

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 16, 2022

- Call to Order:** Chair Denis Hebert called the February 16, 2022, meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Russ Cooke; Ben Johnson; and Jim Weiner; Alternate Board member, Rick Stern; Board of Selectmen's Representative, Bob Blonigan; Town Planner, John Krebs and Jane Kendall, Recorder
- Absent:** Board member, Peter Welch
- Public Guests:** Damien Callahan, owner of Cars and Coffee; John Ricci with Ricci Construction; Brendon Hoben and Zachery Smith with Winter Hoben Design; Moe Erol, co-owner of Stoneface Brewing; Patrick Moynihan, Deputy Fire Chief; Steven Paquin, Building Inspector; Town engineering consultant, Eric Weinrieb, Principal P.E. with Altus Engineering; Jack O'Reilly

I) Preliminary Discussion: Seacoast Cars and Coffee Storage at the former Buffalo Wild Wings restaurant at the **Fox Run Mall, Tax Map 27, Lot 11**

Damien Callahan owner and operator of Seacoast Cars and Coffee at the mall appeared before the Board to present his proposal to add a storage area for antique and exotic specialty vehicles in the former Buffalo Wild Wings location at the Fox Run Mall.

Mr. Callahan said his existing business in the mall has expanded since 2018. Mr. Callahan said the café opened in 2019 with the intent of having an auto themed flex work gathering place with Wi-Fi, and specialty car shows on the first Sunday of the month.

Mr. Callahan said business changed since March 2020 and the COVID-19 pandemic, and it was suggested that they expand to include appraisals, consignment, and detailing, consignment.

Mr. Callahan said the space would not be used as a parking garage, but for the storage of a maximum capacity of 40 cars that would stay for the season.

Mr. Callahan said other spaces in the mall would require more time and expense that would not make sense for the short-term leases that the mall was requiring.

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Callahan said Buffalo Wild Wings was a large space that included garage doors, making it idea for auto storage, with minimum changes, including paint, and building a fire wall as required, but it could easily go eventually back to a restaurant as they would not be removing the kitchen.

Mr. Callahan said they would use the same signage area as Buffalo Wild Wings used for their signage, and it would not be back lit.

Town Planner, John Krebs said it was an odd use for a restaurant, and he was not sure if it was permitted, but the mall was only offering 13-month leases, and few businesses were willing to make a large investment with such a restriction. Mr. Krebs said it would be up to the Board to decide if it was acceptable, or if they wanted to see a site review application.

Chair Hebert said he was on the edge of deciding whether it was an allowed use, as it was not the intent of the mall. Chair Hebert said he couldn't make conditions of approval because it was a work session, but he would want to be sure it was safe, and no expansion outside of building.

Chair Hebert asked if the entire operation was moving to a single location. Mr. Callahan replied that this use was storage only with no public access.

Building Inspector, Steve Paquin stated that the former Buffalo Wild Wings was an attached separate building from mall, and the proposal met the building code.

Patrick Moynihan, Deputy Fire Chief, stated that Mr. Callahan brought in a fire protection consultant and found that this was the best location for air circulation for the moderate hazard storage with a fire wall built between the site and the rest of the mall. Mr. Moynihan said they also brought in the New Hampshire Fire Marshall's office in,

Vice-Chair Cross asked if there would be a separate or integrated vent with the mall. Mr. Paquin said an engineer would look at it, but it had to be separate.

Board member, Jim Weiner asked if they would outsource the coffee bar to a company that had a liquor license. Mr. Callahan replied that there were private functions on occasion, but his feeling was that alcohol and cars don't go together.

Mr. Weiner asked if the cars would ever be displayed in the mall area, and Mr. Callahan replied that they might as a draw to the public on occasion, but they had to be sure everything was locked, including the gas caps.

Mr. Moynihan stated that the National fire code allowed vehicles to be on display so long as the battery was disconnected, and the gas caps were locked. Mr. Moynihan said newer vehicles were not happy when batteries ere disconnected, and the regulations were more relaxed when moved to moderate storage, so they were trying to allow flexibility for cars not in the public space.

