

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 10, 2023

- Call to Order:** Chair Denis Hebert called the April 10, 2023, meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Board Members: Russ Cooke; Ben Johnson; Jim Weiner and Peter Welch; Alternate Board members, Rick Stern Planner, John Krebs and Jane Kendall, Recorder
- Absent:** Vice-Chair Christopher Cross and Board of Selectmen's Representative, Bob Blonigan
- Public Guests:** Gregg Mikolaites; P.E with August Consulting, PLLC; Brian Jones with Allen and Major Engineering; Steve Haight, P.E. with Civil Works; Tom Heaney, with Heaney Consulting; Jamie Byron; Maggie Cooke; Jack O'Reilly; Rabbi Berel Slavaticki with Seacoast Chabad Jewish Center; Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering

Chair Hebert informed the Board that he had asked the Board of Selectmen for an alternate representative when Bob Blonigan could not attend meetings.

Chair Hebert announced that Alternate Board member, Rick Stern would be appointed as a voting member.

Chair Hebert asked that abutters and Board members limit their comments to three minutes without repetition during public comment, adding that members of the public might be given more time so long as everyone else has spoken.

Chair Hebert announced that meetings would end at 9:30 p.m.

Board member, Jim Weiner asked that Town Planner, John Krebs provide a quick review of applications before each meeting.

1) Public Hearings:

A) Site Plan Review with Zero West Park Realty Trust to redevelop the existing Moko Japanese Steakhouse into a Drive-Thru Chick-Fil-A restaurant on property located at 2060 Woodbury Avenue, Tax Map 27, Lot 20.

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Mr. Krebs informed the Board that there was a slight change to expand the footprint that had been approved in December 2022 by 500 square feet. Mr. Krebs added that there was more than enough parking, so there was no need for any further adjustments.

Gregg Mikolaides; P.E with August Consulting, PLLC clarified that the request was to expand by 800 square feet.

Mr. Stern asked if they were putting in a playground, and Mr. Mikolaides stated that they were putting in an indoor playground.

Board member, Russ Cooke asked which dimensions were altered. Mr. Mikolaides stated that they wanted to expand the width of the drive-thru to the east side.

Chair Hebert opened discussion to the board.

Mr. Cooke said the expansion seemed to be an insignificant change that he was fine with.

Mr. Krebs said there were no additional questions from Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering or his December 2022 comments. Mr. Krebs said the draft conditions of approval would be the same.

Jim Weiner moved to approve changes to the Site Plan for Zero West Park Realty Trust's redevelopment of the existing Moko Japanese Steakhouse into a Drive-Thru Chick-Fil-A restaurant on property located at 2060 Woodbury Avenue, Tax Map 27, Lot 20 with previous approval and conditions. Rick Stern seconded, and the motion passed with all in favor.

B) Minor revisions to the 2020 Master Plan Housing Chapter

Chair Hebert stated that Mr. Krebs had made the requested changes that were requested at the previous meeting.

Peter Welch moved to approve minor revisions to the 2020 Master Plan Housing Chapter as presented. Ben Johnson seconded, and the motion passed with all in favor.

II) Subdivision Modification: by Joseph and Paula Akerley to adjust their subdivision roadway known as Windswept Way as deemed necessary during construction.

Steve Haight, P.E. with Civil Works presented drawings for the requested changes, explaining that the existing catch basin was higher than anticipated, and the rim of the structure couldn't be lowered, so they determined they should shim the edge of the road to facilitate better flow.

Mr. Weinrieb commented that it was unfortunate that conditions were different than designed, but they didn't see any other resolution; Mr. Weinrieb said it was a fairly minor change, but he didn't have the authority to approve a field change.

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Chair Hebert asked if the manhole grate could be lowered. Mr. Weinrieb replied that it could not because of the cross culvert and drainage in the area.

Chair Hebert recalled that the Board of Selectmen had advised a raised elevation. Mr. Weinrieb responded that there was only a hole during the initial discussion, and then the structure was installed to grade, so it was not possible to remove it now. Mr. Weinrieb noted that the change was redlined and would be added to the as built.

Jim Weiner moved to approve the request by Joseph and Paula Akerley to adjust their subdivision roadway known as Windswept Way as deemed necessary during construction and as presented. Peter Welch seconded, and the motion passed with all in favor.

Chair Hebert asked when the work would be done. Mr. Haight replied that they would complete the work when Brandon Arsenault's new house was completed.

Chair Hebert asked if they would sell any houses on the subdivided lots, and Mr. Haight replied that they could, but that their intent was to keep the lots in the family.

