

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 6, 2014

Call to Order: Chair Denis Hebert called the October 6, 2014 meeting at 6:30 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross; Justin Richardson (arrived at 7:21 p.m.); Alternate Member, Peggy Lamson; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Jack Pare; Board of Selectmen Representative, Rick Stern

Public Guests: Town Counsel, Attorney John Ratigan; Attorney John Bosen; Doug LaRosa with TriTech Engineering; Mr. Joe Calderola; Attorney Bernie Pelech; Bill Gregsak with Gregsak Engineering; John Bernier with Bernier Corporation; Keith Frizzell; Steve Haight with Haight Engineering; Eric Weinrieb with Altus Engineering; Ann Beebe; Paul Reardon; Bill and Sandra Sweeney

1) Curb-Cut Permit Application:

A) Michelle Lozuaway for property at the corner of Fox Point Road and Old Post Road, Tax Map 11, Lot 18.

Town Planner, Tom Morgan said the applicant claimed to have two existing curb cuts on the property and he believed that was accurate. He said she was requesting a new curb cut to access the back of her property and would abandon one of the other curb cuts at the low end of the lot on Nimble Hill Road.

Vice Chair Marconi asked if there were safety reasons for the request and Mr. Morgan said abutters said residents had been parking off Old Post Road and the building inspector informed the applicant that a curb cut was required and she then applied.

Chairman Hebert noted that two Board members were not in attendance and that Alternate Board member, Peggy Lamson would be voting. Chairman Hebert asked if there was anyone present that objected to the application. Ms. Linda Kahlsa, who resided at the abutting property on Post Road read a letter of objection that she also provided to the Chair.

Mr. Kahlsa said the curb cut was near a section of yard near her fence and during the summer there were as many as six cars at a time on the Lozuaway property, which caused her dog to bark continually.

Ms. Kahlsa also said there was an unmarked grave on the property and didn't believe there was sufficient setback for a driveway Ms. Lamson said she was also a

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cemetery trustee and was required to keep an inventory of all private cemeteries in town. She said Barbara Hill had listed all known cemeteries for the Historic District, but there was no record of this gravesite. Ms. Kahlsa said it was an unmarked grave that was covered by lily of valley and she would provide documentation. Vice Chair Marconi asked if the gravesite was near the proposed curb cut and Ms. Kahlsa said they probably were not driving over the graves. Vice Chair Marconi asked Mr. Morgan if there was a setback requirement from gravesites and Mr. Morgan said he was not sure if there was in the Town ordinance, but he thought it was State law. Chairman Hebert said Town counsel had advised that the burden of proof would be up to the abutters. He asked Ms. Kahlsa to have the cemetery trustees confirm the presence of the gravesite with Mr. Morgan.

Chairman Hebert said they also needed to know if the fence was on the property line or not. Ms. Kahlsa said it was on the property line and Chairman Hebert said it should be back a foot or two from the property line. Vice Chair Marconi asked Ms. Kahlsa if her property had been surveyed and she said it had. Mr. Cross asked Mr. Morgan if he had searched the files for a plan from the previous sale and Mr. Morgan said he had a copy of the Kahlsa's property, but he never saw one from the former DeRoachmont property.

Board member, Chris Cross asked if it had been determined which road had the front setback and which had the side setback. Vice Chair Marconi said the current curb cut was on Fox Point Road. Mr. Cross said they did not have a plan showing the location of the house to determine if the driveway would be within the setback. Mr. Morgan said Article 2 of the Zoning Ordinance required that the Planning Board would determine curb cuts. Chairman Hebert said he originally thought Old Post Road would be the better place for a second curb cut because there was less traffic.

