

**Brentwood Planning Board
Minutes – September 15, 2011**

Members Present:	Bruce Stevens, Chairman	John Kennedy, Vice Chair
	Doug Brenner, Secretary	Mike Hubbard, BOS rep
	Kevin Johnston	Bob Magnusson
	Rob Wofchuck	Glenn Greenwood, Circuit Rider Planner

Chairman Stevens opened the meeting at 7:08

Minutes – Mail – Board Business

The manifest was signed.

Motion made by Kennedy, 2nd by Johnston to approve the September 1 minutes: the motion carried with Hubbard abstaining as he was not present.

Continued Hearing: Site Plan Review Brentwood Distribution tax maps 205.019 & 205.019.001

Present were applicant Marco Carrier and Erik Saari of Altus Engineering. There were no abutters present. Two Request for Proposals for a safety study of the intersection of Pine Rd and Rte 27 were dropped off at the PB office this afternoon. One was from Vanasse, Hangen, Brustlin, Inc, (VHB) and the other from Stephen G. Pernaw & Company, Inc. Brenner arrived at this time. These were distributed to members, Greenwood and the applicant. Stevens suggested that time be allowed for all to review, and recommended that the PB schedule a meeting Thursday, September 22 to discuss with the applicant the results of the studies. The applicant agreed to meet with the Board next week.

Motion made by Kennedy, 2nd by Hubbard to hold a PB meeting on September 22, at 7:00 pm to discuss the proposals and make a decision on them: all were in favor.

Stevens asked the applicant if there were any other aspects of the application that they wanted to discuss tonight, and Carrier said he thought the only outstanding issue was the study.

Motion made by Kennedy, 2nd by Hubbard to continue this hearing to September 22 at 7:00 pm: all were in favor. Carrier and Saari thanked the Board for their time.

New Hearing: The Planning Board will consider revocation of the of the approved site plan titled Site Plan of Land in Brentwood, NH Drawn for Daniel E. Musso, 149 Crawley Falls Rd, Brentwood, NH, referenced by tax map 217.002.

Present was Dan Musso and Harriet Cady, who spoke on Musso's behalf. Stevens stated that this is a legally noticed hearing, and that all abutters were notified of the possible revocation of Musso's site plan that was approved by the PB, and recorded at the registry in 1997. He said they have had several meetings with Musso and his representative over the past few months. Stevens said that on May 24, 2011 the BOS sent Musso a letter requesting that the site be in compliance, or to meet with Greenwood before the June 16 PB meeting. On May 31 the PB received a letter from Musso that said they could not meet the June 16 deadline, and asked to be rescheduled to late July or early August. On June 7 the PB sent a certified letter to Musso, asking that he attend the August 4th PB meeting. The letter also requested that the site either be in compliance by August 4, or bring some information for an application for an amendment to his plan. At the August 4 PB meeting that both Musso and Cady attended, the PB felt that the site was not compliant with the approved plan, and voted

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to hold this meeting tonight, to consider revoking the plan that was approved back in 1997, unless they were to amend the plan. Stevens said they have had many discussions back and forth, and the PB will answer questions and take any input and evidence they may have as to how they feel they comply or not comply with the site plan. After this discussion the Board will determine what action to take.

Stevens said there are two items that violate the previously approved plan. Stevens and Greenwood drove by the site Wednesday, Sept 14, and saw the steel container on the site that is not shown on the plan. They also saw 3 cars parked within the town right-of-way.

