

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, December 18, 2023

- Call to Order:** Chair Denis Hebert called the December 18, 2023, meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Russ Cooke; Ben Johnson; and Peter Welch; Alternate Board member, Jill Semprini; Board of Selectmen's Representative, Bob Blonigan; Town Planner, John Krebs and Jane Kendall, Recorder (remotely)
- Absent:** Board Members: Russ Cooke; Ben Johnson; Jim Weiner; Alternate Board member, Rick Stern
- Public Guests:** Meiliege Black; Susan Hargrove; Jay McManus with Benzo Developers; Robert "Guy" Young, Jr.; Moe VonderPol with TF Moran; Chief Mike Bilodeau

I) Preliminary Discussion

- A) Regarding a Home Hair Salon business at 62 Little Bay Road Map 9, Lot -B owned by Susan Hargrove

Chair Hebert announced rules and procedures for comments during public meetings.

Chair Hebert announced that Board member, Ben Johnson had recused himself as his company, North and South construction would be doing construction.

Chair Hebert announced that there would be no voting on preliminary discussions, but Alternate member, Jill Semprini would be filling in to vote if there was anything else to vote on because the Board was short of two members who were out.

Jay McManus with Benzo Developers appeared before the Board to represent Susan Hargrove who was looking to remove the doors from her existing garage to turn it into a two-chair hair salon for Ms. Hargrove with no other employees.

Mr. McManus passed out the business proposal and a drawing of the layout., and stated that they would install hair traps according to code so that the existing septic system and leach field would not require any further upgrades.

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Board member, Russ Cooke asked what the difference was between Home Business and Home Occupation. Chair Hebert replied that Home Occupation was for one employee, and a Home Business may have more than one employee.

Town Planner, John Krebs noted that hair salons were listed as permitted for Home Occupation, but not under Home Business.

Mr. Cooke asked if the existing septic system had been designed for their four-bedroom home. Mr. McManus replied that it was, and they would be tying into that system with a gravity feed. The Board asked that Mr. McManus provide the size of the septic tank.

Chair Hebert read the requirements of a Home Business under Z40, and stated that stated that the principal operator must reside on the premises, with no more than 50% of their floor space occupied by the business, and that the business must stop if they left.

Chair Hebert said that they would require a conditional use permit, and site review by the Planning Board to determine if the size and location met the requirements.

Chair Hebert went on to say that no display or storage of goods were allowed to be visible to abutters or the public road, and there would be no need to notify abutters so long as there was no emissions, odor, smoke, or detectable noise that would impact the surrounding neighborhood.

Chair Hebert asked about the entrance, exit, and parking to the business.

Mr. McManus stated that that there were only two occupants in the home, and they would use the existing drive with two parking spaces against garage for one, or possibly two clients, and the homeowners could park on the turnaround.

Vice-Chair Cross asked what the purpose of a turnaround was if it was used as parking. Mr. McManus replied that there would be enough room.

Vice-Chair Cross asked if there were any plans to expand the depth of parking, and Mr. McManus they might in the future.

Chair Hebert suggested that they consider a gravel turn around for the long drive.

Chair Hebert informed the applicant that they would need to be sure that they did not consume any more than the average residential water use, which could be like a sprinkler system in summer, that there be no onsite storage of hazardous materials, and that they obtain a certificate from the fire department, and a Certificate of Occupancy for business.

Mr. Krebs asked that they also provide a letter from the New Hampshire Department of Environmental Services (DES) stating that the use would be acceptable for their home septic system.

Mr. Krebs asked that they submit an application with an application fee by Thursday, December 21, 2023, or Tuesday, December 26, 2023, at the latest so that he could send out notices to abutters, and post the public notices for a Monday, January 8, 2024, or Monday, January 22, 2024, public hearing.

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B) Discussion on subdivision request by Robert “Guy” Young, Jr. on Nimble Hill Road, Map 12, Lot 4

Moe VonderPol with TF Moran appeared before the Board on behalf of Robert “Guy” Young, Jr in regard to a preliminary discussion of a subdivision proposal on Nimble Hill Road for two residential home lots and a road that would have to go over an easement held my Map 12, Lot 2.

Mr. VonderPol stated that one of the lots had 490 feet of frontage, and discussion ensued regarding form factor lot requirements. Chair Hebert said his interpretation was that frontage of more than 300 feet on both lots would mean that the lots were exempt from the lot form factor.