III) Preliminary Consultations:

A) Proposal for five (5) lot subdivision on property owned by **John Liatsis** and located at **Tax Map 10, Lot 38**

Board member, Russ Cooke stepped down from the Board to recuse himself as an abutter.

Tom Heaney, with Heaney Consulting appeared before the Board as representative to property owner, John Liatsis to present their conceptual subdivision design.

Mr. Heaney stated that they had originally proposed a 13-lot subdivision on the 31-acre parcel but were now looking for road approval for a five (5) lot subdivision for compliance on the odd-shaped lot that would include Mr. Liatsis' existing house on Lot 3.

Mr. Heaney stated that they would have put the cul-de-sac on higher ground, but the Ordinance limited road lengths to 1,500 feet. Mr. Heaney said they did have some flexibility to move the road to the left or right in their line of sight.

Mr. Heaney asked if there was any possibility to move the cul-de-sac to the right to allow a more gradual curve for easier approach on higher ground, and for improved drainage. Mr. Krebs replied that the Board felt strongly about limiting road lengths to 1,500, including cul-de-sacs was important, so a variance would be required to make it longer. Mr. Krebs said some towns only allowed 900- or 1,200-foot-long roads.

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Mr. Weiner said length of road was a previous issue. Mr. Krebs noted that the previous application proposed a 2,900-foot road.

Mr. Krebs said that he had pointed out during a preliminary discussion with Mr. Heaney that Lot 1, Lot 2, and Lot 3 did not appear to meet the form factor, but it should be an easy fix considering that the lots were bigger than necessary.

Mr. Krebs also noted that the frontage strip in front of Lot 4 was unacceptable.

Mr. Weinrieb noted Mike Mazeau's subdivision on Fox Point Road was allowed to put a spite strip in for the sake of frontage for a back lot, despite his objections.

Mr. Weiner asked what the waiver would be for, and Mr. Weinrieb said it would be for the form factor. Mr. Krebs suggested that they submit a plan that meets the regulations first.

Mr. Heaney commented that the conceptual design outlined the wetland area, and he didn't think they would require any waivers. Chair Hebert responded that the Board would need a current wetlands review of the wetlands to consider the subdivision.

Mr. Heaney said Gove Environmental reviewed the wetlands before, and they tried to make the new proposal conform. Chair Hebert pointed out that Town wetlands consultant, Mark West with West Environmental hadn't agreed with all of their wetlands designations that flowed to Little Bay.

Chair Hebert said he did a site walk some years ago, and he was still not sure about meeting the wetlands setbacks, especially on Lot 4. Mr. Heaney said it was not clear that a 150' setback was required, but there was no wetland impact to the best of his knowledge.

Mr. Heaney responded that it would be nice if all lots were square, but they were not. Mr. Heaney said they made sure there would be enough room for the house placement, but they might have to put the septic further away.

Jamie Byron at 11 Hannah Lane expressed concern with the site distance between the proposed road and the existing streets. Mr. Krebs noted that 400 feet was required from another intersection, and they could move it slightly, but there was no other place for access to the property. Mr. Weinrieb suggested that the applicant would need to request a waiver.

Mr. Weiner asked if they would need to go before the Zoning Board of Adjustment (ZBA). Mr. Krebs clarified that site distance was a part of the Subdivision Regulations that the Planning Board could waive.

Chair Hebert stated that the Board could tell the applicant that they would needed to buy out an abutter if they didn't grant the waiver. Mr. Heaney replied that they would have liked to have another access, but none of the abutters were able or interested in subdividing and commented that the existence of waiver suggested that some properties needed consideration because of circumstances.

Mr. Weinrieb noted that the previous proposal never got to the point of drainage review, and there was a concern with drainage onto Nimble Hill Road.

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Ms. Byron commented that drainage on the right side of Hannah Lane was also brought up.

Chair Hebert said he knew there was a lot of ledge at the entrance of the proposed road and asked if any testing had been done. Mr. Heaney replied that the applicant didn't want to spend on testing if the road was not allowed, and only a driveway would be put in.

Chair Hebert commented that the Planning Board always recommended that owners consider the Planning Board subdivision approval before purchasing properties. Chair Hebert said they also suggested that they consider financial feasibility because he wouldn't want to see them start project they couldn't finish, however, there were people who might be willing to pay for all the land in the back and do something with it.

Chair Hebert asked Board member, Ben Johnson who was a builder, what he thought. Mr. Johnson said he thought they could make it work.

