

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 20, 2014

- Call to Order:** Chair Denis Hebert called the October 20, 2014 meeting at 6:30 PM.
- Present:** Vice Chair, Mike Marconi; Chris Cross; Jack Pare; Justin Richardson; Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Bernie Christopher, Alternate Member, Peggy Lamson and Board of Selectmen Rep, Rick Stern
- Public Guests:** Jose Valdez, Eric Cloutier and Don Dudley from Georgia Pacific; Dick Kelly with Jacobs Engineering; Leonard Lord, District Manager, Rockingham Counting Conservation District

### **A) Preliminary Discussion:** Expansion proposal by Georgia Pacific

Mr. Jose Valdez with Georgia-Pacific, Inc. appeared before the Board with their latest concept for their warehouse expansion to become more efficient with loading, traffic flow and shipments.

Mr. Dick Kelly with Jacobs Engineering said they would be replacing the temporary warehouse used to store gypsum board. He said there were safety issues with the current layout and they wanted to get employee, truck and visitor traffic away from one another.

Board member, Jack Pare asked if the existing facility was paved and if they were planning to replace the pavement and put paving in the setback area. Mr. Kelly said they would.

Vice-Chair Marconi asked how much trailer storage at a time they had and Mr. Kelly said they were proposing 23 storage places in one place and 20 in another area.

Mr. Eric Cloutier with Georgia Pacific said they would be separating the parking areas to prevent traffic backing up on Avery Lane. Mr. Kelly said the plan would improve traffic for the site as well as clear traffic on Avery Lane for Sea-3. Vice-Chair Marconi said Shattuck Way was getting busier and busier and there was a safety issue with trucks strapping on the side of the road and recommended they consider that in their plan. Board member, Justin Richardson asked about their storm water plan and Mr. Kelly said they hadn't completed their plan, but considered underground storm water detention with perforated pipe imbedded in stone.

Vice-Chair Marconi also expressed concern with runoff discharging into the river and Mr. Valdez said they would have an environmental consultant look at the site and they were considering treatment ponds. Vice-Chair Marconi asked how often they

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reviewed the treatment centers for buildup and Mr. Valdez said they looked at them yearly. Vice-Chair Marconi said the Board would require a yearly letter be sent to the building inspector for review.

Board member, Chris Cross asked if they considered making use of the abandoned Boston and Maine railway and Mr. Kelly said Georgia-Pacific had purchased the existing spur of track, but had never used it. Mr. Cross said Boston and Maine was in the process of removing it as part of the Sea-3 project. He said Shattuck Way would eventually be extended and connected to Shaftmaster Road and asked if they might consider an alternative for better use of Shaftmaster Road to eliminate the need for so many turns and remove some of the traffic congestion from Avery Lane. Mr. Valdez said there was a natural gas building, power lines and costs to consider, but they would entertain possibilities.

Chair Hebert said he was not so concerned with the truck turning radius as the timing of Sea-3's expansion project that was being held up in court. He advised them to coordinate with Sea-3's Vice-President of Operations, Mr. Paul Bogan. Mr. Kelly said he thought there was just a gravel path there for fire trucks right now and Mr. Richardson said it could be paved. Mr. Morgan asked if the fire chief had seen option and Mr. Valdez said he had.

Mr. Richardson said he was also concerned with setting a bad precedent in allowing encroachment into the setbacks and wondered if there weren't other configurations. Mr. Valdez said they had considered various options, but the project had to be financially viable and this plan optimized storage in their warehouse and shipping.

Mr. Kelly said they were proposing a 60' setback where 50' was required. Town Planner, Tom Morgan said the production line was a total of ½ mile and they should show the setbacks on the plan. Chair Hebert said they were expanding and running out of space and should consider talking to neighbors regarding a land purchase. He said they would still need to go to the ZBA each time because they had no frontage on a public road. Mr. Morgan said he liked the plan and advised that they go to the ZBA after they worked out the concept before they spent a lot of money on the project. Mr. Richardson also commented that one of the criteria for granting a variance was to show there was a hardship with no other alternative so he suggested that they be able to show other alternatives that were considered. He said they should also get whatever waivers and agreements were necessary.

Mr. Cross asked if they considered moving the employee parking to the other side and building a multi-level garage. Mr. Cloutier said they were trying to avoid putting pedestrians in the way of heavy equipment. Chair Hebert said he understood building a garage would be expensive, but buying land would be more expensive.

Mr. Richardson asked Mr. Morgan if the definition of structure did not include paved drives for access to property or if that meant only the section coming off Shattuck Way. Mr. Morgan said he considered one the access and the other egress, but it was open to interpretation and they would go to the ZBA for further consideration. He also recommended that the plan show different colors for the existing conditions and the proposed changes.

