

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Tuesday, February 3, 2015

- Call to Order:** Chair Denis Hebert called the February 3, 2015 meeting at 6:33 PM. This meeting had been postponed from January 26, 2015 and February 2, 2015 due to winter storms.
- Present:** Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross; Jack Pare; Justin Richardson; Alternate Members, Peggy Lamson and Ken Latchlaw; Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Board of Selectmen Representative, Rick Stern
- Public Guests:** Paul Pellitier and Cindy Gunn with Newington Historic District Commission; Dave Hislop with Knight Hill Surveying; Sharon Alley, Joe Calderola, Attorney Bernie Pelech, Doug LaRosa with TriTech Engineering; Dawn Lewis, Director of Great Bay Services; David Choate

1) Public Hearings:

A) Proposal by the **Historic District Commission** to erect a freestanding sign at the corner of **Nimble Hill Road and Little Bay Road**.

Chair Hebert informed the Board that the Board of Selectmen were in charge of traffic signs, but had asked for the Board's recommendations on the proposal.

Town Planner, Tom Morgan reminded the Board that he had forwarded an email regarding the Town's dimensional requirements for signs and recommendations for placement from Town engineering consultant, Altus Engineering. Chair Hebert said Mr. Eric Weinrieb with Altus Engineering had recommended that adding another sign to the two existing signs on the corner would overwhelm viewers and that two of the signs should be removed if they were to put the proposed sign up.

Alternate Board member, Peggy Lamson said a nice looking sign to identify the Historic District would be fine, but she didn't think it was necessary to have more verbiage considering all the buildings already had identifying signs. She added that there was too much sign pollution on the corner and the sign should be up further up the street, noting that most people wouldn't redirect in response to a sign on the corner unless they were history buffs that were already looking for the District.

Discussion ensued regarding the possibility of placing the sign in other locations further away from the corner. Mr. Morgan said there was a strip of grass between the cemetery fence and the road before the old maple tree stump that might be a good location for the sign. Board member, Chris Cross said placing the sign on the corner

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would be a distraction to drivers and said he thought it would be preferable to place the sign in front of the Old Town Hall where people could pause to look at different sites.

Members of Newington Historic District Commission (HDC), Mr. Paul Pellitier and Ms. Cindy Gunn were present and Mr. Pellitier said the proposed sign was not strictly a Langdon Library notice board, but the library would be a primary user. Chair Hebert said the Board of Selectmen had also sent a letter stating that they objected to having a sign to advertise events in the Historic District. Mr. Pellitier said he had not yet received input from the Selectmen. Ms. Gunn asked if the Board would recommend the sign if they dropped the library notices.

Board member, Justin Richardson said he agreed with the Selectmen's recommendation and also Mr. Weinrieb's recommendation to remove two signs if the proposed sign was approved.

For discussion, Justin Richardson moved to recommend the proposal by the Historic District Commission to erect a free-standing sign at the corner of Nimble Hill Road and Little Bay Road as recommended by Altus Engineering. Mike Marconi seconded the motion.

Chair Hebert agreed that signs shouldn't be in competition, but said the "Dead End" signs on the corner were traffic safety signs to keep people from running into the gate closing off Nimble Hill Road from Arboretum Drive. Mr. Richardson said the idea was to place the sign at the entrance of the Historic District and he didn't see the benefit or need for the sign if they placed it in front of the Meeting House. Board member, Bernie Christopher and Ms. Lamson both agreed.

Mr. Pellitier added that the HDC was also considering upgrading signs for each building in the District also. Mr. Richardson wondered what need and value there was in identifying the Historic District considering the quality of the buildings spoke for themselves. He said there was also the pending issue of Public Service of New Hampshire's proposal to put transmission lines through town and Pease Development Authority cutting trees in the District for their flight path.

*Chair Hebert called the Board to vote on whether they were in favor of a Historic District sign and **all were in favor.***

Chair Hebert said the Board then needed to make a recommendation on the proposal as it was or if they agreed with the Selectmen's request that the event notices be removed. Discussion ensued regarding the appearance and placement of the sign. Chair Hebert said he thought the current library sandwich board would need to come down because it was competing. Vice-Chair Marconi, Ms. Lamson, Mr. Cross and Alternate Board member, Ken Latchlaw all agreed that the sign only needed to identify the District.

Mr. Pellitier said it sounded as if the sign needed to be redesigned so they should invite the Planning Board to one of their meetings to exchange ideas. Chair Hebert said the Planning Board could only make a recommendation and the Selectmen would make

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the final decision. There was a brief discussion on the style of the sign. Board member, Jack Pare pointed out that the Board was not a committee to design and were only asked to make a recommendation. The Board agreed that it was not the Board's role to design the sign and that they could leave that up to the Historic District to propose and for the Selectmen to approve.

