

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, July 14 2014

Call to Order: Chair Denis Hebert called the July 14, 2014 meeting to order at 6:30 p.m.

Present: Mike Marconi, Vice Chair; Bernie Christopher; Christopher Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Bruce Belanger, Attorney John Bosen, Robert Stowell with TriTech Engineering; Michael Mazeau, Edna Mosher, Lorna Watson; Jim Teetzle, Wilcox Industries; John Bernier, Bernier Corporation; Keith Frizzell; Attorney Steve Roberts, Steven Haight, Haight Engineering, Ann Beebe, Jeff Lunden, John Sweeney and Sandra Sweeney; John Reardon; and Doreen Stern

1) Public Hearings:

A) Proposal by **Bruce C. Belanger** for a 3-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, **Tax Map 17, Lot 11-2.**

Attorney John Bosen appeared before the Board on behalf of his client, Mr. Bruce Belanger along with Mr. Robert Stowell of TriTech Engineering. Attorney Bosen said wetlands scientist, Mark West had submitted his wetlands study and they provided their modified report. He said there were only minimal disagreements that would have no impact on their building plans.

Attorney Bosen asked that the Board accept their application as complete. He said they discussed the proposal in February 2014, prior to the ordinance was changed to eliminate shared driveways so they reconfigured their plan to meet the ordinance. He said the plan met the dimensional requirements except the access issue so they applied to DES for a dredge and fill permit for two driveways with minimal with wetlands impact. He said the application was dependent on the issuance of the permit.

Alternate Board member, Peggy Lamson said she received the report at the last minute and hadn't had a chance to review it. She said it was her responsibility to look out for the town and she wanted to be sure all the t's were crossed and the i's dotted.

Chairman Hebert agreed and said he wanted to discuss the report further with Mr. West. Ms. Lamson said they needed another week. Chairman Hebert asked Town Planner, Tom Morgan when they would see Mr. West and Mr. Morgan said he hadn't

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been invited back yet, but said he spoke with Mr. West who confirmed that TriTech had adopted his wetland delineations.

Chairman Hebert said there were concerns about the wetlands crossings, but he also made it clear that the two driveways for lots 11-2 and 11-2/1 on Nimble Hill Road would have a poor line of site and create a safety issue. Attorney Bosen said they submitted a report from the State of NH that said traffic had decreased on Nimble Hill Road over last few years. Chairman Hebert said he didn't know where they got that information, but he lived in town and his observation was different. Alternate Board member, Peggy Lamson agreed that traffic through town had definitely changed over the years. Board member, Justin Richardson said he echoed Chairman Hebert's comments and wondered what kind of traffic study had been submitted. Mr. Morgan said it was possible that the information submitted was accurate, but it only mentioned the number of cars and not the speeds, which was a different matter. Board member, Bernie Christopher agreed that the traffic count was not as important as the speed of traffic. Mr. Morgan said subdivision regulations specified that the proposal could not to create a traffic hazard. Chairman Hebert said the Board requested traffic studies when warranted.

Mr. Richardson said his main concern was with a driveway opposite the Town Hall entrance that would require drivers to look left, right and forward for traffic. He said many municipalities didn't like driveways opposite one another and some prohibited them. He said it would be helpful to review and identify the rules. Chairman Hebert asked when the traffic study was done and Attorney Bosen said it was done in 2013. Chairman Hebert said the problem was not so much the number of cars, but the density and intensity during peak hours. Mr. Richardson said he would like to know what the average speed of traffic was and the safe stopping distance. Vice-Chair Marconi said they could refer to the speed counter set up by the police.

Chairman Hebert asked Mr. Morgan what the Conservation Commission had said about the wetlands impact and Mr. Morgan said they asked him to write a letter to DES stating that the dredge and fill request was premature, which he did because they were still in the initial phase.

