

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 14, 2015

- Call to Order:** Chair Denis Hebert called the September 14, 2015 meeting at 6:30 PM.
- Present:** Vice-Chair Chris Cross; Jack Pare; Mark Phillips; Jim Weiner; Alternate Member, Ken Latchlaw; Board of Selectmen Rep, Rick Stern; Thomas Morgan, Town Planner and Jane Kendall, Recorder
- Absent:** Bernie Christopher
- Public Guests:** Portsmouth Community Radio; Robert Chaikin; Anthony DiLorenzo; Michael Berounsky; Joshua and Katherine Blaisdell; Joe Mitchell

1) **Public Hearings:** Proposal by Portsmouth Community Radio (WSCA) to erect an 80-foot high antenna tower atop Beane Hill. The property is situated between Arboretum Drive and the Spaulding Turnpike, Tax Map 19, Lot 22.

Mr. Morgan said the applicant sent a letter requesting a postponement.

Chair Hebert said they could consider waiving the fee and then review the proposal later. Mr. Morgan said the waiver was addressed in the memo provided, but he felt uncomfortable discussing the waiver when the applicant was not present. Chair Hebert said they would not be discussing the merits of the application and Co-Chair Chris Cross agreed.

Mr. Morgan said the legal opinion was that the applicant could perceive discussions in their absence as inappropriate. Mr. Stern agreed that the Board usually didn't discuss applications when the applicant was not present.

Co-Chair Cross said he read Mr. Morgan's memo, but he wanted to see an outline of Town policies that would substantiate the recommendation, outlining town policies or RSA's that were applicable. Mr. Weiner agreed that pre-memos would help the Board reach consensus in their decisions. Chair Hebert said the Town Planner could provide his opinion during the application review and how it did or did not meet the ordinance.

Mr. Phillips asked if fees had been waived in the past or if they were plotting new ground. Mr. Morgan said there hadn't been that many waivers, but the Board didn't see many non-profits and the fees had tripled. Co-Chair Cross said they did waive a fee for one applicant when they ran out of time and had to reapply, but they should be careful not to discriminate.

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2) **Curb Cut Application:** Proposal by Robert Chaikin to re-locate a driveway entrance at 26 Welsh Cove Drive, Tax Map 23, Lot 30.

Applicant Robert Chaikin presented plans for a new driveway to the front entrance. Co-Chair Cross asked why he was removing the other drive and Mr. Chaikin said it would no longer be necessary, would look better to only have one driveway and he wanted to comply with the Town ordinance.

Chair Herbert asked the applicant if he would install a culvert under the driveway for a drainage swale and Mr. Chaikin said he expected the Board to advise him further. Chair Hebert discussed various options with the applicant.

Mr. Morgan recommended that the Board approve the application.

Chris Cross moved to approve the proposal by Robert Chaikin to re-locate a driveway entrance at 26 Welsh Cove Drive, Tax Map 23, Lot 30 with the addition of a culvert to maintain a drainage swale and to remove the asphalt from the previous driveway. Mr. Weiner seconded the motion and all were in favor.

3) **Preliminary Consultations:**

A) Proposal by Anthony DiLorenzo to construct a hotel restaurant, and retail store at 2025 and 2061 Woodbury Ave

Mr. Morgan said the applicant was not present. Chair Hebert said they could wait to see if the applicant wanted to reschedule.

B) Proposal by Michael Berounsky to erect a second dwelling at 30 Swan Island Lane (Tax Map 53, Lot 9) and to construct a shared driveway to access the second dwelling.

Mr. Morgan informed the Board that this was a preliminary discussion and there was no plan, but he did have the original subdivision plan.

Mr. Michael Berounsky appeared before the Board to discuss options for building a second dwelling on his property for his daughter and son-in-law and suggested a shared driveway as a solution to the lack of adequate frontage.