Vice-Chair Cross said the intention of form factors was for logical proportion to avoid too long or narrow lot, and it would not be a problem so long as any owner could make good use of the entire length and width of a lot for the building envelope, and avoid the wetlands. Chair Hebert agreed.

Mr. Krebs noted that building form factor couldn't be found in definitions. Mr. Cooke said he didn't see why the Board would care about the shape of the house. Chair Hebert responded that it should be taken out.

Ms. Semprini said a building envelope would have to take setbacks into account, so the lot form factor could dictate the building form factor if the building area or lot was small.

Mr. Cook commented that the wording of the right-of-way easement would be important for the Board's approval.

Mr. Cooke noted that he didn't see a lot of space in the easement between Suzanne Russell's house, and Kathy and Ken Latchaw's houses.

Mr. Krebs said access to the lot through the easement was considered for the Shackford Development, but it didn't work out for other reasons, adding that the Town would need an iron clad legal opinion on whether access through the easement was possible.

Mr. Young said his attorney was in agreement with the use of the 50-foot-wide easement, and he could have his opinion written, and submitted. 50' right-of-way between houses, and could have written up.

Chair Hebert responded that his attorney and Town counsel would have to discuss the matter further because although they might have a right-of-way, but the question was who owned the land, and if the Town would be allowed a right-of-way for a public road if it was transferred to the Town.

Chair Hebert asked if Ms. Russell and the Latchaws were aware of Mr. Young's intentions to subdivide and build a road through the easement. Mr. Young said they were not, and he didn't expect them to be very happy about it. Chair Hebert responded that could still be an issue whether it was a private road, or road built to Town standards.

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Mr. Krebs said that the New Hampshire State statute defines lot frontage by a public road or road built to town standards, so most New Hampshire towns didn't allow private roads that were not built to town standards. Mr. Krebs went on to say that Newington only had town road standards, and although owners could agree to a private road, there was not a reduced road standard for private roads.

Ms. Semprini asked if there were any private roads in Newington. Mr. Krebs said the Planning Board approved of a few including Avery Lane, the private road for the Mazeau subdivision, and Windswept Way off Fox Point Road.

Ms. Semprini commented that the Town trash pickup, bus pickup, mail delivery, plowing, or maintenance wouldn't be provided for a private road. Chair Hebert responded that the developer would have to have an agreement that they would maintain the private road, but it would still be a public right-of-way.

Ms. Semprini asked if a private road sign could be posted. Chair Hebert replied that it was not required, but an owner could post a private road sign.

Ms. Semprini asked if such a road would always be private. Mr. Krebs said residents could petition the Town to make it a public road eventually because they pay taxes like other residents, so most towns require roads be built to town standards to ensure emergency vehicle access at the very least.

Mr. Krebs commented that the Shackford lots were built with the intention of transfer to the Town, but the owners could get together to request that it remain a private road, but he was not sure to what benefit.

Chair Hebert commented that it usually takes two to five years before a private development road is eligible for acceptance as a town road.

Chair Hebert asked if they considered that children would have to wait at the end of the private road for school buses to stop at Nimble Hill Road.

Mr. VonderPol said the road would require a conditional use permit for a wetland crossing.

Mr. Krebs said they would also need a waiver for the radius coming out on Nimble Hill because the easement was only 50 feet wide, and they didn't own the abutting properties to include a flare.

Vice-Chair Cross noted that they also needed a flare, and there was no place for snow clearing.

Chair Hebert said he didn't understand there being a problem with flare because the Town owned the right-of-way.

Ms. Semprini asked if there were any concerns with the proposed road and the driveways being close together. Mr. Krebs said the only option would be for the abutter to connect to the new road, but it was not likely that they could tear down their garage and put it on the other side of their house, so he was not sure how they could solve the issue.

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Vice-Chair Cross said the attorneys would need legal explanations for right-of-way access, if it could be conveyed to the Town, and the abutters' attorney would need to determine if the right-of-way could be shared for multiple lots.

Vice-Chair Cross said even a private road would need to be built to standards and inspected within two to three years. and certified as acceptable to the Town with the base built to Town standards even if not conveyed for 20 years.

Chair Hebert pointed out that they would need to upgrade the road before the Town would accept it unless the Board of Selectmen changed their minds.

Chair Hebert said it appeared that they could go up his mother's driveway, and avoid the wetlands to make room for another lot. Mr. Young said it had been brought up, but they decided not to do that.