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Chair Hebert said they were trying to do a lot with parking and controlling truck traffic, but he wasn't sure how the plan would change the existing traffic flow. He said there was little land left for water treatment, trees and grass and they could should consider off-site improvements to offset so much pavement, adding that the Town had a fund for conservation lands that were approved. .

Mr. Morgan asked if the Board preferred that the applicant go to the ZBA first and Mr. Richardson said the ZBA should consider the Conservation Commission's recommendations first.

Mr. Valdez said they were only in the conceptual stages and didn't intend construction to be complete for a couple of years but would be available to meet for the first meeting in November 2014.

### **B) Appropriate sizing requirements for uplands.**

Mr. Morgan referred to item C7 on the agenda in regards to the consideration to increase upland requirements. To assist the Board in determining if the increase would be appropriate, realistic and defensible, he invited Rockingham County Conservation District Manager, Leonard Lord to join their discussion.

Chair Hebert said one of the problems that complicated determination of whether lots had jurisdictional wetlands, despite their wet appearance was disturbed soils from agriculture and construction. In addition to that consideration, they were also looking at an increase in two-family dwelling proposals on lots that would have further impact that could warrant the increase of uplands.

Mr. Lord discussed the current upland calculations for a small, single-family home, a septic, well, and no wetlands, and possible increases when adding wetlands and setbacks. Mr. Richardson said one of the issues was with building right up to no cut/disturb buffers and having trees right up to their back doors that they could not cut. Mr. Pare added that over time people's lawns expanded into the buffers, especially if they were that close.

Chair Hebert said the current requirements were in response to the rural character that the town's people wanted, but some developers were trying to find ways around it to create more lots near wet areas. He said they also needed to consider the number of residents on a lot and the type of soils considering how much clay was in the area.

Discussion ensued regarding non-contiguous wetlands and contiguous uplands and setbacks. Mr. Lord said most towns did not have a provision for minimum contiguous uplands, but he thought it was a good idea that made sense because people were building up to the buffers. Mr. Morgan said he had anticipated that developers attorneys would bring in wetlands scientists to say that would be unreasonable, but he was hearing an increase could be defended. Mr. Lord said especially for two-family dwellings.

Mr. Richardson said the Master Plan talked about a lot area for subsurface disposal and irregardless of advanced septic design, lots were still not large enough and needed to be increased because of the intense use of land. Mr. Lord said there were a

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few expensive systems that could be used when soils can't handle nitrogen from regular systems, but the technology still wasn't advanced and maintenance and operation costs were \$1,500 a year and prohibitive for many. He said right now the requirements were only based on soil types, but they also needed to consider whether a resident had a dog and other uses on the property and even then, some towns allowed more on smaller lots.

Discussion ensued on updating the Master Plan and cross-referencing other documentation. Mr. Cross and Mr. Morgan both agreed that trying to use a definition of maintaining a "rural" character in town would not be sufficient. Mr. Richardson said the legislative body of a town approves the Zoning Ordinance and the rural character was part of the Master Plan process that was voted on. Chair Hebert said he was trying to follow the town Master Plan for a rural character and at this point he had never seen a cluster-housing plan that fit the description. Mr. Richardson said they could also run into issues with manufactured and workforce housing, but they could still determine minimum lot size that would be approved by the town. Chair Hebert said some towns had 1-5 acre lots and Mr. Richardson added that some towns had 10-acre woodlots. Vice-Chair Marconi said investors usually considered 5 acres or more to be the norm for rural.

Mr. Lord said he knew of one town that limited the number of bedrooms per lot. Mr. Morgan said he would check, but he thought the existing regulation might be for four bedrooms. Mr. Richardson said there was always an assumption that a single-family residence had four bedrooms when doing site reviews for subdivisions and not eight bedrooms. Vice-Chair Marconi said many lenders were more concerned with the number of bathrooms than bedrooms and they also wanted an area for backup septic systems for failed systems.

Mr. Lord said thought they could double lot sizes for double house lots considering some recommendations of 32,000 square feet of uplands for well-drained sand and gravel on single lots up steep slopes. Mr. Lord suggested 32,000 square feet of uplands for a single lot with at least 100 across. Mr. Pare pointed out that the soils shown on the county map were different than actual soil tests. Mr. Lord and Mr. Morgan agreed that applicants could still claim the soils were adequate for the lot size and uplands, but Mr. Lord said clay soils were another consideration for increasing uplands requirements.

