

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, August 22, 2016

- Call to Order:** Chair Denis Hebert called the August 22, 2016 meeting at 6:30 p.m. followed by the Pledge of Allegiance
- Present:** Chair Denis Hebert; Board Members: Bernie Christopher; Jack Pare; Mark Phillips; Alternate Member: Ken Latchaw; Board of Selectmen's Representative, Cosmas Iocovozzi (arrived at 7:30 p.m.); Interim Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Vice-Chair Cross and Jim Weiner
- Public Guests:** John Lorden and Corey Caldwell with MSC Engineering, Inc.; Eric Weinrieb with Altus Engineering; Mr. and Mrs. Michael Berounsky; Joseph Coronati with Jones and Beach Engineers, Inc.; Attorney Kevin Baum; Dr. Constantine Routensky; Chris Rogers; John Frink; Leonard Thomas; Joe Mitchell of Mitchell's Gulf

1) **Public Hearing:** Subdivision proposal by Michael Berounsky regarding property at 30 Swan Island Lane, Tax Map 53, Lot 9.

Mr. and Mrs. Michael Berounsky appeared before the Board along with their daughter and son-in-law. Chair Hebert noted that their engineering representative from Jones and Beach Engineers was not present at the beginning of the meeting and suggested the Board hear the second item on the agenda first until their engineer arrived.

2) **Preliminary Consultation:** Proposal by Riverside Pickering Marine regarding property on Tax Map 19, Lot 9.

Chair Hebert determined that this item should be taken out of order and heard first.

John Lorden and Corey Caldwell with MSC Engineering appeared before the Board on behalf of the applicant, Ken Anderson, co-owner of Riverside Pickering Marine, who was not able to attend.

Mr. Lorden presented a plan similar to the plan that was previously presented in June with a few modifications.

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Mr. Lorden stated that they were proposing to use the existing road from River Road that was used for Beane Farm businesses as their access road to their office and laydown area before bringing their work inside to assemble.

Mr. Lorden said they had moved the proposed curb cut further west on Shattuck Way because General Electric owned a sliver of property near the curb cut they originally proposed and they were not willing to sell it.

Board member, Jack Pare asked if there was a way to get a visual easement to cut trees from the abutter and Mr. Lorden replied that they would look into it.

Mr. Lorden stated that they were proposing to use gravel beyond the driveway. Board member, Mark Phillips expressed concern for the 20' elevation change and the ruts would be created with heavy equipment. Mr. Lorden replied that they would have a maintenance program.

Town engineering consultant, Eric Weinrieb with Altus Engineering commented that it would be difficult not to have erosion with the 20' grade change. He said it would run right into the street instead of the pond as it was now.

Interim Planner, Gerald Coogan said the major issue brought up during their previous presentation was truck traffic onto Shattuck Way. Mr. Lorden said he thought the issue was with the grade, which they had addressed.

Board member, Bernie Christopher said the Board had discussed traffic visibility during the last presentation, but he had since looked at the site and didn't see a problem. Mr. Pare and Chair Hebert also agreed, but Chair Hebert said they needed to be sure now that they were moving the curb cut further west.

Mr. Weinrieb said he was also concerned that the angle would create a difficulty causing trucks to go over the line to oncoming traffic. Mr. Pare suggested having flaggers on Shattuck Way to direct traffic when the trucks were exiting. Chair Hebert added that it would be important to schedule the trucks so their exits wouldn't coincide with commuter traffic between 4 p.m. and 6 p.m.

Chair Hebert asked if any variances were required for their proposal and Mr. Lorden replied that they met all the setbacks and didn't see that any were needed at this point.

Chair Hebert stated that he had visited their current site in Portsmouth and he was surprised to discover the appearance of heavy industrial. He said he would like the applicant to move the rest of their operation to town, but the Office Zone was only for light manufacturing, not heavy equipment and the Waterfront and Industrial Zone across the street would be a better fit. Mr. Lorden asked if the issue was the outside activity or storage and Chair Hebert replied that it would be both, even if it was only occasionally. Chair Hebert said he was concerned with setting a precedent. Mr. Caldwell said he understood, but it was for pier assembly that was just a quarter mile down the street.

Mr. Pare suggested that the Board might want to address the definition and sizing of the Office Zone because he thought more uses in the zone needed to be allowed.

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Chair Hebert stated that the Board had previously denied another use in the zone and a use variance based on a hardship for the site would need to be granted.

Mr. Coogan wondered if the building inspector and code enforcer would weigh in on the subject. Chair Hebert replied that the Board usually determined and considered permitted and the building inspector weighed in if an applicant was denied.