Chair Hebert asked about the distance between the right-of-way easement and houses. Mr. VonderPol replied that he didn't have the surveys yet, but it appeared to be 20 feet or less.

Chair Hebert said they needed to meet the setback requirements because the existing residential homes were currently conforming. Mr. VonderPol said the right-of-way for the easement was a pre-existing condition. Chair Hebert said they needed to take that into consideration because the homeowners could ask for a living screen.

Vice-Chair Cross agreed that it appeared that the road could cause the existing dwellings to become non-conforming to side setbacks, and a new road would create a corner lot requiring bigger setbacks.

Chair Hebert asked if they had done any drainage plans. Mr. VonderPol said stormwater management would be part of the plan. Chair Hebert noted that they couldn't create a water problem for abutters, or have runoff go into the roads.

Vice-Chair Cross said the road would probably have a culvert, and the road would probably have a gradual grade from Nimble Hill.

Chair Hebert asked if test pits had been done, and Mr. VonderPol said they had been approved.

Chair Hebert noted that the septic location for the first house looked as if it was within the 50-foot setback, and within the cul-de-sac right-of-way. Mr. Krebs said it would be simple enough to move. Vice-Chair Cross said otherwise, they would need to request a variance from the Zoning Board of Adjustment because septic systems were considered a structure.

Chair Hebert said they would need to comply with all the Subdivision Regulations, as well as have a wetlands scientist review what kind of wetlands were present to determine DES requirements.

Mr. Krebs asked the applicant if they would agree to pay legal fees to review the easement, and right to build a road before the application was submitted, to avoid engineering before discovering any issues, and Mr. Young agreed.

Chair Hebert said they should have a public meeting hearing after notifying the abutters.

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Mr. Young asked if he would only be able to make a single lot home with a driveway if the abutters objected to the proposal.

Chair Hebert responded that such a driveway would not have the required frontage on a public road if he only had a driveway through the easement between the abutters. Mr. Young commented that the Planning Board had approved other lots without frontage. Chair Hebert said there had been separate discussions on issues when those houses were created.

Chair Hebert stated that the applicant's attorney might provide an opinion in his favor, but the Board would not get in the middle of a legal battle between the applicant and abutters.

(A break was announced at this point in the meeting at 7:57 p.m.)

II) **Work Session:** Discussion of potential Zoning Ordinance and Regulation Amendments for 2024 Town Meeting

This item was delayed to hear the next item first.

III) **Other Business and Discussions:**

Mr. Krebs said Newington Police Chief, Michael Bilodeau, had come to the meeting to talk to the Board about pending House Bill 622 for legal marijuana cultivation, manufacturing, and sales in New Hampshire.

Mr. Krebs said he was not sure how the new legislation would play out, but he asked Town counsel if the Town could ban sales of marijuana, considering they could not specifically ban other legal merchandise. Mr. Krebs said the bill keeps getting vetoed, but the proponents keep fine tuning their bills, so he was confident would eventually pass, but thought the Board should discuss the question, and consider saying that they didn't want manufacturing or dispensaries.

Chief Bilodeau said his department would still need to police the sale of marijuana regardless of whatever the Board and Town decided to do.

Mr. Krebs said the legislation would allow towns to decide if they wanted to opt in or out. Mr. Krebs said the sale of marijuana would not change the retail tax structure, so the Board should ask what the pros and cons of allowing sales would be because he didn't think the Town would get any more tax dollars, or more shoppers.

Chair Hebert asked Chief Bilodeau what concerns the Board should consider. Chief Bilodeau said the Board always looks at the makeup and reputation of the town, and whether they wanted to be viewed like Route 236 lined with dispensaries in Maine. and reputation. Chief Bilodeau said there was nothing to say that sales couldn't occur in the shops at the mall, but thinks the Town should establish regulations for sales areas and exceptions for some kind of control.

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Vice-Chair Cross asked if the Town could identify restrictions to location such as 1.000 yards from a school or point of assembly. Mr. Krebs said that was common in the 1990's when people were concerned with First Amendment rights to put distance between uses.

Vice-Chair Cross asked if there might be any impact on a drug treatment facility. Chief Bilodeau said it was a different drug.

Vice-Chair Cross asked for information regarding crime monitoring and control around dispensaries. Chief Bilodeau said there would be restrictions, but it would still depend on the regulations.