Vice-Chair Cross asked if they were placing portable fuel leak sensors under each car tank should they drip. Mr. Callahan replied that the y never had a car leak, but they could look into it. Mr. Callahan went on to say that the Town required that they keep no more than a quarter of a tank of fuel, but they only kept one-eighth of a tank of fuel in the cars.

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Vice-Chair Cross asked if the mall had a sprinkler. Mr. Callahan replied that the mall exceeded the requirement at a Level.

Chair Hebert noted that Mr. Moynihan and Mr. Paquin would have Mr. Callahan meet the codes.

Alternate Board member, Rick Stern asked if they would be doing auto reconditioning, and Mr. Callahan replied that they would not.

Mr. Weiner said he had left a voice mail for Mr. Paquin on whether the dozen Mazda's parked in the mall parking lot were allowed. Mr. Paquin replied that he was looking into it with mall management.

Chair Hebert recommended that Mr. Callahan return for a public hearing on Monday, February 28, 2022, so the Board could grant the use with conditions of approval.

II) Work Session: Stoneface Brewing proposal to construct a 23,400 square foot brewery with 4,640 square foot office space, and associated parking on 5.71-acre lot on **Shattuck Way, Tax Map 13, Lot 5A.**

Chair Hebert stated that the storm drainage was the biggest issue for the project. Town Planner, John Krebs added that they were also hoping that the Department of Environmental Services (DES) would allow them to fill or modify the small wetland swale to use with runoff storage to get rid of underground system.

John Ricci with Ricci Construction stated that they had received Town engineering consultant, Eric Weinrieb's January 12, 2022, comments, and hoped to discuss some of them as well.

Vice-Chair Cross commented that the drawing showed pavement within a foot of the 30-foot setback on the southern side boundary adjacent to the surgical center, but structures were not allowed in setbacks. Vice-Chair Cross stated that the regulations required green space between properties.

Mr. Ricci stated that they ran the question by their legal counsel, Alec McEachern and it was his opinion that it was permitted because an accessway so not considered a structure, and he would submit that letter to Mr. Krebs.

Chair Hebert stated that he had no problem with a driveway to access property, but not a full travel lane. Brendon Hoben with Winter Hoben Design responded that it was a truck path. Mr. Ricci added that they needed the travel lane to get vehicles in. Chair Hebert responded that they had over designed the site without consideration to setbacks.

Vice-Chair Cross explained that the Board didn't want another entrance from the surgery center and this facility making left and right turns in conflict with one another, and the Board had rejected numerous similar access requests. Vice-Chair Cross suggested that they eliminate four parking spaces in front, move the entrance down 30 feet, and eliminate another six spaces.

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Mr. Krebs noted that there was a truck turning motion problem so moving the drive to the north wouldn't solve the turning problem to the back loading docks. Vice-Chair Cross suggested that they might need to do an angle on the building.

Vice-Chair Cross said there was only one foot of soil between the edge of pavement and the abutters drainage swale, and nothing to prevent snow being pushed into their swale. Vice-Chair Cross said all businesses were required to meet setbacks for a separation of properties for maintenance, landscaping, and snow storage. Vice-Chair Cross said the Board was trying to enforce the Ordinance, and not design the building site for the applicant.

Chair Hebert asked where they would put snow storage if only, and Mr. Ricci said they wouldn't store it there. Mr. Hoben noted that the setback was five feet at the narrowest point, and then expanded to twelve feet wide.

Board member, Ben Johnson asked if there were two areas for trucks, and Mr. Ricci replied that there was one for the loading docks and one for the silo.

Mr. Johnson suggested that the trucks come into the entrance nose in, and then back up. Mr. Weinrieb noted that it was a double dock, and there was not enough space to maneuver if another vehicle was there.

Chair Hebert agreed that they could discuss ideas, but wanted to be clear that it wasn't the Board's job to resolve their site design problems.

Mr. Weinrieb suggested could put a sawtooth dock in, but Mr. Hoben said they also needed an access for the fire lane by the silos.

Mr. Hoben said he would shift the building to get the turning radius to work.

Discussion ensued regarding water pressure and the sprinkler system. Deputy Fire Chief, Pat Moynihan stated that they had discussed the fire lane, but had not received any plans for the sprinkler system as yet, and a pressure test would be done when the sprinkler system plan was submitted. Chair Hebert responded that the Board needed to know so they could come up with another plan if they didn't have adequate pressure, and wouldn't be taking pressure from the surrounding area.

Mr. Moynihan stated that the hydrant on east Shattuck Way put out over 1,000 gallons a minute, and there was an 18-inch water line with plenty of water, but they didn't know the pressure for this site. Mr. Moynihan said the City of Portsmouth Water Department no longer did flow tests on hydrants, so the Fire Department now had a third party do the tests. could give #'s on closest hydrants from that test. Mr. Weinrieb said he thought the Portsmouth Water Department would have information. Mr. Ricci responded that he didn't know how they would get the information if the Newington Fire Department couldn't get it. Chair Hebert said the Board could make a condition of approval that they had adequate water.

Mr. Hoben said they would submit drawings with sprinkler information. Mr. Ricci said they would submit their plan to the fire department, and it wouldn't get approval if there wasn't enough water pressure. Chair Hebert said courtesy to go through Mr. Krebs at the same time.

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Mr. Weinrieb noted that the abutting medical office was asked to put a hydrant at their entrance. Mr. Moynihan said the concern was that there was no hydrant on that side of the road before, and they didn't want to shut down Shattuck way to run a hose across the street. Mr. Moynihan stated that that hydrant could probably service both spaces.

Mr. Johnson said he was only required to provide a letter in support of sprinklers for his business, not a flow test. Chair Hebert said he just wanted a letter of intent that there would be adequate water pressure for the site. Mr. Moynihan said the sprinkler would be under the building inspector and fire chief's jurisdiction.

Mr. Krebs asked why they couldn't put the generator and chiller in the back. Mr. Ricci agreed that would be the case for most buildings, except those breweries were different, and there was an industrial theme to the building, so they would put a screen in front of the mechanicals. Mr. Hoben added that all the utility rooms were there, and the patio was the money shot, but there would also be landscaping in front.

Mr. Krebs said he didn't know what they would be using the auxiliary building on the end of the lot, but thought the angled parking that didn't work, and a dumpster would require a truck to back out into River Road. Mr. Ricci responded that they would review the site further, and six spaces would suffice.

Chair Hebert commented that the accessory use was not as listed on front page. Mr. Krebs stated that the accessory use was one of the ten variances granted by the Zoning Board of Adjustment (ZBA). Mr. Ricci said the accessory building would probably support Stoneface Brewery, but would stand alone in the beginning.

Chair Hebert stated that they could make it a condition of approval to return to the Board for the use. Mr. Ricci asked why they would need to return if the use was permitted in the zone. Chair Hebert replied that the Board would need to determine if the parking was adequate for the use. Mr. Ricci said the use was listed as a production warehouse.

Mr. Weinrieb noted that the plan referred to an accessory building, would require sixteen spaces including handicapped parking, and a walkway, instead of the eight spaces listed. Mr. Hoben responded that it should have said auxiliary. Mr. Weinrieb said they also needed to discuss access for the second building. Mr. Weinrieb said the auxiliary building was almost a separate site plan to be addressed independently, could be.

Several other discrepancies on the drawings were discussed, and Chair Hebert asked that the applicant update, and provide the Board with the same plans that they were using, and Mr. Hoben agreed to edit the plans for clarity.

Mr. Krebs stated that some towns say setback are one thing and buffers are another, but Town legal counsel, John Ratigan had sent his opinion that he could find no Ordinance prohibiting pavement in setbacks. Town Building Inspector, Paquin said the Ordinance stated under structure in Definitions that driveways and paving were not structures.

