

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, June 3, 2019

- Call to Order:** Chair Denis Hebert called the June 3, 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 members, Rick Stern and Jim Weiner; Board of Selectmen's Representative, Mike Marconi; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Public Guests:** Ted Mooney; John Briggs and Nick Lynch, co-owners, and Steve Demers with Starkin Autoworks; Alisha Busconi, VP of KeyPoint Property Management for the Crossings; Sandy Dewing; Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering; Paul Reardon

Chair Hebert announced that Board of Selectmen's Representative, Mike Marconi would be arriving later in the meeting, and that alternate board members would vote until he arrived.

1) Old Business: Continued discussion on change of use for **Starkin Autoworks** in the Mooney building located at **436 Shattuck Way, Tax Map 7, Lot 12**

Building owner, Ted Mooney updated the Board on questions on the proposed change of use for Starkin Autoworks.

Mr. Mooney showed a drawing where the dumpster would be outside the personnel entrance at the end of building furthest from Stoneface Brewery. Mr. Mooney said there were five parking spaces available and that Starkin Autoworks would only have four employees.

Town Planner, Gerald Coogan noted that Starkin Autoworks co-owner, John Briggs had submitted a letter of agreement to the Board as requested. Chair Hebert noted that a statement regarding no retail transactions were to occur on site needed to be included in the letter.

Alternate Board member, Jim Weiner questioned whether an occasional pickup from a commercial customer with no onsite sales transaction would be considered a retail sale. Steve Demers, representative for Starkin Autoworks stated that they wanted to focus on filling online orders for delivery and shipping and would not advertise onsite sales, but he wouldn't want to send customers away either. Board member, Chris

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Cross responded that items could be shipped or delivered same day, but retail sales transactions were not permitted in the Office or Waterfront-Industrial zones.

Vice-Chair Mantz noted that Stoneface Brewery was in the same building and asked if they were zoned differently. Chair Hebert replied that Stoneface had applied for a liquor license and the State had sent the request to the City of Portsmouth for approval instead of the Town of Newington, who never had opportunity to object within the allotted time. He added that Stoneface also requested a variance and did a site review.

Mr. Mooney commented that he had previous tenants that did business by phone or internet and shipped items out, whether they were retail sales or not. Chair Hebert responded that he had no problem with the proposal except that retail sales transactions weren't allowed in that district.

Board member, Russ Cooke commented that he personally didn't have a problem with an occasional pickup, and Board member, Ben Johnson agreed. Chair Hebert responded that might not always agree with all the Town's ordinances, but Board members took an oath to uphold them, and retail sales were not allowed in this district whether they agreed or not.

Mr. Cross stated that he did a site walk on the previous weekend when Stoneface was not open and noticed that only one parking space was open. Mr. Mooney replied that he understood that parking was limited due to the setbacks.

Mr. Cross added that he also noted foot deep potholes in the pavement. Mr. Mooney responded that he had put in an order for repairs, but the frequent rains had prevented paving until the next day. Discussion ensued whether Mr. Mooney should repair the potholes or pave the entire lot. Mr. Mooney stated that he did not think he could pave the entire lot and retain access for the businesses, but Chair Hebert pointed out that businesses often did a section at a time until it was done. Mr. Mooney then stated that he could not afford to do the entire lot, but he would do the repairs as soon as he had three days of dry weather.

Board members asked several questions to ensure that hazardous materials storage, and traffic concerns. Mr. Demers stated that trucks would only deliver to their loading dock during 9 a.m. to 5 p.m. business hours, Monday through Friday only. Chair Hebert asked about the size of delivery trucks, and Mr. Demers replied that their sizes varied. Chair Hebert replied that he understood considering that a tractor trailer truck had recently delivered an Amazon online order to a neighbor in the residential area recently. Mr. Demers stated that they could block times off for deliveries if necessary.

Chris Cross moved to approve the change of use and sublease of the Vera Roasting site in the Mooney building located at 436 Shattuck Way, Tax Map 7, Lot 12 to Starkin Autoworks. Erika Mantz seconded the motion.