Chair Herbert asked how much frontage they had and Mr. said he had 200 feet. Chair Hebert said the requirement was for 200' per house. Mr. Berounsky said they wouldn't need 200' if they had a shared driveway. Chair Hebert replied that the Ordinance required 200' on a town road and the Ordinance didn't allow shared driveways. Mr. Berounsky said he thought there were other shared drives in town without frontage. Chair Hebert said there had been some in the past, but the Ordinance was changed to avoid disputes among existing and future property owners. Mr. Berounsky asked how his proposal was different from the Mazeau development. Chair Hebert replied that the Mazeau development was granted the last shared

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driveway and each of the houses had 200' of frontage Mr. Berounsky asked about the old Beane Farm development on Nimble Hill Road and Chair Hebert said each building had 200' of frontage and the developer was building a road to Town specifications.

Board member Jack Pare suggested that the applicant could propose a similar road from the cul de sac at the end of Swan Island Lane to his home and build a connecting duplex onto the existing house so long as there were enough uplands. Mr. Berounsky asked what would qualify as a connection and Chair Hebert told him a connection would have to have a common roof. Mr. Weiner asked if there was any limitation to the kind of roofs to prevent an acre long roof and Chair Hebert agreed that a 200' walkway would not qualify. Mr. Berounsky asked if garages would qualify. Co-Chair Cross said two standard 3-car garages might qualify. Mr. Pare said that would be the length of a football field and Chair Hebert agreed that a 300' connection wasn't reasonable.

Mr. Phillips asked about the proposed drainage easement and Mr. Berounsky said the drainage needed to be revamped because water flowed onto the property from the abutting subdivision. Mr. Weiner asked if the area was wet and then dry at different times of the year and Mr. Berounsky said it was wet when it rained. Mr. Weiner said they would need to be sure it was not a vernal pool. Mr. Berounsky stated that the lot was mostly uplands except for the drainage area. Chair Hebert said the drainage area was agreed upon at time of the original subdivision. The applicant's daughter, Ms. Katherine Blaisdell stated that her aunt had sold the abutting lot, which was then illegally subdivided and that water flowed from the abutting property and had become a problem for her parents' lot. Chair Hebert clarified that the subdivision met Town requirements and was legally approved by the Board and that and there was no dispute at the time. Mr. Berounsky asked how they could change that and Chair Hebert said he would need to hire a wetland scientist and talk with the Department of Environmental Services.

Mr. Berounsky said the original plan was to to build a private road for three lots, but they were told there was only enough frontage for two lots and that they could not use Newington Road for frontage. He said Mike Marconi was on the Board when the property was subdivided and there was a caveat that the lots could not be subdivided any further, but the new owners subdivided their lot again. Chair Hebert stated that Mr. Berounsky could take the issue up with an attorney.

Chair Hebert said his biggest problem was that there was not sufficient frontage to subdivide and build another dwelling and shared driveways were not allowed. He added that Mr. Berounsky would need to do test pits, show where the septic and water would be and apply to DES for approval. Mr. Latchlaw wondered if they could increase the cul de sac to allow more frontage. Mr. Pare said that would put pavement into the wet area. He said he thought the lot was so large because there were wetlands, which might prevent them from tying the two houses together.

Mr. Morgan informed the Board that Mr. Berounsky had visited him a month ago to discuss a variance, but the Planning Board had requested that applicants review proposals with them first. He said this was the first he had heard of a duplex. Mr.

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Berounsky asked what his chances were of getting the ZBA's approval of a second dwelling. Mr. Morgan said the Board had never approved of a second building on a single lot before. Chair Hebert said the ZBA never granted lots without frontage because that would set a precedent.

Co-Chair Cross told the applicant that they needed to understand that the ownership of a duplex, could never be separated and a road would need to be built to Town standards with a 90' cul de sac at the end for a turn around. Ms. Blaisdell said there would not be enough room. Ms. Blaisdell asked where the driveway for a duplex could go and Chair Hebert replied that they could propose to put a driveway anywhere for consideration.

Mr. Berounsky asked if he could put another building like a barn on his lot. Chair Hebert said he could possibly build a barn as an accessory to the primary residence, but not with the intent of turning it into a dwelling, which would be a legal issue.

