

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

- Call to Order:** Chair Denis Hebert called the April 22, 2019 meeting at 6:30 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; Board of Selectmen’s Representative, Mike Marconi; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Public Guests:** Alex Ross with Ross Engineering; John Wendell; Attorney Christopher Mulligan; John Lorden, P.E. with Tighe and Bond; Samil Patel and Shailesh Patel with Doloma Investment of Portsmouth, Inc.; Board of Selectmen, Ken Latchaw; Ann Hebert; Joe Mitchell

Chair Hebert asked Board members for their availability for meetings in May, and if they would be available to meet at 6 p.m. instead of 6:30 p.m. Board members agreed that they could meet on Monday, May 13 and 20, 2019 at 6 p.m.

l) Public Hearings:

- A) Two-lot subdivision proposal by **John Wendell** regarding property located at **188 Little Bay Road Road**, Tax Map 22, Lot 13

Chair Hebert joined the public as an abutter, and Vice-Chair Erika Manze chaired the meeting.

Alex Ross with Ross Engineering said Town engineering consultant, Eric Weinrieb and Town Planner, Gerald Coogan also reviewed their updates, and Mr. Weinrieb prepared a review letter that was included in Board member’s packets. Mr. Ross also responded to Mr. Weinrieb’s questions for the Board.

Mr. Ross stated that they would add a note that the shared drive would be fully reconstructed as needed to address degrading from construction trucks. Board member, Chris Cross commented that the Board could make a recommendation, but it was a private drive and he didn’t think the Board could make it a requirement.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

Mr. Ross stated that the applicant's soil scientist, Jim Gove with Gove Environmental had written a report regarding the low-lying wet area on the lot, and they would address the area with a culvert for drainage, so he didn't believe they needed the Town's wetlands consultant, Mark West to review the site or Mr. Gove's report. Board member, Chris Cross agreed that the ponding did not meet the definition of a wetland.

Mr. Ross stated that the plan met the 100-foot site distance in the driveway regulations, but Altus had suggested that they have a site distance of 200 feet as required for 30 mile per hour residential roadways with hairpin turns. Mr. Ross said that this driveway was not a roadway, but they had measured a site distance of 190 feet, which exceeded the driveway regulations, and was very close to the roadway requirement so they felt their site distance was sufficient. Board member, Peter Welch agreed that 190 feet was sufficient and not an issue. The applicant, John Wendell added that they intended to remove the two tall stone columns at the entrance, which would improve site distance as well.

Mr. Ross stated that they were aware that any work done within the 250-foot shoreline buffer would require a separate Shoreline Permit.

Mr. Ross stated that they had done calculations for the quantity and rate of flow from the culvert. He said details on Sheet 3 showed the catch basin for detainment with a large pipe for clearing, but the inlet was only three inches to avoid heavy water flow.

Mr. Cross commented that the Board asked for Mr. Weinrieb's recommendations, but understood that an opening larger than three inches was not required. Mr. Cross noted that 2-1/2 acres were draining to that section, and that the original design was for six-inch culvert was being improved so it would be easier to replace a three-inch entrance than the entire culvert.

Mr. Welch responded that he would be concerned that a three-inch entrance would fill in quickly and that a stepped weir would be more tolerant than a three-inch opening. Board member, Russ Cooke said a stepped weir was a good point, but the concern was with a rush of water from the decent sized area drains to that low-lying area. He added that the three-inch culvert would slow the water down, and cleaning out the opening would be the owner's maintenance issue.

Mr. Ross said they agreed that reducing the length of the culvert outlet, or installing a swale would improve the appearance.

Mr. Ross said they had shown a conceptual house location and grading, and had done test pits and considered lot grading for permitting and erosion control measures, but again, the drainage control would be reviewed under their Shoreline Permitting process, and was not under the Planning Board's prevue.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

Mr. Ross stated that he walked the site with Mark Collins from Eversource and the electrical connections would meet all the requirements as previously discussed with the Board.

Mr. Cross commented that he took exception with a two inch utility line as there was a requirement that all utilities at the subdivision line conform with roadway specifications of a four inch conduit from the edge of the roadway. Mr. Ross said Fairpoint's conduit was two inches, but it would not be a problem to change the conduit from two inches to four inches as Eversource's electric conduit was 4 inches.