Mr. Pare moved to recommend to keep two of the three upper elements of the free-standing sign, eliminating the events advertisement section below as proposed by the Historic District Commission at the corner of Nimble Hill Road and Little Bay Road, as recommended by Altus Engineering. Bernie Christopher seconded the motion.

Chair Hebert said Altus Engineering had recommended removing two signs because they would compete, but he would not be in favor of removing the "Dead End" signs for safety reasons. Ms. Lamson disagreed that it would be a problem. Mr. Cross said the sign would need to be considerable distance from intersection if they kept all the design features and left the other signs in place. He added that someone might stop and block the intersection if there were too many features on the sign.

Mr. Richardson said he didn't think the Dead End was that big of an issue and he wondered if the new sign would have a calming effect on traffic. Mr. Cross said another reason for the sign was to keep tractor trailers from going up the road because they would turn in the church parking lot instead of the Town garage. Chair Hebert agreed, but said it was also to keep people from crashing through the gate as the Selectmen and Chief of Police had said.

Vice-Chair Marconi said he would support if they kept the "Dead End" sign. Mr. Cross said removing the library sign would help.

Mr. Pare said Altus was only recommending that they remove the "Dead End" sign from the right-hand side, but leave the other sign on the left side. He said they could put the other sign further up the road near the Town garage.

*The motion **passed** with Chair Hebert opposing.*

Chair Hebert it might be time to consider having an electric sign that could be programmed by Town employees with updated notices, using shades of gray and black to replace the centrally located sign in front of the fire station.

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

Attorney Bernie Pelech and Mr. Dave Hislop with Knight's Surveying appeared before the Board on behalf of the applicant, Ms. Sharon Alley.

Mr. Hislop said Town wetlands consultant, Mark West had checked the wetlands in November and sent his report in December 2014. He said Altus Engineering

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reviewed the plan and recommended that they draw up a culvert maintenance agreement with the Town. Attorney Pelech said the culvert easement was on the plan.

Mr. Hislop said they shifted the back driveway over to avoid the woods and the need for fill. He said Alex Ross had done a drainage analysis and Mr. Ross said there would be less water flow once the project was built with driveway culverts.

Chair Hebert said they would be creating more impervious surface and didn't make sense that there would be less water flow because water would need to go somewhere. Mr. Hislop said he wasn't an engineer, but his understanding was that the wetlands acted as a retention. Mr. Pare said he thought the curved lower portion of the culvert acted like a v-notch detention and would retard peak flow over period of time.

Mr. Richardson said the retention factor might stop the initial rush and there might be some evaporation, but in a significant storm, the storage behind the culvert was minimal and water would go over. Chair Hebert said he was confused why this would be acceptable in this application and Mr. Richardson said there were wetlands setbacks issues with other applications, but subdivision regulations didn't require stormwater discharge plans on residential lots.

Mr. Hislop said they finally got a letter showing access to the Portsmouth City water line after six weeks, but the letter said they couldn't hook up to the 24" water main that others were hooked up to and would be required to extend the pipe 400 feet. Mr. Morgan said the Mazeau subdivision across the street tapped into the 24" water main and he was confused. Mr. Hislop said there had been three tie-ins and Portsmouth was saying there wouldn't be enough pressure.

Mr. Morgan asked if Portsmouth had changed their policy and Mr. Hislop said he didn't think so. Chair Hebert said he thought there was an agreement that Portsmouth would allow residents to tie into their water main, but this was a case of Portsmouth asking them to pay for an extension. Mr. Richardson so long as Portsmouth provided the same water services outside the city as provided inside the city, they would be Portsmouth would be exempt from regulation as a public utility. Mr. Richardson added that they would also be disrupting wetlands for an extension to the water main. Chair Hebert said Portsmouth would need to be informed of that as well.

Mr. Hislop suggested that they propose putting in two wells so they could apply to the State for subdivision approval. Chair Hebert said the subdivision regulations for utilities said it was not mandatory that water service necessarily goes in first. Mr. Morgan he wouldn't want to see the applicant held hostage to problem and the subdivision regulations required a water line connection so they would need a waiver. The applicant, Ms. Sharon Alley said she would like to get waiver to allow wells on the property instead of connecting to Portsmouth water supply. Chair Hebert suggested that Attorney Pelech approach the City of Portsmouth Water Department on behalf of Ms. Alley first.