Mr. Cross said the applicant acknowledged there were two existing curb cuts and he wondered if they could live with those for now. Chairman Hebert said a curb cut was a drive used on regular basis, but some residents just wanted access to the back side of their property occasionally, and he was not sure what was being done on a regular basis. Ms. Kahlsa said the residents were using the Old Post Road access like a regular driveway. Mr. Cross said residents could access their property as needed for various activities, but parking vehicles overnight would appear as a defacto drive and he thought they should cease until it was approved. Vice Chair Marconi concurred and Chairman Hebert said he no problem with that. Vice Chair Marconi said they should get input from the building inspector for a cease and desist until they knew more.

Vice Chair Marconi asked if the Board could table the application for 30 days and Chairman Hebert agreed that it was not urgent to decide at this meeting. Chairman Hebert continued the application to Monday, November 10, 2014.

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B) **David Lauze** for property at **15 Little Bay Road, Tax Map 10, Lot 20A**

The applicant and no abutters were present.

Mr. Morgan said the location was on a straight section of Little Bay Road.

Chairman Hebert said that section of road had poor drainage, but there was a culvert there. Mr. Cross said the plan appeared to be to scale and in conformance.

*Mr. Cross moved to **approve** the curb-cut application for David Lauze for property at 15 Little Bay Road, Tax Map 10, Lot 20A. Bernie Christopher seconded conditional upon fire chief review and approval.*

Chairman Hebert said he was trying to be consistent and fair with all applicants and was concerned with approving before they received a report. He said they could continue their decision to the next meeting and asked Town engineering consultant, Eric Weinrieb what he thought. Mr. Weinrieb said he hadn't seen the site, but the plan looked straight forward. Vice Chair Marconi said the fire chief could do the review quickly.

*All were in favor and the motion **passed** unanimously.*

2) **Public Hearings:**

A) Proposal by **Bruce 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 and Mr. Doug LaRosa with TriTech Engineering appeared before the Board on behalf of the applicant. Attorney Bosen said they went before the Conservation Commission and the Zoning Board of Adjustment. Mr. LaRosa said on he and Mr. Bob Stowell of TriTech Engineering met with Mr. David Price from the Department of Environmental Services (DES) on September 11, 2014 along with Mr. Morgan to discuss their wetlands application. Mr. Morgan said Mr. Price was following a different criteria and asked if the applicant if they would request a waiver from the shared driveway regulations by the Planning Board. Mr. Price said he wouldn't make any decisions until they made the request. Chairman Hebert said a waiver could only be granted if good reason shown and the plan only showed one wetlands crossing.

Mr. Cross said he was under the impression the applicant went to the ZBA for a Special Exception for wetlands crossing for the driveways. Mr. LaRosa said they did go to the ZBA for a Special Exception on September 29, 2014, but they were required to go before the Conservation Commission for a recommendation first and prior to that they met with DES who said they needed to show the least amount of impact to the wetlands as possible and suggested a waiver from the driveway regulations. Mr. LaRosa said at the ZBA meeting they first requested an administrative appeal from the Planning Board's determination that a Special Exception was required because of the debate over driveway and access ways. He said there was a 3-1 vote upholding the Planning

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Board's decision. He said they then requested a Special Exception, but the request was postponed to a date uncertain pending the required wetlands permit.

Board member, Justin Richardson arrived 7:12 p.m. Chairman Hebert recommended that Mr. Richardson recuse himself because he spoke up at the ZBA meeting and Mr. Richardson agreed.

Ms. Lamson asked if access would be adequate for fire apparatus coming from Fox Point Road or Nimble Hill Road. Mr. LaRosa said there would be adequate access for three fire vehicles coming in off Fox Point Road, but he had not made plans for the entire development until the driveways were fully determined.

Vice Chair Marconi asked how many subdivisions and houses were being requested and Chairman Hebert they were asking for a 3-lot subdivision, but there could be six residences if they built duplexes. Vice Chair Marconi said he thought three lots with six residences would be too much of an impact on the site, which could drain on his property and other properties in his neighborhood near Coleman Drive. He said he previously asked the applicant if they could install a cistern or retention pond. Chairman Hebert said water flow eventually went into Great Bay as well.

