

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Tuesday, October 15 , 2019

- Call to Order:** Chair Denis Hebert called the October 15, 2019 meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Erika Mantz; Board Members: Russ Cooke; Christopher Cross; Ben Johnson; and Peter Welch; Alternate Board member, Jim Weiner; Board of Selectmen's Representative, Mike Marconi; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Alternate Board member, Rick Stern
- Public Guests:** Matt McGovern with McGovern Auto Group; Greg Mikalatis with August Consulting; Ben Clarke with ACM Engineering; Town counsel, Attorney John Ratigan; Peter Davis; Bob Raymond; Board of Selectman, Ken Latchaw;

I) Non-public Session under RSA 91-A:3, II (L)

Chair Hebert announced that the Non-public Session would be delayed until Town counsel, Attorney John Ratigan arrived around 7 p.m., and would then they would go into a Non-public Session.

II) Public Hearings:

A) Continuation of amended Phase V Site Review building expansion at Wilcox Industries, 25 Piscataqua Drive, Tax Map 27, Lot 22

Chair Hebert announced that the applicant had requested an extension, but he was concerned that they would go beyond the allotted 60 days. Town Planner, Gerald Coogan responded that listing the proposal as a public hearing for an amendment on the agenda was a typo, and that the Board never accepted the application as substantially complete so the clock had not begun, and they would be scheduled for the Monday, December 9, 2019 meeting.

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B) Site Plan review proposal for a **Subaru Automotive Sales** facility utilizing the existing building and footprint of the vacated Toy'R'Us building located at **85 Gosling Road, Tax Map 34, Lot 3-1**

Mr. Coogan passed out a copy of a letter received from the applicant earlier in the day that asked for a waiver allowing 98 parking spaces were 104 were required. Chair Hebert responded that the Board would decide if they would decide or delay their decision on the waiver after further discussion.

Ben Clarke with ACM stated that they had a different layout at their last, and when it was suggested that they consider sectioning off the middle area for inventory. Mr. Clarke reviewed their proposal for head in parking and a 28-foot aisle in front of the building, and the center parking with smaller spaces for 191 vehicles with a 24-foot aisle. Mr. Clarke said there would be 98 spaces along the outside perimeter for customers and employees along the outside perimeter.

Mr. Clarke said retail site regulations called for 140 parking spaces for customers, but they were proposing 98 spaces because auto sales didn't generate as many customers as retail, and that was the reason that they were asking for a waiver.

Matt McGovern with McGovern Auto Group stated that they currently had seven sales people, four managers, ten technicians, three service advisers and a few others adding up to 35-40 employees. He said they currently sold approximately 50 new cars per month and about 30 used cars. He said Subaru evaluated dealerships by penetration in each state and he was slightly less than expected at his dealership in North Hampton. He said the state average should be around 75 per month. Mr. McGovern said they were attempting to scale back parking space on the proposed site because sales were even through the week, so they expected 25 service customers a day, and 15-18 customers on Saturdays.

Chair Hebert said he wanted to be sure there was no parking on the shoulders of the mall access road or on Woodbury Avenue.

Mr. Coogan commented that he bought five Subaru's in 15 years, and bought the last three over the internet. Mr. McGovern agreed that more buyers were checking models and prices over the internet, and only going to a single dealership when buying instead of two or three.

Chair Hebert asked how many vehicles he was required to stock. Mr. McGovern replied that he had 191 inventory spaces, but he was not required to have that many on site because he could swap from fellow dealers. Mr. McGovern said they also had a cushion of 50 parking spaces at the back that they weren't using so he didn't feel there was any need for offsite storage at this point.

Chair Hebert asked about truck deliveries of cars, and Mr. McGovern showed how they would enter and exit. Chair Hebert asked about traffic generated by test drives, and Mr. McGovern said they would do a plan that called for all right-hand turns.

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Mr. Clarke informed the Board that he was working with their lighting vendor for a photometric plan with shielded, dark sky compliant LED lighting that would be ready the following week.

Mr. Weiner commented that LED lights were sometimes blinding for some drivers if they weren't pointed down. Mr. Clarke responded that all fixtures were downward, dark sky compliant.