Chair Hebert suggested a geometric building requirement within a radius of 25,000 square feet. Mr. Morgan said rectangles had been done before in other communities and worked to avoid wetlands buffers and prevent pork chop lots. Mr. Richardson said it would encourage the right types of behavior in developers for contiguous lots, limited to one or two instead of three or more with long, snaky driveways.

### **C) Amend the Zoning Ordinance**

Discussions on amending the Zoning Ordinance ensued as follows:

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### 1) Revise the definition of **Frontage in Article II**, as follows:

**Frontage:** Shall mean the width of the lot bordering on the public right-of-way. In those instances in which a property abuts multiple public ways, the Planning Board shall determine which side of the parcel is frontage, for purposes of satisfying the zoning ordinance's minimum frontage requirements, and which side of the parcel is frontage for purposes of establishing "the street giving access to the lot", as that term is used in RSA 674:41,III.

Mr. Morgan said he spoke with Town counsel, Attorney John Ratigan who provided a legal opinion that the Planning Board make revisions so that they comply with State law, but still retain their flexibility. Mr. Morgan said the Board needed to look at controlling the placement of curb cuts.

Mr. Richardson said the Board needed to make sure the revision did not go beyond the original intent when determining frontage on corner lots by allowing two frontages.

Chair Hebert said 200' of continuous frontage on any public road(s) could include a lot on three roads. Mr. Richardson agreed that the RSA said singular use could include plural if it was not otherwise specified. Mr. Cross contiguous frontage of 200' could be acceptable on two roads so long as they met at the corner.

Mr. Richardson said they also needed to look at their definitions of lots because a law change in the late 1990's said access had to be on an actual lot, a public street or private street that had been approved by the Planning Board.

Mr. Morgan said he would present Mr. Richardson's proposal to Attorney Ratigan for review.

### 2) **Amend Article V Section 1A** as follows: "together with recreational, ~~educational, and religious~~ facilities.."

Mr. Morgan said items 2 – 5 addressed the same legal advice that had been discussed by Attorney Ratigan. Chair Hebert said the recommendations for changes were based on evacuating large groups from the Waterfront and Industrial Districts, with the exception of a hotel proposal that was already grandfathered.

Mr. Morgan said his concern was that they might be losing businesses that provided a tax base in a transition zone. Chair Hebert said they were still trying to keep permitted and grandfathered uses. Mr. Richardson said businesses could also request a variance for consideration.

### 3) **Amend Article V Section 2B** that lists permitted uses in the Office Zone, as follows:

B - Principal Uses Permitted:

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(1) offices, research and development facilities, biotech facilities, light manufacturing, warehouses, ~~hospitals~~, medical clinics, ~~nursing homes~~, veterinary hospitals, ~~schools~~, hotels of 3 stories or higher, ~~conference centers~~, and facilities to treat the developmentally disabled.

4) **Amend Article V Section 3B** by adding the following to the list of permitted uses in the Commercial Zone: hospitals, nursing homes, schools, and conference centers.

5) **Amend Article V Section 3** by replacing the term “church” with “place for public worship.”

6) **Amend Article X** by adding the following to Section 4B(6) “contingent upon the issuance of a Special Exception pursuant to Section 4C below” was changed to “by Special Exception pursuant to Section 4C below”

Mr. Morgan suggested the wording would either have driveways as a permitted use or they would have to go before the ZBA. Mr. Cross said permitting driveways could allow them to be placed anywhere through wetlands, but requiring applicants to go before the ZBA would require a determination if they were necessary. Chair Hebert said they needed to make sure that the wetlands ordinance didn't land lock lots.

Mr. Richardson said the Article X, Section 4B(6) should mirror item 7's requirement for a Special Exception. Chair Hebert suggested getting rid of it all together. Mr. Morgan said the change would require a ballot vote before Town Meeting.

7) **Amend Article X**, as follows:

### **SECTION 5 - Minimum Lot Size Requirements**

Areas designated as jurisdictional wetlands may be used to fulfill no more than 50% of the minimum lot size required by the Zoning Ordinance, provided that the upland area is includes at least 30,000 contiguous square feet of land area outside of buffers and setbacks required by Sections 6 and 7 below.

D) Consider amending the **Subdivision Regulations**, as follows:

1) **Delete Section 3C(3)** regarding abutters fees.

2) In **Section 3C(5)**, replace references to the Water Supply and Pollution Control Commission with “Department of Environmental Services.”

