

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, August 14, 2023

- Call to Order:** Chair Denis Hebert called the August 14, 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, Jill Semprini and Rick Stern; Board of Selectmen's Representative, Bob Blonigen; Town Planner, John Krebs and Jane Kendall, Recorder
- Absent:** Vice-Chair Christopher Cross
- Public Guests:** Jim Teetzle, CEO of Wilcox Industries; Bill Gregsak with Gregsak and Sons; John Bernier with Bernier Construction; Joe Coronati, P.E. and Anthony Jones with Jones and Beach Engineering; Bob Pace, President of Shackford Homes, LLC; and associates with Nimble Hill Development, LLC; Robert "Guy" Young; Mike Parker and Kim Jacques; Denis Labrasca with Duston's Bakery; Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering

- I) **Public Hearing:** Lot line adjustment request by **Nimble Hill Development, LLC and Shackford Homes, LLC** for Map 6, Lots 2-10 based on new evidence of a previously referenced lot line on property located off **Nimble Hill Road and Coleman Drive**

This item was delayed to hear the following item first.

II) Preliminary Consultation

- A) **Wilcox Industries** request to discuss expansion plans at **Tax Map 27, Lots 2 and 22** located on **Piscataqua Drive and Woodbury Avenue**

This item was heard first as it would only be a brief discussion.

Jim Teetzle, CEO of Wilcox Industries presented preliminary plans for minor changes on the adjoining recently acquired property on the corner of Piscataqua Drive and Woodbury Avenue.

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Mr. Teetzle added that they intended on merging the new parcel with the older parcel for more parking to meet the requirements of expansion, and build a bridge walkway between the facilities.

Mr. Teetzle said that their original expansion plan was with ten floors, but they had reduced it to seven floors, with a one-story parking garage with a ramp for further parking below.

Mr. Teetzle said they wanted to expand past the one-story footprint of the original building, and the garage beyond the setback requirements, so they would be requesting variances.

Bill Gregsak of Gregsak and Sons said they would also be looking for a waiver from the parking island requirement, but would replace them with landscaping at the end of the road.

Mr. Gregsak stated that they had just received the survey a week prior, and there were approximately 5,000 square feet of wetlands on the site, and they were already working with the New Hampshire Department of Environmental Services (DES) regarding the strip of wetlands along the former Eversource parcel property line.

Board member, Jim Weiner asked if they would be willing to transfer the cost of the required landscape islands to the landscape area, and Mr. Teetzle said they would be more than happy to do that all around.

Mr. Teetzle said the building would be comprised of foundation, blockwork and stainless-steel shrouds for nice curb appeal, and security fencing all around.

Mr. Gregsak said they intended on opening and pushing the granite curbing to expand the parking, and add a detention basin.

Mr. Gregsak said they were working on drainage for the site, and would probably use underground chambers. Mr. Gregsak said they would probably submit plans in six to eight weeks.

Town Planner, John Krebs informed the applicant that the Board had eliminated credit for pervious porous pavement, unless they granted a waiver.

Mr. Krebs asked if they intended on presenting one site plan. John Bernier with Bernier Construction said they would present the remodeling of the former building first.

Mr. Teetzle further explained that they wouldn't have enough parking for the new building, so they were thinking of building the new single deck parking garage shortly after, and would use existing parking during construction.

Mr. Krebs said they already had variances from their former approval, but they would probably need new variances for the new building. Mr. Krebs asked if they would be requesting variances to build up to the lot line, and Mr. Teetzle said they would because they were trying to work around all the easements.

Chair Hebert said there were no setbacks around the entire property, and they were proposing to build the garage right up against road, so he suggested they consider building garage up to have fewer setbacks.

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Mr. Weiner said might also be able to consider walkways under parking garage instead of above too.

Board member, Russ Cooke said he also wanted to be sure variances and waivers were discussed as soon as possible. Mr. Krebs recommended finalizing the site plan for the Planning Board, and then the Planning Board would advise.

Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering said a water line ran through the site, and asked if they were working with the City of Portsmouth Water Department to move it. Mr. Teetzle replied that they already decommissioned the line when they moved it down Piscataqua Drive, and they could also tap into waterline for garage sprinkler system.

Mr. Teetzle said they had removed access from Woodbury Avenue, and would put in an apron for vehicles to go in through the guard shack.

Mr. Gregsak noted that they would have emergency access onto Woodbury Avenue, however.

Mr. Krebs said there would need to be a discussion between the Newington Fire Department and the Planning Board, and recommend begin that discussion with Fire Department as soon as possible for an 85-foot-high building.