Cady said she has asked the town, on several occasions, to show her their survey of the road. She said Musso parks on his land, abutting his garage, between the No Parking Signs. She said no one has proved that it isn't his property, stating he has paid taxes on it for years, and is not in violation of his site plan for parking. She said the legal notice is supposed to state what violations, and the only thing in the legal notice is the building, and nothing about parking. Stevens said the PB may rebut some of the comments, but said he wanted to afford Cady every opportunity to put anything on the table that they feel is applicable to the discussion at hand tonight. Cady said the container is a temporary piece of equipment, which has a For Sale sign on it, and is not a permanent structure on the site, so they say they are not in violation of the site plan. She said that until the Town can show her their survey of where the road is, the town never bought that land. Stevens said that is not the Planning Board's jurisdiction, nor do they have authority to determine where a ROW would be. He said the PB goes by the survey, done by a licensed professional, which Musso had done for the recorded plan, and that lays out the extent of his property. He said it is the Board's contention that they are parking beyond that, westerly of the property line. Cady said the plan shows about twenty feet between the garage and the road, she said the surveyor pin shows where the line is for that property along the road, and he has every right to park on that twenty feet. Stevens read a note from the recorded plan that said "This property is in the Shoreline Protection District, vehicle storage is limited to those areas delineated on this plan". Cady said this has nothing to do with what they are here for, the PB advertised, and they are here because they violated the building. St. Hilaire read a portion of the legal notice that said "for having a structure, and established use of land which fails to conform to the statements, plans or specifications upon which the approval was based". St. Hilaire said the parking is the established use of land. Stevens said the property bounds are mute for the purposes of this hearing, they can discuss that with the selectmen, or maybe come back before this Board with an amended plan, from a licensed land surveyor, showing bounds that are somewhat different than what they are presented tonight. Cady said the bounds are his bounds, they are recorded. Stevens said they approved the plan based on the surveyor's plan and statements and conditions associated with that plan. He they are here tonight to let the property owner present any evidence they have, that it is the Board's assertion that they are not meeting the use, as set forth on the plan. Cady said "and our assertion is that we are". Cady read the minutes from 1997 where the PB approved the plan. She said she said the plans show overflow parking, other than cars that come in and out or are Musso's own vehicles or family that live there, there are no vehicles for repair stored on site for any length of time. She said the parking is not in any of the wetland area when he parks them. Stevens said that is a separate issue to the parking issue, saying they contend that he be in compliance by sticking to the number of vehicles shown on the plan. Cady said there is no number of vehicles shown on the plan, and no number of vehicles that were ever limited in the PB minutes. She said the Board never stated how many vehicles they could have. Stevens said they are delineated by a space shown, and there are 4 spots. He said they are afforded reasonable commercial use of the property, but because of the size, there is a limitation as to what is reasonable to store. Cady said the PB minutes did not limit him to any vehicles, nor does the plan say that those four spaces are all the vehicles he can have on the land. Stevens asked if they have any other concerns, and Cady said that she

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does not believe the PB put in the legal notice that they were parking, but she knows this has been a complaint, and she said they have made sure Musso has parked on his land, between the No Parking sign and the garage. Stevens said Musso indicated what he wanted for parking and the PB approved it, and signed and recorded the plan. He said the notice clearly states that they are going to examine any issues that relate to the use of the property, and parking is one of them. Cady asked if the Board knew of any court in NH that has told an owner how many vehicles they may own? Stevens said their purpose tonight is, are they in compliance with their plan, or not. He said if they are not, and they wish to engage the PB help in making the plan compliant with an addendum to the plan, he said the Board is more than willing to do that. He said they have unfettered access to Glenn Greenwood, our professional planner at no cost to them, they can meet with the PB during any meeting night, and they will have general discussion toward amending the plan. Stevens said tonight the purpose is to determine if the use complies with the approved plan. Stevens asked for any abutter input and Beatrice Gardner said they were here because they did not know what this was about. She does not know if this affects her property, and Stevens said they are not considering any further approvals at this time, but the town is required to notice abutters. He said they want to keep the discussion tonight to the compliance to the plan.

Jim Johnson was present and said he is bothered by the PB going after Musso when there are privileges given to people within the town, and town politicians. Stevens said there are venues for that, and said the BOS are best for those concerns. Johnson said in May of 2005 Musso applied to the state for repair plates, and the PB response was that the Department of Safety defer this permit renewal. He read "The town is currently attempting to resolve site compliance issues through litigation and at present cannot make a determination that the site complies with all town requirements". Johnson said the town was not in litigation with Musso, but the Fireman's Association was, over a parcel of land. He said this is a false statement on a state application that denied his right to repair plates. Greenwood said there is an ample appeal period for that request, that has long past. Johnson said this is going to civil court; he said that two years later the selectmen used the same language. Stevens said the Board has been quite clear that tonight is to talk about the compliance issue only.

Brian West was present, representing the Fire Association (an abutter) and said there was litigation between Musso and the Fire Association over who owned the property and the Association was attempting to get the storage container removed from their property, and that was two, three years ago. He said he would hesitate to say the unit is on the property "short term". Cady asked to see a letter from the Firemen Association that they assigned him (West) to speak for the Association, or a vote of their minutes. West said they voted at the last meeting to authorize him to speak on their behalf.

Jay Hipke of South Road questioned the metal container saying it is not permanent, is made to move. Stevens said that the zoning ordinance does not use the word permanent.

Cady said she believes that the PB never told Musso that he could have so many vehicles, and the PB never did limit the vehicles. She also said that customers come and go, and they never know who is coming in and out. No business would tell a customer to drive away because they have 4 vehicles, or 6 vehicles. Cady said he has a right to his registered vehicles, and she again said there is nothing on the plan limiting the amount of vehicles.