Discussion ensued regarding the original request for a single lot line adjustment from Mr. Michael Mathes. Chairman Hebert said he understood the Board felt there was a bait and switch when they granted the lot line adjustment for a single lot, but there had since been statements that there was enough uplands for three lots. Attorney Bosen said the property was not under his client's ownership at the time and he was not a party to the lot line adjustment. He said there was no legal basis that the lot had to remain as a single lot. Vice Chair Marconi said he understood that, but they still needed to be concerned with water flow.

Chairman Hebert said the Conservation Commission clearly granted the lot line adjustment based on the understanding that it was only a single lot. Attorney Bosen said the Conservation Commission was an advisory board and the Planning Board had the prerogative to deny the waiver request, but they couldn't say it was legally only a single lot. Chairman Hebert said he understood, but thought two lots would be better where three lots was pushing the maximum density in a very wet area with a minimum access issue and shared driveways would get into setbacks. Mr. LaRosa said he met with Mr. Morgan who indicated driveways were permitted 25' away from wetlands. Mr. Morgan clarified that was only true if they were not paved. Chairman Hebert added that paving is considered a manmade structure. Mr. LaRosa said he hadn't understood that.

Mr. Cross said any lot owner could propose any number of lots, but meeting zoning conditions was the key and he did not agree that DES' preference for minimal wetlands impact was sufficient reason to implement an ordinance for shared driveways.

*Chris Cross moved to **deny** the request for a waiver from the shared driveway ordinance for Bruce Belanger's property at the corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2. Vice Chair Marconi seconded the motion.*

Mr. Richardson of Old Post Road commented from the public and pointed out that the plan appeared to show a driveway crossing one lot to serve another by easement and

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State law didn't allow access across another person's property and the Zoning Ordinance defined a lot as having frontage on a public street and their frontage proposal was only on an easement drive. He said there was a process for exceptions, but they had not applied for them. Mr. LaRosa said there had been an amendment a couple of years before that exempted paved driveways as structures. Chairman Hebert asked Town counsel, Attorney Ratigan to clarify what the law was regarding frontage on easements and Attorney Ratigan agreed that the frontage on an easement didn't meet requirements, but there was a procedure to get around that under RSA 674:41:II that said the ZBA could grant an exception if circumstances warranted.

All members were in favor and the motion to deny passed unanimously.

Mr. LaRosa said he would go back to DES with his original plan. Chairman Hebert asked if he would also go back to the ZBA for a Special Exception and Mr. LaRosa said it was unclear if it would be granted. Mr. Morgan said they were just waiting for the DES permit.

Mr. Cross said he was intrigued with the proposal for a cul-de-sac as a way of solving the issue though it would still require a Special Exception to cross over the wetlands. Mr. LaRosa said the proposed cul-de-sac was to access three lots, but it impacted more wetlands, and he couldn't show a least impacting alternative. Mr. Cross said under he was under the impression that the cul-de-sac would involve a bridge rather than a culvert and Mr. LaRosa said there were differing view points of view that weren't clear whether a bridge would be a wetland impact or not.

Vice Chair Marconi asked if a detention pond would alleviate the problem and Mr. LaRosa said he believed the lot itself was a giant detention pond with the outlet on Fox Point Road. He said with proper engineering the development wouldn't increase the rate or volume or runoff on the property. Chairman Hebert said test pits indicated water could penetrate, but impervious surfaces would cause water to run into wet lowlands. Mr. LaRosa said he understood the drainage issue and would provide information to show they wouldn't increase the rate of runoff.