Mr. Teetzle said the design and survey work was done, and they were now going out for bid.

Mr. Krebs informed the applicant that there was a new law, RSA 674:75, which said developers had to work closely with owners of pipelines.

Chair Hebert suggested that they ask if they could put transmission lines underground, making the area safer, more attractive and providing more space.

Mr. Teetzle asked if the Town would consider transmission lines going under Woodbury Avenue. Chair Hebert said it would be up to the Board of Selectmen to approve.

Chair Hebert asked about the right-of-way under the building. Mr. Krebs said it looked like an easement. Mr. Teetzle said there were no power lines there. Chair Hebert said they still need resolution of all easements before construction could begin.

Chair Hebert said they would also need to do a traffic flow and pedestrian crossing study. Mr. Krebs said the study would need to consider the number of trips a day based on parking, and determine where traffic was coming from. Mr. Weinrieb said they also needed to consider shift change traffic as well to avoid backups on public ways.

Mr. Cooke asked how many employees they had. Mr. Teetzle said there were 375 now, and he could see the number growing to over 700 with two shifts, and there would be 25% more working first shift.

- B) Change of Use** to convert a portion of the former Sears building to a convention center at the Fox Run Mall

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This application was withdrawn.

I) Public Hearing: Lot line adjustment request by **Nimble Hill Development, LLC and Shackford Homes, LLC** for **Map 6, Lots 2-10** based on new evidence of a previously referenced lot line on property located off **Nimble Hill Road and Coleman Drive**.

This item was delayed to hear the previous item first.

Mr. Weiner said he wanted to present some research he had done before the meeting. Mr. Weiner stated that a private resident had expressed some concerns regarding a Department of Environmental Services (DES) project by Trickey Cove. Mr. Weiner said he talked with David Price at DES about concerns with the Shackford lot, and was told forms needed to be filled out first.

Mr. Weiner said wetland permits were in place, but changes had occurred on the property causing some unintended consequences that would require the developer to submit an amended DES application.

Mr. Weiner recommended an additional review by wetland scientists, the Town engineering consultant, and the building inspector because disturbances may have altered the wetlands.

Joe Coronati, P.E. with Jones and Beach Engineering responded that Brad Jones with Jones and Beach Engineering had been inspecting the site since Severino had begun the roadwork.

Mr. Coronati went on to explain that an issue came to light recently when they discovered that the GPS and CAD plan drawn from work that had been tied into an older survey work was off, causing a slight rotation on the plan compared to the on the ground wetlands flagging that was done by Jim Gove of Gove Environmental, and reviewed by the Town wetlands consultant, Mark West of West Environmental.

Mr. Coronati stated that many of the flags tied to trees at the back of the lot were placed at a conservative high tide line, and were still there.

Mr. Coronati said the road was in the correct location, and did not need to move, and the frontage of lots didn't need changing, but adjustments needed to be made on some of the lots. Mr. Coronati said they would still need waivers on two lots that didn't meet the form factor requirement as they had initially, but all the lots met the 80,000 square foot requirements although some would be smaller, and some would be larger, so deeds would need to be rewritten with correct sizes.

Mr. Krebs stated that the peninsula on the map needed to be rotated 10 degrees.
(Alternate Board member, Rick Stern arrived at this point in the meeting at 7:01 p.m.)

Mr. Weinrieb said he agreed that the findings, and they would need to submit an amended permit.

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Mr. Coronati indicated that the new layout showed a shift of the cul-de-sac, and a reduction of shoreline impacts, but they would still need a simple amendment, Mr. Krebs asked if the impact occurred during construction. Mr. Coronati replied that he didn't think so, but they said they would do restoration mitigation if it was required by DES.

Mr. Weinrieb asked if there were any impacts when crossing culverts, and Mr. Jones with Jones and Beach said there were no additional impacts. Mr. Weinrieb said Severino stopped construction when the issue was brought to their attention.

Mr. Weiner asked what feedback there was from the technical review committee (TRC). Mr. Krebs replied that the TRC had been disbanded three years ago after his first three months. Mr. Krebs added that a TRC reviews preliminary plans, makes comments and recommendations, but would have nothing further to do with an application once it goes to the Planning Board.

Mr. Weiner said he thought that the Board agreed that the intent was to have the engineering consultant, fire department, building inspector, and wetlands consultant meet as a TRC so the Board wouldn't concern themselves with engineering, and to save time and money. Mr. Weinrieb said it was the applicant's responsibility to reach out to engineers for technical review, whether formal or not, and he and Mr. Krebs had been receiving comments back from the applicant's engineers. Mr. Krebs added that it had also been determined that everyone involved in public works, sewer, fire, or police didn't convene as a TRC to save time and money, but weighed in as necessary.