Mr. Richardson wondered about the possibility of the Zoning Board of Adjustment denying the Special Exception for the wetlands crossings. Attorney Bosen said Article 10 Section 4 referred to access ways for Special Exception, but said driveways, roads and access to water systems were considered permanent and did not require a Special Exception. He said access ways were not defined in the ordinance and may have meant shared driveways before the ordinance change, but there was no way to know. Mr. Richardson said a lot was defined as having access to a street and access way was a general term that meant a driveway. He agreed that the terms in the ordinance was somewhat open to interpretation, but the RSA's stated that the more stringent standards were to be followed whenever there was a conflict between two

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ordinances. Board member, Chris Cross said a driveway had to be approved for direct access to a lot, but an optional footpath over wetlands was an example of a Special Exception. Chairman Hebert said these discussions and questions that identified ambiguities in the ordinances were important, but after reading from the ordinance he said a footpath would never qualify as being "...essential for the production of a non-wetlands area..." and agreed that the more stringent ordinance was to be followed. Attorney Bosen said he didn't think the town had a history of requiring a Special Exception for every driveway. Chairman Hebert said every driveway didn't impact wetlands.

Attorney Bosen said they wouldn't be able to resolve everything at the moment, but asked if the application was complete. Chairman Hebert asked Mr. Morgan if there was anything missing from the application and Mr. Morgan said the Board was in agreement that a traffic study was needed, but the current question was whether the application was substantially complete. Chairman Hebert agreed, but added that the Board could decide if they needed more time and invite Mr. West to the next meeting before deciding if they needed to.

Mr. Richardson asked about their deadlines and the time spent reviewing the proposal if there were changes after it went to the ZBA. Chairman Hebert said the Planning Board would begin the review process from the beginning if there were any changes to the plan.

Mr. Christopher said the question was whether the application was *substantially* complete and said he thought it was. Chairman Hebert agreed, though he thought there were other driveway alternative to avoid wetlands and traffic safety issues, which required further review, in addition to review from the Conservation Commission and the ZBA. Mr. Bob Stowell from TriTech Engineering said he didn't see that there were any other options.

Ms. Lamson said there was a lot of information to go over and she didn't appreciate receiving information at 4 p.m. before a meeting was scheduled. Chairman Hebert said there was a standing rule that all new information for consideration had to be submitted to Mr. Morgan a week before a meeting to give the Board time to review it, otherwise there would be no way to know if the proposal was correct and complete.

Mr. Cross wondered if the Board might consider approving the driveways along with the subdivision application in situations where there were traffic safety and wetlands considerations. Chairman Hebert said they would look at the driveways when they reviewed the application. Chairman Hebert said the safety issue could go away if they came in from Fox Point Road.

Chairman Hebert asked if the Board wanted more time to review the information before making a decision. Ms. Lamson said she couldn't vote as an alternate on a full board,

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but she was not comfortable with receiving information at the last minute and making a decision . Mr. Christopher, Mr. Cross, Vice-Chair Marconi and Mr. Richardson all agreed and said they would prefer reviewing the information further.

Mr. Stowell said the Board requested that they confer with a wetlands consultant two meetings ago, but Mr. West wasn't available until that day so they couldn't submit their response a week before the meeting. Chairman Hebert said they also requested a delay two months before because the applicant was on vacation and they all had other cases lined up, so providing complete and correct information was not entirely up to the Board. Mr. Cross reminded them that whether it was the Town's or the applicant's consultants that were delayed, the applicant applied at their own risk and the Town could extend the review period if they needed to review information provided by consultants. Chairman Hebert said he understood that both parties had difficulties coordinating dates, but he would not accept late information for consideration again.

Mr. Cross wondered if the Board might consider approving the driveways along with the subdivision application in situations where there were traffic safety and wetlands considerations. Chairman Hebert said they would look at the driveways when they reviewed the application.

Chairman Hebert said they were still in preliminary discussions, but opened up the meeting to public comment.

Ms. Madeline Mills of Old Post Road said the original survey done by Mr. David Hislop of Knight Hill Surveying was for one house lot only. She said the current subdivision proposal for three lots would directly affect her backyard and she wanted to hear more from Mr. West's wetlands report. She also expressed concern for how traffic safety as a result of driveways coming out on Nimble Hill Road.