Vice-Chair Cross asked if anyone could grow anywhere or if area would have to be registered. Mr. Krebs said he thought personal use could be grown in Maine, but it had to be regulated if grown commercially.

Chief Bilodeau said they were also looking at the manufacturing and sale of active ingredient THC products.

Mr. Cooke wondered if the State was considering distribution through the New Hampshire State Liquor stores. Chief Bilodeau said they were, but there was a question as to would monitor the sales.

Chief Bilodeau recommended reaching out to other agencies to determine what would be required if allowed.

Chair Hebert said he wasn't sure what the law would say about this, so he would want a legal opinion about giving the Town a year to create an Ordinance as they had established a one-year moratorium for making zoning regulations should Pease Development Authority sold their property to a private owner. Mr. Krebs said he didn't believe legislation would ever make marijuana sales mandatory in all New Hampshire towns.

Vice-Chair Cross agreed that they should pursue a moratorium for a year. Chair Hebert said Mr. Krebs would talk with Town counsel.

II) **Work Session:** Discussion of potential Zoning Ordinance and Regulation Amendments for 2024 Town Meeting

This item was delayed to hear the previous item first.

Chair Hebert said Mr. Krebs sent out an email to Board members regarding potential zoning amendments

Mr. Krebs informed the Board that Tidemark Development had removed their rezoning proposal, adding that he had no idea of their intentions for their property now.

Mr. Krebs said John Stebbins with Tidemark had inherited the property that his father Mark Stebbins, owner of ProCon, had purchased over two years ago, so it was not purchased with the intention of changing the zoning to mixed use. So long term and didn't purchase and try to change zoning.

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Mr. Krebs said nursing homes by the old definition were allowed across the highway in the Commercial Zone, but he thought the Board should eliminate them as a permitted use in the Commercial Zone to allow different uses, and commit to determining where else the modern definition of nursing homes might be allowed because there were people in town that could benefit by living in a community like that.

Vice-Chair Cross agreed that he heard a lot of support for a nursing home in another location.

Chair Hebert said he didn't think of a nursing home as a residency, and he didn't want to jeopardize gatherings near the Industrial Zone.

Chair Hebert said schools were also listed in the Commercial Zone.

(Bob Blonigen arrived at this point in the meeting at 8:30 p.m.)

Board member, Peter Welch said he thought they needed to include the modern definition of independent living areas for seniors, or there wouldn't be any nursing homes. Chair Hebert said he was concerned with expanding residential homes in independent living areas for able bodied seniors. Mr. Welch recommended that they specify limitations.

Mr. Cooke commented that it was unlikely that younger people would consider living in a nursing home with assisted living for family members. Mr. Krebs agreed that modern nursing homes needed to include an independent living section, and he didn't see any problem with it.

Mr. Krebs asked whether everyone thought nursing homes should be left in the Commercial Zone.

Mr. Cooke said he didn't really understand the separation of uses in the Commercial and Office Zones, and didn't have a problem with a nursing home in the Commercial Zone.

Mr. Welch asked if Mr. Krebs was suggesting that they move nursing homes to the Office Zone. Mr. Krebs said he thought the Commercial Zone was surrounded by pavement, and would not be a pleasant place for a nursing home, so he recommended that they commit to finding a better place, whether in another area of the Office Zone, or where it had been proposed. office or where proposed.

Mr. Blonigen agreed that allowing nursing homes in the Office Zone would be acceptable, as he didn't see the difference between allowing a residential care facility and a nursing home near the Industrial Zone. Mr. Krebs commented that evacuating a hotel was quicker than a nursing home.

Mr. Krebs said he didn't know what scared everyone. Mr. Blonigen said they kept saying that they didn't have a proposal, but wanted zoning changed, and people didn't like not knowing.

Ms. Semprini said people also kept hearing that the population would increase in close proximity to the Residential District, so she would be a proponent of keeping nursing homes in the Commercial Zone.

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Mr. Krebs said he had researched the economics of a nursing home development, and the critical mass of 125-150 was needed to cover dining and memory care expenses, definitely not 60 beds that people might have preferred.

Chair Hebert the independent living with a nursing home was greatly desired, but he was afraid of legislation that would allow workforce housing in an area that allowed senior independent living.

Mr. Welch asked if they would address hospitals along with nursing homes. Chair Hebert said hospital stays were usually not as long as residential nursing homes. Mr. Krebs added that many hospitals were closing, so it was unlikely to have a proposal for a hospital in Newington. Mr. Krebs said pop up clinics were popular, however, and shouldn't be eliminated.

Chair Hebert said he never realized nursing homes had residents. Mr. Krebs said they would find themselves in legal jeopardy if they restricted them as residents, but they could say they didn't want overnight stays near the Industrial Zone.

Mr. Krebs said Newington was going to grow, and they needed to allow it to grow.

Chair Hebert suggested that they remove the age limit of 55 years or older with future anticipated needs. Mr. Cooke suggested that they include family members that may not need nursing care for some time.

Mr. Blonigen asked if a spouse would be kicked out if a nursing care patient passes away. Mr. Cooke said many spouses would be around the same age, and would still want to remain in the facility for assistance.

Vice-Chair Cross said the definition of the residents at the Great Bay Services would be cared for for the rest of their lives.

Mr. Krebs asked if an instructional school, but not a residential school, would be acceptable.

Vice-Chair Cross said people don't always age and require care at the same rate, so the definition of spouses would have to include multigenerational partners.

Vice-Chair Cross said they also need to modify definitions to be sure residential structures aren't built in the Industrial-Waterfront that would limit access to the working waterfront.

Chair Hebert recommended that Mr. Krebs remove nursing homes and schools from the Commercial Zone, and schedule a public hearing

Chair Hebert said he was afraid that a nursing home made up of one-third of independent living, one-third assisted living, and one-third memory care, one-third assisted living, and one-third independent living could shift to a larger percentage of independent living. Mr. Krebs said they could say that a nursing home had to have a nursing component.

Vice-Chair Cross said they had to face the fact that it would be a 125-150 resident facility. Mr. Krebs said it might be a good idea to look at other facilities in surrounding communities.

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Chair Hebert said he realized that most nursing home residents wouldn't be concerned about new fire, police or school buildings, so he didn't have a problem with nursing homes unless it changed how the Town looked.

Mr. Krebs said the last day to post a public hearing was January 11, 2024, so he would have a draft for Monday, January 8, 2024, to move for a public hearing.

III) Other Business and Discussions (*continued*)

Mr. Krebs said many families had members that could help them with housing, but three members had to move out of town, and he wondered how the Town could help citizens with the need for affordable housing.

Mr. Welch responded that people could find accessory dwelling units.

Chair Hebert said Newington's fair share of workforce housing until 2040 was 62 new units.

Vice-Chair Cross asked if the Board would consider discussing the connection of open spaces in town. Vice-Chair Cross said some parts of town were cut off by developments, but other towns have acquired access ways.

Vice-Chair Cross said previous discussions realized there would be a problem with increased traffic speeds with widening roads, so he suggested holding some charettes at annual meetings, and looking at Federal grants.

Mr. Blonigen said he thought the interest from the Conservation Commission's perpetual trust fund could be spent on any public lands, not just conservation lands, so they could maintain trails at Fox Point, or clean underbrush in the Old Town Forest.

Mr. Cooke said he didn't see this as the Planning Board business. Chair Hebert replied that the Planning Board does planning for trails as well as roads. Chair Hebert said the Board doesn't always have time to do the work; however, members could work with the Conservation Commission.

Mr. Blonigen suggested that Vice-Chair Cross work on a five-year plan with Conservation Commission Chair Jane Hislop.

Vice-Chair Cross said it would take more than one individual, and they would need input from the Recreation Commission too. Chair Hebert said he still needed to draw up an initial plan as a launching platform.

Vice-Chair Cross said they would also need to talk with individual property owners first before they were paraded out in public meetings.

Mr. Krebs recommend looking up the woman that did the trail network in Stowe, Vermont. Mr. Krebs said the trail was not very popular then, but it is now very popular.

Mr. Krebs said it is hard for people to think ten years down the road because they wanted instant gratification, but things could be done with little work. Vice-Chair Cross agreed, and said the suggestion has been sitting around for decades.

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Minutes: It was decided to vote on the December 2023 Minutes at the next meeting.

Adjournment: *Peter Welch moved to adjourn the meeting. Jill Semprini seconded the motion and the meeting adjourned at 9:31 p.m.*

Next Meeting: Monday, January 8, 2024

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary

These Minutes were approved and adopted at the January 22, 2024 Planning Board Meeting.