

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 17, 2014

Call to Order: Chair Denis Hebert called the November 17, 2014 meeting at 6:30 PM.

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

Absent: Bernie Christopher

Public Guests: Sharon Alley, Gurubhai Khalsa, Dave Hislop, En Nu, Frank Lavalieri

Alternate Board member, Peggy Lamson announced that a second fixed base operator (FBO), called Granite Star, LLC was interested in building near Plain Sense at Pease. Ms. Lamson said they would supply services like fuel, etc. She said they would be doing a presentation at Pease on Wednesday, November 19, 2014 at 8 a.m.

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

Chair Hebert said the owners could not make it in and the item would be continued until all the requirements had been met.

Town Planner, Tom Morgan said they had installed a guardrail and done some landscaping, although the building inspector said it was minimal. Chair Hebert asked that the original approval for plantings be reviewed.

Mr. Morgan recommended that the Board do a site walk after dark and review and approve the LED lights. Chair Hebert requested a photometric design for the lights.

2) **Preliminary Discussions on Applications:**

- A) Proposal by **Sharon Alley** and Gurubhai Khalsa for a lot line adjustment and a 2-lot subdivision off Fox Point Road and adjacent to 11 Old Post Road, Tax Map 11, Lots 21 and 22.

Mr. Morgan recommended that the Board do the lot line adjustment before the subdivision.

Surveyor, Dave Hislop said he did the survey for Ms. Sharon Alley and included the showed the abutters, Eva Reid, Dorothy Watson, Ms. Gurubhai Khalsa's properties. He said Ms. Khalsa said could convey .3 acres to meet the frontage on Fox Point Road. He said Ms. Alley Wants to make a 1.4-acre minimum sized lot for a single-family

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residence with four bedrooms at most. He said the larger lot would cross the wetlands buffer, but neither lot would not cross actual wetlands.

Mr. Morgan said there was more protection for wetlands than buffers and the Planning Board recognized that the wetlands ordinance under Article 10 was short of perfect and they were working on it. Mr. Hislop asked if they would need to run the proposal through another board and Chair Hebert said he didn't have a big issue with the proposal, but agreed that they would probably have to go to the ZBA. Mr. Morgan agreed that the ZBA could discuss running the driveway through the buffer or wetlands, especially if the applicant was in a hurry, or the Planning Board could propose making an amendment for Town Meeting. Chair Hebert said going before Town Meeting would depend on changes to the Ordinance. Ms. Lamson said she thought they should keep the process going.

Mr. Hislop said the lot line adjustment could easily be done in one meeting and Mr. Morgan agreed, but said they still needed to notify abutters. Chair Hebert recommended that they could do the lot line adjustment and the subdivision approval concurrently once they had seen the full plans with septic approvals.

(Board member, Chris Cross arrived at 6:45 p.m. at this point in the meeting.)

Discussion ensued regarding wetlands drainage. Mr. Cross said determining the flow would be key to determining the best solution for the driveway.

Chair Hebert said they couldn't build up driveways and affect abutters, but he thought culvert pipes with easements under the driveways would resolve any issues. He said they would have Town engineering consultants, Altus Engineering review the engineering of the culverts.

Chair Hebert said they also needed to consider the effect of drainage from surrounding properties and upcoming developments. Chair Hebert said they should also consider a fair share of off-site improvements. Vice-Chair Marconi said they also needed to be conscious of other properties down stream.

(Board member, Jack Pare arrived at 6:55 p.m. at this point in the meeting.)

Board member, Justin Richardson said he it appeared that the proposed septic was on the property line and he thought a vernal pool on the Watson on the Watson property ran along the property line also. He suggested Town wetlands consultant, Mark West review the connectivity of wetlands and where they ended to determine where the buffer should extend. Mr. Cross and Ms. Lamson agreed that they should see a wetlands survey before scheduling the next public hearing. Mr. Morgan said the wetlands had already been delineated so they only needed confirmation.

Chair Hebert said they would probably need a deposit for costs to the Town for consultants and asked Mr. Hislop to get an estimate from Mark West. Mr. Morgan informed Ms. Alley that she would send her check in to the Town of Newington and the treasurer would set up an escrow account.