Alternate Board member, Ken Latchaw commented that the new Ordinance and Regulation books didn't contain zoning maps to show where the zones changed. Chair Hebert said the Office Zone was on one side of Shattuck Way and the other side was Industrial and Waterfront Industrial. Mr. Latchaw commented that the Westinghouse warehouse on Avery Drive contained heavy equipment. Chair Hebert replied that they had been grandfathered when the Office Zone went in to include light manufacturing around 1999.

Mr. Latchaw asked if assembly was considered to be light manufacturing and Chair Hebert replied that the applicant would be assembling large docks and using heavy equipment. Chair Hebert asked if Mr. Coogan if he had a definition of light manufacturing. Mr. Coogan said it was not in the list of definitions in the Zoning Ordinance book, but he could get a definition.

Mr. Weinrieb asked Chair Hebert if he would feel differently if all the assembly was done inside. Chair Hebert replied that he probably would. Mr. Lorden said the laydown area was only temporary before the docks were brought inside behind closed doors for assembly.

Chair Hebert commented that materials were stacked high and appeared to be messy at their Portsmouth site. Mr. Lorden said the area was only 800 square feet and that was another reason the new site with 68,000 square feet of fenced outside storage area would be an improvement. Mr. Christopher suggested requiring other screening besides a fence, such as no cut zone.

Mr. Weinrieb commented that it would make sense to work with the abutter to adjoin the fences so a no man's land wouldn't be created with channeling fences.

Mr. Weinrieb added that visitors to site would need to know how to get to the existing site without going through the laydown area. Chair Hebert asked if they could use a gate. Mr. Weinrieb said they could, but signs would still be beneficial.

Mr. Coogan asked if they would need an Alterations of Terrain Permit (AoT) and Mr. Weinrieb said it appeared that they would.

Mr. Coogan noted that the application listed the address as 2299 Woodbury Avenue and asked if it would be changed to Shattuck Way. Mr. Lorden said the address would probably be River Road, but the tax map listed the property as Patterson Road. Chair Hebert asked Mr. Coogan to follow up with the Town assessor because Patterson Road was on the other side of Shattuck Way.

Chair Hebert arranged for the Board to do a site walk on Thursday, September 8, 2016.

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1) **Public Hearing:** Subdivision proposal by Michael Berounsky regarding property at 30 Swan Island Lane, Tax Map 53, Lot 9.

This item was taken out of order until Mr. and Mrs. Michael Berounsky's engineering representative appeared.

Chair Hebert said he and Mr. Coogan talked about having Mr. Weinrieb review the plans for a single subdivision that wouldn't require an expansion of the road or going through the Technical Review Committee (TRC). He suggested that the Board could determine if the plans submitted were substantially complete and then set another meeting to review in detail.

Joe Coronati with Jones and Beach Engineering stated that the applicant, Michael Berounsky and his family wanted to subdivide the 6.3 acres.

Mr. Coronati said the property currently didn't have enough frontage to subdivide and they could go for variance or try to create adequate frontage. He said previous discussions with the Board suggested a preference for creating frontage so he presented a plan for a 20' wide cul-de-sac for an elongated road to create the two-hundred feet of frontage.

Mr. Weinrieb said he agreed with the proposal except that he found the entire development area was on an existing drainage easement and there would be additional drainage problems. Mr. Coronati replied that there was a low point, a berm and an 18" culvert, but he spoke with David Hislop who did the survey and the drainage easement was never plotted or recorded.

Chair Hebert replied that the Town had a copy of the easement signed by a former Planning Board chair, but they recently found out that several subdivisions hadn't been brought to Rockingham Registry of Deeds by the applicants for recording so the Town determined it would be best to bring the plans in for recording themselves. Mr. Coogan added that the subdivision was recorded in 1991.

Mr. Coronati said the plan was recorded, but not the easement. Chair Hebert said the Board would still look at the easement when considering the subdivision. He said it was just a matter of recording the easement on the plan to identify the water flow. Mr. Weinrieb added that Dave Hislop didn't know about the easement when he did the survey so recording the easement as additional information could be done after the plan was approved.

Chair Hebert asked if the applicant had considered any other alternatives to changing the cul-de-sac. Mr. Coronati replied that Denis Moulton with Altus Engineering had identified some alternatives that were included in his report. Mr. Weinrieb added that the other alternatives were for drainage and traffic improvements.

Mr. Coronati stated that they could also apply for a variance from the frontage requirements, but they had been discouraged in previous discussions.

Mr. Coronati said another alternative was to keep the circular cul-de-sac and bulb out the frontage partially on the Town right-of-way and with a longer drive, which would

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simplify the drainage around the cul-de-sac and also require less asphalt and maintenance.

Mr. Coronati said they could also bring Swan Island Lane in and create another cul-de-sac, but that could create a problem with abutters.