B) Change of Use by Beane Farm and the Seacoast Jewish Education Center from a surgical center to a meeting space

Board member, Russ Cooke returned to his seat on the Board.

Mr. Krebs informed the Board that the Seacoast Chabad Jewish Center had purchased the Beane Farm on Woodbury Avenue. Mr. Krebs said there were no tenants in the basement, and the new owners had done some minor cosmetic work, and sanding dust had set off the smoke alarms from dust, causing the Fire Department to call attention to the Town building inspector.

Chair Hebert stated that the Board had asked that all tenants come before the Board for change of use approval.

Mr. Krebs asked about the tenants in the building, and Rabbi Berel Slavaticki with the Seacoast Chabad Jewish Center said the basement ground floor to the back was vacant, and an acupuncturist, and autism treatment facility, a dermatologist, and a gynecologist operated out of the front and top floors.

Chair Hebert commented that he wasn't aware of the autism treatment facility in the building.

Rabbi Slavaticki handed out building plan and stated that they wanted to use the lower back level as a gathering space for services of 20-30 people for now, and eventually a small day/preschool if zoning allowed.

Mr. Krebs asked when the meetings would occur. Rabbi Slavaticki replied that they would hold Shabbat synagogue services on Saturdays. Rabbi Slavaticki said they were currently holding services for 20 people in a small space they leased in Durham, and they needed a larger space.

Chair Hebert said the Town had a formula to be sure there was sufficient parking and asked about their needs. Rabbi Slavaticki said Fire Chief Hoyt said the Beane Far

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could contain 180 people, and of the 100 parking spaces, there were always 40-50 spaces available in the back, especially on Saturdays when no tenants were present.

Chair Hebert asked what their goal was for the next 5 years so that they could be sure they would have sufficient parking. Rabbi Slavaticki said they had what they needed for now, but they were thinking that they could use tenant space if they grew in the future.

Mr. Weiner suggested that the Rabbi work with Mr. Krebs to determine the number of spaces needed as each tenant would have allocated spaces.

Chair Hebert said Mr. Krebs was there to assist, but it was not his job to design spaces, so most applicants hired an engineering firm to do this work. Chair Hebert added that they might look at the current needs but would also need to return when they expanded.

Mr. Krebs agreed that he didn't do assessments, and said engineers typically presented plans that the Town engineering consultant reviewed. Mr. Krebs added that although they might not need an engineer, it would be easier to hire a site engineer that reviewed requirements and did permitting.

Mr. Weinrieb recommended that a site engineer review the maximum and minimum spaces required for the previous approval, and, how much was allotted to each tenant, and then review how many parking spaces required for public assembly.

Mr. Krebs pointed out that daycare was not permitted in the Office Zone, however. Chair Hebert added that daycare was only allowed as an accessory use to a primary use, and it was incumbent upon the buyer to determine uses allowed in zones before purchasing a property. Mr. Krebs said primary uses were what was allowed, and an accessory to the primary, but you can't have primary use that isn't allowed. Mr. Weiner explained that it would be fine if they had daycare during services, but not a daycare by itself.

Rabbi Slavaticki commented that they couldn't afford such a large place without the income of the tenants. Chair Hebert reminded him that the income from tenants would be taxable. The Rabbi Slavaticki said he was aware of that, and he had an attorney for their business.

Mr. Johnson asked if he could apply for a variance. Mr. Krebs said he would encourage him to obtain an attorney to fill out the application to present the request if that was what he wanted to do.

Chair Hebert asked if the Planning Board needed anything from the fire department. Mr. Krebs said the fire department said they shouldn't go forward with any further changes until they went before the Planning Board first.

Chair Hebert said the State recently said places of worship were allowed any place, but informed the Rabbi that the Board created the zones to discourage high density populations from gathering in the abutting Industrial Zone where there were potential dangers. Rabbi thanked him for the information.

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Mr. Weinrieb said the fire code would consider the maximum assembly may be based on the number of entrances and exits.

IV) Other Business:

A) Request for comment on property formerly owned by Jane Moore at **144 Old Dover Road Tax Map 19, Lot 17.**

Mr. Krebs passed a request from the Board of Selectmen to comment on property formerly owned by Jane Moore at 144 Old Dover Road Tax Map 19, Lot 17. Mr. Krebs stated that the former Town Clerk would not deed the property to the Town, and now they wanted to sell the property.

Mr. Johnson suggested that the Town ask one of the abutters if they wanted to buy the property.