Mr. Ross said they were not able to locate a cross culvert at the shared driveway entrance near Little Bay Road, so they would install a new culvert, and the outlet would go on the abutting easement.

Vice-Chair Mantz opened comments to public. Abutter, Denis Hebert of Gundalow Landing agreed that a three-inch opening to the culvert would require constant cleaning especially with leaves during snow melt and rainy seasons.

Vice-Chair Mantz read Town Planner, Gerald Coogan's draft motion with conditions. Mr. Cross asked if he had received a draft of the motion from legal counsel. and Mr. Coogan said he hadn't, but counsel could revise the motion if necessary.

Mr. Cross said the Board had discussions regarding notes to go on the subdivision plan because to waivers had been granted to allow a shared driveway with a utility easement to retain the historic character of the lot.

Mr. Wendell asked if his next of kin would be required to keep the historic home, or if they would be allowed to demolish and rebuild the house. Mr. Cross replied that he hoped that they would retain the historic character, but the condition was not to allow further subdivision of the lots, but it would not preclude redevelopment or revisions as needed in the future. Mr. Cross added that they could also petition the next the Planning Board for changes.

Mike Marconi moved to approve the two-lot subdivision proposal by John Wendell regarding property located at 188 Little Bay Road, Tax Map 22, Lot 13 with the following waivers and conditions:

- 1. That there shall be no further subdivision of the property with the Newington Planning Board's granting of waivers to allow a shared driveway and utility easement to retain the rural setting of the existing historic home on Lot 13.*
- 2. That all technical issues such as computations for the catch basin and culvert would be addressed.*
- 3. That all New Hampshire State wetlands, shoreline and subdivision permits would be obtained as required.*
- 4. That funds for third party engineering inspection services would be paid if needed*
- 5. That a PDF of the final approved plans, which reflect all changes required as part of the approval process, including technical review would be provided.*

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

6. *That a Mylar of the plan approved by the Newington Planning Board, suitable for recording at the Rockingham County Registry of Deeds would be provided with required recording fees, a separate fee for Land Conservation Historic Investment Program (LCHIP), made payable to Rockingham County Registry of Deeds, along three (3) copies of the final approved plan, and one Mylar for the Town of Newington be provided.*
7. *The work shall not be started before all engineering issues are resolved, and final plans are approved, the Mylar is signed, and State and Town permits have been signed and received.*
8. *That the applicant prepare a legal agreement that binds the owners of both lots to the maintenance and repair of the driveway, that the agreement shall include a termination clause, and that the Town's legal counsel shall review the agreement.*
9. *That the applicant and his agents shall adhere to all Town ordinances and regulations*
10. *That the applicant shall submit an "As Built" plan*

Peter Welch seconded the motion, and all were in favor.

B) Proposal by **Doloma Investment of Portsmouth, Inc.** to construct a 4-story, **83-room hotel** to be located at **141 Shattuck Way**, Tax Map 20, Lot 4 within the Office District

Vice-Chair Mantz stepped down as chair and Chair Hebert returned to the Board.

John Lorden, P.E. with Tighe and Bond informed the Board that the applicant's counsel, Attorney Bernie Pelech, who had been involved with the project since 2010, was not available for the meeting so his associate Attorney Chris Mulligan was present on his behalf.

Mr. Lorden presented an updated proposal that was similar to the 75-room hotel with 79 parking spaces that was approved by the Board in 2007. He said they had previously presented a smaller footprint with a taller building, but the Board had not been receptive to a five-story building, so they redesigned a four-story building, and parking with a travel lane around building.

Mr. Lorden showed the wetlands designated by soil scientist, Jim Gove with Gove Environmental in 2015 and the setbacks. He said they designed the site to avoid variance requests, and that the building was pushed into the wetlands buffer as a result of the 75-foot setback requirement from Woodbury Avenue. Mr. Lorden said there was a pipe connecting the wetland area on left to the area on the right, but he didn't consider it to be a contiguous wetland. Mr. Lorden said they would go before the Newington

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

Conservation Commission to request a recommendation for the wetlands permit from the Department of Environmental Services (DES) for the wetlands disturbance.

Mr. Lorden reviewed electric, gas, water and sewer line connections, and said he met with the fire, police and sewer departments.

