

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, January 8, 2015

- Call to Order:** Chair Denis Hebert called the January 8, 2015 meeting at 6:30 PM.
- Present:** Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross; Jack Pare; Justin Richardson; Alternate Member, Ken Latchlaw; Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Alternate Member, Peggy Lamson; Board of Selectmen Rep, Rick Stern
- Public Guests:** Dawn Lewis, Great Bay Services

A) **Public Hearings** on proposed amendments to the Zoning Ordinance

1) Amend **Article V Section 2B** that lists permitted uses in the Office Zone, as follows:

B) – **Principal Uses Permitted:**

(1) offices, research and development facilities, biotech facilities, light manufacturing, warehouses, ~~hospitals~~, medical clinics, ~~nursing homes~~, veterinary hospitals, schools, and hotels of 3 stories or higher, ~~conference centers, and facilities to treat the developmentally disabled~~ (correction discussed from the posted agenda).

Chair Hebert said he and Town Planner, Tom Morgan discussed issues regarding places of gathering near the industrial zone with Town counsel, Attorney John Ratigan. He said the reason for the amendment was to create a transition zone between the Industrial and Waterfront Industrial Zones and the Commercial and Office Zones to avoid emergency evacuation complications with large groups of people who did not have independent mobility and/or transportation, however current uses were grand fathered.

Mr. Morgan said the Office Zone was established in 1994, which used to be industrial, but he didn't think Great Bay Services was zoned at all at that time. Chair Hebert disagreed and said he would check into their zoning further.

Ms. Dawn Lewis of Great Bay Services said she was returning at the Board's invitation and thanked the Board for listening to their concerns at the last meeting and thanked them for keeping facilities for the developmentally disabled in Principle Uses Permitted, Mr. Morgan said that was a typing error and Chair Hebert said they still had time to re-advertise.

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Mr. Pare asked what Attorney Ratigan had said regarding allowing uses for large gatherings and Chair Hebert said Attorney Ratigan said they had to be consistent. Ms. Lewis said she understood the Board's concerns, but she had to advocate for her clients. Chair Hebert said the Board's concern was in relation to any group that couldn't mobilize themselves during an industrial accident.

Vice-Chair Marconi said he didn't have a problem with leaving the existing uses in the Ordinance. Chair Hebert said the problem was they could not defend restricting similar uses. Board member, Justin Richardson said facilities for the developmentally disabled didn't seem analogous. Chair Hebert said they weren't saying Great Bay Services had to go away, but they were concerned if someone tried expand behind them and closer to the industrial zone. Mr. Richardson said they would need a variance if they wanted to expand and Ms. Lewis said they had already discussed that during their last conversation.

Discussion ensued regarding the best use of properties in the surrounding zones. Chair Hebert said they also wanted to avoid commercial creep. Mr. Richardson asked what was wrong with allowing commercial uses in that location considering Great Bay Services and restaurants were already there. Mr. Morgan said Newington had been successful by creating an area that allowed industrial jobs to thrive, and although the market value of commercial properties would go up, allowing commercial development would only bring in a low wage work force rather than encouraging higher paying industrial jobs. Mr. Cross said even if a national chain paid a lot for a property, the increased police and fire coverage would offset the increased property value. He said at first there was an opportunity for restaurants when they first created the Office Zone, but then they cut back once they saw the encroachment.

Mr. Cross said Great Bay Services was grand fathered and protected, but suggested they recommend limiting similar uses elsewhere in the district. Mr. Richardson said he didn't like the idea of changing the wording of the Ordinance that would prohibit Great Bay Services. Mr. Pare said they could make a motion stating that the Board was favorably disposed with Great Bay Services and would support a variance. Chair Hebert said anyone applicant would like that, but an Ordinance had to stand on its own and couldn't be wishy-washy. He said the Board could say they would support the grand fathered use, but they could not determine the outcome of a variance request to expand further.

Chair Hebert asked if the clients still made pallets and Ms. Lewis said they hadn't done that since the 1980's and their service shifted from a segregated setting to a community based center. She said the operation received client based funding through the State, but funding would not be available as clients became elderly so they needed to look at changing their license for home health assisted living and nursing care to prevent them from becoming homeless because they were committed to caring for their clients for their whole lives. She said they would be required to expand to include nursing home care for the general public in order to receive funding, however.

Ms. Lewis said Wilcox Industries had proposed purchasing the property, but Great Bay Services faced a dilemma with affording another facility if they moved elsewhere unless they received an endowment of some kind.

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Alternate Board member, Ken Latchlaw said he didn't think their mission to treat the developmentally disabled was any different whether their clients were newborn or senior citizens. Ms. Lewis explained that currently their facility was only for the developmentally disabled, but in order to qualify for waiver funding for a nursing home, they would be required to have an assisted living setting integrated with those that are not developmentally disabled. Mr. Cross said it sounded as if they needed multiple funding sources and Ms. Lewis agreed. Mr. Latchlaw said he didn't think a change of use would be an issue if they just wanted to treat the aged. He suggested that they do a national search for solutions as Boys' Town had rather than rely on the State. Mr. Cross and Board member, Bernie Christopher agreed that the Board would have no problem if other uses were part of their mission.

Chair Hebert asked if Great Bay Services was no longer a school with manufacturing as it was originally zone and Ms. Lewis said that was correct. Chair Hebert said they were addressing a transition in the zoning because of Federal laws and they were trying to create consistency for safety in the Industrial Zone and avoid discrimination against others.

Mr. Pare asked if they might consider modifying the zoning for the developmentally disabled as they had for Great Bay Marina. Chair Hebert said that would be spot zoning on a single lot. Vice-Chair Marconi said Great Bay Marina was a large chunk of land that could be subdivided. Mr. Morgan added that the zoning there had also been done two generations ago. Mr. Richardson said there had been no successful spot zone cases in a decade, but he wondered if it would be allowed with something that already existed. Mr. Morgan said it would set a precedent and anyone in that zoning corridor could make a similar request. Mr. Pare said they could discuss the issue of spot zoning to continue grand fathered uses with Attorney Ratigan. Mr. Morgan said spot zoning was unconstitutional and he would be shocked if Town counsel would say differently. Mr. Cross added that Great Bay Services would be stuck if they allowed spot zoning and their property values would plummet from the limitation if they sold.

Discussion ensued regarding decision deadlines from the publication of the public notice. Mr. Richardson said SB2 towns were on different schedules and Mr. Morgan said Newington was not an SB2 town. Chair Hebert said the hearing had been continued to allow time to correct any errors. He said the last day for another public hearing would be February 3, 2015. Chair Hebert continued the public hearing on 1)B1 to January 26, 2015.

2) Amend **Article V Section 3B** by adding the following to the list of permitted uses in the Commercial Zone: hospitals, nursing homes, schools, conference centers, and facilities to treat the developmentally disabled.

Mr. Richardson moved to close the public hearing. Mr. Cross seconded the motion and all were in favor.

Chair Hebert said the Chair usually closed the public hearing and a motion was not necessary.

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Mr. Richardson moved to recommend placing the amendment for Article V Section 3B by adding the following to the list of permitted uses in the Commercial Zone: hospitals, nursing homes, schools, conference centers, and facilities to treat the developmentally disabled. Vice-Chair Marconi seconded the motion and all were in favor.

Minutes: *Vice-Chair Marconi moved to approve the Minutes for the December 15, 2014 meeting. Mr. Richardson seconded, and all were in favor.*

Correspondence and Discussions:

Chair Hebert said he attended the ZBA meeting for the Belanger property regarding permitted uses and whether a Special Exception was required for a wetlands crossing for driveways or not. He said Mr. Richardson made a very good argument for the Special Exception, but the ZBA voted to overturn the Planning Board's request.

Chair Hebert said the Planning Board had previously discussed taking item 6 out completely and putting it under Section C to make it like the next item as Mr. Richardson had suggested. Mr. Richardson said they might be overly concerned and it might be easier to make the change as advertised.

Mr. Morgan said the COAST bus service was still trying to solve their Route 7 dilemma that Newmarket and Exeter depended upon, and although Newington didn't as much, the burden for the increased costs would be put on the remaining towns.

Mr. Cross asked if other towns that were not on the route contributed and Mr. Morgan said they did not.

Chair Hebert said the Board of Selectmen proposed that the Town not adopt the \$37,000 contribution for COAST, but he, Mr. Morgan and the Budget Committee told the Selectmen that they supported it. He said other abutting towns provided other services that Newington did not have such as supermarkets, elderly care, assisted living and nursing homes and although many residents did not benefit from the bus service directly, a large chunk of Town taxes were paid for by non-resident employees and patrons of the Commercial, Industrial and Office and it was a relatively inexpensive service for the Town and region.

Mr. Pare added that 60% of the Town budget was paid for by people that use the COAST bus service in the Commercial and Industrial Zones. Mr. Morgan said it was more like 75% and Mr. Pare agreed that it was worthwhile to keep for local industry.

Chair Hebert said the Air Force was closing down their site along the Piscataqua River and asked who would have access to site. He said he and Mr. Morgan were trying to get them to find out who the true property owners of Avery Lane. Mr. Morgan said the property had sat empty for 20 years and there was no first hand knowledge of the ownership so they recommended they get their attorney to do some research.

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Chair Hebert said the property had contaminated soils and was landlocked. He said they would give it to anyone that wanted it and it would be an opportunity for Sprague. Mr. Cross said it was also right next to the propane tanks and could give Sea-3 more access to the rail line.

Vice-Chair Marconi said he would like to see a letter from the Planning Board to the PDA in response to a recent accident at the four-corner intersection at Arboretum Drive. He said the Board had told the PDA that a traffic light was needed, yet they refused. Chair Hebert said there was a blinking light there. Mr. Pare said recommended the Board recommended a full traffic signal and they should be reminded.

Mr. Cross said Newington Station shut down and was going for an abatement that would affect taxes. He said there was a recent study on the value of New Hampshire power plants and the Newington plant was listed as worth 90 million dollars, not 37 million because it could be converted to gas. Chair Hebert said Upton Law Firm represented the Town and asked Mr. Cross to give the information to the Board of Selectmen to determine if taxes were owed.

Mr. Morgan asked if anyone on the Board would be interested in being the MPO and TAC representative for the Town on transportation issues. Chair Hebert asked Mr. Morgan if there were any conflict of interest with the City of Portsmouth's filing for a safety study on the impact of the Sea-3 expansion delivering more propane by rail and Mr. Morgan said the MPO's transportation issues had nothing to do with rail and there were no conflicts of interest.

Adjournment: *Mike Marconi motioned to adjourn, and Bernie Christopher seconded. All were in favor and meeting adjourned at 8:15 p.m.*

Next Meeting: Monday, January 12, 2015

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