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Chair Hebert agreed that anything construction on the ground for access purposes, including docks stairs, and paved drives for access were not considered structures, but a turnaround area was different. Mr. Paquin said asphalt and pavement incl sidewalks had never been considered a structure.

Mr. Krebs said access in the setback would not be an issue if the applicant could comply with a revision. Mr. Ricci responded that they would if they could, and would also make an effort to make more green space, but if they couldn't make the turnaround, then they would follow Attorney McEachern's legal response.

Chair Hebert said the Board had been consistent with setback requirements unless a variance was granted. Chair Hebert said the Town had bent over backwards for the applicant, and felt they were over building the lot. Mr. Ricci responded that he didn't design the site, and didn't know if they could make 60% improvements, and then be told it was not acceptable, but he knew other towns would be happy to have them.

(Chair Hebert called for a break at 7:42 p.m., and the meeting resumed at 7:52 p.m.)

Chair Hebert said he would be happy to talk with Attorney McEachern as side setbacks mattered, and the key word was access to a property not a turn around. Mr. Ricci said they would probably work it out.

Mr. Weinrieb asked if the issue would be resolved based on a legal opinion, code enforcement, or variance. Mr. Paquin said a judge would not want it to go to court, so they would work the issue through attorneys or an arbitrator. Mr. Krebs said he hoped they would make it work.

Mr. Krebs asked if there was any reason they couldn't push the entire site plan to the north, and Mr. Ricci said the drainage was on the north side, so it was not a possibility.

Chair Hebert pointed out that they were talking about access to the property, and the not building

Vice-Chair Cross said he had stated the Town's requirement for setbacks three meetings before this design when would have been easier to consider, but the applicant went for legal opinion instead. Vice-Chair Cross stated that the Board tried to comply with principals in the Master Plan, and that sometimes compromised what an applicant wanted, but he still thought they could come up with a solution.

Mr. Ricci said he had an application in, and hoped to meet with DES the following week, but he wasn't sure they would have an answer until the March 14, 2022, meeting. Mr. Weiner said DES had a huge backlog.

Mr. Krebs said he would still put them on the Monday, February 28, 2022, agenda. Chair Hebert asked the applicant to let Mr. Krebs know if they couldn't attend. Mr. Weinrieb reminded everyone that he would not be available for the February 28, 2022, meeting. Chair Hebert responded that the Board wouldn't act without Mr. Weinrieb's comments. Mr. Krebs asked that they continue to the next meeting as Town

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voting day was on Tuesday, March 8, 2022, the day after the first Monday meeting of the month. Mr. Ricci said they could wait until March 14, 2022.

Mr. Krebs suggested that the applicant meet with Mr. Weinrieb before he left for vacation.

The Applicant left at the meeting at 8:02 p.m.

II) Other Business and Discussions:

A) Discussion on New Bills before the NH House of Representatives

Town Building Inspector, Steve Paquin, and Vice-President of NH Building Officials discussed several bills that were appearing before the House that he would be testifying on in Concord. Mr. Paquin said the NH Municipal Association was testifying against some of these bills as well.

Mr. Paquin said there was a major push toward statewide zoning, and ten different bills had a chance of becoming law that would take away local rights to set ordinances. Mr. Paquin said there were 27 Free Stater Libertarians from out of state, sitting in the New Hampshire House running as Republicans to throw State regulations out to gain a stronghold.

Mr. Paquin said one of the bills they passed a couple of years ago was preventing the denial of accessory dwelling units (ADU's) 's below 750 square feet attached to residential houses, which doesn't require an increase in the size of septic systems until they failed, and took DES out of the equation.

Mr. Paquin said HB 1177 would require local legislative bodies to allow by right up to four residential units on family lots, and the configuration could include a four-unit single building, a duplex with two ADU's, or two duplexes. Mr. Paquin said this was the State's way of stopping the housing crisis. Chair Hebert asked if municipal septic would be required, and Mr. Paquin said it might be left up to DES to determine. Mr. Paquin said there was rumor that the Senate would squash the bill because it wouldn't work on all lots, but Free Staters were on the House side.