Stevens said there has been much discussion and PB believes the 4 vehicle limitation is what needs to happen. He said the Board's purpose here is to try to work with the business owner, to help him be compliant and

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Stevens said the Board will work with Musso to amend the plan, if he will just say to them that they would like to go before the Board and amend the plan to allow a different number of vehicles, or different types of uses. He said this is the opportune time to make that statement if that is their intent, and it would have a bearing on this meeting. Cady said the Board would love to review this plan so they can limit him, but the Board never did in the original minutes or on the plan that they signed. She maintains that the court is going to say “You have no limitation on the number of vehicles you can have”. Stevens said he is going to close the meeting to public comment at this point, and asked Cady one more time, “do you wish to work with the Board to amend your plan, if that is your intent, or not your intent”. Cady said Musso “has a plan that has been approved, he is abiding by that plan, there is no reason for Mr. Musso to amend this”.

Taxpayer Charlton Swasey (not a resident) was present and said he agrees with Cady about the car issue, that with any legal hearing, the issues should be provided to Musso specific, should be provided with date and times. He said the Board has not given Musso anything to respond to.

Stevens closed the public discussion to allow the board to discuss this and Brenner said there have been problems, complaints and lots of cars there and the Board is not wrong to bring up the parking issue. He added that this site is also a residence, and there is a valid argument that a certain amount of parking would be associated with that. Greenwood said that site plans serve as an agreement between the property owner and the Town. He said in 1997 Musso agreed that it was adequate for his business to have two customer parking spaces and two overflow customer parking spaces, and that those would be the location of cars for his business. There is nothing on the site plan that allows commercial activity to park in the right-of-way, and in Brentwood there is nothing that allows a resident to continually park their car in the right-of-way. Greenwood said it is within the Selectmen’s right to say they don’t want cars parked in the right-of-way any longer. He said he is comfortable with the PB acting on this site plan, with the agreement with Musso. If Musso wants to change that agreement, he has been told many times the method for doing that, and the Board has been really patient. Kennedy said to take out of the argument that there are three or four cars, whether in the right-of-way or on personal property, they are not on the site plan. He said he would expect there to be some personal cars on the site. He said the container has been around at least three years. Wofchuck asked if it was Musso’s contention that there are only 4 commercial use vehicles on the spot at any one time, and all the rest are private, or is it that they are allowed to have more than 4. He said it is clear that they are only allowed 4 customer vehicles. Cady said the Supreme Court has ruled on due process, that proper notice be sent, and she said she is reserving her right that the PB did not give due process legal notice. Stevens said they are asking specifically about the number of vehicles. Cady said they PB never said on the site plan that there could only be four vehicles, the PB only said where the vehicles be parked shown on the site plan. Wofchuck said his question has been answered, that they think they can have as many as they want. Stevens said the number of parking spaces, or storage spaces on the property pertain to the size, topography, how the site works, and if they came in with an amended plan, the PB would apply the standards in the zoning book to the new request for a greater number of vehicles. Kevin Johnston said that parking is only one issue, the other is the storage container. Stevens said the number of vehicles would be ascertained to applying our planning standards to the size of the property, the layout and how everything works on the site, safety issues, etc., this is something the PB evaluates during the process. He said that is why the PB has not been out to give Musso a hard time, we are trying to work with him at every level, to say, we know the property, we have a survey, we know the reasonable standards that is applied to every business in town and come in and tell us what they want to do and they will try to figure out what the best use of the property can be made in a safe, reasonable manner that our book allows, and we could get into that discussion if we had an application for an amendment or addendum. Brenner said what he is hearing is that they (Musso) don’t care about the plan,

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that they can have as many as they want and there should be no limit as far as what they want. He said he is not hearing anything that brings it at all close with trying to work within the way the plan is laid out, and he was hoping to hear something like that. Stevens said he was hoping for that the past couple years. Hubbard and Kevin Johnston said they are hearing the same thing. Greenwood said the district boundary for the Shoreland Protection District is 300 feet, and the building setback within that district is 150 feet. Kennedy said that at the last meeting Cady told the Board that this was not a legal site plan, so his question is whether or not it is a legal site plan? Stevens read the RSA's regarding this, and asked Greenwood if the applicant could withdraw a recorded plan, and Greenwood said that could be run by the town attorney. Cady said that after 5 years, something that has been approved and not challenged becomes legal.

Kevin Johnston said it is both the parking and the building; that they do not work at all with the Board. Stevens said they are not asking them to move the building, but to bring the site plan into compliance which would entail moving the building.