Chair Hebert recommended that they get as much done before the ground froze any more and snow fell and schedule their meeting with the ZBA. Mr. Richardson said they could have Mr. West prepare his report for the ZBA meeting and ask for reimbursement of the costs and his comments would be ready before they returned to the Planning Board.

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Chair Hebert said after they went before the ZBA, they could return for their Planning Board public hearing on the second Monday, January 12, 2015.

B) Proposal by En Nu to revise the exterior lighting at the former Asia Restaurant at 347 Shattuck Way, Tax Map 13, Lot 1A.

Mr. Frank Lavalier of Lavalier Electric appeared before the Board on behalf of Shogun Japanese Restaurant with recommendations proposed by their lighting engineer for energy efficient lighting that would improved lighting issues in the parking lot for improved safety at the entrances. He said the lighting would point away from the highway and toward the building. He said the lighting would change from 400 watts to 1,000 watts for greater efficiency.

Chair Hebert said they would need to review the lighting careful as some of the lighting might be too bright across the parking lot. Mr. Pare said there was filament glare visible from the Spaulding Turnpike. Mr. Lavalier said they could tone that light down by changing the wattage. Chair Hebert said their lighting expert could review the Ordinance and had software to take the guess work out.

Mr. Lavalier said he also wanted to put an underground conduit where a pole had been approved, but was never installed. He said his lighting engineer, Vijay Soni could show the layout. Chair Hebert said flood lights caused pollution and there would be height limitations so they would need their photometric engineer to review the Ordinance and rework. Mr. Cross said all grand fathered lighting had to be updated to current lighting regulations by 2017 and he didn't think it could be higher than 25'. Mr. Lavalier said they were steel poles and Chair Hebert said they could mount the lights at regulation height on the poles. Mr. Lavalier said he had called Dig Safe for the conduit and hoped to put in a sona tube before the ground froze.

Chair Hebert expressed concern for the electric cost to the Town for the light on the pole on the Shattuck Way entrance. He said the Planning Board and the Board of Selectmen should review the costs. Vice-Chair Marconi said they could determine an impact fee. Mr. Lavalier said they were going to pay for it. Mr. Richardson said they could assess the cost of the street light installation, but he didn't think they could access the cost of maintenance over time. Chair Hebert said he thought the Board of Selectmen could make that decision and Mr. Richardson suggested they check with PSNH. Mr. Cross asked why they couldn't use their own lighting at the entrance and Mr. Lavalier said there were wetlands at the entrance that they would be reluctant to work in.

Mr. Richardson asked if there were any other plans to change the property. Mr. Lavalier said only the sign lettering would change on the exterior. He said the interior had been gutted for five cooking stations cooking in front of patrons, private and group seating, function hall at the back for karaoke, rent and catering, and karaoke. He said propane lines had been approved and inspected.

Mr. Richardson asked if they needed to do a site plan review or if the building inspector could review the proposal. Mr. Morgan said it had already been reviewed during the last review in 2002 for a lot line adjustment and previously in 1997 for

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approval of a comedy club. Chair Hebert said lighting updates and not a change of use. Vice-Chair Marconi said the footprint of the building was not changing either.

Mr. Lavalier said the restaurant would have a capacity for 380 people. Vice-Chair Marconi wondered if they would need fire chief approval. Chair Hebert asked how many parking spaces there would be and asked Mr. Morgan to be sure there was not a gross expansion. Ms. Lamson said she recalled that the Asia parking was approved for 300 spaces. Chair Hebert said the restaurant had been approved for 366 so they would be limited to that number. Mr. Richardson said the Ordinance required once space for every four occupants so they would only need 90 spaces.

Mr. Lavalier said would also like a stop sign at the exit and pointed out that there was a one-way directional sign across the street on Sprague's property, but it was a Town road and was not one way. Mr. Cross said it was probably left behind during the Shattuck Way construction. Mr. Morgan said the sign posting would be on the Town right-of-way and could be removed.

Mr. Cross informed the applicant that easements for an elevated railway proposal would be done in 2015 as part of the Spaulding turnpike expansion. He said the railroad bridge construction might never happen, but the State would still buy land for a 20' high and wide earth berm so they might want to take that in consideration when considering the lighting and parking plan.