Mr. Richardson made a motion to accept the proposal by Bruce C. Belanger for a 3-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2 as substantially complete to evoke jurisdiction, sufficient...read... Bernie Christopher seconded the motion.

Chairman Hebert clarified that the motion was whether the application was substantially, but that didn't mean the plan was complete. Ms. Lamson said she couldn't vote, but she thought the initial application was substantially complete to go forward with the review. Chairman Hebert called for the vote.

Bernie Christopher, Chris Cross, Jack Pare and Justin Richardson voted in favor of the motion. Vice-Chair Marconi and Rick Stern opposed and the motion passed 4-2.

Attorney Bosen said it would be helpful to seek Town counsel, John Ratigan's opinion for an interpretation of the ordinance on Special Exception. Chairman Hebert

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suggested that they would probably need to go before the Conservation Commission and the ZBA. He said it was obvious that it was a swamp and he was concerned with wetland cut-throughs and the law said they needed to consider other options for driveways or private roads. Ms. Lamson agreed. Chairman Hebert said the middle lot appeared to be the most problematic, but it wasn't up to the Board to waste time designing their lots so it was up to the applicant to provide information on their plan in a timely manner as requested.

Mr. Stowell said they would initiate a traffic study that would include a speed study for the next meeting. Mr. Richardson suggested that they also review the line of site and stopping distance from the driveways. Chairman Hebert said the safety issue could go away if they came in from Fox Point Road.

Mr. Richardson said the subdivision regulations stated that a formal application had to be reviewed for threats of flooding and it was incumbent on the applicant to inform the Board on how it met the standards. He suggested the Board ask Altus Engineering to review traffic safely and Mr. Morgan said he could get a traffic safety expert to review the plan if that was what the Board wanted.

Vice-Chair Marconi said the lot map showed a shed with a line through it. Mr. Stowell said it was an existing shed that had no foundation and was owned by Ms. Dorothy Watson. Chairman Hebert asked how it would be moved and Mr. Stowell said no one had asked at this point. Ms. Lorna Watson of Fox Point said she believed the shed belonged to her and asked if they could move it 8' toward her driveway. Attorney Bosen said they would be happy to move the shed. Mr. Cross said there were setback requirements from boundaries and asked Ms. Watson if she would be willing to move the shed 15' from the site boundary and Ms. Watson said that would be fine.

Chairman Hebert continued the next meeting to August 11, 2014.

B) Proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 4.

Mr. Morgan said the applicant requested a postponement to the next meeting on August 11, 2014.

C) Proposal by the Wilcox Industries and Public Service Company of NH for a lot line adjustment at 25 Piscataqua Drive and 165 Gosling Road, Tax Map 27, Lot 2 and Map 28, Lot 4.

Mr. John Bernier of the Bernier Corporation posted the latest plans for the expansion of Wilcox Industries, which encroached on PSNH's abutting property line for which they acquired a purchase and sale agreement.

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Mr. Jim Teetzle of Wilcox Industries said they assumed PSNH's obligation to contribute toward the extension of Shattuck Way as a condition of their purchase and sale agreement, along with a lot line adjustment to facilitate the abandonment of a water main that crossed PSNH's property. He said they also secured an agreement with Tyco to move the water main that fed Tyco over the past 50 years. He said there was concern with the age of the pipe and condition of the land owned by the City of Portsmouth so there were discussions about connecting with a new feed when the water main was extended.

Mr. Teetzle said they hired an engineering firm for \$50,000 to design the Shattuck Way extension for Piscataqua Road to Gosling Road. He said part of the road construction design would include where the water main was laid and they would return to the Board with designs for the road and drainage as well. He said they would build the road once it was approved and then Tyco would sign off on the water easement.