Chair Hebert asked if they were using Walpaks on the side and back of the building, and Mr. McGovern said they were not, as there was no need for them. Chair Hebert asked if there would be lighting at the exit corners, and Mr. Clarke said there were three existing lights.

Chair Hebert asked if the operation would create any noise and odors. Mr. McGovern explained that the automatic service doors would always be closed so there would be no noise, and they weren't doing any body work, so their service was odor free.

Chair Hebert commented that they had been asked to talk with the Crossings Mall, but the mall hadn't provided a plan.

Board member, Jim Weiner asked what their plan was for used metal. Mr. McGovern replied that there was little waste metal from a service shop, and there was a tire bin in the existing loading area fenced near the dumpster that was picked up by a vendor. Board member, Chris Cross asked if it was covered so it wouldn't collect water, and Mr. McGovern said it was not, but it was picked up weekly.

Mr. Weiner asked if they planned on any mitigation for potential oil leaks into the wetlands. Mr. Clarke replied that there would be fewer cars with oil leaks on their lot than a typical retail parking lot, and Mr. McGovern added that they sold reconditioned, clean vehicles.

Chair Hebert asked about the disposal of used oil. Mr. McGovern stated that they would have above ground tanks in the facility for fresh and used oils, and the same for antifreeze that would be picked up once a month.

Mr. Clarke went on to say that they were trying to do the most they could with what was there without ripping up the lot for stormwater management. Mr. Clarke said currently there was a culvert and a single catch basin that collected from 55,000 square feet of impervious surface, and they were proposing to create a cutout with riprap, and a rain garden designed to handle first two inches of a storm. Chair Hebert asked if they could do anything else besides a rain garden to reduce areas for mosquitos. Mr. Clarke said they could install an underdrain with a four to six-inch pipe for filtering and prevent sitting water. Mr. Weiner added that rain gardens were beautiful if maintained, but they were also costly.

Mr. Clarke stated that an Alteration of Terrain Permit (AoT) had more rigid requirements, but their proposal was in the redevelopment category, so they were not trying to hit letter of law by New Hampshire Department of Environmental Services (DES). He said they considered more of a depression with a gravel wetland with fewer

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plantings, which was considered a DES practice. Chair Hebert said they would see what Town engineering consultant, Eric Weinrieb with Altus Engineering had to say.

Mr. Cross asked how they would remove snow from site, and Mr. McGovern said they would push it over the curbing and stack it on the grassed area to prevent it from flowing to the wetlands. Mr. Clarke added that they wouldn't store it near the wetland as there was room in the existing space with a swale.

Board of Selectmen's representative, Mike Marconi pointed out that he had observed ice sheeting in winter from melting and refreezing. Mr. McGovern replied that the site was pretty level, so he didn't expect melt to flow down and refreeze.

Chair Hebert asked where cars would go during a two-foot storm cleanup. Mr. McGovern replied that they would move vehicles inside the facility prior to a big storm coming, and stack others off to one side, plow and then replace them.

Mr. Cross suggested that they check clearance of the sewage line for customers going into the service bay. Mr. Clarke responded that it was tight, but it would be costly to change. Greg Mikalatis with August Consulting stated that it was an above ground suction lift and it had to stay. Mr. McGovern said the bay doors were two way, but they used a lit sign to indicate if it was used for being used as an entrance or exit.

Board member, Russ Cooke asked why the sewer pump couldn't be lowered to create more suction. Mr. Mikalatis said the motor was on top, and everything was sitting at the surface because it was easier to service. Mr. Cross commented that it was expensive, and he was concerned with it being driven over.

Mr. Cross asked how someone could walk to the site. Mr. Clarke replied that there was no room to build a side walk, but they were proposing to paint a three-foot-wide pedestrian walkway along the pavement that would tie in with the proposed sidewalk on Woodbury.

Mr. Cross asked how patrons of the mall could walk over. Mr. Clarke said Aldi's was proposing a sidewalk, and they would get a master plan for pedestrian crossings at the malls that would tie everything together. Mr. Cross said many people wouldn't walk to a sidewalk, but would walk straight across, and he thought they needed to put sidewalks to the entrance on both sides. Mr. Mikalatis responded that he thought most people would drive to the auto dealership, and that there would be a minimal number of people walking to the mall, but they would be directed to the crosswalk. Mr. Weiner said most people would take the direct route through the parking lot, and he didn't think people would go around the back to use that proposed sidewalk. Chair Hebert suggested putting a crosswalk in at the intersection. Mr. Cross commented that vehicles would turn in and out, and suggested building a connecting concrete sidewalk.