Mr. Lorden said the top of the roof complied with the 45-foot building height ordinance, but the parapets for the elevators added an additional nine to ten feet, bringing the elevation up to 64 feet depending on the grading. Chair Hebert commented that he thought the height at the back of the building would probably look okay from Woodbury Avenue.

Chair Hebert noted that he didn't see a lighting plan yet. Mr. Lorden replied that they had not yet received the plan from the architect. Chair Hebert pointed out that they needed to comply with the Town's dark sky ordinance, and that walpaks were frowned upon.

Mr. Welch asked if any mechanical equipment would be visible above the parapet. Mr. Lorden replied that all the air conditioning units would be below the parapet.

Chair Hebert asked about the existing trees on the site, and Mr. Lorden said they would clean up the troubled trees and undergrowth, but would leave healthy trees that had a caliper of over six inches.

Mr. Cross commented that a building would last longer than trees, and that the tall pines were especially susceptible to winds and needle cast so he thought they might consider planting other trees in their place.

Mr. Marconi stated that trees would also be planted down the middle of Woodbury Avenue, which would improve the area.

Mr. Welch asked if they were considering sidewalks connecting from east to west, and. Lorden replied that the hotel was a destination site, with access on Shattuck Way, and there was no crossing at Old Dover Road or Piscataqua Drive so a sidewalk would direct pedestrians where there was no safe crossing.

Mr. Cross said that sidewalks had been talked about for the past 20 years and there were sidewalks between the former restaurant that had been torn down and the emergency vets. He added that the Department of Transportation (DOT) had designed the area for sidewalks, but they would not put sidewalks in until enough development occurred. Mr. Marconi responded that he thought that although sidewalks were a consideration, sidewalks on that side of Woodbury Avenue were a concern because of a lack of pedestrian crossing signals. Mr. Lorden recalled that there had been a previous discussion regarding a crossing at the intersection of Piscataqua Drive and Woodbury Avenue. Mr. Marconi noted that eventually, DOT wouldn't own or maintain Woodbury Avenue.

Chair Hebert noted that an office building would be put in where Family Buffet had been, and Northeast Credit Union would be building their headquarters on the other side of Piscataqua Drive where Great Bay Services had been, so he thought sidewalks

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

and crosswalks should be put in for the safety of pedestrians that would want to go back and forth to restaurants and shopping. But he thought the costs should be shared by the applicants. Mr. Lorden asked if part of DOT's repaving plan was to have a crosswalk at the traffic signal, and Mr. Marconi said the Board of Selectmen would continue to discuss safety concerns further.

Board of Selectmen, Ken Latchaw asked about the appearance of the back of the building facing Woodbury Avenue, and if trash compaction or equipment would be visible. Mr. Lorden replied that a transformer was proposed on the corner of the building that would be concealed with shrubs and landscaping, and the dumpster would be behind a solid masonry structure matching the building, and mechanicals would be on the roof. He pointed out that elevations were included in the Board's packet.

Discussion continued regarding drainage from surrounding developments onto the proposed site. Mr. Cross asked if there had been any analysis of water flowing from the malls across Woodbury Avenue. Mr. Lorden replied that stormwater management regulations did not allow them to increase or disrupt the existing flow, but drainage analysis of Woodbury Avenue in its entirety was not required and would not be possible.

Mr. Cross stated that his concern was with 40 days of rain that would affect flow. Mr. Lorden said they were required to have a 100-year flood drainage plan, so they would do an extreme precipitation drainage plan, then add another 15% because they were in the Great Bay watershed. He said the point was to treat stormwater before it got into wetlands, and they were following the DES approach, with concrete chambers with filters for treatment, and they were proposing seven of them, so they felt good about the water leaving the site.

Mr. Cross commented that Town wetlands consultant, Mark West had identified fish in the lower part of Paul's Brook, and he wondered about the interruption of amphibious wildlife crossing back and forth and asked if they might consider putting in larger 24-inch culverts or open bridges. Mr. Lorden said a 24-inch pipe would increase water flow, so they were stuck with using 12-inch pipe, but they could consider putting a 24-inch pipe for wildlife passage.

Mr. Coogan asked about the building that was placed in the 100-foot structural setback. Mr. Lorden replied that they had discussed the wetlands setbacks during their presentation at the January 28, 2019 Planning Board meeting, and Attorney Bernie Pelech had asked if they would need a variance or a Conditional Use Permit (CUP) for paving, curbing or drainage, that used to be under the Zoning Board's jurisdiction, but had since changed to the Planning Board, so he didn't see any difference between the building. Mr. Coogan read the description for a CUP for access, but it didn't include buildings, which would require a variance. Mr. Lorden replied that he recalled a discussion on the definition of structures because the previous proposal was also in the wetlands buffer.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

Chair Hebert replied that he recalled a discussion about pavement being considered a structure because of wetlands encroachment in the previous discussion, but he didn't recall a discussion about the building, however it would be in the Minutes.

Mr. Lorden noted that Gove Environmental noted that DES said that standing water had to be five to six feet deep to require a 100-foot setback, and a 50-foot setback would make less impact, but they decided to design the development with a 100-foot setback on that side just to be conservative.

Mr. Cross asked where the driest area of the site for development was, and Mr. Lorden replied that it was in front, but they were required to meet a 75-foot setback from Woodbury Avenue. Mr. Cross asked if they could make use of the setback closer to Allard Storage, and Mr. Lorden said don't know enough about the topography. Mr. Lorden added that it was always a battle with DES to get crossings across wetlands, but crossing existing culverts was more accepted.

Mr. Cross suggested that the Board work with Mr. West and the Conservation Commission to determine where the best placement of the hotel should be, and Mr. Welch agreed.

Chair Hebert added that he thought that this was a superior design over previous proposals, but reminded the Board that they didn't need to get into finer details, but needed to determine if the proposal was substantially complete, and then they would have 65 days for review.

Chris Cross moved that the proposal by Doloma Investment of Portsmouth, Inc. to construct a 4-story, 83-room hotel to be located at 141 Shattuck Way, Tax Map 20, Lot 4 was substantially complete. Erika Mantz seconded the motion, and all were in favor.

Mr. Lorden suggested that Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering review their plans and provide comments as soon as possible before they went before the Technical Review Committee before going back to the Board.

Mr. Cross suggested that they provide Mr. West with a copy of the plan and meet with the Conservation Commission to discuss the wetlands and setbacks first. Chair Hebert agreed that they would expect Mr. West to review the wetlands and that the Conservation Commission would review the wetlands permit as well.

Mr. Coogan passed out copies of the January 28, 2019 Planning Board Minutes and read from the top of page 8 of where it was noted that Mr. West had said Paul's Brook was offsite.

Mr. Coogan went on to read from page 8 where Ken Latchaw, Board of Selectmen's representative at the time said they would need to check with counsel to determine if they needed to go before the ZBA.

Discussion continued regarding criteria for a CUP for the construction of roads, and other accessways, but did not include buildings. Chair Hebert said he recalled

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

changing the CUP from the ZBA so that the Planning Board could work with applicants for accessways, and that would also allow an applicant to appeal to another board if there was a dispute. Mr. Lorden noted that the next couple of sections pertained to setbacks.

Attorney Mulligan said Attorney Pelech would have applied for a variance by now if he had been advised to do so. Mr. Welch responded that they were talking about the north corner of the building that was proposed at the time. Attorney Mulligan replied that they would need relief from impact either way.

Mr. Cross also recalled their discussion that this was a town that considered parking lots and retaining walls structures like as buildings, but that the CUP regulations were about accessways, not buildings.

Chair Hebert asked why one wetland had a 50-foot setback and another had a 100-foot setback if they were both connected by the same pipe. Mr. Lorden replied that the wetlands on the left side was more intermittent, whereas the right side was always wet, so they chose to review the 100-foot setback.

Chair Hebert said the traffic flow of the new plan was better than the previous proposal, but there was more wetlands impact.

Mr. Cross wondered if the Board could consider a waiver to the 75-foot setback from the Woodbury Avenue side to avoid as much wetlands disturbance. Mr. Lorden responded that there wouldn't be any wetland disturbance if could move forward, and that they would prefer to move the building forward with a 30-foot setback.

Chair Hebert agreed that there were significant wetlands impacts so it would be helpful to consider if they could do less impact, but said he would rather see buildings further back and impact wetlands than be closer to Woodbury Avenue, however. Mr. Cross pointed out that development across the street like the Longhorn Steak House was on higher ground, but still had less of a setback. Chair Hebert responded that it was also a matter of whether there was a 50-foot or 100-foot impact in the wetlands itself or in the wetlands buffer, so a joint meeting with Mr. West and the Conservation Commission would be helpful.

Mr. Coogan asked what kind of variance was granted with the 2007 site approval. Mr. Lorden replied that they received a variance from the wetlands setbacks, but this was a new proposal and he understood from previous discussions that they would need a CUP, not a variance. Mr. Lorden said he was now concerned with meeting their schedule

Mr. Coogan said he would contact Mr. West and schedule a site walk on Monday, Apr 29, at 5 p.m. before they met at the next Conservation Commission on Thursday, May 9, 2019 at 6:30 p.m.

Chair Hebert continued the public hearing to Monday, May 13, 2019 at 6 p.m., and asked that the applicant contact Mr. Coogan to change the meeting to May 20, 2019 if they were not ready.

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

II) New Business: Informational Discussion: Eversource Distribution Upgrades

Chair Hebert updated the Board on the upgrading of Eversource’s utility poles that have been flagged on Fox Point Road and Nimble Hill Road over the summer. Chair Hebert said that the upgrade is not part of Eversource’s Seacoast “Reliability” transmission expansion project, but it was a sequential part of it.

Chair Hebert said he expected Eversource to appear before the Board by May 15, 2019 or possibly sooner to review cutting trees along the town’s scenic roadways. He said they had been cutting a lot of trees since 2008, and it was a toss-up between keeping the town’s roadways scenic and upgrading utilities for the town. He added that upgrading the utility poles was part of the negotiations for the Seacoast “Reliability” Project.

Chair Hebert said Eversource would six utility trucks, dumpsters and porta-on the side of the road while doing their work.

Chair Hebert said they would be replacing 100 poles, and the new poles would be four to ten feet higher than the existing poles depending on the location. He said in doing so, the older poles would remain alongside the new poles for a time until the other utilities were moved. He said the Town was talking with counsel regarding how long the older poles would remain. Board member, Ben Johnson said sometimes the poles remained for a long time, as was the case in Portsmouth.

III) Other Business: Master Plan: Update

Mr. Coogan announced that Theresa Walker with Rockingham Planning Commission would meet with the Board on Thursday, April 25, 2019 at 3:30 p.m. to discuss future land use and the scope of their work.

Mr. Cross said would he would provide a draft on the scope of work to Mr. Coogan and Chair Hebert before the meeting.

(Mr. Coogan left the meeting at 8:55 p.m.)

V) Additional Discussions:

Chair Hebert said rec’d letter from Jim Weiner to serve as an Alternate Board member. Mr. Cooke asked if an alternate was necessary, and Chair Hebert said the Board often had an alternate.

Chris Cross moved to recommend the appointment of Jim Weiner as an Alternate Board member v, and Peter Welch seconded the motion.

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, April 22, 2019

Mike Marconi read from a letter saying he did not support the appointment of Jim Weiner because Mr. Weiner's demeanor toward other Planning Board members and applicants had been confrontational and aggressive.

Mr. Marconi stated that Mr. Weiner did not support the extension of Shattuck Way to Gosling Road, even though the extension would promote economic development in the Waterfront Industrial Zone.

Mr. Marconi added that Mr. Weiner had brought forth a wetlands zoning amendment without identifying which properties would be affected. He said the Board of Selectmen supported further study, and changes to be made before going before the Town for a vote.

Lastly, Mr. Marconi said that Mr. Weiner had lost the most recent election as a member of the Planning Board, and it would be an insult to the voters of sidestep their decision and appoint him as an Alternate Board member.

Chair Hebert said he had contacted the Municipal Association, and was told there was no restriction to appointing Mr. Weiner to the Board, as he had received 142 votes.

The motion passed 5-2 with Russ Cook and Mike Marconi opposing.

Mr. Cross commented that the extension of Shattuck Way should not be completed until an agreement with Portsmouth was reached.

Minutes: Erika Manze *moved to approve the Minutes for the March 25, 2019 meeting with corrections as noted. Peter Welch seconded, and all were in favor.*

Adjournment: *Peter Welch moved to adjourn the meeting. Russ Cooke seconded the motion and the meeting adjourned at 9:16 p.m.*

Next Meeting: Doloma Investments site walk, Monday, April 29, at 5 p.m.
Planning Board Meeting on Monday, May 13, 2019

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

These Minutes were approved and adopted at the May 13, 2019 Planning Board Meeting