Mr. Richardson asked if there were any concerns from other abutters and Mr. Teetzle said PSNH owned most of the abutting property and Newington owned some of it. Mr. Richardson asked about Great Bay Services and Mr. Teetzle said they abutted along 50'. He said the only issue was with a security fence and retaining wall, which was addressed. Mr. Bernier said another abutter was the City of Portsmouth's water pumping station, but he believed the Town of Newington owned that property. Mr. Morgan said the City of Portsmouth had an easement with Newington.

Mr. Teetzle said they needed the Town to accept the new lot line adjustment and to add a 50' corridor to the back property line.

Mr. Morgan said the Board had voted that the application was substantially complete during their last meeting for preliminary discussion so he had already sent legal notices out.

Vice-Chair Marconi moved to accept the proposal by the Wilcox Industries and Public Service Company of NH for a lot line adjustment at 25 Piscataqua Drive and 165 Gosling Road, Tax Map 27, Lot 2 and Map 28, Lot 4 as substantially complete. Peggy Lamson seconded and all were in favor.

Mr. Morgan asked if they would be interested in reconfiguring a primary access to the wastewater treatment plant off the newly proposed Shattuck Way Extension. Mr. Teetzle said he wasn't sure if it would be possible, but he would look into it. Chairman Hebert said it would be in everyone's interest if they could connect to the plant. Mr. Bernier said he would like a copy of the treatment plant plans. Chairman Hebert and Mr. Teetzle arranged to get together later in the week to discuss plans further.

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2) Preliminary Discussions: Proposal by **Keith Frizzell** to construct a 32,000 square foot industrial building at **34-36 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11.**

Mr. Steve Haight of Haight Engineering on behalf of applicant Keith Frizzell appeared before the Board. He said Mr. Frizzell had purchased the former Yeaton house with the barn and fields.

Mr. Frizzle said he had a number of tenants at his existing industrial building over the years, but many tenants expressed an interest in more space so he purchased the abutting property in hopes of replacing the existing building with two larger buildings.

Mr. Haight said they were only in the conceptual phase and looking for feedback. He said one lot was zoned industrial and the other was zoned residential. He said they were six acres added together and the buildable area on either side of the lot line was small with the setbacks so they would need to go before the ZBA. He said their proposal would be in keeping with industrial master plan on Patterson Lane. He said there would only be one access for both lots. He said they would retain the historic home. Mr. Richardson asked what they would use the residential building for and Mr. Haight said they would use it as a caretaker's building to maintain watch over the property at night.

Vice-Chair Marconi asked about water and sewage and Ms. Lamson said the former Yeaton property still had septic. Mr. Haight said the existing building already had water sewer lines that they would hook into and Mr. Frizzell said the building had a natural gas hookup as well.

Mr. Haight said he met with Mr. Morgan regarding drainage. He said the site drained from back to front. He said there was a man made ditch in the front that they would leave alone, but the catch basin was plugged and they would need to determine whether to use drainage swales or a retention pond. Vice-Chair Marconi asked who would maintain the culvert and Mr. Haight said Mr. Frizzell would be responsible for the culvert and the catch basin would be maintained by the Town. He said the soils were good and all storm water design criteria would be met.

He said there were two lots of record, but they were proposing one project to get trucks in and out. He said their landscaping plan would require tree buffers and they would need to take some of the existing trees before adding more trees. He said they also could remove the house.

Ms. Lamson said she would be concerned for traffic safety of cars with trucks turning off Shattuck way onto Patterson Lane.

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Mr. Richardson asked why they weren't proposing one larger building instead of two small buildings. Mr. Haight said they had talked with a couple of different building manufacturers and 20' was not enough room for a truck or van. He said it also had to do with the cost of the building. Mr. Richardson said the residential zone only allowed one building per lot and wondered if there would be an issue. Chairman Hebert said the zoning ordinance only allowed a supplemental building to a principal building, but that would require a variance.

Ms. Lamson asked what other procedures would be required for industrial use in a residential zone. Mr. Morgan said they could request a change of use variance, which would be tough or they could ask the Planning Board to support and put on a warrant for Town meeting or they could get petition with 25 town resident signatures.

Vice-Chair Marconi asked why then zoning had been set up that way and Mr. Morgan said Mary Yeaton lived on the residential side and Mr. Frizzle owned property on the industrial side. He said the zoning went back 40 yrs.

Attorney Steve Robinson said it was rare that a master plan specifically addressed a road and a change of use, but Patterson Lane was identified for future industrial use in the 2009 Master Plan, specifying that future expansion of the residential zone should not be allowed. He said they didn't want to phase out the existing residents, but stated that industrial use was the best use for this lot. He said Mr. Frizzell could put in duplexes, but he didn't want to.

Chairman Hebert said at the time of writing the Master Plan, there had been discussions about homes in the middle of the industrial zone and the Board said any changes would have to be approved by all the residents, not just some of them. Ms. Lamson said she was at that meeting and residents from Patterson Lane were emphatic that they didn't want their properties gobbled up by industry.

Chairman Hebert asked if they had approached residents and Attorney Robinson said they were in the preliminary stages and had not , but that they understand their concerns.

Discussion ensued regarding industrial vs. commercial use. Mr. Frizzell said he had considered use from electricians, HVAC, or plumbers, but didn't want retail sales running out of an industrial building where business would be conducted over the phone. Mr. Morgan said the language in the zoning ordinance was somewhat ambiguous and he had relied on historic precedence as guidance. He said Ted Mooney's building across from Rockingham Electric went to the ZBA some years ago because it was listed as being in the Waterfront District, yet it had no access to water and over the years he has had a variety of tenants that didn't meet strict definitions of industrial use. Chairman Hebert said he had always understood use to be a matter of

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enforcement and Mr. Morgan historic used set a precedent in some cases, but there was retail use had a strict definition and that was not allowed in this location.

Mr. Paul Reardon of Patterson Lane said there were 16 families that lived on the lane, which was a dead end with only one way out and he was concerned for their safety if there was any kind of emergency. He said there was a sharp corner for trucks to turn in and out of the lane with a natural gas transformer that could blow up and trap residents. He said it appeared that there were over parking 60 spaces in the proposed lot. He said the traffic on Shattuck Way was often at a dead stop during rush hour or as a result of accidents on the bridge and he was concerned with what additional truck traffic would do. He said he had lived there all his life and he didn't want to see the residential waterfront disappear the same way it had behind multi-story buildings in Portsmouth, but he would support a duplex.

Mr. Frizzell said the parking spaces were dictated by the size of the building.

Another Patterson Lane resident, Norman LeClerc said he was opposed to the project. He added that he had asked if he could connect to the Town sewer line and was told he couldn't because it was a residential zone and he didn't understand how an abutting new building in a residential zone could be approved for connection.

Ms. Ann Beebe of Patterson Lane expressed concern for tractor-trailers bringing in supplies onto Patterson Way. She said she didn't want to go to the expense of hooking up to the Portsmouth water system and didn't want to risk contamination of her well from fuel and oil.

Mr. Tom McGagliano read a letter from his father, Todd McGagliano of 101 Patterson Lane who had been a resident since 2004. He said he was aware that the property in question was "commercially zoned" but believed that extending the zone further would have a negative effect on the residents, neighbors and families. He said they he loved living there on water with a view of the Piscataqua River and didn't want to see a big ugly building and more traffic.

Mr. Bill Sweeney of Patterson Lane said the applicant knew where the residents stood on the proposal and asked that the residential area remain as it was. He there was no turn around and tractor-trailers had to back up over a mile when they made the mistake of going down the lane.

Mr. Jeff Lunden of 97 Patterson Lane said he had no problem with the existing industrial building where it was, but agreed that he didn't want to lose any more residential area.

Ms. Sandra Sweeney of 90 Patterson Lane said she lived in the neighborhood for 32 years and had the impression that people on the other side of the tracks didn't realize

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there was a community on the other side near the water. She said it was a nice neighborhood that included wildlife and you could hardly tell they lived in the middle of an industrial area. She added that she was disappointed that the applicant hadn't approached Ms. Beebe prior to this meeting.