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Board members continued a discussion on repair of the pavement as a condition of approval.

Mr. Cross suggested that the business not be allowed to open until the potholes were filled and sealed, and that the parking lot conditions be reviewed again in the spring following another winter. Mr. Mooney responded that he thought the Board was over stepping their bounds, however his tenants had complained about the potholes, and he had already made a down payment for repairs as soon as the weather allowed.

Chair Hebert commented that he didn't know that repairing the parking lot as needed each season would save over paving the whole lot, or if the Planning Board had any standing to require that he pave the entire parking lot, so it was up to Mr. Mooney if he wanted to do it piece meal.

Town engineering consultant, Eric Weinrieb with Altus Engineering commented that the issue was to be sure that the parking lot was in good repair for public safety and so that emergency vehicles wouldn't break their axles.

Mr. Cooke commented that he was concerned that the Board was overstepping their bounds, as the hearing was in response to the conditions of a variance and not the parking lot; however, the owner did say he was making repairs because the tenants were complaining.

Mr. Cross said the intention was to re-evaluate in a year because of the heavy truck deliveries. Mr. Cross added that he understood that tenants could require and and negotiate over the parking lot, but it was reasonable to expect that Stoneface's business were having to travel through potholes, and it was reasonable to expect that the parking lot met safety standards.

Mr. Weiner asked Mr. Mooney if his tenants had enough parking spaces, and Mr. Mooney replied that he couldn't create any more parking spaces, but the potholes were on the periphery and not in parking spaces.

Chair Hebert added that the Board couldn't control the number of spaces available for parking at the Stoneface, so he wanted to be sure that *Starkin Autoworks* return if there were any intentions of expanding.

Board members recommended an amendment to the motion to include the following conditions of approval:

- *That a letter stating that the internet sales operations could not include on-site retail transactions would be submitted*
- *That deliveries would not occur during peak hours for abutting businesses*
- *That the broken pavement would be repaired for safe business operation, and return in one year to be sure that it was still in good repair*
- *That the tenant would return for review if they had intentions of expanding*

Chris Cross agreed to amend the motion with the following conditions. Erika Mantz seconded the motion, and all were in favor.

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II) Public Hearings:

- A) Site proposal by **Doloma Investments of Portsmouth, Inc.** regarding property located at **141 Shattuck Way, Tax Map 20, Lot 4** to construct a 4-story, 83-room hotel

This item was continued to Monday, June 17, 2019.

Vice-Chair Mantz commented that there had been numerous delays and wondered when the clock stopped, and if it would be better to pull the application and start over. Chair Hebert replied that he talked to Town counsel, Attorney John Ratigan, who informed him that they could deny the application without prejudice, but a hotel was a hotel and it was not necessary to restart so long as they requested a continuance to a date certain.

- B) Site proposal by KeyPoint Partners, property managers of the Crossings for an **Aldi Market** to be located at the former Bugaboo Creek restaurant site at **45 Gosling Road, Tax Map 34, Lot 4**

Aleisha Busconi, Vice-President of KeyPoint Partners, property management for the Crossings presented plans for an Aldi Market on behalf of the engineer that was not able to make the meeting.

Chair Hebert noted that the lighting sheet was missing in all the plans, and Ms. Busconi stated that they needed to replot lighting since Eversource had relocated locations for the poles during their Seacoast "Reliability" transmission expansion project. Chair Hebert said she would need to do an addendum to the original plan.

Ms. Busconi informed the Board that they were also said working with Eversource on the Alteration of Terrain Permit (AoT) for a laydown area and soil storage area. Chair Hebert said he was concerned with silting during a major rain even that they would block storm drains, and suggested that they might also need new stormwater treatment plan. Ms. Busconi responded that she thought that they might use the area around the garage to get them away from wetlands.

Discussion ensued on whether the AoT permit for the Aldi Market needed to include PetSmart and Eversource's work. Chair Hebert said he thought that Eversource's work was under different jurisdiction. Ms. Busconi said they would caveat to be sure they were covered.

Ms. Busconi described the history of the original site with four buildings that used to be under one owner, that was now 50 acres with nine buildings. Ms. Busconi said

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they were proposing a 1,900 square foot building on a 2,400 square foot building pad located where the former Bugaboo Creek restaurant was left vacant after the owners went bankrupt. Ms. Busconi said there were 2,600 parking spaces, and the Aldi Market would only require 200-600 spaces.

(Board of Selectmen's representative, Mike Marconi arrived at 7:07p at this point in the meeting.)

Ms. Busconi stated that Aldi Markets were the top grocers in the world, saving buyers 50% by only offering the top selling commodities requiring fewer deliveries and employees.

Chair Hebert said the Board would be most concerned with site safety, traffic flow, dumpsters, snow removal and storage. Discussion ensued regarding orientation of the building, parking lot, handicapped parking, fire lanes and traffic flow.

Mr. Weinrieb added that the wetlands needed to be accessed as they were proposing a building within 100 feet of wetlands. Chair Hebert said he thought they would be grandfathered so long as they didn't expand beyond the existing asphalt.

Mr. Weinrieb stated that they would still need to do drainage improvements, and should coordinate day to day access with building inspector and fire inspector.

Mr. Weinrieb added that it appeared that the electrical layout to Woodbury Avenue went through the wetland buffer, so they would need a Conditional Use Permit. He also said it appeared that they might have redundant loops for electric and communication lines. Chair Hebert reminded them that letters from the utility companies would need to be submitted to the Town to confirm approval of connections.

Board member, Peter Welch asked why they weren't using an eight-inch line from the fire hydrant instead of a six-inch line. Sandy Dewing, who would be overseeing construction said they had upgraded the water main from a two-inch line to a twelve-inch line before the no-dig moratorium on Woodbury Avenue went into effect.

Mr. Cross questioned the placement of the flush handicapped parking in front of the building where the fire lane should be clear, stating that it was customary for most developments to have handicapped parking across the travel lane in front of buildings. Ms. Busconi replied that on a practical basis it was cumbersome for handicapped patrons to unload and cross from the store, so this proposal was to provide accessible spaces with bollards flush to the building as they had on the PetSmart lot. Mr. Weinrieb agreed that many new retailers were going flush because of a greater trip hazard for aging populations. Chair Hebert stated that he would like to hear from the fire chief, but suggested that handicapped parking could be placed in front of the brick wall. Mr. Cross suggested that they could also place the handicapped parking to the side of the building.

Mr. Cross asked if fire fighters could access the back of the building over the retaining wall topped by a chain-link fence. Ms. Busconi replied that the design was following code, but they could mimic what was done on the rest of the lot as they did near PetSmart.

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Mr. Weinrieb asked if they might consider building below grade, so they could use the building as a retaining wall. Ms. Busconi replied that the grade had to do with drainage and the loading dock. She added that they tried different layouts with retaining walls and this was way Aldi programmed their stores.

Mr. Cross asked if the Crossings was making individual lots for each business. Ms. Busconi replied that Longhorn restaurant had been recorded, but never assigned a lot number. Chair Hebert replied that the assessors usually gave the information to Civil Consultants to assign a lot number once a year.

Alternate Board member, Rick Stern stated that he was concerned with who would pay the taxes if they went out of business. Ms. Busconi replied that SBF, owner of the Crossings owned the property, but the businesses owned the buildings, and that SBF paid the taxes when Bugaboo Creek went bankrupt.

Mr. Coogan commented that the building footprints for Bugaboo Creek and iHop suggested they were on separate lots. Mr. Cooke responded that they were not listed as separate lots on the Town tax map. Mr. Coogan commented that a State RSA said that long term lease over years could be considered a subdivision. Mr. Weinrieb suggested that Town counsel review the RSA to determine if a long-term lease was part of the subdivision process. Chair Hebert commented that SBF paid all the taxes on the lots, so he did not believe they had been subdivided.

Chair Hebert noted that they also needed to identify the frontage on a public right-of-way. He said the loop was privately owned, but it was still a publicly used right-of-way, so it would meet the subdivision requirement. Mr. Weinrieb responded that he was not sure the loop would be considered a public right-of-way. Mr. Cross suggested that they review the matter further at another time.

Discussion ensued regarding a connecting sidewalk between the iHop and Fox Run Mall. Chair Hebert recalled that the Town had to return funds to the Fox Run Mall for a connecting accessway because the Crossings would not agree to contribute their portion.

Mr. Cross expressed concerns with lighting, drainage, ice, plowing, maintenance, liability insurance and a lack of use because of people were afraid to walk in a secluded area alone. He suggested that they consider a bus stop in the area. Chair Hebert suggested that the Crossings set aside funds to complete a walkway in the future just the same.

Mr. Cross asked about the mature trees, and Ms. Busconi replied that they were trying to save as many mature trees as possible.

Chair Hebert asked Mr. Weinrieb if he would recommend the plan as substantially complete, and Mr. Weinrieb replied that they were missing site lighting plan, but had otherwise submitted enough data available for the Board to begin review.

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Erika Mantz moved to accept the site proposal for an Aldi Market to be located at the former Bugaboo Creek restaurant site at 45 Gosling Road, Tax Map 34, Lot as substantially complete. Mike Marconi seconded the motion, and all were in favor.

Discussion ensued regarding setting a date certain. Ms. Busconi said she would try to be ready with an updated plan on Monday, June 17, 2019.

III) Other Business:

A) Escrow for Pet Smart

Mr. Coogan informed the Board that Mr. Weinrieb had said the PetSmart project was complete and all bills paid, so he recommended that they return the remaining balance of \$22,946 in escrow to the applicant.

Erika Mantz moved to return the remaining balance of \$22,946 in escrow to PetSmart. Peter Welch seconded, and all were in favor except Mike Marconi who abstained.

B) Vice-Chair Mantz said she and Mr. Cooke attended the New Hampshire Municipal Planning Conference on June 1, 2019, and shared materials regarding planning board basics with Mr. Coogan for distribution.

Vice-Chair Mantz added that there was a legal update session on several upcoming bills including SB306 on housing appeals. She said they were confident it wouldn't impact local control. Mr. Coogan stated that the bill had been tacked on a budget bill, so he wrote a letter. Chair Hebert said he didn't feel he could sign the letter on behalf of the Board without their consent.

Vice-Chair Mantz said they also discussed a pending senate bill around private road maintenance as a civil matter to back up towns

Vice-Chair Mantz said there was also discussion on whether a tiny house could be considered a detached accessory dwelling unit (ADU) if wheels attached.

C) Summer Sched: The following tentative dates were discussed, Monday, June 17; Monday July 8, and Monday August 5, 19 and/or 26, 2019.

D) Master Plan: Update on

Mr. Coogan informed the Board that Theresa Walker with Rockingham County Planning would not be able to make the scheduled June 6, 2019 meeting so it had been changed to Thursday, June 13, 2019 at 3:30 p.m.

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Minutes: *Erika Mantz moved to approve the Minutes for the May 13, 2019 meeting with corrections as noted. Ben Johnson seconded, and all were in favor except Mike Marconi and Rus Cooke who abstained.*

Erika Mantz moved to approve the Minutes for the May 16, 2019 Master Plan meeting with corrections as noted. Rus Cooke seconded, and all were in favor except Mike Marconi and Ben Johnson who were absent for the meeting and abstained.

Chris Cross moved to approve the Minutes for the May 20, 2019 meeting. Rus Cooke seconded, and all were in favor except Mike Marconi who abstained.

Adjournment: *Mike Marconi moved to adjourn the meeting. Ben Johnson seconded the motion and the meeting adjourned at 9:08 p.m.*

Next Meeting: Monday, June 17, 2019

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

These Minutes were approved and adopted at the June 17, 2019 Planning Board Meeting.