Mr. Krebs said he didn't see any reason for the Town to own the lot but agreed that one of the abutters could combine the lots.

Mr. Stern said the Town demolished the house at great expense ten years earlier because of asbestos, but he didn't know if the Town could sell the lot for residential use.

Mr. Johnson asked if the lot had been appraised as non-conforming buildable lot. Mr. Krebs responded that it was a legal non-conforming lot, and Town counsel said it could be sold to an abutters, and that was his recommendation.

Chair Hebert said he didn't think it should be sold as a buildable lot. Mr. Krebs said the Town would need to stipulate that it was not a buildable lot if sold.

Mr. Weinrieb asked why the Planning Board would be concerned if someone requested a variance and built on the lot. Chair Hebert replied that the lot was not in the Residential Zone, and the grandfather clause expired after two years of non-use.

Mr. Johnson said he would be concerned with a property owner getting stuck with a useless lot if the Town sold it. Mr. Stern commented that he didn't think the Town should give away taxpayers' property. Mr. Johnson commented that the taxpayers had already been stuck with back taxes for last the 15-20 years.

Mr. Weiner commented that the decision was outside of the Planning Board's purview, and that the Board of Selectmen should work with the abutters to resolve the issue.

Mr. Weiner commented that the lot was useless to the Town, but wondered if they could put an easement on it to make it non-buildable. Mr. Krebs said he didn't see any reason for an easement. Mr. Weinrieb responded that a deed restriction would be more appropriate.

Chair Hebert said a residential building would go against zoning and economic development, and therefore thought that the Town should sell, give away, or keep the lot to prevent a house from being built on it.

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Mr. Stern commented that one of the abutters had been parking tow trucks there for years. Mr. Weiner said there were a number of properties with trucks parked in the back, and wondered how that was allowed. Mr. Krebs said when people called Town Hall, and nothing was done, it opened the door for someone else to do the same. Mr. Krebs went on to say that it would be beneficial to talk with the Board of Selectmen's representative because enforcement had not been a priority in this town.

Rick Stern recommended that the Planning Board advise the Board of Selectmen to sell property formerly owned by Jane Moore at 144 Old Dover Road Tax Map 19, Lot 17, and restrict the deed to prevent development, or retain ownership. Jim Weiner seconded, and the motion passed with all in favor.

- B) Review potential transfer of a portion of **Woodbury Avenue and Piscataqua Drive** from the Town to Wilcox Industries at the request of the Board of Selectmen

Mr. Krebs passed out a plan showing the current right-of-way along Woodbury and Piscataqua Drive. Mr. Krebs said Wilcox Industries wanted to purchase the right-of-way to push their building closer to Piscataqua Drive and reconfigure the layout for a security fence and access. Mr. Krebs said Chair Hebert and Mr. Weinrieb wondered if a sale made sense.

Chair Hebert said the Board of Selectmen might think it would be good to get tax revenue from the sale, and help Wilcox, but he was concerned that it could hurt the Town in future development of the intersection.

Mr. Weinrieb said the plan didn't depict Woodbury Avenue properly when the State transferred it to the Town, so what they were asking for was part of the Town roadway, and the waterline and utilities were in that area. Mr. Weinrieb said the industrial park regulations suggested an 80-foot right-of-way, and they could narrow the extra 100 feet of width on Piscataqua Drive.

Mr. Weiner said he recalled a discussion of a separate lane to queue traffic, and he thought it was a bad idea because it could back up onto Woodbury Avenue. Chair Hebert said they could queue on their own property as an alternative.

Chair Hebert said a tanker tipped over a few years ago, and the width was increased, and yet trucks still cut the corner, so he thought it was a good idea to keep it.

Mr. Weinrieb said he recalled that COAST was trying to put a bus stop there years ago.

Rick Stern moved to recommend the Chair sign a letter to Board of Selectmen not sell a portion of Woodbury Avenue and Piscataqua Drive owned by the Town to Wilcox Industries because the Planning Board thought the property was part of the

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existing road that was important to the Town's future development. Jim Weiner seconded the motion, and all were in favor.

Minutes: *Jim Weiner moved to approve the Minutes for the March 13, 2023, meeting with corrections as noted. Russ Cooke seconded, and all were in favor.*

Adjournment: *Rick Stern moved to adjourn the meeting. Russ Cooke seconded the motion and the meeting adjourned at 8:20 p.m.*

Next Meeting: Monday, April 24, 2023

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

These Minutes were approved and adopted by the Planning Board at their May 8, 2023 meeting.