Chairman Hebert said the Master Plan said expanding the industrial zone made sense mp said *if* a proposal was acceptable to all of the residents, but the Board could not support the proposal if the residents did not approve of the proposal; however they could go to the ZBA and request rezoning. Attorney Robinson said the intent was not expressed in master plan. Chairman Hebert the use of the word "coerce" conveyed the intent. Attorney Robinson said Mr. Frizzell was not trying to coerce the residents to change their lifestyle.

Mr. Haight said this was only a preliminary presentation to get feedback. He said the hardship was that they had tenant interest in a larger space, but the existing building was as large as it could be and so they were proposing another building on the abutting lot. He said the intention of the Master Plan was to expand the industrial zone and that they interpreted the reference to the term "coerce" meant that the developer was not to be coerced to create an industrial building. Chairman Hebert said if the Board wanted the area to be industrial, they would have proposed that. He said the intent was that a zoning change would be all or nothing if the residents were willing without coercion of a big developer.

Mr. Richardson said he didn't have a problem with industrial use in general, but there was an issue with having the same setbacks as the residential side. He said it was important to keep a bigger buffer between residential and industrial. He said residents made investments in their homes knowing where the line was and it wouldn't be fair if the line was moved. need to take into consideration.

Mr. Richardson added that he might need to recuse himself as a representative on the ZBA because he had represented resident Gary Manter and Cheryl Elkins.

Ms. Doreen Stern of Shattuck Way said she understood how the residents felt and suggested that Mr. Frizzell compromise to be sure the residents could protect their homes and property values.

Chairman Hebert said the intent of a work session was to discuss options. He asked the applicant if they had talked with the residents prior to the meeting. Mr. Frizzell said they were only in the conceptual stages and hadn't talked with residents first, but he knew they were up against different hurdles and decided on the preliminary meeting with the Planning Board first as advised by Mr. Morgan. He said he had no intentions of ignoring or circumventing the residents. He said Fuel Depot wanted to purchase the property, but he had owned the property for a long time and had turned down some proposals because he wanted some decent tenants. Chairman Hebert agreed

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that coming before the Planning Board was the proper format in a public forum to give everyone an opportunity to speak rather than passing second or third hand information around. He said he understood it might not be the final plan.

Mr. Reardon said he might be able to accept a proposal that would blend in with the neighborhood, but he couldn't accept a large parking lot on a dead end road.

Mr. Frizzell wondered if they could compromise on some of building on his residential lot because he couldn't build a sufficiently sized building on the his industrial lot. Chairman Hebert said he could not and would need to follow the process with the ZBA or he could end up going to court.

Mr. Haight suggested requesting a change of use variance. Mr. Cross asked if they had considered a sound barrier such as a berm between the industrial and residential zone and Mr. Haight said the 150' buffer met the intent, but they could consider expanding it to compromise with the residents.

Ms. Beebe asked if his lot was industrial or commercial. Mr. Frizzell said the tax map listed it as industrial. Mr. Sweeney said Mr. Frizzell knew the Yeaton property was residential when he purchased it.

Ms. Sweeney said she saw the existing building as more of a commercial use than industrial, but it had been empty a long time and wondered how they would know who and when it would be leased.

Mr. Pare suggested they consider reorienting the larger building so that it remained within the industrial zone only and consider residential use on the other side. Mr. LeClerc agreed that they could come back with a less ambitious plan.

Minutes: *Vice-Chair Marconi moved to approve the Minutes for the June 9, 2014 meeting with corrections. Ms. Lamson seconded. Mr. Stern was absent and abstained from voting. All others were in favor of approving the minutes.*

Other Business: A brief discussion ensued regarding the Stone School and finding a use considering its uninhabitable condition, renovation costs, parking limitations and restrictions due to close proximity to the Town Forest.

Adjournment: *Vice-Chair Marconi motioned to adjourn, and Mr. Stern seconded. All were in favor and meeting adjourned at 9:30 p.m.*

Next Meeting: Monday, August 11, 2014

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary