

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

Call to Order: Chair Denis Hebert called the September 21, 2020 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; Board of Selectmen's Representative, Ken Latchaw; Town Planner, John Krebs and Jane Kendall, Recorder

Absent: Alternate Board members, Rick Stern and Jim Weiner

Public Guests:

I) **Public Hearing:** Site Plan Review by **Lordco Pier Associates** to construct a 6,304 square foot storage building on property located at **158 Shattuck Way, Map 20**

Town Planner, John Krebs informed the Board that the application was incomplete, so the applicant agreed to resubmit for next month's meeting.

Peter Welch moved to continue to the Site Plan Review by Lordco Pier Associates to construct a 6,304 square foot storage building on property located at 158 Shattuck Way, Map 20 to Monday, October 19, 2020. Russ Cooke seconded the motion, and all were in favor.

II) **Discussions**

A) **Meeting Schedules**

Chair Hebert said he was trying to get back to scheduling meetings on the traditional second and fourth Mondays of the month, but it was difficult with upcoming holidays. Discussion ensued regarding possible dates for upcoming meetings, and decided to hold the next meetings on Monday, October 5, 2020.

Chair Hebert suggested that they determine whether to meet again on Monday, October 19, 2020, as well as Monday, October 26, 2020 depending on applications.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

B) Driveway Application

Mr. Krebs informed the Board that a driveway application for Patterson Lane had come in, but had not been noticed. Chair Hebert said the Board could review the application, but he wanted to hold off any decisions until it was listed on the agenda for the October 5, 2020 meeting. Chair Hebert said Mr. Krebs could give the applicant indications of any recommendations from the Board.

Mr. Cross said the applicant was only moving the parking to the other side of the house with a culvert 15 feet from the setback, which he thought was a good idea. Chair Hebert added that he didn't see that there would be any issue with the line of sight.

Vice-Chair Mantz asked why they couldn't stay where they were already parking. Mr. Krebs said he understood that the applicant was going to clear the area and lay down gravel.

Mr. Cross said they would need to clarify that they would need to abandon the parking on the lawn.

III) Other Business:

A) Continued Discussion of **Subdivision and Site Plan Review Regulation** amendments

Mr. Krebs passed out a revised copy of the regulations showing the edits from the previous meeting for Board members to discuss further.

Chair Hebert said he wanted a better definition of flowable fill to protect conduit from settling. Board member, Ben Johnson said there's excavatable and non-excavatable. The Board agreed to say excavatable concrete flowable fill.

Discussion ensued whether the requirement was necessary if conduits were not under pavement. Mr. Krebs stated that utilities would always run under the road, and it would be easier to continue with flowable fill if a trench was already open, easier to continue with flowable fill rather than put fill in, then stop and put in sand. Chair Hebert and Mr. Johnson agreed that it would be cheaper for a contractor to put in flowable fill.

Mr. Cross asked why a contractor would bother if it was far off the road, and suggested that they specify conduits that were running perpendicular to the road. Chair Hebert responded that his concern was the collapse of roads, and conduits from heavy traffic, or vehicles pulling off to the side of the road or sidewalks. Chair Hebert recommended that a minimum of 16 inches of excavatable concrete flowable fill be used for conduits installed under pavement, or within three feet of the pavement edge.

Erika Mantz moved to send Subdivision Regulation amendment 1 and 2 as amended to a public hearing. Ben Johnson seconded the motion, and all were in favor.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

Discussion continued regarding standards for bike paths in Amendment #4.

Board member, Peter Welch commented that there was no way for a developer to estimate costs because standards had not been established. Mr. Welch asked if the New Hampshire Department of Transportation (DOT) had established a standard for bike paths, and Mr. Krebs said they had not, and their sidewalk standards wouldn't apply to a rural road.

Mr. Cross noted that page 17, Section R and S listed Bike Path Standards, but sidewalks were not listed. Chair Hebert said bicycle paths and sidewalks were not load bearing and were usually built to the same standard.

Mr. Krebs suggested that they say, "...construction standards to be approved by the Planning Board.

Mr. Cross said the construction specifications for residential roadways were revised by Town engineering consultant, Eric Weinrieb with Altus Engineering eight years earlier, and included specifications for sidewalks. Mr. Cross suggested that they "...in accordance with subdivision and roadway standards for sidewalks and bicycle paths."

Chair Hebert noted that the standards for residential roads were in a separate booklet.

Chair Hebert suggested that they remove the reference to roadways because standards for roads were already established. Mr. Krebs agreed, and also suggested removing "minimum" and the underlined reference.

Mr. Krebs commented that it was unusual to include roads built as part of a commercial development. Chair Hebert responded that Shattuck Way had been built as part of a site plan, and Wilcox Industries was doing the same with the continuation of Shattuck Way toward Gosling Road.

Mr. Cross added that Home Sense rebuilt part of Woodbury Avenue to the State's standards. Mr. Cross said ownership of the Newington side of Woodbury Avenue would eventually be turned over to the Town by the State, and he anticipated that someone could eventually build a bike lane.

Mr. Cooke suggested that they include a reference to the standards that were applicable. Mr. Cross responded that the standards were in multiple places, and it was up to the design engineers to go through the book. Mr. Johnson added that applicants would also meet with the Town planner and the Town engineering consultant.

Discussion continued regarding the best wording. Mr. Krebs recommended that they say, "all roadways shall be constructed with town applicable standards and specifications for streets, sidewalks, or bike paths."

Chair Hebert stated that he asked Mr. Krebs to review Amendment 10 with Town counsel, Attorney John Ratigan. Mr. Krebs recommended that "bond" be replaced with "surety, cash or a letter of credit as determined by the Town. Chair Hebert explained that this was because there was an added expense to calling in insurance bonds.

Mr. Johnson said he never had an issue with the bonding company.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

Peter Welch moved to bring 18 Site Review amendments to a public hearing. Ben Johnson seconded the motion, and all were in favor.

B) Discussion to enlarge **Workforce Housing Overlay District** by adding four (4) additional parcels identified as Map 7, Lots 2A; 3; 24 and 25

Mr. Krebs informed the Board that the Board of Selectmen had given the Board a letter recommending that they seek another legal opinion in response to Newington's Zoning Ordinance, Article XVIII- Workforce Housing Overlay District, New Hampshire RSA 674:58-61, and a letter from Attorney Laura Spector-Morgan with Mitchell Municipal Group, P.A.

Mr. Krebs said that he and Chair Hebert met with legal counsel, Attorney John Ratigan who suggested adding more land to the zone to provide more options to developers. Mr. Krebs said there were approximately eight acres four parcels between Shattuck Way, the Spaulding Turnpike, and Nimble Hill Road by the old Flagstones lot that could be developed.

Chair Hebert stated that they had selected the initial site because it had municipal water and sewer, the former drive-in movie site owned by the State, the Portsmouth Sign Company, and Thermo Fisher properties that had been sold in the last year for redevelopment.

Chair Hebert commented the old drive-in site owned by the State was on 18 acres. Chair Hebert said that 200 new residents would be one-third of the town's current population, so they might want to cap that type of sudden growth so that the Town could sustain the demand for municipal services.

Board of Selectmen's representative, Ken Latchaw said the Board of Selectmen investigated requirements for workforce housing, and thought it possible that Attorney Ratigan had erred in his recommendations, so they were suggesting that the Board obtain a second opinion on what the Town should do to be compliant with the workforce housing statute.

Mr. Latchaw said the statute required 51% of workforce housing to be located in the Residential Zone, and only adding acreage in the Workforce Housing Overlay District did not meet that requirement. Mr. Latchaw said the responsibility of meeting the statute rests with the Town.

Mr. Latchaw stated that accessory dwelling units (ADU's) were fine, but it would be up to the Town to prove that they existed, and met the requirement if an applicant claimed they had been excluded from workforce housing in the Residential Zone. Mr. Latchaw added that ADU's didn't count as workforce housing if they were dwellings for retired parents or children. Mr. Latchaw said that many people often confused workforce housing for professionals like accountants, teachers, fire and police with assisted low-income housing, and that was part of the reasoning for including it in the residential zone instead of discriminating and separating everyone in another zone.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

Mr. Latchaw went on to say that it wasn't necessary to get personal as to what people were asking for rents, but the Town needed to show that there was workforce housing inventory in the Residential Zone for working people within 6-7% of the median income, which would be an annual income of \$100,000.

Vice-Chair Mantz said she thought the Board of Selectmen got a second legal opinion. Mr. Latchaw replied that they did with Mitchell and Associates, which didn't agree with the Attorney Ratigan's opinion in establishing the Overlay District, which was not in the Residential District as required by the statute.

Mr. Krebs said that Mitchell and Associate's letter said they didn't think the three parcels earmarked in the Overlay District were adequate, and recommended that the Planning Board expand, which is what this proposal was doing. Mr. Latchaw responded that it was fine to expand the district, but it was still not in compliance with the statute because multiunit workforce housing was not being allowed in the Residential District.

Mr. Cooke said he didn't think a second legal opinion was necessary because the statute said towns could determine which properties would meet the obligation, and the Board felt that municipal sewage was needed for multiunit housing. Mr. Latchaw responded that municipal sewage wasn't necessary if the applicant could show that they could provide adequate septic.

Mr. Krebs commented that he was not aware of any town that met the statute. and considering that lots were going for \$300,000 to \$400,000 an acre, he didn't think that many developers would be interested in putting in a multiunit rental for that expense.

Chair Hebert stated that page 9 of a publication that the New Hampshire Housing Finance Authority (NHHFA) talked about types of workforce housing that would qualify in a residential zone including ADU's, duplexes, garden style apartments like Point Place in Dover, and townhouses with common access to utilities.

Chair Hebert went on to say that the NHHFA publication talked about towns providing their fair share of workforce housing, but specific numbers were not given. Chair Hebert went on to say that the Planning Board was trying to address what other towns were ignoring by creating an overlay district, but proposals still had to be presented to the Board to request a special exception, and approval, keeping in mind that Newington's soils were not conducive for septic systems for multi-unit dwellings in the Residential District.

Mr. Latchaw said the Board of Selectmen were just asking the Planning Board to obtain a second legal opinion, and he didn't understand their hesitancy. Chair Hebert replied that the Board's meetings had been limited due to the COVID-19 pandemic, and the Board of Selectmen had been asking the Board to cut back on expenses, and they were not doing the Capital Improvements Program update, so the Board didn't see the need for seeking an additional legal opinion.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

Mr. Johnson asked if could see full study that the Board of Selectmen did. Mr. Latchaw said they could, but they still wanted a second opinion to support the Board's decisions, and it wouldn't cost that much.

Mr. Latchaw added that the Board of Selectmen weren't talking about legal advice on private properties, but were talking about advice on a State statute. Chair Hebert asked Mr. Latchaw for the name of the attorney with the New Hampshire Municipal Association that the Board of Selectmen obtained an opinion so he could call them.

Mr. Cross stated that the Board heard had many opinions from attorneys, developers, and other experts over last 20 years. Vice-Chair Mantz added that opinions among experts varied, and there was a problem with an RSA that was that open to interpretation.

Chair Hebert said that workforce housing could be included in a residential zone by special exception or right, and some towns did studies on how many ADU's there were with rents under \$1,300 that were less than the average rent in the area to see if they met the quota of 10% for workforce housing so long as they met septic requirements. Chair Hebert added that workforce housing also included apartments, condos, duplexes and starter homes.

Mr. Johnson wondered how information on privately owned properties could be proved as meeting the requirement. Mr. Krebs responded that Rockingham Planning Commission (RPC) wasn't willing to say how many workforce housing units a town should have because would be political suicide, but they were willing to say how many were needed by the county. Mr. Krebs went on to say that Hampton and North Hampton met the criteria because they had mobile home parks that Newington didn't allow.

Mr. Krebs said he thought that 150 workforce housing units in a small town was too much, and that no more than five to ten percent of workforce housing, which would be 30 units was more reasonable than 50%.

Chair Hebert commented that it was not Newington's responsibility to show their fair share of workforce housing if the statute didn't provide a number. Chair Hebert went on to say that the purpose of fair share analysis was when a town wanted to show that they were exempt from workforce housing opportunities, but Newington hadn't asked for exemption, and were on the record as having provided opportunities with the Workforce Housing Overlay District.

(Mr. Latchaw left the meeting at this point at 8:15 p.m.)

Chair Hebert said he had talked with retired municipal Attorney Peter Laughlin who said that Governor Chris Sununu had appointed a tribunal of three judges from the building industry, and the workforce housing statutes had been written in such a way

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

that it made it difficult for towns to respond, but he thought the Planning Board was doing all that they could.

Mr. Cooke suggested that the Board go ahead and get a second legal opinion. Chair Hebert said he felt that Attorney Ratigan spoke up, and pointed out issues, but he would look into getting a recommendation for an attorney that he could trust with objectivity.

Mr. Cross said he also wanted it understood that the Board made a reasonable attempt at meeting the workforce housing requirement given constrained lots in town.

Mr. Cross added that the Board could consider a housing growth restriction, just as there had been a restriction on commercial growth in late 1980's, but they had to be sure that it was legal. Chair Hebert said control and restrictions were different. Mr. Cross agreed, but noted that there were limits on what a town could do.

Mr. Krebs pointed out that zoning changes for the March 2021 Town Meeting couldn't be done until December 2020, but it was something for the Board to consider. Chair Hebert added that the Board could discuss things, but no decisions could be made until a public hearing was posted on agenda.

C) Review of Planning Board Budget

Chair Hebert presented his line item proposals for the 2021 Planning Board budget for the Board to review.

Chair Hebert stated that 90% of the operating budget was reimbursable by applicants, and that he expected more development in 2021. Mr. Krebs agreed that they expected pent up demand for developments to continue after the initial COVID-19 pandemic restrictions. Chair Hebert said the Board had cut back expenses over the last couple of years, but he would be asking for \$3,500 more for 2021.

Chair Hebert informed the Board that Tim Roche with Rockingham Planning Commission informed him that they had fewer planners, and would not be able to work on the Capital Improvements Program in 2021.

Mr. Cross pointed out that the Town need to do some infrastructure improvements, including updating the tax maps, including online because pen and ink changes on physical maps were not accessible.

Mr. Cross said it was the assessors and mapping companies responsibility to update maps. Chair Hebert said he asked Mr. Krebs to talk with Town Administrator Martha Roy and the Board of Selectmen about mapping updates because the Board of Selectmen had always paid for them.

Peter Welch moved to approve the 2021 budget proposal as presented. Chris Cross seconded the motion, and all were in favor.

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, September 21, 2020

Minutes: *Chris Cross moved to approve the Minutes for the August 31, 2020 meeting with corrections as noted. Peter Welch seconded, and all were in favor, except for Chair Hebert who recused himself.*

Adjournment: *Erika Mantz moved to adjourn the meeting. Russ Cooke seconded the motion and the meeting adjourned at 9:06 p.m.*

Next Meeting: Monday, October 5, 2020

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

These Minutes were approved and adopted at the October 5, 2020 Planning Board meeting.