Mr. Richardson said the seller shall provide for water supply, but anyone would want to know before spending on a well with no guarantee that they would get adequate water. Chair Hebert said the State would have to approve the well and Mr. Richardson said DES would approve the well location, but there was no approval process for the quality of the water. He said it was the Planning Board's job was to make sure lots had

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adequate water before they were approved. Mr. Cross said it was up to the land owner how to tap into water and suggested they approve the lot conditional on connecting to water supply at no more than the usual reasonable fee, while also granting a waiver to give the landowner a bargaining chip. Mr. Christopher agreed with Mr. Cross and Ms. Lamson said they should be able to do what they wanted for water. Ms. Alley said she would be happy to provide water at a reasonable price.

Chair Hebert said he would wait 60 days to hear from the City of Portsmouth Water Department to give them plenty of time. He continued the hearing to Monday, March 23, 2015.

C) Proposal by **Dennett Farm LLC** regarding property at **233 Nimble Hill Road, Tax Map 17, Lot 4:**

- i) 3-lot subdivision
- ii) condominium conversion

Attorney Pelech said he thought Town counsel, Attorney John Ratigan would be at the meeting, but he had discussed the condominiumization with him and had changed the documents so that they were no longer land condominiums.

Attorney Pelech said changes to the performance guarantee had also been approved and they would get a building permit to put an addition on the front of the existing building. and for construction of the cul-de-sac. He said Attorney Ratigan had advised them that the lots could not be conveyed until the performance bond was posted.

Chair Hebert said there were no driveways yet and an occupancy permit should not be granted until the performance bond in case they went bankrupt. Attorney Pelech said the driveways could be built after the cul-de-sac was built.

Discussion ensued regarding Attorney Ratigan's recommendation on the subdivision and condominium agreement. Mr. Richardson expressed concern with an equal number for condominium ownership creating a deadlock in a dispute. Chair Hebert said the same issues might occur as with shared driveways, but the State RSA said if duplexes were allowed, then condos were allowed. Attorney Pelech agreed and added that it would be discrimination to allow one owner, but not two. Mr. Richardson said a single duplex owner, joint tenancy or tenancy in common would allow an owner or owners to sell an entire building, but a condominium owner had the right to buy and sell a portion of the building to anyone. Vice-Chair Marconi said they had a legal opinion that supported the right to establish condominium ownership. He added that as a real estate broker, he dealt with condominiums frequently and this was the way it was done. Chair Hebert added that the developer had been forthcoming and was working with the Board and was creating legal documents for the condominiums.

Mr. Richardson said his concern was still that disagreements could be deadlocked and require arbitration. Chair Hebert said that was no different than any other property dispute with no agreement in place where the court makes a decision.

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Mr. Cross said there was something to be said for 50% ownership instead of one-third where one of the owners could be outvoted .

Discussion ensued regarding the disturbance of the existing stone wall in the right of way. Mr. Calderola said intended on replacing the hedges, but he didn't recall such an agreement, but Board members all agreed that it had been determined in the earliest discussions to do so to keep the historic character. Mr. Richardson said previous minutes noted that he assured the Board that he had a professional stone mason that he worked with on other projects in Durham. Mr. Doug LaRosa with TriTech Engineering agreed that relocating the stones from one place to fill in the front drive had been discussed and was on the plans from the beginning. He said they had not agreed to a continuous wall, however. Mr. Calderola said he would be concerned with being able to find matching stones at a reasonable cost. Chair Hebert said he didn't think he would need that many and it could be done. Ms. Lamson suggested he speak with someone with the Historic District Commission.

Chair Hebert wondered if there had been any consideration for putting the excess wetlands at the back into conservation. Mr. Calderola said he would rather not because the nearby owner might have an interest in expanding their yard. Mr. Richardson added that putting wetlands into conservation without buffers would be like a pig in a poke, only giving the Town the parts that weren't wanted.

Discussion ensued regarding clarifications on the additional conditions listed on Mr. Morgan's handout, including the utility plan, compaction of the roadway, and providing a bond for any damages to Nimble Hill Road during construction.

Vice-Chair Marconi noted that he had been concerned over drainage problems from construction near the wetlands in the begin so he hired an independent drainage review at his own expense, which made him more comfortable. He said he also looked at some of Mr. Calderola's other projects and was impressed with the work. Mr. Richardson agreed that Mr. Calderola did an excellent job, but he was still not happy with the way the condos were set up. Chair Hebert said the Board should address the issue of condominiums further for the future. He said he didn't like heavy development near the wetlands and he hoped proper basement drainage had been addressed.

Ms. Lamson agreed that she didn't like the condominiums and shared drives and was concerned that the drainage issue on one of lots would be a problem for a family with children that would want to play outside.