Mr. Paquin said there was talk of redefining Prime wetlands to be over 50 feet wide, with a requirement that they would have to meet all four criteria, which would pretty much eliminate all Prime wetlands.

Mr. Paquin said there was also a House bill that was trying to limit the size of house lots to no more than half an acre for single family sized houses, again to reduce the housing crisis.

Mr. Paquin said HB 249 would make Airbnb no longer illegal as declared through the Town of Conway when an owner wanted to rent out their single-family home. Mr. Weinrieb commented that buying up single homes to rent out as Airbnb's would take away from the inventory of housing, especially in tourist towns. Mr. Paquin agreed that argument may have opened some eyes.

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Mr. Paquin said HB 244 would allow non-conforming structures, and changes to the definition of a subdivision where housing could be put in any zone as long as the conversion didn't go outside of the existing footprint.

Mr. Paquin said HB 1238 amendment would also prohibit municipal regulations on affordable work force housing in any zone.

Chair Hebert said his concern was with the effect on the local economy building housing in the Waterfront Industrial Zone as it was the only deep-water seaport in New Hampshire. Chair Hebert said the zones in town were created for reasons, and housing didn't mix with many of those zones. Chair Hebert said he was especially concerned with chemical exposure to residents in the Industrial Zone. Mr. Moynihan noted that fire and building codes set minimum distances, and that was an issue with some hazards.

Chair Hebert added that he was concerned that Newington would become more like Portsmouth.

Mr. Paquin said if regulations couldn't be denied even if by right so long as they were in place before bills become signed by the Governor. Mr. Paquin said only building and fire code would maintain standards, so it would be better to say housing was allowed with provisions to get ahead of the game.

Mr. Weinrieb noted that they had already passed the time for new amendments unless they passed a special the Town meeting. Mr. Paquin responded that was how the legislation worked, so it was important to get the ear of local representatives who were concerned with getting reelected every two years, and start writing. Chair Hebert commented that the general public often didn't get involved or attend meetings, but it only takes a small minority to show up, and be heard.

Mr. Paquin said there was another bill to do away with lobbyist like building inspectors, and the NH Municipal Association that the Board of Builders and Electricians would support this because they don't get public funds

Vice-Chair Cross suggested that the Board start on the Subdivision regulations and Ordinance amendments soon.

Mr. Krebs wondered if they might organize a forum with local planning boards and Rockingham Planning Commission to testify with their representatives.

B) Mr. Stern asked where the mailboxes and trash pickup would go for houses on the Shackford lots. Mr. Johnson said the developer was supposed to talk with the postmaster about the mailboxes. Chair Hebert said all services usually had to go to the nearest public road. Vice-Chair Cross suggested that they should specify Coleman Drive because Nimble Hill Road was a busy road.

C) Board of Selectmen's representative, Bob Blonigan announced that Leonard Thomas gave notice on February 23, 2022, that his trash truck wouldn't pass inspection, and would require an excess of \$10,000 to make it legal.

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Mr. Blonigan said the Town had asked for bids that had come in under \$5,000 a month where Mr. Thomas had been charging \$6,000 a month. Chair Hebert cautioned that the Town had accepted lower bids for other services, but had not received as much in return.

Mr. Blonigan suggested that bringing trash to the Town transfer station had been suggested as an option. Chair Hebert noted that the transfer station wouldn't be able to handle everyone's trash without the Three-phase power compactor.

Minutes: *Ben Johnson moved to approve the Minutes for the January 24, 2022, meeting with corrections as noted. Chris Cross seconded, and all were in favor with Russ Cooke abstaining.*

Adjournment: *Ben Johnson moved to adjourn the meeting. Russ Cooke seconded the motion and the meeting adjourned at 9:05 p.m.*

Next Meeting: Monday, February 28, 2022

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

These Minutes were approved and adopted at the March 14, 2022 Planning Board Meeting.