Discussion ensued regarding waiving the site plan review to expedite the project. Mr. Morgan said they would have to notify public. Mr. Cross said there would be no problem waiving the site plan review if they were in conformance. Chair Hebert said if there was glare, they could withhold occupancy until it was fixed. Mr. Morgan recommended the Board take no jurisdiction with that understanding.

*Vice-Chair Marconi moved to **take no jurisdiction** on the proposal by En Nu to revise the exterior lighting at the former Asia Restaurant at 347 Shattuck Way, Tax Map 13, Lot 1A with the understanding that the occupancy permit could be withheld if the applicant was not in compliance with the lighting regulations. Peggy Lamson seconded the motion.*

Mr. Richardson read through Section 4, Article 17 on lighting and illumination in the Ordinance. He said the code enforcer could determine and issue the permit.

Chair Hebert said he was willing to work with the applicant and bring the results back to the Board if anything further needed to be done. Mr. Richardson and the other Board members agreed that would be fine so long as they weren't proposing an expansion. Chair Hebert said the proposal for a street light did constitute an expansion, but their proposal was to make it more conforming so he thought they could move forward and he would bring the final plan back to the next meeting. Mr. Morgan said they would need to be careful that the change in lighting would not have an increased impact and Chair Hebert replied that the goal was to decrease the impact.

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

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Vice-Chair Marconi introduced Mr. Ken Latchlaw of Nimble Hill Road who had expressed an interest in serving as an alternate Board member. Mr. Latchlaw said he had lived in the Seacoast area his entire life and had previously served on other planning boards and school boards in surrounding towns.

Chair Hebert asked Mr. Morgan to ask the Town Administrator, Martha Roy to make arrangements with the Board of Selectmen for Mr. Latchlaw's appointment to the Board if he was interested.

3) Preliminary Discussions on the following proposed amendments to the land use regulations:

A) Pork chop Lots

Mr. Morgan presented the Board with framework proposal for the Board to work with as requested. He said the proposal addressed complaints with contorted lot shape proposals. He said the Board would see more such proposals as land in Newington was getting scarcer.

The Board discussed various issues such as long fingered extensions from back lots to create frontage as well as properties surrounded by wetlands and buffers with no living space. Mr. Pare said Mr. Morgan's initial proposal of 200' x 200' quadrilateral lots addressed the issue of shoehorned island lots with wetlands buffers close to houses, but didn't address the issue of swan neck extensions. Chair Hebert agreed there was a problem with a lack of living space and allowing a 10' strip leading to 200' of frontage in front of someone else's house, blocking their main road frontage, and possibly opening up problems such as lack of maintenance, structures and signs in front of someone else's home.

Chair Hebert suggested 40,000 contiguous square feet within a radius. Mr. Richardson said that still didn't address pork chop lots and wetlands could affect the shape of buffers so box shaped lots wouldn't address that issue. He reminded the Board that they had previously discussed contiguous wetlands and uplands. Ms. Lamson agreed that was a good point.

Discussions ensued regarding changing the shape to circles and ovals. Mr. Cross said strange property shapes often made sense in New England because of wetlands, buffers, stone walls and shorelines. He said some lots also had narrow areas that mushroomed into multiple acres. Chair Hebert said he understood there exceptions existed, but he was still concerned with extreme goosenecks that could create problems and would like to avoid them. Mr. Cross said he understood, but aside from the appearance, he could see how there were sometimes advantages. Chair Hebert said it was more than appearance and pork chop lots were more of an advantage to a developer than future homeowners. Ms. Lamson agreed that they needed to consider the future for property owners, the Town and future board members.

Mr. Cross said they needed to keep in mind that many people had nice homes on small lots. Mr. Morgan said the swan necks didn't bother him so much so long as the

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animal having sufficient body mass. Chair Hebert agreed that sufficient living space was most important and he would consider putting the pork chop issue aside so long as they could find something else that prevented issues for town's people in the future. He asked Mr. Morgan to review solutions from other communities. Vice-Chair Marconi offered to work Mr. Morgan and talk with planners in other towns. Mr. Morgan said that would be fine, but he was still looking for clear direction from the Board on what solutions they were looking for.