(Board of Selectmen representative, Cosmas locovozzi arrived at this point in the meeting at 7:30 p.m.)

Chair Hebert replied that he appreciated other solutions, but it had been brought to his attention that accepting property to the Town for frontage would open up Pandora's box with other applicants that faced similar frontage problems.

Mr. Weinrieb agreed that it would be a slippery slope unless the Town changed their regulations.

Mr. Pare also agreed that allowing such a solution could become a problem for the Town if someone less scrupulous which could be problem for Town.

Mr. Coogan said the applicant had provided sufficient plans to evoke the jurisdiction of the Planning Board and Mr. Weinrieb agreed that all the data had been provided.

Chair Hebert opened the discussion to the public for comments.

Attorney Kevin Baum said his client Dr. Constantine Routensky, the direct abutter would be most affected by extending the road to his side boundaries. He asked that the Board not find the plan complete because there were other alternatives that could be considered before being locked in.

Mr. Pare replied that it was the Board's duty to consider the application proposed, but they could informally consider "what if's". Mr. Coogan added that the applicant could withdraw their application if they wanted the Board to consider a completely different proposal. Mr. Coronati replied that he had not been present for the previous meetings, but their proposal was based on a sketch that had been drawn by the Board.

Chair Hebert agreed, but added that there were questions about how the proposal would affect abutters so he thought the Board would need to consult with Town counsel, Attorney John Ratigan.

Mr. Berounsky replied that even though it wouldn't affect them, he could understand why Mr. Routensky wouldn't want the cul-de-sac extended because it would create more traffic and headlights would shine into their windows at night so he thought leaving the existing cul-de-sac and deeding the additional land to the Town was the solution for everyone. Mr. Coronati added that they could go back to the original cul-de-sac if the Board deemed the plan was substantially complete.

Chair Hebert said creating frontage on a phantom Town road could be tricky, but they could consider a special exception. Mr. Coogan replied that the Board had the authority to waive zoning.

Mr. Pare suggested they consult Town counsel regarding the issue of creating frontage in the Town right-of-way along with the intricacies of relief from the Planning

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Board rather than the Zoning Board of Adjustment. Chair Hebert said the Board could do special exceptions for certain things, but he was not sure if this was one.

Chair Hebert clarified that they could still do changes if the Board voted that the proposal was substantially complete.

Bernie Christopher moved to accept the subdivision proposal by Michael Berounsky regarding property at 30 Swan Island Lane, Tax Map 53, Lot 9 as substantially complete. Mark Phillips seconded the motion and all were in favor.

Chair Hebert commented that the water pressure in South Newington was questionable and said they would need to address the issue.

Mr. Weinrieb said he thought there was a 4" water line. Mr. Coronati agreed that the 4" water line serviced three homes and they were considering a 1" line to service a single home. Mr. Weinrieb said they would need a letter of approval documented by the City of Portsmouth.

Chair Hebert asked if there was a hydrant nearby and Mr. Weinrieb stated that it was just a flushing hydrant. Mr. Coronati replied that they were not proposing any hydrant upgrades. Chair Hebert commented that their homeowner's insurance could mandate the installation of a hydrant.

Chair Hebert asked if changes to the circle would impact the existing transformer and if they could support an additional home. Mr. Coronati said there were already underground utilities there. Abutter, Chris Rogers added that he had already tapped off the Connors line so he didn't think there would be a problem.

Attorney Baum said major concerns were flagged by the Altus letter regarding the peanut shaped frontage and asked why the TRC was waived. Chair Hebert replied that the proposal was still going under technical review, but not going through the committee with fire and police, which could be costly and not necessary for a single-home subdivision.

Attorney Baum asked what the home-owners association would do to maintain the rain garden that was proposed. Chair Hebert asked who maintained grass in the cul-de-sac and Mr. Berounsky said he had been mowing it for the last twenty years. Attorney Baum stated that his client would not be willing to be a part of such an association or to pay for something that was a major impact to him.

Leonard Thomas of Newington Road stated that he was seeing a lot of water at the low end of his property since the new homes went in instead of going to Great Bay like it used to because the drainage wasn't being maintained. Chair Hebert replied that they were not aware of the problem and wanted to be sure the water drained properly. He added that the proposal for a rain garden could help slow the water down.

Mr. Weinrieb said Attorney Baum's client, Dr. Routensky owned a 25-foot gap between Mr. Thomas' property and Mr. Berounsky's property.

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Mr. Coronati said Mr. Berounsky's property had changed over the years and they kept the drainage way open and flowing so the runoff couldn't be coming from his property. Mr. Weinrieb said he would take a site walk to see.

Mr. Berounsky said anything built drains directly through his property to the Bay so he was getting impacted the most. Chair Hebert commented that others were impacted as well.

Mr. Frink commented that Mr. Berounsky had appeared before the Zoning Board for variances twice and had been denied, but now they were discussing alternatives to obtain frontage. He said the biggest concern was the creation of more permeable surfaces with increased runoff and so he hoped that could be resolved without going before the ZBA again. Mr. Berounsky replied that he had been denied an easement the first time because there was not enough frontage, then the Planning Board recommended the expanded cul-de-sac; but if he needed to go back to the ZBA to request approval of deeding an additional right-of-way, then he had the right to do so.

Chair Hebert said they were entitled to drop the current proposal and applied for a variance, but first the Board was trying to address issues with proposal such as water. He asked why they weren't proposing to build a swale or single pipe for drainage. Mr. Coronati replied that existing water ran down Swan Island Lane so they put the pipe underground so they wouldn't need to increase the size of the cul-de-sac rain garden. Mr. Weinrieb said there would be an opportunity to provide more run-off mitigation if not constructing additional pavement.

Discussion regarding the pros and cons of both the expanded culvert and creating frontage on a Town right-of-way. Mr. Coronati commented that allowing frontage in the Town right-of-way to subdivide a six-acre lot would not to set a precedent the same way a fifty-acre subdivision would and would reduce the amount of runoff as well as reduce the cost of additional pavement and maintenance for the Town.

Mr. Coogan advised Mr. Coronati to provide a sketch of the alternative.

Chair Hebert replied that as much as the Town didn't want more pavement to maintain and plow, he was still concerned with setting a precedent so he would seek the opinion of Town counsel. Mr. Berounsky asked if Mr. Coronati could attend the meeting with Attorney Ratigan and Chair Hebert replied that it would be a private, pre-meeting consult. Mr. Coogan informed Mr. Berounsky that Attorney Ratigan would call if he had any questions.

Chair Hebert asked the applicant to show the wetlands easement and how water would drain from the proposed home.

Chair Hebert cont'd to 9/12

3) Subdivision Regulations Draft Review

Mr. Coogan presented proposed changes for frontage in the definitions throughout the Subdivision Regulation and Zoning Regulations book for clarity. Chair

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Hebert suggested they keep the wording the same for consistency, adding that he should discuss it with Attorney Ratigan first.

Mr. Pare recommended that they keep the reference to mathematical form factor to avoid trouble with pork chop lots and Chair Hebert agreed.

Mr. Coogan asked if other towns used form factors. Mr. Weinrieb replied that some towns did it differently, but there was, merit in the intent, except there was a challenge with cul-de-sacs if there was a provision for shorter frontage so there might be a need for an additional provision for cul-de-sacs.

Mr. Weinrieb gave a status review on recent subdivisions in town. Discussion ensued regarding building placement according to the plans.

Mr. Latchaw asked if placement of building envelopes was confirmed by the town when houses were plotted for placement before laying the foundation. Mr. Weinrieb said that would be the job of the surveyor. Mr. Latchaw replied that the surrounding communities did so and suggested the requirement be included in the subdivision regulations to protect the abutters and Town.

Mr. Christopher commented that he provided a copy of the certified plot plan to the building inspector every time he put in a building.

Mr. Phillips added that his experience was that builders couldn't get their building permit until they received confirmation of placement.

Mr. Locovozzi commented that the location of a house could change so long as it was in the setbacks, but not the septic field or tank. He said he thought it would be a civil matter if there were any questions, but he agreed that it was a good idea so long as the applicants understood that they were responsible for the inspection costs.

Mr. Coogan said he would discuss the matter with the building inspector.

Chair Hebert said they could discuss it further at the next meeting if they weren't too busy.

4) **General Update** by Town Planner

Mr. Coogan informed the Board that the Department of Transportation recommended overhead power lines for the Fabyan Point development even though the Board had made a condition for underground utilities. Mr. Phillips commented that there were already four lines crossing the street and he didn't think one more or less would change the aesthetics.

Mr. Coogan informed the Board that the Municipal Law Lectures would be held in Newington in October. Chair Hebert encouraged Board members to sign up so there would be high attendance.

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5) Other Business:

Chair Hebert announced that the Air Force wanted to clean up their site and use the Patterson Lane gate right-of-way. He said he and the Board of Selectmen met with them and discussions were ongoing.

Minutes: *Bernie Christopher moved to approve the Minutes for the July 25, 2016 meeting with corrections as noted. Mark Phillips seconded the motion and all were in favor.*

Adjournment: *Cosmas Iocovozzi moved to adjourn the meeting. Bernie Christopher seconded the motion and the meeting adjourned at 9 p.m.*

Next Meeting: September 12, 2016

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

These Minutes were approved and adopted at the September 12, 2016 Planning Board Meeting.