Mr. Cross moved to approve the 3-lot subdivision proposal by Dennett Farm LLC regarding property at 233 Nimble Hill Road, Tax Map 17, Lot 4 as depicted on the December 2014 TriTech plans that were revised on January 19, 2015, subject to the conditions that the front boundary wall would be reconstructed to fill the gap between the existing walls as shown on drawings and that the existing roadway be properly compacted with crushed stone after the waterline is installed; and also subject to the following stipulations:

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1. *Submittal of a letter of credit drawn on a NH bank, and acceptable to Planning Board legal counsel, or alternately, a cash bond, to cover the cost of the roadway, stormwater infrastructure, driveways and culverts, the amount of said security to be \$182,000.*
2. *The aforementioned bond shall be accompanied by a signed Performance Guarantee Agreement prepared by Planning Board legal counsel.*
3. *Construction shall be in conformance with Newington's Road Design Standards and Construction Specifications for Residential Roadways.*
4. *Upon certification by Altus Engineering that infrastructure construction is complete, the Town will retain a maintenance bond in the amount of \$18,200 for a period of three years.*
5. *All final utility plans shall be presented to the Planning Board prior to the start of construction.*
6. *The drainage maintenance easement deed, the stormwater flowage easement deed, the declaration of homeowners association, and the declarations of condominium, are subject to review and approval by Planning Board legal counsel.*
7. *The applicant shall adhere to a schedule of roadway construction inspections determined by Altus Engineering. The applicant shall reimburse the Town for the cost of these inspections.*
8. *The applicant shall reimburse the Town for all expenses associated with the review of this application.*
9. *The applicant shall submit a signed stormwater maintenance schedule and checklist that is binding on future property owners.*
10. *The applicant shall provide as-built plans, both paper copies and digital copies in .pdf and .dwg formats, referenced to NH State Plane Coordinates.*
11. *Notwithstanding that the town may accept the roadway and may accept stormwater and drainage easements from the applicant, the applicant, its successors and assigns shall remain responsible for the maintenance of all drainage improvements, drainage ditches and swales, culverts and the bio-retention improvements as they are described on the plans, the Declaration of Homeowners Association Covenants, Conditions and Restrictions, and the Condominium Declarations. The applicant shall add a note to the plan confirming this ongoing maintenance responsibility.*

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Vice-Chair Marconi seconded the motion. Mr. Pare moved to amend the motion to include corrections to #5, that "of utilities" be added at end of sentence, and the last sentence of #11 be changed to say "The applicant shall add this note". Vice-Chair Marconi seconded the amendment. The motion passed 6-1 with Mr. Richardson opposing.

Mr. Cross moved to approve the condominium conversion plan for the proposal by Dennett Farm LLC regarding property at 233 Nimble Hill Road, Tax Map 17, Lot 4 as submitted to the Board and approved by the attorneys. Mr. Christopher seconded the motion and all were in favor.

D) Amendment: Article V Section 2B that lists permitted uses in the Office Zone as follows:

B – Principal Uses Permitted:

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

Chair Hebert said this item had been extended due to a typo in last month's notice.

Ms. Dawn Lewis, Director of Great Bay Services said she appreciated the opportunity to speak on behalf of Great Bay Services at the last meeting. She said she understood the proposed change was made out of concern for the future safety of those in close proximity of the Industrial zone, but also felt comfortable with the Town's support of Great Bay's grand fathered use. Chair Hebert said there was no question that Great Bay was an important service to its clients.

Mr. Morgan reminded everyone that they had reached the deadline by State law and there was no option to amend. Mr. Richardson asked if they should wait another year on this section to come up with another alternative. Chair Hebert they needed to act now and Mr. Pare said they could get more detailed next year if necessary. Mr. Richardson said the minutes from the previous meeting reflected Great Bay Services value to the community and that their current use was grand fathered. Realtor, David Choate said his concern was that GB Services would be required to seek a variance anytime they wanted to make changes and the Planning Board couldn't speak to a variance. Mr. Richardson said one of the criteria for granting a variance was that the use met the spirit of the ordinance and the public interest, which GB Services did.

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Mr. Richardson moved to place on the Town Warrant an amendment to Article V Section 2B under Principal Uses Permitted as follows:

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

Vice-Chair Marconi seconded the motion and all were in favor.

Ms. Lewis suggested they prepare a statement for the towns' people and the newspapers with the proposal to address the perceived restriction of the developmentally disabled. Chair Hebert said the use was allowed across the street in another zone so they were not saying it was not allowed.

Minutes: *Vice-Chair Marconi moved to approve the Minutes for the January 8, 2015 meeting. Mr. Christopher seconded, and all were in favor.*

Vice-Chair Marconi moved to approve the Minutes for the January 12, 2015 meeting with changes. Mr. Pare seconded, and all were in favor.

Adjournment: *Mike Marconi motioned to adjourn, and Bernie Christopher seconded. All were in favor and meeting adjourned at 9:29 pm*

Next Meeting: Monday, February 9, 2015

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