Chair Hebert informed the applicants that duplexes were currently allowed, but there were townspeople that were upset with expanding homes and the Ordinance could change in the future. Mr. Berounsky asked if the Board changed Ordinances after applicants built projects that they didn't like and Co-Chair Cross replied that the votes made the final decision on Ordinance changes.

4) **Old Business:** Request by Portsmouth Sign Company

Mr. Morgan said the applicant had requested the return of their \$30,000 cash bond and he had advised them to submit a letter of request, but he still hadn't received it. Chair Hebert said the applicant had appeared before the Board two ago and they had been asked to complete their landscape plan, but they had still not done so. Mr. Latchlaw said it would now be an enforcement matter if it was a part of their original approval and could withdraw their occupancy permit. Chair Hebert said the Boards were currently busy, but the Town could continue to hold the bond until they complied. He said most companies didn't want their bonds called in because it gave the appearance of being a bad risk.

5) **New Business:**

A) Short-Term Vacation Rentals – discussion

Mr. Morgan opened the discussion on the regulation of short-term bed and breakfast rentals, with the best known company known as Air B&B.com, which advertized over the internet. He said that the City of Portsmouth was also review the businesses as well after they received complaints from neighbors. He said San Francisco had the biggest problem in the country. Mr. Stern said he had relatives in San Francisco that were dealing with strangers coming in and out of their neighborhoods all the time.

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Mr. Morgan said there was only one Newington listing on Air B&B.com and the Board of Selectmen were addressing the issue of operating an unlicensed business. Chair Hebert said he would also be concerned for safety conditions in opening a business without review. Co-Chair Cross said he thought sprinklers should be required. Mr. Stern said enforcement was attempting to get the current case to come before the Board. Mr. Phillips said he was not in favor of over regulation, but he did think anyone running such a business should apply for approval and be required to renew a licence every year and Mr. Latchlaw agreed. Chair Hebert said it was already in the Ordinance that home businesses were allowed if they were owner occupied, so any business could shut down if the owner was not present. He said they should talk with Town counsel because they to be registered and could be turned in for non-payment of taxes.

Mr. Weiner said there were zones that might allow lodgers, but he didn't think they should not be allowed in the residential zone. Co-Chair Cross said aside from hotels in the commercial zone, home occupied bed and breakfast establishments were a long standing New England tradition in residential areas of the country and he didn't see any problem with them, especially when some owners wanted to utilize a home run business. Mr. Stern agreed that a regular B&B could be allowed within regulations, but it would be more difficult to enforce if there were too many restrictions, however room and meals taxes would still be due.

Mr. Pare said Air B&B was just a way of booking rooms. Mr. Morgan with Air B&B owners might not be present so Portsmouth was considering limiting bed and breakfasts to those where the owner was present. Chair Hebert said some people lived in their homes seasonally and rented them out or have house sitters while they were gone, but not for a week like a temporary boarding house without the owners present and no concern for neighbors. Mr. Phillips wondered what category vacation house swapping would fall into and Mr. Weiner replied that it would be a one-time thing with no cash transaction.

Discussion ensued regarding the duration and size of bed and breakfast operations. Mr. Stern said they needed to be strong and clear that neighbors could not be disturbed either. Chair Hebert said they must also be owner occupied regardless of what they were called. Morgan said short-term rentals were defined as less than 30 days in Portsmouth and they were looking at both Air B&B's and boarding houses.

Chair Hebert suggested Mr. Morgan talk with Town counsel, Attorney John Ratigan. Mr. Morgan said he would also confer with planning consultant, Jerry Coogan.

B) Consider proposal to revise the Driveway Regulations

Chair Hebert said the regulations did not specify materials, and suggested they move to approve Altus Engineering's recommendations and then send the item to a public hearing in October.

Mr. Stern said many contractors knew the right procedures, but some were still not doing it. He said there was nothing in the Ordinance listing preferred size of stone on

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accessways and pea stones were ending up in the road at the construction site on Nimble Hill Road.

Chair Herbert said there standard sizes recommended by Altus Engineering, PE, which were also recommended by the Department of Transportation. Co-Chair Cross said the thought they were complicating the regulations just as they had the wetlands using UNH's storm water management recommendation that no one could understand. Mr. Weiner said the regulations might be complicated for the average homeowner, but builders were looking for those kind of speculations. Chair Hebert agreed and said they needed to specify the size so the rocks would look together instead of shift and move. Co-Chair Cross said driveway specifications were one thing and road specifications were another. Mr. Stern said they also needed specifications on construction entrances. Chair Hebert said they could refer to an appendix at the back of the regulations and they wouldn't need to put detail in each regulation.

Chair Hebert set the public hearing date for October 27, 2015.

Minutes: *Chris Cross moved to approve the Minutes for the August 24, 2015 meeting with changes as discussed. Mark Phillips seconded, and all were in favor.*

Report by Planner

Mr. Morgan announced items on upcoming meetings including:

- 7-lot subdivision review by the Technical Review Committee on Tuesday, September 23, 2015
- Requests for variances from the ZBA by Mr. John Emergy for his deck expansion request for his house at the end of Fabyan Point, and the Portsmouth Community Radio tower on the Beane Farm on Tuesday, September 29, 2015
- Great Bay Services subdivision and Wilcox industries expansion on Tuesday, October 13, 2015

Mr. Morgan also announced that Hoyle and Tanner Associates were working with Pease Development Authority and had contacted the Historic District Commission to meet on Thursday, September 17, 2015, regarding topping and tree removal and some kind of warning light thurs a.m. old town hall.

Mr. Morgan commented briefly on the following inquiries:

- A proposal for an indoor lacrosse facility
- The removal of trees in front of the Belanger property across from Town Hall
- Appraisal in the Waterfront Industrial zone of the Roland farm now owned by Eversource
- Discussions on the bondings and inspections with Mr. Joe Calderola prior to the Portsmouth Water Department going further with the Dennett Farm condominiums on

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Nimble Hill Road. Mr. Morgan said the Water Department was concerned with a bond being posted first to cover possible contamination and road impaction issues.

- Stoneface Brewery expressed interest in expanding their facility and adding a restaurant, preferably on the Addleman property on Shattuck Way. Mr. Stern said restaurants were not allowed in that zone and they were already violating zone restrictions by selling beer retail in their current location.

Discussions:

Chair Herbert said there had been suggestions of creating an advocacy group regarding Eversource running their transmission lines through town. He said he would not be able to join the group because he was working with the Town, but said he would be willing to speak with the group. He said people were wondering at what point they should contact their representatives, Senators Ayote and Shaheen.

Chair Hebert said he still did not think the transmission lines had so much to do with reliability as Eversource claimed, but were instead a step in bringing cheap power to the south from Canada.

Chair Hebert said he also discussed Eversource's concerns regarding chemical degradation of underground cable near Pease site #8 and there was doubt that it would be a concern considering the City of Portsmouth had put new water lines in for the Langdon Library recently.

Chair Hebert announced that Mr. Bill Peterson from Great Bay Wildlife Refuge offered to meet with the Board and the Town between September 28- October 1, 2015, to discuss possibility of working together. He said it would be an informal meeting without a quorum so there would be no need to take minutes.

(Mr. Pare left at this point of the meeting at 9 p.m.)

Mr. Morgan said he spoke with Maria Stowell with Pease Development Authority regarding the location of the New England Maritime right of way, but she could not locate the map. Co-Chair Cross said there had been a map on file at Langdon Library.

Mr. Morgan said he also had made contact with Laurie Summer, the DES mitigation specialist, who would be key in approving the Flynn Pit for mitigation of Shattuck Way extension and also Eversource mitigation. He said he sent her wetlands information on the proposals.

Adjournment: *Jim Weiner motioned to adjourn, and Chris Cross seconded. All were in favor and meeting adjourned at 9:15 pm*

Next Meeting: Monday, September 28, 2015

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