Chairman Hebert said ultimately it came down to economics and the applicant had been proposing three lots for a long time, but the middle lot was tight and he thought two lots would have less impact on the wetlands and less costs. Mr. LaRosa said the property owner stated that he wanted to live on one of the lots and having seen his other developments, he was confident it would be a good development. Chairman Hebert said the Board was looking at what did and didn't work and saw problems with wetlands and access, and who lived there was not the purview of the Board. He said they were running out of time. Attorney Bosen said he would return to his client for further consideration. Chairman Hebert said there were time limitations and they needed something in writing to Mr. Morgan to say it was okay to delay another month. Attorney Bosen agreed and Chairman Hebert continued the hearing to Monday, November 10, 2014.

Mr. Richardson returned to his seat at the Board.

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B) Proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 14.

Mr. Joe Calderola appeared before the Board with Mr. Doug LaRosa from TriTech Engineering. He said the Board requested as much information as possible at once so he developed the lot plans, designed the septic systems and drainage for Town engineering consultants, Altus Engineering to review. He said he also met with Attorney Bernie Pelech to discuss a homeowners' association agreement and easements. He said the foundation drain, water and utility easements were emailed to Mr. Morgan. Chairman Hebert asked if Mr. Eric Weinrieb of Altus Engineering had seen the plans and Mr. Weinrieb said he had not.

Mr. Calderola said they were proposing duplexes on each lot. He said it was an intensive development of the sight, but they would not be requesting any waivers.. He said they were proposing ascending barn additions to the back of the prominent historic house in the front to give it a natural look. Ms. Lamson asked if they would be restoring the original house and Mr. Calderola said the left side would be the restoration and right side would be the new development.

Vice Chair Marconi asked if the stone wall above the cul-de-sac would need to be moved and Mr. Calderola said they would need to move it down. Mr. LaRosa said the grading notes would be on the final plan. Chairman Hebert said they had discussed the best location for the entrance at the last meeting and they had a site walk to look at the best location for safety, but it appeared they were removing the wall along with a tree. Mr. Calderola said they would reuse the stone and a qualified mason to continue the wall.

Mr. Richardson asked about cutting into the grade and tree roots for the driveway placement at the edge of no cut/no disturb buffer and Mr. LaRosa said they was no disturbance in a 25' zone. He said the old farm was built at grade with compact fill over years so there was no more than a 2' elevation difference along the inside of curb, mostly 1' so they would cut into earth and put in fill just a little above the existing grade to stay out of buffer zone. He said he would provide plans to Altus Engineering. Chairman Hebert said they were concerned with digging in unsuitable soil, getting to clay, putting soil on top that would absorb water, freeze and heave the pavement. Mr. Weinrieb said it could be done, but it would be hard to do without altering the width. Mr. LaRosa said they would address that issue.

Mr. Richardson said he was concerned that the tree roots would grow toward the sub straight if they put in fill. Chairman Hebert said there was no way to avoid going through some of the forest and root system, but it should be at a minimum and perhaps the Conservation Commission could address how much damage it would do. Mr. Richardson said if they were putting fill up to the no disturbance buffer, then the construction would require a Special Exception and he wanted to know what would work best. Mr. Calderola said their concerns made sense and he asked Mr. LaRosa to look at a driveway system that wouldn't go into the buffer even it were a dirt driveway because he didn't want a project that didn't comply.

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Ms. Lamson said she didn't see a septic backup area on the plans and asked if they had one. Mr. LaRosa said they would be digging more test pits in a couple of days and would have an answer then, but it looked as if the best area would be to the side of unit 2. Mr. Calderola said they would have a back up plan to complete the design. Chairman Hebert said Altus Engineering would need to review any changes.

Mr. Weinrieb said he had no objections to the foundation drain discharging onto the other parcel, but was concerned with the possibility of separate pipes backing up into other homes. Chairman Hebert said they had requested an easement for drainage, utilities and water, but did not want them built along the setbacks either. He said he was also concerned with digging up neighbors' yards for access. Mr. Cross agreed that they should have independent lots to avoid future problems. He said a two-family dwelling on a lot would have a 50-50 split sharing utility conduits and water access along each driveway and he was not in favor of granting shared utility easements and thought independent access should be at the cul-de-sac without going through other properties. He also suggested that Lot 4.1 not drain toward the front drainage field and Mr. LaRosa said he would look into it further.