Magnusson asked about the right-of-way, and asked if they were debating about whether vehicles are parked between the pavement and property line, or between the shed and property line. Stevens said they are parking beyond the edge of the property. He said that Cady has asked for proof of where the town road is, but for the purposes of the application, the PB takes the word of the applicant's licensed surveyor or engineer who submitted the plan to the Board. Stevens said if Cady felt the property line on the plan was drawn in error, they could go back to a licensed land surveyor and have them submit a plan that would show a different line. He said he is not sure if it would be reasonable, in terms of our parking standards, to show parking on that plan along the edge of roadway, but that is something that could be discussed in a noticed hearing. Stevens said these are discussions the PB would love to have, there is a process, the Board will work with him, but they need participation from the applicant. Cady said Musso is complying with what was allowed in 1997, and he will not change the plan, which would then limit him, being able to do business.

Wofchuck asked if they had come in with a new plan and was not satisfactory or was rejected, would that negate the existing plan, and Stevens said no, they have a recorded plan.

Brenner stated that Cady said the structure was temporary and for sale. He said if that is something that will be gone shortly, then it would be different. He said he didn't hear that and would be curious to know what the plan is for the structure, whether they can make a commitment. Stevens said that was implicit in holding this hearing and noticing the non-compliance, and we didn't hear evidence to the contrary. Johnston said it should be removed, not sold, but taken away, and sell it somewhere else. Brenner asked if that is something they might be willing to do? Stevens said they have had that discussion. Stevens said that now the PB is waiting to hear from the applicant, either a statement that they are going to bring the site activity into compliance with the plan, or they can attempt to work with the Town with an amended plan. He said that this may not even require a new survey, but it can be discussed with the Board.

Motion made by Johnston to revoke the site plan. Stevens read a letter to be voted upon (on file) that states "On September 15, 2011, at their duly noticed public hearing, the Brentwood Planning Board voted to revoke the approval of plan titled Site Plan of Land in Brentwood, NH as drawn for Daniel E. Musso, 149 Crawley Falls Road, Brentwood, NH 03833 on December 19, 1996. The Plan was recorded in the Rockingham County Registry of Deeds as Plan D 2-5373 and filed on April 17, 1997 at 12:29 pm. The approval was revoked for the following reasons:

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1. For having a structure, specifically a storage container, which fails to conform to the statements, plans or specifications upon which the approval was based.
2. For having vehicle parking which fails to conform to the statements, plans or specifications upon which the approval was based.”

Brenner said the PB has been very specific about what they have to hear, that the structure is going to be gone, and before the voting he would like to know if they have anything else to say.

Stevens asked Musso if at this point in process of the meeting and hearing, if he wished to make any representation that he wished to proceed with an amended site plan. Cady said she would look at the site map that the PB has right there, and with what Greenwood said about being 300 feet from the shoreland, the PB is basically saying they would put him out of business, she said he cannot comply with 300 feet. Greenwood said he was asked by a Board member what the district boundary was, and it is 300 linear distance from the river. Greenwood said the Shoreland Protection ordinance was in place when Musso got his approval, it was adopted in 1991, and the site plan came through in 1996. Wofchuck asked for confirmation that the specific violations were being read into the motion, and Stevens said yes. The motion was 2nd by Wofchuck. The motion passed by unanimous vote.

Stevens signed the Notice of Decision for the Revocation of the above mentioned site plan. The Notice of Decision was presented to Musso, who would not take it, but indicated it be given to Cady by pointing his finger toward’s her, so it was given to Cady and a copy kept on file.

Cady asked if they had a typed decision, was this a foregone decision. Stevens closed the hearing at this point. Stevens said the decision only covers the same two basic points that were noticed and were up for discussion all night. He said this Board does not meet every day, so they had this ready.

Board Business

The Board is in receipt of a notice of a public hearing to be held by the Epping Planning Board for Sig Sauer, for the addition of a business sign.

The Board is in receipt of letter from SAT 33, requesting the release of their cash bond being held, in the amount of \$17,448.56, plus. The request is being made because they no longer own the property, which is referenced by tax map 205.019.001.

Motion made by Hubbard 2nd by Magnusson to not release the bond until Brentwood Distribution, who now owns the land is before the Board with a site plan, posts a new bond for the same project: all were in favor.

Motion to adjourn at 8:45 made by Johnston, 2nd by Stevens to adjourn: all were in favor.

Respectfully Submitted,

Kathy St. Hilaire,
Administrative Assistant
Brentwood Planning Board