Mr. Latchlaw suggested they consider using a setback ratio between useable areas versus wetlands. Mr. Richardson said there were requirements that said 50% of a buildable lot had to be non-wetlands in other provisions, but the issue was having houses right up to wetland buffers. Mr. Cross suggested they especially needed to address the living area of dual family dwellings. Chair Hebert said an expert from Rockingham County Conservation Commission had given suggestions at a previous work session.

Mr. Richardson said the Town of Newbury ordinance used a ratio of perimeter to area called a form factor for subdivision approval to find the relationship between boundaries and area. He said it addressed the pork chop issue, but not the wetlands buffer and setback issue. Mr. Pare suggested they still consider creative geometry, but limit by following form factor. Mr. Cross said it was an intriguing solution and Vice-Chair Marconi said it would be defensible in court. Chair Hebert asked Mr. Richardson to email the example Mr. Morgan to send to Board members and they would continue the discussion at the next meeting.

A) LED Light

Chair Hebert said they would address the measurement of lighting "nits" at a later date.

B) Number of dwellings per lot

Chair Hebert said the Board had previously created an ordinance to address illegally connected apartments in town to allow dual residences on a single lot, but now they were concerned the Ordinance allowed building duplexes without sufficient yard space. Mr. Morgan said the Ordinance accepting duplexes had been adopted during the 1995 Town Meeting and had served the town well people started trying to squeeze more into less. He said an example of a change to the duplex ordinance had been given because small living space "islands" with duplexes surrounded by wetlands was driving the issue and he wasn't sure that requesting a variance would be adequate in preventing the problem.

Vice-Chair Marconi said other towns were also limiting dual and multiple dwellings because it was impacting schools and municipal services. Chair Hebert said he was not completely against duplexes because the town needed mixed age groups and kids in the school.

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Mr. Richardson added that some duplex proposals could be valid such as the one on Little Bay Road, but without definition there would be twice as many cars, garages and activities on a limited amount of space. He said currently the Ordinance was too permissive and they should assume the worse case because developers often switched plans. He pointed out allowed uses listed under Article 5 and said that other parts of the Ordinance could specify adequate upland area and square footage. He suggested that each case be considered by following the Special Exception Ordinance criteria.

(Board of Selectmen representative, Rick Stern arrived at 8:45 p.m. at this point in the meeting.) Mr. Stern asked for clarification on the difference between in-law apartments, regular apartments and duplexes. Mr. Morgan said the term duplexes was what had been adopted at the 1995 Town Meeting. Mr. Stern asked if Special Exception could allow a duplex and Mr. Morgan said there was a Special Exception for a dual residence.

Mr. Cross said they didn't want to make it so a resident couldn't make space for their in-laws, but asked at what point should they request additional square footage and septic systems. Mr. Stern said he thought that was a good reason to specify criteria for in-law apartments, which couldn't be rented out. Mr. Richardson said one of the problems was when an in-law went into a nursing home and a homeowner then rented out the apartment. Vice-Chair Marconi said that wouldn't be an issue if only family was allowed. Mr. Richardson said that would require that the building inspector police in-law apartments, but the ZBA could assist with the issue by either approving the apartment or not. Mr. Latchlaw said he once built an in-law apartment when he lived in Dover, but the kitchen was limited and they were only allowed one curb cut. Vice-Chair Marconi said he is required to notify lender when he finds an illegal unit, but it is often hushed and towns say they are not allowed to do anything about it so he agreed that the Board should address the issue.

Chair Hebert said existing in-law apartments and duplexes were grand fathered, but they needed to decide if they wanted to increase upland area for new duplex structures to 40,000 square feet or do Special Exceptions. Mr. Stern said he thought a Special Exception would not be sufficient and they should increase uplands requirements to solve duplex problems going forward. Mr. Pare said he thought they should require 45,000 square feet for a duplex. Mr. Richardson said they already had a proposal for the public hearing. Mr. Cross said they were not bound to accept the proposal and could expand it.

4) Budget

Board members discussed line items on the 2015 Budget proposal.