Ms. Lamson asked for clarification on the catch basin and Mr. LaRosa said they were proposing catch basins made of plastic instead of concrete with stone and pipe infiltration system that would fill and drain into wetlands. Ms. Lamson asked if that would increase the wetlands and Mr. LaRosa said it would infiltrate into the ground.

Board member, Bernie Christopher asked if they had done test pits to determine how many bedrooms the lots could support and Mr. LaRosa said they would determine that in a couple of days and they would comply with State regulations for infiltration.

Mr. Cross asked why they didn't do collection ponds rather than going to greater expense for drainage that would require Town maintenance. Mr. Calderola said the homeowners' association, not the Town, would cover maintenance. Mr. LaRosa said there were other options and it was up to the Town, but it had been his professional experience that their proposal would work and the systems lasted a long time. Mr. Weinrieb said he had never seen an underground detention in a cul-de-sac maintained by a homeowners' association that would set precedent and his concern would be for what would happen if it failed during a large storm. He suggested they consider something cleaner or better.

Mr. Richardson said he shared the concern with the engineered solution for storm water and said they wouldn't do any good if the system broke. He said water sits and heats up in detention basins so the water quality going out was worse than going in. He said he would like to see an alternate plan and thought the front and center of the lots would look nice with landscaping and perhaps a rain garden for less maintenance and a selling point. Mr. Calderola agreed and said he liked rain gardens.

Mr. Cross suggested that the recorded plan showed the water flow path from the wetlands so homeowners would understand the importance. He also noted that there was no culvert across from Nimble Hill Road and snow would need to drain somewhere so it wouldn't build up on the road. Mr. LaRosa said water seemed to flow toward the stonewall and then disappeared. Mr. Cross said it didn't go anywhere right now, but he was concerned with how the buildings would change the water flow. Vice Chair Marconi

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said Pease was currently sending people around to check wells for pollution and he was on well water and would be concerned that water flowing in his direction could affect his water quality.

Mr. Morgan said the proposed expansion met setbacks, but Article 13 of the Zoning Ordinance said non-conforming structures could not expand and they were proposing a duplex in the front lot with a setback of less than 40' from Nimble Hill Road so they would need variance. Attorney Pelech said Mr. Cross suggested they change the frontage to make the lot conforming. Mr. Morgan said Article 2 says the Planning Board would determine frontage.

Mr. Richardson said his understanding was that the language for a non-conforming structure related to making a non-conforming aspect more non-conforming. He said he asked Attorney Ratigan and he didn't think they would require a variance because the expansion was outside the 40' setback. Chairman Hebert said they discussed the matter in great detail, but the ordinance read as written and they were asking to put a driveway on a new road and they couldn't add on to the non-conforming structure without ZBA approval. Mr. Richardson said he thought it would be in the Planning Board's purview. Attorney Pelech agreed with Mr. Richardson, but said he couldn't argue if that was how the Town's ordinance read.

Mr. Morgan said they previously agreed that the frontage would be off the circle, which would comply and then they wouldn't need a variance and only one side of the lot would need frontage. Mr. Richardson said they had decided on frontage, but they also needed to decide on access. Mr. Cross said they would preserve the house, but would have to lose a tree, move an iconic stone wall and lose half the yard so he asked the Board if it would be in their purview to access the lot from Town property. Attorney Pelech said he didn't think they could propose their road through the Town's property. Chairman Hebert said it would have to go to Town Meeting for approval. Mr. Richardson said there was also an issue of notice to abutters. Chairman Hebert said moving the wall would not be a problem so long as they made it a condition that they would use a professional stonewall builder. Mr. Calderola said he would supply photos of walls his stone mason did in Durham.

Mr. Weinrieb said he wanted to be sure that the applicant responded to his comments and that they met Town requirements, including reference to FEMA. Mr. Richardson said he thought it would be better to be on the 88 datum rather than 27th. Mr. Weinrieb said it should be on the datum and topum and not on the correction. Mr. Calderola said he talked with Bob Stowell with TriTech who thought the sensible solution would be not just to change the numbers, but to build that way also. Mr. Weinrieb and Mr. Morgan both agreed. Chairman Hebert said it should be a condition and Mr. LaRosa said it would be on the recorded plan.

Mr. Weinrieb said it was not a Planning Board requirement, but in other communities he was seeing plaques on wetlands boundaries as shown on plans so residents would understand needs protection. Mr. Calderola agreed that they could install steel posts with aluminum plaques in the buffers.

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Chairman Hebert said there were several open issues and he was also concerned that they might be looking at other plans. Mr. Weinrieb said he understood they might be hesitant until they settled on a final plan and Mr. LaRosa agreed.

Chairman Hebert said he also asked Town wetlands consultant, Mark West to review the effects of changes from single to double residences. He said the Town would probably need additional funds to cover consultant fees.

Chairman Hebert took a non-binding poll on whether the Board preferred the frontage for the existing home to face the cul-de-sac side instead of Nimble Hill Road and all members concurred.

Chairman Hebert continued the hearing to Monday, November 10, 2014.

Attorney Ratigan left the meeting at this point in the meeting at 8:58 p.m.

C) Proposal by **Wilcox Industries** to expand their facility at **25 Piscataqua Drive, Tax Map 27, Lot 22**, and to extend Shattuck Way in a southerly direction

Chairman Hebert excused himself from his seat and Vice Chair Marconi chaired the meeting for ten minutes before Chairman Hebert returned.

Mr. Bill Gregsak of Gregsak Engineering, presented the site plan for expansion to the existing facility and reviewed the proposal.

Mr. Gregsak said at the ZBA meeting on September 29, 2014 they were granted a variance to construct a parking lot and retaining wall within 2' of the rear setback where 50' was required. Chairman Hebert said it would be recorded on the easement that they could not build under the power lines and Mr. Gregsak agreed that it would be recorded correctly.

Mr. Gregsak said they also went before the Conservation Commission for a recommendation to DES for a dredge and fill application, which the Board of Selectmen sent to DES. Mr. Morgan said the Selectmen were involved because there were two property owners and Mr. Weinrieb said it was a major impact.

Mr. Gregsak reviewed the list of waivers for lighting, parking lot design, landscaping, impervious surfaces, and drainage and then discussion ensued.

Chairman Hebert said there was a potential long term plan to expand and they wanted to be sure there would be adequate parking. Mr. Morgan said he and Mr. Weinrieb were on site and the intent of the parking ordinance was not to create offsite parking problems so they could stipulate that there would be no parking outside of the fenced area.

Chairman Hebert said he understood the requests for waivers from lighting and landscape, but he asked if they would consider new technology that would not affect security. Mr. Richardson expressed concern that they could be asking for increase light that glared offsite. Chairman Hebert said he thought they might be asking for higher light levels within the fenced area. Mr. Gregsak said for security reasons, they did not want all the information public, but he didn't think they wanted to increase the amount of

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lighting. Chairman Hebert suggested they meet in confidence if necessary and that was acceptable by the Board. Mr. Richardson expressed concern that they would be waiving their confidentiality if they met with a public official. Chairman Hebert said there was a difference between Homeland Security and the Right to Know law. Mr. Richardson agreed, but suggested that they include a stipulation in the approval. Mr. Weinrieb agreed that would not compromise Chairman Hebert's position.

*Bernie Christopher moved to **approve** the waivers as proposed by Wilcox Industries to expand their facility at 25 Piscataqua Drive, Tax Map 27, Lot 22 with the condition that Chairman Hebert meet in confidentiality to discuss shielding of lighting from the property line. Peggy Lamson seconded and all were in favor with Justin Richardson opposing.*

Mr. Morgan commented that Shattuck Way flared to the west, but now it was causing setback issues and he suggested they could return that portion of the property. Chairman Hebert said there would be a delay because Town Meeting wouldn't be until March. Mr. Richardson commented on the differences between the property line and the right of way easements to the center line and asked if the Town had a deed owned in fee. Mr. Morgan said they did and said the right of way had a 30' setback.

Vice Chair Marconi moved to return the triangle of land on the southeast corner of the Wilcox Property with dimensions provided by Town Planner, Tom Morgan and present the proposal to the Board of Selectmen to go through due process for approval at the 2015 Town Meeting. Bernie Christopher seconded the motion and all were in favor except Justin Richardson who did not vote.

Chairman Hebert continued the hearing to Monday, November 10, 2014.

3) New Business: Proposal by Keith Frizzell to construct an industrial building at 34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11.

Chairman Hebert said they talked about the Master Plan at their last meeting and asked the applicant to consider the residential area.

Mr. Richardson asked if a former client, Mr. Gary Mentor was an abutter. Ms. Ann Beebe of Patterson Lane said he was her neighbor and Mr. Frizzell said he was not his abutter. Chairman Hebert said it would not be necessary for Mr. Richardson to recuse himself.

Mr. Keith Frizzell said the existing building was not large enough to meet tenant requests so they originally proposed replacing with larger buildings on each lot, but had since redesigned the building so it would only be on the Industrial zoned side, abutting the Residential zoned side. Mr. Morgan asked if there were plans and Mr. Steve Haight of Haight Engineering said he had mailed them, but had some smaller plans for the Board to review. He said they met with some of the residents of Patterson Lane to show them the new plan. Mr. Frizzell said their plan was to combine the two lots in order to

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meet the overall lot size requirements. Ms. Lamson said the building would be up against the existing parcel line, which was also the zone line.

Mr. Morgan said two fire chiefs ago there was a Fire Department policy that trucks had to be able to get around buildings. Mr. Haight said he would discuss it further, but he thought they were usually required to access three sides.

Mr. Morgan asked what the old house on the residential lot would be used for and Mr. Haight said it would be used as a caretaker's building. Mr. Morgan asked if there would be vegetative screening between the industrial building and the residential lots and Mr. Haight said there could be. Ms. Lamson said the Beebe property would still have a view of the back of the industrial building. Mr. Cross suggested they consider a 10' berm with planting on top.

Mr. Paul Reardon of Patterson Lane said the EPA had been doing some testing of the wells on Patterson Lane. Chairman Hebert said the Air Force owned an abandoned pipeline and Vice Chair Marconi said the airbase was required to test wells. Ms. Lamson said they started the testing in 1988. Ms. Beebe said she would be concerned about runoff into her well from the abutting industrial use.

Ms. Beebe asked why they were talking about building on the industrial parcel up against the residential parcel beside her if it didn't meet the setback requirements. Mr. Frizzell said there was a five acres requirement to build in the industrial zone so they were proposing to combine the lots, but only build on one side. Mr. Richardson said they would need a lot line adjustment and would gain a 50' side yard setback. Mr. Morgan said the Planning Board used to have the authority, but the NH Legislature wrote an RSA for voluntary lot mergers and cities and towns had no choice. Ms. Beebe asked if that was still the case when the lots were in different zones. Mr. Morgan said some towns had forced mergers in the past and the law was intended to make it easier for property owners to combine or separate the parcels as they needed, but this was different.

Ms. Beebe said there had been a previous proposal for a truck stop that was shot down by the Planning Board before. Mr. Frizzell said they only had one meeting and it was not shot down, but the tenant decided not to go forward. Ms. Beebe said it would still be the same thing for her with trucks going in and out, adding to pollution. She said she was also concerned with expansion once they became established. Mr. Reardon said the last proposal was shot down because of an environmental impact as a non-conforming lot and he thought that set a precedence. He said maps showed wetlands, a stream that ran under the road into the river and the EPA checking pollution. He said he would want to know what would be stored on the site there. Mr. Frizzell said the use would follow Town ordinances and Mr. Haight said they had discussed leases with electricians and whatever would be acceptable in Town zoning. Ms. Haight said info would have to be provided to fire dept. existing tenant wants to expand, and also discussed industrial and business use so if an electrician or plumber,

Chairman Hebert said borrowing acreage from a residential parcel wouldn't increase the area in the industrial zone. Mr. Haight said the lot existed before zoning so he thought a precedent had been set. Chairman Hebert said he thought their attorney

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should review the circumstances because there might be less standing for setbacks, but not for use, which might require variances.

Mr. Richardson said he didn't know if meeting the industrial use after combining the two lots would leave enough square footage to meet the residential requirements for the house. Mr. Haight said if the residential requirements couldn't be met, then they could remove the house, but they would rather not because it was historic.

Ms. Sandy Sweeney of Patterson Lane said if they originally determined that the industrial lot was too small for trailers so asked what the difference would be. Mr. Haight said by taking the lot line away they could move closer to the zoning line to leave enough room for tractor trailers.

Mr. Richardson asked if they would be willing to put not on plan that the residential area would not be expanded for industrial use. Mr. Haight said they could, but they would limit their options if Ms. Beebe or others agreed to sell their homes and the industrial zone was expanded as discussed in the Master Plan.

Mr. Richardson said the condition would only be in relations to this plan and then they could go back to the Planning Board for an amendment if things changed.

Chairman Hebert said generally speaking, residential uses are not as compatible with industrial as industrial waterfront. And they still needed a legal opinion to review to see if they could subdivide and sell the residential lot at a later date because they would be losing their setback. Mr. Haight said they would still need to meet the industrial setback and would require a variance if they subdivided. Chairman Hebert said the Board was trying to prevent a future situation that would be non-conforming. Ms. Lamson said the Board also had a responsibility to the residents on Patterson Lane. Mr. Haight said this property owner had rights too.

Mr. Richardson said the idea was to record on the plan that the lot would be limited for residential use only so the ZBA could not approve a change of use. Chairman Hebert said that was a good option.

Mr. Bill Sweeney of Patterson Lane asked why couldn't put the residential lot into a conservation easement and then it would be set in stone. Chairman Hebert agreed that conservation might be a consideration.

Mr. Richardson also suggested that under current the current zoning, a driveway was not a structure, but a parking lot was and he wondered if they could move the building so the driveways access was on the lot line and the setback under the driveway regulations could be waived. Mr. Morgan said that would move the 18-wheelers closer to the residents. Chairman Hebert said they could also install a berm in the residential area that would block sound.

Chairman Hebert said Mr. Morgan would initiate a discussion with the attorneys to get answers as quickly as possible.

4) Old Business: Portsmouth Sign Company improvements at 19 Nimble Hill Road, Tax Map 7, Lot 20, and Map 12, Lot 15.

Mr. Morgan said the applicant had informed him that he was not ready and would not present until a later date.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 6, 2014

Minutes: *Peggy Lamson and Mike Marconi were not at the September 8, 2014 meeting so there was not a quorum and approval of the Minutes was tabled until the next meeting.*
*Mike Marconi moved to **approve** the Minutes for the **September 22, 2014 meeting**. Peggy Lamson seconded, and **all were in favor**.*

Adjournment: *Mike Marconi motioned to adjourn, and Bernie Christopher seconded the motion. All were in favor and meeting adjourned at 10:25 pm*

Next Meeting: Monday, October 20, 2014

Respectfully
Submitted by: Jane K. Kendall, Recording Secretary