3) In **Section 3C(5)f**, revise as follows:

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~~f - the limits of the 100-year flood zone, i.e. all land along the Great Bay Estuary that is situated between the shore and 7 feet above National Geodetic Vertical Datum (NGVD), as delineated by FEMA.~~

4) Add the following to **Section 3C(5)**:

h – Topography is to be referenced to North American Vertical Datum of 1988 (NAVD 88).

*Mr. Richardson moved to notice the above amendment items on the agenda for a public hearing on Monday, November 24, 2014. ? **seconded** and all were in favor.*

5) Revise **Section 3D** as follows:

~~(1) Formal consideration of the application will not begin until the Planning Board or its agent has received sufficient information to allow the Board to make an informed decision, in the proper time period, per RSA 36:23.~~

~~(2) A completed application will be received only at a regularly scheduled public meeting of the Board which has been properly noticed as per RSA 36:23 I(d), see Town Regulations, Section 3.F.~~

(1) Formal consideration of the application will not begin until the Planning Board has determined that the application is complete. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision, as per RSA 676:4(l)(b).

6) Revise the Planning Board's **Fee Schedule in Section 3D(3)**, as follows:

b - Schedule of Fees - **Subdivisions**:

Lot Line Adjustment: ~~\$100~~ **\$300**

Minor Subdivision (3 lots or less): ~~\$200~~ ~~\$600~~ **\$1,000**

Major Subdivision (more than 3 lots): ~~\$500 plus \$100/lot~~  
~~\$1,500 plus \$300/lot~~  
**\$1,500 plus \$500/lot**

Mr. Cross suggested that the fees be increased commensurate with other towns so that they would include all fees. Mr. Morgan said the recommendation was lower than many towns.

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Vice-Chair Marconi recommended that they increase the fee to \$1,000 for 3 lots or less. Chair Hebert agreed, adding that the fees also paid for administrative and building inspection costs. Mr. Cross said the fee was relatively small for multi-lot developers.

Chair Hebert recommended that the fees for a major subdivision also be increased to \$1500 plus \$500 per lot.

E) Amend the **Site Plan Review Regulations in Section 7F**, as follows:

1) <b>Application Fee</b> for New Construction:	\$200;	Change of Use:	\$50.
	\$600		\$150

*Mr. Richardson moved to schedule a public hearing on Monday, November 24, 2014 to change the subdivision and site plan regulations as noticed. Vice-Chair Marconi seconded the motion and all were in favor.*

F) **“Pork Chop” Lots**

Mr. Morgan had previously recommended that the Board consider a rectangular radius from construction to avoid “pork chop” lots and Chair Hebert agreed.

Mr. Richardson suggested they consider noticing a public hearing for changes to the minimum lot size requirements of 30,000 contiguous uplands to be included in the subdivision regulations so that they would not have to wait until Town Meeting to make the amendment. Chair Hebert agreed. Mr. Pare asked if it could still be under zoning and Mr. Richardson said it could, but enforcement wouldn’t be contingent under zoning changes made at Town meeting. Mr. Morgan said he didn’t think it would have the same legal teeth under subdivision regulations and said he would like to review the subject with Attorney Ratigan. Mr. Richardson and Chair Hebert agreed.

### **Budget:**

Chair Hebert said he would like to see a quasi-technical review board that would consist of Mr. Morgan, the fire and police chiefs and the Town engineering consultant. He said he was afraid the request would get squashed because it would appear as an initial cost increase, but they needed to keep in mind that the budget would get reimbursed by applicants. Mr. Richardson said they should consult with Town legal counsel because it would need to be included in the Zoning Ordinance. Mr. Morgan said the budget deadline was December 10, 2014.

Mr. Richardson said a punch list of costs for applicants would be helpful.

### **Appointments:**

Mr. Morgan informed the Board that Mr. Ken Latchaw was interested in serving on the Planning Board. Vice-Chair Marconi said he knew of a couple of other people



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that were interested in serving on the Board as well. Mr. Morgan said the Planning Board members were elected and he believed the Board appointed alternates.

### **Discussions:**

Vice-Chair Marconi asked if individual Board members, as well as the Board itself, were covered by the Town in lawsuits. Chair Hebert said the Town would cover individual members unless they slandered themselves.

**Minutes:** *Mike Marconi moved to approve the Minutes for the September 8, 2014 meeting. Justin Richardson seconded, and all were in favor.*

*Mike Marconi moved to approve the Minutes for the September 22, 2014 meeting. Justin Richardson seconded, and all were in favor.*

**Adjournment:** *Mike Marconi motioned to adjourn, and Chris Cross seconded. All were in favor and meeting adjourned at 9:10 p.m.*

**Next Meeting:** Monday, November 10, 2014

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