Peter Welch moved to accept the site plan proposal for a Subaru Automotive Sales facility utilizing the existing building and footprint of the vacated Toy'R'Us building located at 85 Gosling Road, Tax Map 34, Lot 3-1 as substantially complete. Ben Johnson seconded the motion, and all were in favor.

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Mr. Coogan suggested scheduling a Technical Review Committee meeting on Tuesday, October 22, 2019, and then return for a public hearing on Monday, November 25, 2019.

Chair Hebert recommended that they carry the parking waiver request to the next meeting.

I) Non-public Session under RSA 91-A:3, II (L)

This item was delayed to hear the previous items until Town counsel, Attorney John Ratigan arrived at the meeting at 7:06 p.m.

Peter Welch moved to go into a Non-public Session, and Erika Mantz seconded the motion. A roll call was taken, and Chair Denis Hebert, Vice-Chair Erika Mantz, Board members, Russ Cooke, Christopher Cross, Ben Johnson, Peter Welch, and Board of Selectmen's Representative, Mike Marconi all voted in favor.

Erika Mantz moved to end the Non-public Session and go back into public session at 8:15 p.m., and Peter Welch seconded the motion. A roll call was taken, and Chair Denis Hebert, Vice-Chair Erika Mantz, Board members, Russ Cooke, Christopher Cross, Ben Johnson, Peter Welch, and Board of Selectmen's Representative, Mike Marconi all voted in favor.

Erika Mantz moved to seal the Minutes for the Non-public Session indefinitely to avoid affecting anyone's reputation, or undermining the topic of conversation, and Peter Welch seconded the motion. A roll call was taken, and Chair Denis Hebert, Vice-Chair Erika Mantz, Board members, Russ Cooke, Christopher Cross, Ben Johnson, Peter Welch, and Board of Selectmen's Representative, Mike Marconi all voted in favor.

III) New Business:

These items were delayed to hear the following discussion first.

IV) Old Business:

A) Proposed Zoning Amendments for 2020

This item was delayed to continue the following discussion after the Non-Public Session.

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B) Residential and Mixed Use in the Commercial Zone

Continuation of the discussion was added to the agenda.

Erika Mantz moved to give Chair Hebert the authority to find a third party to study mixed use, including housing in the Commercial Zone for review by the Planning Board, and presentation to residents. Peter Welch seconded the motion.

Mr. Cross commented that the Board of Selectmen had suggested the Board consider mixed use with housing as a financial solution to a loss of tax revenue from the power plants, and loss of business at the Fox Run Mall, but he thought a drop in assessment was likely to continue whether mixed use was allowed or not. Mr. Marconi replied that the Board of Selectmen were only asking the Planning Board to do an impartial review and consider the possibility. Chair Hebert responded that the Board of Selectmen's letter stated that allowing mixed use would address a loss of revenue from the lowered assessment.

Mr. Cross commented that the Board could establish another residential zone near the Commercial Zone, but he didn't think that mixed use at the mall would be a good idea. Chair Hebert added that the Board could present the possibility to residents. Attorney Ratigan replied that the Planning Board decided which amendments were proposed for the Zoning Ordinance unless residents petitioned an article.

Chair Hebert stated that he wished that the Economic Development Committee would work with the Fox Run Mall to bring in a store like Bass Pro. He acknowledged that other sales at stores like Dick's Sporting Goods and Eastern Mountain Sports could suffer if a Bass Pro came to town, but it might take three years to get a Bass Pro. Mr. Marconi agreed, noting that it took three years to get the malls approved.

Mr. Cross said they should include all possible uses, and they needed to ask if mixed residential use would be beneficial to the tax base. Vice-Chair Mantz responded that that was the reason for the study.

Erika Mantz modified her motion to include all possible uses, and Peter Welch seconded the motion.

Attorney Ratigan commented that a study for multiple mixed uses was a big study for a short time.

Mr. Cooke asked what the study would study. Chair Hebert replied that he had discussed the need to study the implications to Town services, including trash pickup, bus and school services for families with children, and snow plow, but they also needed to look at the pros as well.

Mr. Cross withdrew his objection to motion.

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The motion passed with all in favor.

Mr. Cross commented that the Planning Board was required to permit allowed uses for any viable business regardless of the level of profitability. Attorney Ratigan added that an applicant had the right to use their property within the definitions of a district, but the Town could also change with the times.

Mr. Marconi asked if Attorney Ratigan would be available to address a special warrant article. Chair Hebert responded that the Board would not present a special warrant article until the study was done.

Attorney Ratigan left at this point in the meeting at 8:30 p.m.

III) New Business:

A) Landscape amendment proposal by **Essential Power Newington, LLC** at their property located at **# Shattuck Way, Tax Map #, Lot #**

Mr. Coogan said the Conservation Commission had recommended the applicant's tree cutting proposal. Chair Hebert said approval of the trees was part of the original condition of approval at the request of residents that were concerned with establishing a sound barrier on the mound. Mr. Weiner responded that the tree cutting was not on the mound, but was under the power lines because the trees had grown too tall, and needed to be replaced with a lower growing species.

Chris Cross moved to concur with the Conservation Commission recommendation to approve the landscape amendment proposal by Essential Power Newington, LLC at their property located at # Shattuck Way, Tax Map #, Lot # to only cut trees under the power line. Russ Cooke seconded the motion, and all were in favor.

B) Warrant Article: Discussion of proposal for **Special 2019 Town Meeting:**

Erika Mantz moved to table this discussion. Ben Johnson seconded, the motion, and all were in favor.

IV) Old Business:

A) 2020 Zoning Ordinance Amendment Proposals:

1) Amendment #1: **Solar Ordinance**

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Mr. Coogan presented his most recent draft amendment, and pointed out that anyone could install a roof mounted solar unit, except in the Historic District, but this amendment would address ground mounted solar units.

Mr. Coogan stated that Town counsel, Attorney John Ratigan advised that a public hearing for residential use be addressed first.

Chair Hebert agreed that he only wanted to establish residential uses at this time, and that the Board could review larger agricultural, commercial, industrial, or community applications for next year's proposals. Mr. Coogan pointed out that the State Land Use Rules and Regulations book stated that there could be no obstacles to a reasonable proposal.

Mr. Coogan said the Board would establish requirements, and if met, the building inspector would issue a building permit.

Chair Hebert said it was important that any ground mounted solar panels be shielded from road frontage, either in a backyard, or behind landscaping, but he was concerned with what would happen when living landscape screens died. Mr. Weiner noted that solar use had to be screened, and trees had to replace them with like plantings and size were required. Chair Hebert said he wanted to make sure units were low glare as well.

Chair Hebert said they would also need to address allowing ground mounted units in the Historic District. Mr. Weiner responded that placement should only be allowed at the back of homes in the Historic District, and that quantity and size limitations was an important consideration as well.

Chair Hebert added that power generated from residential use couldn't be greater than the homeowner's use. Mr. Weiner responded that his energy consumption would be greater than his neighbors.

2) Amendment #2: **Modifications to the Town's Building Code**

Mr. Coogan stated that he had left a dollar amount in for the building permit requirement. Chair Hebert added that they were removing 50% of the value of a home because it was too high, but bathroom fixture replacements, roof and siding replacements should be allowed.

3) Amendment #3: **Piping Materials in the Building Code #8**

Mr. Coogan stated that Kevin Kelley, the building inspector recommended that Item #8 be removed completely as it was antiquated, and contradicted Item #7 – Sewer Connections.

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4) Article #4: **Buffer from major gas transmission lines**

Mr. Coogan stated that he had done some research on explosion hazard distances, and had come up with a chart on hazardous area for fracking. Mr. Cross responded that report addressed fissures in rock from fracking, but the Board was discussing concerns for a relatively young, 20-year-old gas line in town. Mr. Cross stated that there were no Federal safety standards for setbacks. Mr. Cross added that the line was a transmission line rather than a distribution line, which did not blow up frequently, but could take out an acre of forest or a city block when it did because of the high pressure.

Mr. Cross said the steel, 30-inch Class I pipeline, buried three feet deep behind the Town Forest, and then became a Class III when it crossed the ditch, and was buried at six feet below the sand embankment so a blast would not blow toward the road.

Mr. Cross explained that a safety setback of 600 feet would be a taking, and would never be established in congested cities, but safer distance was a question as Newington grew. Mr. Cross said he researched 30 pages of safety standards in Canada, and came up with a single page synopsis that presented the premise that it would be impossible to protect everyone from an explosion of extreme power that ignited all at once with a fireball, and ruptured the entire length of pipeline. Mr. Cross said a Canadian consulting firm on safety recommended protection from the most intense fires based on thermal plume calculations, but a standard fire suit wouldn't protect anyone from 200 degree centigrade, or 430-degree Fahrenheit burning gas.

Mr. Cooke asked if friction could be a source of ignition for a leak, and Chair Hebert replied that the source of ignition would have to be found.

Mr. Cross went on to say that Canada set their own standard a 250-foot setback based on pressure and pipe diameter to show flow of gas in a rupture based on 200-degree centigrade temperatures, however, Newington had larger diameter pipes under higher pressure that would impact a 650-foot radius.

Mr. Cross said the Town could hire a consultant, but they could use these guidelines as a basis, and subjectively recommend that no new residential construction be allowed within 200-foot zone from pipelines. Mr. Cross said it would also affect new construction along Arboretum Drive from his property down. Chair Hebert commented that it was understood that uses along the Industrial and Industrial-Waterfront Zones had to cross a gas line, but the idea was to protect children and others in their homes, and he thought it should include any high-density population, such as office use as well. Mr. Cross agreed, and suggested that they include new structures, major gathering points and high-rise structures to Section 14 of the Ordinance.

Mr. Marconi asked how close the pipeline was to the Old Stone School, and Mr. Cross replied that it was close to 200 feet, which would limit rehabilitation of the school use for 24 hours per day. Mr. Cross said couldn't rehab for occupancy 24 hours per day.

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Mr. Marconi noted that it shouldn't be used for a school at all if the Air Force returned the property to the Town.

Chair Hebert said they could recommend a 250-foot setback according to the guidelines, but were only recommending 200 feet. Chair Hebert added that they could also create an earth berm to deflect a potential blast.

Mr. Marconi commented that the easements didn't always run on either side of the pipelines, and therefore it was difficult to identify the pipeline center. Chair Hebert responded that the center was close to the posts.

Mr. Marconi suggested that the building inspector inform an applicant that there was a gas line present. Mr. Cross added that the Board of Selectmen and the Planning Board would also require a waiver.

Board member, Peter Welch asked if they were accomplishing anything if the disaster area was out to 800 feet. Mr. Cross agreed, noting that impact was also affected by wind velocity, and whether there was snow on the ground, but right now there was no setback at all.

Mr. Welch asked if the Town was providing an unreasonable expectation of safety. Mr. Weiner responded that an applicant would be informed of the Article referencing the setback, and they would have to sign a waiver.

Vice-Chair Mantz commented that she was concerned that people would not be able to use their property. Chair Hebert responded that it would only partially affect how far a couple of property owners could build on undeveloped properties, but would not affect existing structures. Mr. Cross noted that when considered in combination with other setback requirements, some portions of properties might not be buildable, but they would still be usable for other purposes.

Chair Hebert said he wanted to run past starting with high density and residential structures past Town counsel, and noted that the Canadian study that Mr. Cross referenced would be part of record for all time.

5) Article #5: Wetlands Overlay Ordinance

Chair Hebert said the Conservation Commission would do a presentation at the next meeting, and noted that the updated setbacks were mostly less restrictive than the existing setbacks on low value wetlands.

Mr. Coogan said Town wetlands consultant could attend the October 28, 2019 meeting.

V) Town Planner Report and Updates:

Ben Johnson, developer of the Fabyan Point development stated that he was only waiting for delivery on riprap, and would complete repairing the culvert.

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Adjournment: *Russ Cooke moved to adjourn the meeting. Mike Marconi seconded the motion and the meeting adjourned at 9:44 p.m.*

Next Meeting: Monday, October, 2019

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

These Minutes were approved and adopted at the October 28, 2019 Planning Board Meeting.