

## MINUTES OF THE PLANNING BOARD PUBLIC HEARING

June 10, 2004

The meeting was called to order at 7:02 p.m. by Co-chair Bill Stephens. Members present were Dan Miller, Gisela Walker, Ursula Nebiker, Trevor Mackie and Charlotte Dewey. Due to a conflict of interest, Ms. Dewey did not attend the first two hearings. Others present were Donald McLaughlin, Ruth Cannavo, Suzanne Willard, Ray Purinton, Perry Schwarzer, Philip Banks, Jennifer Denbow-Deraway, Don and Joe Schechterle, Earl Bowen, Diego Rivera, John Crowley, and Larry and Ruth Werner.

1. The first hearing scheduled was for the Warfield House.

After the Board was told that Gisela Walker had not yet been sworn in by the Town Clerk, Mr. Stephens said that the Board could exercise their right of necessity because this was the second scheduled hearing of the Warfield case and, with the Board's agreement, the hearing could proceed. The Board agreed unanimously to continue the hearing.

Mr. Stephens began by reading the notice of the hearing for the special permit as it appeared in the West County News.

Donald McLaughlin, general manager for the Warfield House, told the Board of his plans to construct a pavilion over an existing 40' x 80' concrete slab. He informed the Board that he had been issued a permit by the Building Inspector who told him to go ahead. Only after he began construction was he told that he would first need a special permit from the Planning Board in order to continue. Since construction had already begun, Mr. McLaughlin said he now wanted to do things by the book and right a previous wrong by obtaining a special permit for the pavilion. He wanted it known that he already rescheduled two functions to be held inside instead of outside so as not to use the newly-constructed pavilion before having obtained the necessary special permit.

Mr. Mackie asked about lighting. Mr. McLaughlin explained he would be using eight ceiling fans with lights inside the pavilion and no additional lighting.

Mr. Stephens asked him about the hours and times of year of operation. Mr. McLaughlin said that he would be operating from May until the end of October and said that ninety nine percent of the weddings were held on Saturdays. There were eleven functions scheduled for this year.

Mrs. Nebiker inquired as to what time at night the functions would end, and was told that the music must end by 11:00 p.m. Mrs. Cannavo reminded Mr. McLaughlin that the no smoking law will take effect on July 15. However, smoking will be permitted if a structure is open on three sides, but not if the sides are closed.

Ray Purinton, an abutter to the Warfield House, indicated his full support for the addition to the Warfield House. He remarked that the structure looks nice, and hoped the Board would approve the project.

A motion was made to approve the application by Warfield House for the construction of a wood framed roof for a pavilion over a 40' x 80' concrete slab, including an attached 10' x 80' building, enclosing bathrooms, bar space and plating area.

The motion was moved and seconded and passed unanimously.

Mr. Stephens explained that once approved, the Board has fourteen days to get the notice of decision to the Town Clerk, at which time it will go through a twenty day appeal period.

Mrs. Walker asked if the pavilion could be used now.

Mr. Stephens said that it could once it was signed by the Town Clerk and filed in the registry and with the Building Inspector.

Mr. McLaughlin thanked the Board and reminded everybody that the Warfield House is now open for breakfast Tuesday through Saturday and brunch on Sundays will be coming soon.

He was asked if he had a timeline on the new sign, to which he replied that it would be ready in two weeks. Mr. Stephens asked that he use low voltage back lighting on the sign.

2. The next hearing was for Jennifer Denbow-Deraway.

Mr. Stephens read the hearing notice and asked Mrs. Denbow-Deraway to tell the Board what she had in mind. She handed out copies of her floor plan to the Board members.

She explained that she planned on having inside seating but no waitresses or dishes, and that it would mostly be an take out business, serving mostly pastries, donuts and bagels that would have been made off the premises. In the afternoon, she would like to have fresh salads -- tuna, egg, etc. -- and sandwiches. Her hours of operation would be 5:30 am to 2:00 p.m, and possibly as late as 9:00 p.m. in the future. She had already contacted the Board of Health, but was told to start with the Planning Board.

The parking situation was discussed in detail, as the proposed driveway would be too narrow for two cars to pass each other. The Board agreed it would be best to take a short recess and make a site visit to get the exact measurements of the parking area.

Mr. Schwartzer heartily objected, stating that the Board did not need to have a parking plan to approve the application for the special permit. However, the Board felt it best to make the site visit and recessed at 8:20 to do so.

The Board reconvened at 8:35. The parking measurements and signage were discussed. Mr. Stephens reminded Mrs. Denbow-Deraway that any signs should not obstruct the view in any way.

A motion was made to grant Jennifer Denbow-Deraway a special permit to open a coffee/deli/gift shop, located at 90-2 Main Street, Charlemont, MA 01339, the hours of operation to be 5:00 a.m. until 9:00 p.m., seven days a week, and to attach up to a 15'x30' deck to the south side on the southwest corner of the building. The signage will include a 4 1/2' x 4 1/2' sign located on the grassy area at the northwest corner of the building so as to not obstruct traffic lines of patrons, and a 4' x 4 1/2' sign at the east and west ends of the building. Existing parking to remain as is, with a sign limiting parking to 15 minutes between 9:00 a.m and 5:00 p.m. Additional parking to be on the south side of the building, per attached plan. All employees are to park in the rear of the building only. Signage to be wooden with down wash lighting and of minimum wattage, and the dumpster on the property to be screened with stockade fencing.

The motion was moved and seconded and passed unanimously.

The Board wished Mrs. Denbow-Deraway good luck in her business venture.

### 3. Schechterle gravel pit extension permit.

Mr. Stephens read the public hearing notice for the extension of the Schechterle gravel pit special permit. He reminded the Schechterles that their permit to operate a gravel pit had expired and they have been operating without a permit for the past year. The site visit in June of 2003 had revealed that the gravel operation was in compliance with the conditions of the special permit and that there were no problems found with the gravel operation. Mr. Schechterle was asked what his plans were at this point regarding the continued reclamation of property and gravel removal.

He explained that the Board had given him a five year extension on his special permit and had asked him to clean up the banks, but that he had been laid up for three of those five years. He claimed that he did in fact look into hauling out the sand, gravel and fill, but the distance was too far due to not being able to use the bridge on North River Road, and it would take 50 plus trucks. So he decided to stick with a few trucks a day, otherwise the banks would have been cleaned up by now. Mr. Schechterle figured that the pit would be cleaned up in another 5 years. When Mr. Stephens asked if this would be his last extension, Mr. Schechterle said he hoped it would be.

Mr. Mackie mentioned he had done a site visit and had taken aerial photos of the site, and asked about the slope mentioned in the permit. The slope is now pretty steep, and the Board had asked that the slope be corrected, as it is a safety issue.

Mr. Schechterle stated that the slope is steeper now than it will be when finished. Mr. Stephens asked if the operation was registered with the Bureau of Mines, to which Mr. Schechterle replied that he wasn't sure but he thought that the lawyer they had engaged when they first opened the mine had known all the regulations. Don Schechterle was informed that The Planning Board will now be requiring all gravel pit operations to be registered with the Bureau of Mines, and that the Schechterles would need to get their operation registered with them.

The floor was then turned over to the abutters who were present at the hearing.

John Crowley of 199 North River Rd, abutter to the south side of the operation, complained that the trucks from the gravel pit come barreling down Colrain Road and screech to a halt next to his house. The noise and the impact on Colrain Road is very unpleasant. He said that if this permit is extended again, he would like to see some restrictions written into the permit, such as the number of trucks per day, and operations limited to weekdays only.

Larry Werner (abutter) would not like to see another rock crusher. The previous one made him sick from the fumes of the diesel engine, and the crusher was very noisy. He would also like to see the land reclaimed, in the interest of the abutters and everyone in the community.

Diego Rivera (abutter) was concerned about so many trucks driving back and forth and the noise and dust they created.

Ruth Werner was concerned that the trucks don't slow down when they leave the gravel pit and make the right-hand turn on to North River Road from Colrain Road. She was concerned that there is no stop sign at the end of the road.

Mr. Stephens pointed out that the Board cannot limit the number of trucks used in the operation, but requested that Mr. Schechterle please ask his truck drivers to slow down in the interest of the abutters and that he not put a crusher on the Charlemont side of his site.

Don Schechterle stated that when the crusher was running before, it was noisy because he was crushing two foot stones. He disagreed that dust was an issue, saying that there was no dust on a car parked close by to the site on a previous crushing operation. He also stated that there were not many trucks going up to his pit lately.

Mr. Stephens read the conditions of the original permit, dated June 2, 1998, and suggested that the Schechterles create a buffer of gravel above the Werner property and add additional living screen.

John Crowley asked what the abutters' recourse would be if the Board were to extend the permit for another five years?

Mr. Stephens stated that the Schechterles have met the conditions of the Special Permit, and have been asked to keep the impact down. Some responsibility lies with the truckers hauling the gravel out of the pit, and the Board cannot police them. Mr. Stephens again told the Schechterles that if they wanted the Planning Board to consider extending their special permit, then they should directly minimize the impact to the abutters.

Joseph Schechterle said he would talk to the truck drivers, but that John Crowley was not an abutter, and anyway, his hedge blocks the view. Mr. Stephens said that Mr. Crowley was still impacted.

Mr. Schwartzer felt that the permit should not be renewed until they start reclaiming the property as indicated in their Special Permit. He said that the Board should do another site visit, and a new permit issued only if the property has begun to be reclaimed.

Ms. Dewey stated that at the last site visit everything was in compliance except the steep slope of the sand bank. She said that it was difficult to reclaim the property until it was finished.

Mr. Stephens suggested that if Don Schechterle wants the Planning Board to consider extending the permit, they may consider stopping operations at noon on Saturdays.

Joe Schechterle said that he could not do that, as Saturday was his busiest day. He was then asked if he'd be willing to give up one weekday. He said it would be hard to give up any given weekday, as the pit operated on an as-needed basis. He maintained that some weeks there were no trucks at all, and others there are 15-20. He would go along with only working half a day any other day.

Earl Bowen cautioned the Schechterles about giving up any hours of operation.

Mr. Stephens asked the Board how they would like to proceed. Mr. Miller suggested a vote on the extension and stated that although the applicants have been in compliance thus far, they should post a speed limit on their road. Mr. Dewey concurred with that, but said that because the crusher is in Colrain, there was really nothing the Board could do about it. Mrs. Nebiker asked the Schechterles to request their drivers to slow down.

Mr. Stephens further asked the Schechterles to minimize the impact to their neighbors, and if they need to run a crusher, they should lease an electric one instead of a diesel to minimize the smell. He also asked that they wrap up the operation soon, and that they register with the Bureau of Mines.

A motion was made to grant an extension to Don Schechterle for the special permit to operate a gravel pit on Colrain Road in Charlemont, with the additional condition added to the permit that a 4 foot high metal fence be installed along the top of the ridgeline of the existing sand pit, on the south and west sides of the pit, for safety.

The motion was moved and seconded, and passed unanimously.

The Schechterles were further told to come in for a special permit before the existing permit expires or they will be shut down next time.

The Board took a short recess.

4. The final issue before the board was the Cease and Desist order against Earl Bowen. Ms. Dewey informed the Board that she and Mr. Stephens had had a conference call on Monday with Town Counsel, but as yet do not have the final language for the C&D. However, barring anything unforeseen happening, the Board should have a C&D filed on Monday (the 14th).

Town Counsel has had recent discussions with Mr. Bowen's attorney, but the nature of the discussions were unknown to the Board. The Board expected to hear from Town Counsel tomorrow. It was communicated to Town Counsel that their slow response to this situation thus far has been unacceptable, and that the Board expects a quicker response in the future.

Mr. Banks expressed concern that the Board is in the process of a Cease and Desist, yet the attorneys are still talking. Mr Stephens hoped that the Cease and Desist order would force communication, and that the Board could always rescind the order if Mr. Bowen were to come back to the table for a Special Permit. He reiterated that the difference between the original permit issued to Paulson and the conditions that the Board had drawn up differ very little, with the exception of the crusher, limiting hours of operation, and registering with the Bureau of Mines.

Mr. Banks informed the Board that his attorney suggested making bylaws to different restrictions to existing permits. His attorney gave him the names of some towns that have already accepted these bylaws.

After some discussion on this, the next meeting date was determined to be July 1st.

The Board reviewed the mail and adjourned at 11:02 p.m.

Respectfully Submitted,

Approved by:  
Planning Board

Carlene Millett  
Secretary to the Boards