Mr. Weiner asked if Mr. Weinrieb was comfortable rechecking the wetlands, and Mr. Weinrieb replied that the applicant would delineate, and they would be able to see if the wetlands were disturbed, and then would need to be restored. Mr. Coronati said DES would advise.

Board member, Peter Welch asked how the road didn't get affected if the shoreline was rotated. Mr. Krebs said the road was fixed, and only the edge of the water was redrawn.

Mr. Weinrieb added the deviation was not noticeable because it was very flat. Mr. Coronati said it wasn't a significant change, and only moved away from the road to one side.

Board of Selectmen's representative, Bob Blonigen asked if the change affected abutters' property lines. Mr. Coronati said he didn't think it would because it was at the back of the site, and the line was not common to abutters.

Mr. Coronati said the back of the lot abutted Robert G. Young's tidal corner. Mr. Coronati said the 4-1 reference line was determined by wetland scientists and surveyors, and could be interpreted differently, and change with the ebb and flow of land, but that was not part of the survey.

Mike Parker and Kim Jacques, residents of Shattuck Way on Trickey's Cove said it seemed there would be minimal impact moving away from them, and there was a 10-acre property between them with a ravine.

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Ms. Jacques asked how many trees would be removed between Lots 2, 3 and 4. Chair Hebert said that would be determined once the location of the houses was established. Mr. Coronati added that there would be a site design for each lot. Mr. Coronati said DES had a grid calculation with a 75-foot shoreline setback.

Mr. Weiner said abutters should have recourse if there was any new runoff to their property. Mr. Weinrieb responded that the stormwater design was reviewed in the Alteration of Terrain permit with each lot having a stormwater plan, and the roadway construction was reviewed through the Planning Board. Mr. Weinrieb said the plans would be reviewed again, and DES would review another shoreline permit if required, so there were multiple layers of review.

Robert "Guy" Young of Nimble Hill Road 's stated that he was the owner of the 10-acre parcel on one side of the Parker's property. Mr. Young added that Jones and Beach engineering had been clear about drainage, and he didn't expect any issues.

Mr. Coronati said he would be happy to meet with DES or anyone else in town, but the process for restoration with DES for any wetlands impacts was separate from this application for a lot line adjustment. Mr. Weinrieb agreed

Chair Hebert asked how long it would take to amend the shoreline permit. Mr. Coronati replied that it was typically done in an email, and 30 days was a reasonable lead time.

Chair Hebert asked Mr. Weinrieb if he and Mr. Krebs could resolve any questions with a site walk. Mr. Weinrieb agreed, and said the Board could approve the lot line adjustment with the condition that the that shoreline and AoT permits be amended.

Chair Hebert said the wetlands were just skewed on the map, but were still there and marked, so there was no need to hold up the application.

Mr. Weiner asked if the change would affect insurance rates for property owners. Mr. Coronati said there was still a 100-foot setback for construction, and the bank was steep, and 12-15 feet above high tide.

Mr. Krebs passed out a draft of the conditions of approval for review.

Mr. Weiner asked if they could include a condition to protect abutters. Mr. Krebs replied that regulatory conditions of the former approval were standard, and others were added at end, but this lot line adjustment was separate. Mr. Krebs noted that two months ago the blasting company said they would repair damages to abutting properties, but beyond that the application went through many layers of review including an engineering and DES review, and no bank would finance a development if someone got water in their basement.

Chair Hebert appointed Alternate member, Rick Stern to fill in as a voting member for Vice-Chair Cross who was absent.

Rick Stern moved to accept as substantially complete the lot line adjustment request by Nimble Hill Development, LLC and Shackford Homes, LLC for Map 6, Lots 2-

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10 based on new evidence of a previously referenced lot line on property located off Nimble Hill Road and Coleman Drive, and approve with the following conditions:

- 1. That a PDF of the FINAL plans, which reflect any and all changes required as part of the approval process be provided;*
- 2. This approval requires the strict adherence to all applicable regulations adopted by the Town of Newington in effect at the time of approval, excepting any waivers granted by the Board;*
- 3. The Planning Board's approval of these lot line adjustments is in no way an approval of any relief of the Zoning Ordinance which may result from the adjusted lot lines;*
- 4. All State permits previously approved for this subdivision shall be amended as necessary;*
- 5. The Applicant and its Agents shall adhere to all Planning Board Subdivision Regulations, unless the Planning Board has granted waivers from such regulations;*
- 6. The Applicant shall provide two copies of a Mylar suitable for recording at the Rockingham County Registry of Deeds (RCRD) with appropriate recording fees (based on Mylar size) with separate fee for Land Conservation Historic Investment Program (LCHIP), made payable to the RCRD, and three (3) copies of the final plan as approved by the Board;*
- 7. All final approvals by the Planning Board expire within two (2) years from the date of Subdivision approval, unless the Board grants an extension;*
- 8. The Applicant agrees to pay for any and all additional technical review costs associated with the Lot Line Adjustment application.*

Ben Johnson seconded the motion, and all were in favor.

V) Other Business:

Mr. Krebs informed the Board that Until gas was getting ready to build their new station by the turnpike, but the New Hampshire Department of Transportation (DoT) said they would need to use access on Shattuck Way because they didn't want construction on off the Exit 4 ramp.

Mr. Weinrieb added that they had been asked to clear brush in the right-of-way for better site lines. Mr. Stern commented that they would just use an excavator to scrape the trees.

Chair Hebert suggested that they put construction signage or cones on the road, and possibly police to caution traffic, including the fuel tanker trucks coming around the corner. Mr. Krebs said they would, and asked them to block the entrance off at the end of each day too.

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II) Preliminary Consultation

- B) **Change of Use** to convert the former TMobile building on the corner of Woodbury Avenue and Gosling Road to Duston's Bakery.

This item was added to the agenda.

Mr. Weiner said he thought the Board agreed that no new applicants would appear without receiving information a week before. Chair Hebert responded that this was only a preliminary overview, and no decisions would be made.

Mr. Krebs informed the Board that Duston's Bakery of Dover wanted to establish a new site in the former TMobile building on the corner of Gosling Road and Woodbury Avenue. Mr. Krebs provided a sketch of the parking area, and stated that it was a permitted use, but businesses were still required to come before the Board.

Dennis Labrasca with Duston's Bakery said they wanted to add another location in Newington, and would bring in many of their products from the Dover location.

Mr. Labrasca said they would have a griddle, deep fryer, griddle, and a deli case to make fresh sandwiches on location for to-go orders.

Mr. Labrasca said there would be no seating on the site, but they intended to eventually add delivery when able to find delivery drivers.

Mr. Labrasca said they would take down the false walls, install new flooring, and vents out of sight at the back, and hoped to open by October 1, 2023.

Mr. Stern asked if they would be a grease trap. Mr. Labrasca said their systems were all self-contained, and grease and oil removed from site and recycled. Mr. Labrasca said the system wouldn't turn on if full of grease.

Mr. Stern asked about grease going down sink drain. Mr. Labrasca said they were aware that it was a tough location for a grease trap, so they would be using a three-sink system with trap. Mr. Weinrieb recommended that they reach out to Newington Wastewater Treatment, nonetheless.

Chair Hebert asked if traffic would be going in, parking, order, and then leaving. Mr. Labrasca said it would, and they hoped to have their own vehicles for delivery eventually.

Chair Hebert asked how many parking spaces would be used. Mr. Labrasca said he expected a total of six to ten, but didn't think it would be on a continuous basis.

Chair Hebert noted that the owner of the abutting building granted this building owner parking spaces, but then changed easements with one another.

Mr. Krebs said their location was the best parking on the site.

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Mr. Krebs asked what the hours of operation would be, and Mr. Labrasca said their hours would be from 7 a.m. to 2 p.m. on Monday, and 7 a.m. to 6 p.m. on Tuesday through Saturday, and possibly adding Sunday hours in the future.

Jim Weiner moved to approve a change of use from retail at the former TMobile site on the corner of Gosling Road and Woodbury Avenue to a bakery and deli service as requested by Duston's Bakery. Ben Johnson seconded the motion, and all were in favor.

III) Work Session: Discussion of potential Site Plan Review and Subdivision Regulation Amendments to require reporting of non-point pollution standards for newly approved developments.

Mr. Krebs informed the Board that Chair Hebert, Alternate Jill Semprini, and himself had a conference call with Jamie Houle from the University of New Hampshire (UNH) because Newington regarding nitrogen discharge levels in Great Bay. Mr. Krebs said the Environmental Protection Agency (EPA) had set permitting levels for surrounding communities.

Mr. Krebs said several communities had formed an alliance to figure out ways to reduce nitrogen to reduce stormwater because it was expensive to retrofit their wastewater treatment plants. Mr. Krebs pointed out that Newington had a lot of stormwater runoff from the Commercial and Industrial Zones, the Spaulding Turnpike, and Woodbury Avenue especially.

Mr. Stern commented that high nitrogen fertilizer use was also a contributing factor.

Mr. Krebs said the Sewer Commission was already doing all they could, and Newington's Ordinances were up to date, but they needed developers to do more by filling out and submitting a spreadsheet to UNH to keep an accounting. Alternate member, Jill Semprini said the reason for the accounting was to keep track of stormwater runoff mitigation.

Ms. Semprini added that Newington could also get credit for their more advanced sewer treatment.

Mr. Krebs said he would write up an amendment for the Regulations, and would post a public hearing

IV) Town Planner Report

Mr. Krebs updated Board members on work he had been doing with potential applicants, including Wilcox Industries, and the Fox Run Mall.

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Mr. Krebs said Guy Young of Nimble Hill Road also had a plan to subdivide his family's eight to ten acres on Tax Map 12, Lot 4-1 into two lots. Mr. Krebs said the lots could meet all the regulations except the only access with wetlands in the middle at end of the road was a 50-foot-wide easement between Ken and Kathy Latchaw's house, and Suzanne Russell's house on Nimble Hill Road.

Mr. Krebs said the Board of Selectmen were asking the Zoning Board of Adjustment (ZBA) to reconsider the variance they granted to allow Walkers to subdivide their 120 square foot parcel into two lots. Mr. Krebs said it was up to the ZBA to vote yes or know on whether to rehear the application, but the applicant could appeal their decision further if they vote no.

Mr. Krebs said there was a new statute passed in the summer of 2022 that said the ZBA had to have fact findings written for every case, so the ZBA legal counsel, Attorney Keri Roman had written the notice of decision.

Mr. Blonigen said there was a new thing about sealing records indefinitely if reviewed every 10 years. Mr. Blonigen said the Board of Selectmen had asked for clarification, and would update.

(Mr. Weinrieb left at this point in the meeting at 8:38 p.m.)

V) Additional Discussions:

Mr. Weiner said he wanted to review the Planning Board's Rules and Procedures, and discovered that Board members could meet applicants before they had submitted a formal application.

Mr. Weiner said he was reviewing the Rules and Procedures on exparte, and had compared the three sections describing the limitations to a Board member's ability to meet with an applicant in the 2015 Rules and Procedures to the 2020 updates that everyone had signed. A discussion of administrative discrepancies in the Rules and Procedures ensued.

Mr. Weiner said the Board had to operate on what was put before the town for a vote, and Mr. Krebs was the only one that should meet with an applicant.

Mr. Weiner added that he didn't think that Chair Hebert should give projects to Mr. Krebs without the Board's approval first.

Mr. Weiner informed the Board that he had asked to meet with Mr. Krebs for half an hour that turned to an hour and a half, and that he thought that anyone meeting with Mr. Krebs should email him to request more time considering that the Board of Selectmen had asked that the Board be fiscally responsible with budgets.

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Chair Hebert said some weeks he spent no time with Mr. Krebs, and other weeks he might spend six hours with him. Mr. Krebs said he usually averaged two hours per week with Chair Hebert in preparation for Board meetings.

Chair Hebert said the Rules and Regulations were created from a boiler plate template similar to other towns, but he was voted in by town, and would spend the amount of time he needed with Mr. Krebs.

Mr. Weiner said the Board needed to approve fiscal assets. Chair Hebert responded that the budget was already allocated for the Town Planner each year.

Mr. Weiner said he himself tried to cut time and expenditure on engineering reviews to move meetings along expediently.

Chair Hebert said it was at Mr. Weiner's request to run more efficient meetings that he went to the New Hampshire Municipal Association that recommended getting establishing set times to give everyone time to speak and get to the point without repetition and monopolizing discussions, and setting an end time at 9:30 p.m. at the latest.

Mr. Weiner said other land use Boards met at the Town Hall where the meetings could be recorded for residents, or the Building Inspector to listen to them at home, but Chair Hebert had said he didn't like being recorded, so he held meetings at the Old Town Hall instead.

Chair Hebert said other Board members had said they didn't want to be videoed. *(Mr. Blonigan left the meeting at this point at 9:31 p.m.)*

Minutes: *Ben Johnson moved to approve the Minutes for the July 10, 2023, meeting with corrections as noted. Peter Welch seconded, and all were in favor.*

Adjournment: *Peter Welch moved to adjourn the meeting. Ben Johnson seconded the motion and the meeting adjourned at 9:38 p.m.*

Next Meeting: Monday, August 28, 2023, or Monday, September 11, 2023

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary