced from basically 100% of the structure to about half. In addition, that portion of the structure in the floodplain would only have to be raised two to four feet in order to meet the 100-year target flood elevation.

Chairman Ryan inquired as to why the 20 foot move back could be deemed to be the greatest practical extent by the Applicant, when at the time of a site visit by members of the Board, there appeared to be approximately 41 feet of space available for a relocation. In response, Mr. Daniels cited the following issues:

- Topography -- At a 20 foot set back the building would be about 4 feet higher than it is currently. After 20 feet, the land starts to rise rather quickly and every foot of elevation at the back of the building would add at least a foot to the height of the structure at lakeside. This added height would negatively impact the profile of the building when viewed from the lake.
- Parking – Mr. Daniels believes that at the twenty foot set back, the access/parking loop could still be maintained with the addition of a retaining wall at about the 394' elevation. Beyond that point the land rises dramatically and will require an inordinate amount of fill to build any sort of ingress/egress loop and provide for parking. Stabilizing the fill and controlling erosion would ultimately become problematic.
- Drainage – Mr. Daniels was of the view that once the structure was moved into the higher elevations, the drainage would have to be diverted to the northeasterly side of the structure, which has a rather steep descent directly into the lake. He went on to explain that at the 20 foot set back mark, the run off path could be the same as it has been since 1900 or so when the cabin was constructed, which empties out into a substantial and relatively flat area on the southwesterly side of the building. The advantage of this flat area is that it affords an important degree of percolation/filtration through the earth rather than a direct run off into the lake.

Chairman Ryan then inquired as to why the structure couldn't be moved completely to the other side of the road, thereby moving the entire structure back beyond the flood plain and also beyond the required 100-foot setback from the lake.

Mr. Daniels responded that the corporate owners had already indicated that any major change from this proposed project was not a viable option for them and would therefore

result in the project being downgraded to the available foundation-repair-in-place alternative.

After further discussion, a motion was made by Mr. Grzyb to approve the Conditional Use Application as presented with the additional condition that a retaining wall be constructed at elevation 394 ' to insure continued run off to the southwesterly side of the property and as deemed appropriate to basically maintain at least a modified ingress/egress/parking loop on the property.

Through a show of hands, the Board unanimously approved the motion.

Chairman Ryan noted for the record and for Mr. Daniels that he would have to deal with the State of Maine Department of Environmental Protection regarding erosion control. Chairman Ryan also noted that the Floodplain Management Application for Permit had been received and discussed previously at the October 1, 2008 Planning Board Meeting. There being no further questions or discussion relating to this Application for Permit, Mr. Stearns made a motion to approve such Permit Application, as presented. Through a show of hands, the Board approved such motion.

ITEM #7 – OTHER—ORDINANCE REVISIONS

1. Amend Article 5.2, Nonconformance

The ultimate goal of this proposed amendment was to basically clean-up some of the language in the current Ordinance by eliminating a number of ambiguities that have surfaced in attempting to apply the provisions of this Article 5.2.A.3. The Board discussed the proposed changes as incorporated into the working Draft #1 prepared by Mr. JT Lockman of the SMRPC dated October 10, 2008(which document is attached hereto and incorporated herein by reference in its entirety). Except for the issue described in the following paragraph, the Board appeared to be in agreement with the removal of the descriptive terms of “ *repairs, renovations and modernizations*” as being gratuitous and too all-encompassing” as well as with the language that clarified that in any instance involving a structure in the Shoreland Zone, the relevant provisions of Article 5.2.B and 5.2.C would be controlling over conflicting provisions of Article 5.2.A.

There was however, lively discussion of an additional change that Mr. Lockman had incorporated into the working Draft in Article 5.2.A.3. Restoration and Replacement whereby the restrictive language that had been included in the Ordinance for years i.e.... that any non-conforming structure which was damaged or destroyed by fire or any cause *other than the willful act of the owner or his agent (emphasis added)* may be restored or reconstructed, was eliminated on the basis that the language had no utility. A number of Board members expressed a differing view and believed that the language had major utility because it was forthright

and crystal clear that a non-conforming structure that was destroyed by its owner could not be rebuilt, as a matter of right. Under these circumstances, the owner had the same rights as every other property owner in Lovell i.e. to submit an application for a building permit to the Lovell CEO and if that is denied at that level, the owner has the right to have his case heard by the Lovell Board of Appeals and then onward as specified in Article X of the Lovell Ordinances.

After extended discussion on the subject, Chairman Ryan indicated that he would revisit the subject with Mr. J T Lockman and have him develop further language dealing with the essence of the current ordinance for further consideration of the Board.

As a result the board agreed to table this item until the next regular meeting of the Board on December 3, 2008.

2. Amend Article II Definitions

Setbacks for new buildings from Streets

This amendment derives from a suggestion initially raised by Messers. Bliss of Bliss and Associates and Nista of New Suncook Real Estate and the resulting on going discussions amongst the Board over the past several months. The concept is to maintain adherence to the spirit of the Lovell Zoning Ordinance without imposing an undue hardship and expense on an applicant by requiring that a surveyor registered in Maine depict on a Plan the centerline of the right of way of the street adjacent to it. Or by placing an unnecessary burden on the Lovell CEO to measure the setback from an oft times arbitrarily defined edge of the traveled portion of the street. The view has been expressed that the entire process could be simplified by requiring the setback to be determined from the centerline of the traveled way.

A motion was made by Mr.Grzyb to approve the amendment as set forth in the document entitled *Amendments to Zoning, Setback Measurements - Draft #2 dated October 10, 2008* prepared by J.T. Lockman of the SMRPC and is attached hereto and incorporated herein in its entirety by reference.

There was some discussion brought up by Mr. McCormick as to whether Messers. Bliss and Nista were suggesting that the Town setback requirement should be increased to some extent to compensate for half of the width of the traveled way that is being lost because using the reference point at the center of the traveled way will effectively be decreasing the setback currently in effect from 75 feet to say only 63 feet (on a 24 foot wide traveled way).

After due discussion, the consensus of the Board was that such an adjustment was not necessary since the suggested amendment was intended to reinstate the centerline measurement that had been the ordinance standard prior to the current ordinance being amended in 2002. Lovell CEO McAllister echoed this perspective.

The motion made by Mr. Grzyb was unanimously approved by the Board through a show of hands.

ITEM #6 – NEW BUSINESS – BOARD PROCEDURE

Chairman Ryan explained that in order to ease the burden on the individual Board Members regarding the need for a Board site visit for the majority of applications that come before the Board, within the last year or so, a decision was made that generally all site visits would be the responsibility of Chairman Ryan and CEO McAllister and that they would report their findings back to the Board.

Recently, a few instances have arisen where other Board members expressed an interest in attending such site reviews and at least one other Board member felt uncomfortable voting without having had the opportunity to actually see the proposed project first hand. As a result, Chairman Ryan polled the Board regarding their preference for the future. The Board unanimously concluded that they would prefer to attend these site visits, en masse to the extent possible, realizing full well that the preponderance of these visits would have to take place on weekends to accommodate the greatest number of Board Members. CEO McAllister indicated that he would be available to escort those Board members that were unable to attend the scheduled site walk at another appointed time.

There being no further business, Chairman Ryan called for a motion to adjourn, which was made by Mr. Stearns and unanimously approved by the Board at 8:57 PM.

Respectfully submitted,

Bill McCormick
Planning Board Recording Secretary