Chair Hebert said it was uncertain if business property taxes would go down after tax evaluations and the Board of Selectmen had asked them to hold their budget lines.

The Board noted that all the funds allotted for secretarial wages had not been used. Recording secretary, Jane Kendall said she was 100% not sure that her wages had been accurately allocated to the budget. Chair Hebert said the Board had been very

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busy in the last year and they anticipated that they would continue into the next year so they would need to hold the secretarial wages. Chairman Hebert said he was not comfortable talking further about wages in front of Mr. Morgan and Ms. Kendall.

Vice-Chair Marconi asked if applicants would pay for engineering surveys. Chair Hebert said applicants would reimburse the Town, which would go into the General Fund, but they still had to budget for the cost initially and they could ask the Board of Selectmen if they needed any of the costs put back into the Planning Board budget.

Discussion ensued regarding the Planning software budget. Mr. Morgan said his programs were old and he didn't always know when operating system updates were required. don't usually know ahead of time. Mr. Stern recommended holding the line item to \$1,000 and Mr. Morgan said the Board of Selectmen had a sizeable computer budget if anything more was needed.

Mr. Morgan said they had completed FEMA updates, but Mr. Pare recommended that they keep the line item just the same.

Discussion on the COAST bus service ensued. Chair Hebert said the cost increased, but it only added pennies to the tax rate. Ms. Lamson said it was especially low compared to the library bond. She said Ms. mall workers and others at low wage industries in the area without vehicles utilized the bus service frequently as well as workers from Westinghouse. Mr. Stern said the Board of Selectmen left it up to the Planning Board whether to pay it or not. Chair Hebert said Town vote would make the final determination on whether to pay it or not. Mr. Morgan said the purchase order had already been signed.

Mr. Richardson moved to pay 2014 COAST expenses from the budget. Ms. Lamson seconded and all were in favor.

Vice-Chair Marconi moved to approve the COAST line service in town. Mr. Cross seconded.

Mr. Pare questioned if the motion was necessary. Mr. Stern said they should vote on the whole budget.

Vice-Chair Marconi moved to accept the 2015 Planning Board budget for \$187,670 as discussed. Ms. Lamson seconded and all were in favor.

Mr. Richardson moved to amend the salary with a 1.7% increase. Vice-Chair Marconi seconded the motion and all were in favor.

The Board discussed a 1.7% for the salaries. Mr. Stern said they would need to increase FICA by 7% as well. He said Town Administrator, Martha Roy would give the exact amount of salaries, FICA and Medicare. Chair Hebert said the final amount could be shared to the Board by email.

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Minutes: *Vice-Chair Marconi moved to approve the Minutes for the November 10, 2014 meeting. Chair Hebert seconded. Board members said they needed more time to read. Vice-Chair Marconi **withdrew** the motion. Ms. Lamson seconded the motion and all were in favor.*

Discussions:

Mr. Richardson announced that the ZBA voted to grant reconsideration on the appeal by Bruce Belanger for the construction of a driveway crossing wetlands on the property on the corner of Fox Point Road and Nimble Hill Road that required a Special Exception. He said on December 10, 2014 they would reconsider reversing the Planning Board's decision and he would recuse himself from voting, but would still attend and speak. He suggested the Board consult legal counsel on why the Planning Board's decision was sound.

The Board discussed the appointment of Mr. Ken Latchlaw as an alternate to the Board.

Ms. Lamson moved to approve the appointment of Ken Latchlaw as a second alternate to the Newington Planning Board. Mr. Stern seconded and all were in favor.

Vice-Chair Marconi proposed that the Board consider limiting applicant presentations and public comments to 15-20 minutes to cut back on the length of meetings. Ms. Lamson agreed that speakers, as well as Board members needed to stick to issues relative to applications. Mr. Richardson said anything worth doing was worth doing well. Chair Hebert said he tried to allow everyone their freedom of speech, but sometimes people repeated themselves or talked about irrelevant topics and he tried to keep people on track

Adjournment: *Vice-Chair Marconi motioned to adjourn, and Mr. Stern seconded. All were in favor and meeting adjourned at 9:45 pm*

Next Meeting: Monday, November 24, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary