

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

Call to Order: Chair Denis Hebert called the September 28, 2015 meeting at 6:34 PM.

Present: Vice-Chair Chris Cross; Mark Phillips; Jim Weiner; Board of Selectmen Representative, Rick Stern; Thomas Morgan, Town Planner; Planning Consultant, Jerry Coogan and Jane Kendall, Recorder

Absent: Bernie Christopher; Jack Pare and Alternate Member, Ken Latchlaw

Public Guests: Attorney Charles Griffin on behalf of WSCA; Richard Pickford, WSCA; Terry Desmaris with Portsmouth Public Works

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.

Attorney Charles Griffin introduced himself as a Board member and representative of WSCA, along with Mr. Richard Pickford and Mr. Terry Desmaris with Portsmouth City Works.

Attorney Griffin said the volunteer run radio station had been in operation for the last eleven years with their antenna was currently located downtown and interfered with the sound operations at the Music Hall.

Attorney Griffin stated that the City of Portsmouth owned the water tower parcel on which they were proposing to mount their antenna. Attorney Griffin provided letter from Portsmouth City Manager, John Bohenko giving permission to present on the City's behalf. He said the tower would enable the City to mount their own telecommunications device as well. Attorney Griffin also presented a letter from the Newington Fire Chief. He said the placement of the tower could also be benefit the Newington Fire and other departments such as police and Public Works if they wanted to add their communication devices.

Chair Hebert said the Board also received a letter from Maria Stowell with the Pease Development Authority (PDA) who wanted to be sure they applied to the FAA. Attorney Griffin said they had also received a copy of the letter, were aware of the PDA requirements and they intended to follow through. Mr. Richard Pickford with WSCA said FAA approval was part of the licensing process, the tower was approved for the glide

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

path and would not exceed the 30' above the water tank; however they were still required to file with the FAA because the construction crane height was higher.

Attorney Griffin stated that the proposal would not endanger public health, there would be no parking or traffic, they would not remove any vegetative buffers and there would be no negative impact to the environment.

Attorney Griffin said WSCA was non-profit, so they could not air commercials and were dependent on listeners and other support. He said the \$600 filing fee would pose a financial burden and so they were requesting a waiver. Vice-Chair Chris Cross said he wanted to discuss the proposal further first. He asked if conforming lot. Mr. Desmaris said the lot was just expanded. Town Planner, Tom Morgan said there was a 120,000 square foot lot minimum in that zone. Mr. Desmaris said the lot was greater than 120,000.

Vice-Chair Cross said it was a government owned lot and questioned non-government use on the property. Mr. Desmaris said there was agreement by the Portsmouth City Council for the use that would include a telecommunications antenna for the City's Public Works Department. Vice-Chair Cross asked under what jurisdiction the City of Portsmouth allowed other uses like leasing for commercial use such as the proposed community radio antenna. Mr. Pickford responded that it was not a commercial radio station. Mr. Morgan added that RSA 674:54 addressed properties owned by government agencies as "1) for government purposes", but also "2) non-governmental use", which included private uses. He stated that the proposal was a hybrid use on government owned land with the radio station having partial use by the City of Portsmouth and the Town. He said the RSA was only a procedural guideline and didn't say what could or couldn't be done, but it didn't say it had to be 100% government use; and therefore, suggested treating the proposal like a private applicant.

Mr. Morgan said the applicant discussed the proposal with him in late August, and he talked with Town counsel, Attorney John Ratigan for guidance on process, who advised that the applicant go before the Zoning Board of Adjustment (ZBA) for a variance because the use was not expressly listed as permitted before they went before the Planning Board for site review. Chair Hebert said they also asked for clarification on cell towers, which followed different requirements that were passed by the State Legislature, giving them more rights than a radio antenna that did not have to follow the same requirements.

Mr. Morgan said there was an Article in the Zoning Ordinance for cell towers, which had been directed to the waterfront industrial area, but this was not such a tower. Mr. Weiner asked Mr. Morgan if he was able to direct the applicant to other locations and Mr. Morgan said the applicant had already checked other locations and he had called Sprague to confirm they had been contacted. Mr. Pickford said they looked at other sites along the waterfront/industrial district, but the elevation was not high enough, Sprague's cement tower would create 180 degrees of null zone and they also said could not commit because their future was not certain. He said this location was the best because it would not interfere with the frequency of another station in Amesbury as the other sites would. Chair Hebert asked about other towers at Pease and Mr. Pickford said those were also within the radius of the Amesbury station.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

Mr. Weiner said he thought a radio tower would be aesthetically undesirable to future developers and wondered why they weren't directed to another district. Mr. Pickford reminded him that they had been referred to another district, but they were not able to find another site.

Vice-Chair Cross said he thought the proposal was in conflict with Newington principles, which objected to cell towers in the commercial district. Attorney Griffin said there was nothing commercial in nature with the water pump and tank either. Chair Hebert said it was an isolated government owned lot and the Town would have to spot zone if they took the tank out of the surrounding area. Mr. Morgan said the question before the Board was about site plan review; the zoning use question would go before the ZBA. The Planning Board was not being asked whether the tower belonged in the commercial district.

Chair Hebert said Attorney Ratigan also advised that government owned land could be leased to profit or non-profit, but the Board of Selectmen had to sign off on whether the applicant would be taxed or receive an abatement if approved by the ZBA or Planning Board. Board member, Jim Weiner asked if there was any monetary leasing fee and Mr. Desmaris replied that there was a leasing fee of \$600 per year. Mr. Pickford said WSCE raised funds for the tower and antenna and would give Portsmouth \$50 a month. Chair Hebert asked if there would be a fee for Newington to put their antenna on the tower and Mr. Desmaris said there was mutual aid between Portsmouth and Newington's fire departments so they could be combined.

Chair Hebert wondered what would happen if the tower was bought out by larger profit concern. Mr. Pickford replied that they only had a non-profit license and they could not allow it to be commercialized. Mr. Stern asked if the radio station tower could be used for a cell tower if the radio station was abandoned and Mr. Desmaris said the City already had an agreement that they would assume responsibility for maintenance if the radio station went under and they could make another agreement that it could not become commercialized. Chair Hebert said the Board would want to stipulate that it could not be sold for cell tower and approval would be null and void if the tower became commercialized.

Board member, Mark Phillips asked how long their license lasted and Attorney Griffin said he thought they were for about ten years.

Chair Hebert asked the applicant why they didn't upgrade their equipment in the existing location to shield the interference. Mr. Pickford explained that sophisticated equipment was not allowed for an entirely volunteer class of radio. He said the Music Hall only had 100 watts of cable going through their backstage for the wireless microphones and although they had attempted to turn down their microphones for a long time, they had asked the radio station to relocate their antenna. He said they had put up a temporary am/fm antenna as a guest, but they were looking for a permanent solution. Chair Hebert asked the applicant if the FCC had taken their license and Mr. Pickford replied that the FCC had not told them that they couldn't be there, but the Music Hall wanted them to find another place for a long time, only they had to raise funds for another tower before they could move. He said he was now trying to resolve the issue within the given parameters. Vice-Chair Cross asked why the FCC didn't

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

provide them with another frequency and Mr. Pickford said they hired a broadcast attorney, but the FCC told them there were no additional open channels.

Vice-Chair Cross asked if the applicants had looked at compatibility with other frequencies, and expressed concern that there was no guarantee that there would not be interference from the radio antenna if the City of Portsmouth and Newington mounted their antennas on the tower as well. Mr. Pickford said he couldn't comment on Newington's antenna without knowing more, but they had already negotiated with the City of Portsmouth and knew that their microwave and VHF antennae were compatible and he didn't see why there would be a problem for Newington. Vice-Chair Cross said he wanted to see evidence that it was possible to have multiple antennae's that would not interfere with multiple uses. He added that Homeland Security paid for the emergency communications systems and he was concerned that the multi-use would make the coverage null and void as well. Mr. Pickford said it was in their contract that nothing would be higher than 65 feet and added that the Newington Fire Department had already approached them regarding adding another communications antenna.

Vice-Chair Cross said he was also concerned with and the military flight path and would like to hear from the National Guard and Pease. Vice-Chair Cross also expressed concern with interference from Eversource's new transmission lines. Mr. Pickford said they had already done due diligence with the FCC's frequency study.

Chair Hebert asked if the radio station presented political content for any particular party and Mr. Pickford replied that the station was a mishmash of musical genres and community interests. Attorney Griffin said they also presented some candidate debates. Chair Hebert asked if there would be any support for content from the Town of Newington and Mr. Pickford said they were the only radio representation for the Seacoast area and they would be glad to extend community announcements to Newington.

Chair Hebert said he was on the fence because he appreciated their service to the community, but said everyone was responsible for their own frequencies, thought they created their own problem by putting their antennae on the Music Hall's roof and was still concerned with setting precedence. Attorney Griffin said they met the criteria for site review approval and past history and other alternatives were not part of criteria. Mr. Weiner commented that the tower would affect the viewscape, to which Attorney Griffin replied that the tower was already there, the abutters had been notified, and none were present to object. Chair Hebert said it was not a permitted use and cell towers had more legislative protections than broadcast stations, but the Board still directed cell tower uses to another district. Attorney Griffin replied that it was the ZBA's role to make that determination. Mr. Morgan agreed that the Planning Board had site review regulations to review, but it was the ZBA's job to review their criteria to decide on the zoning issue. Chair Hebert acknowledged that the Planning Board could not influence the ZBA, but said he was asking what the Board's position would be for the site review when the applicant returned from the ZBA.

Planning consultant, Jerry Coogan said the Chair would need to re-notice if he didn't provide a date specific. Chair Hebert continued the hearing to October 13, 2015, but said it might be moved if the agenda was too full.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

2) **Old Business:** Proposed revisions to the Zoning Ordinance – Revision 2

Mr. Coogan handed out materials for the second revision to the Zoning Ordinance and thanked Vice-Chair Cross for his help with editing. Chair Hebert said he had asked Vice-Chair Cross to help the planners with the editing.

Vice-Chair Cross said the intent was to simplify by incorporating Article 3 into Article 1. He added that official changes to the zoning map had to be annotated and signed off by the Board of Selectmen and Town Clerk.

Mr. Coogan said Vice-Chair Cross helped with reorganizing, formatting and updating Article 1 and he recommended that the Board approve the changes. Mr. Coogan said there were eleven notable items that were changed as a housekeeping strategy for the Board to determine if they agreed with the approach. He said there would be one warrant article to ask if voters would be in favor of adopting the zoning amendments and then items of note would be individual articles for voters.

Chair Hebert said most were housekeeping items, but Article 1 would change the content. Mr. Stern said changing the wording would require a vote and he was concerned for the size of the change. Mr. Morgan agreed that the changes made for easier reading and understanding, but that the language deleted needed to be included and struck through in the warrant article. Chair Hebert agreed that would be important for transparency. Vice-Chair Cross agreed that would be reasonable, but he didn't think they needed to publish it in the Town report. Mr. Weiner said it should be on the Town website, however.

Mr. Weiner suggested involving their secretary, Jane Kendall to edit so they wouldn't have to pay Mr. Coogan's higher rate. Chair Hebert said he thought the editing should be done by the professional planners instead of repeating the task back to Ms. Kendall. Vice-Chair Cross said he would do the editing first at the lowest cost and then present it to Mr. Coogan.

Mr. Coogan continued to review the recommendations for warrant articles changes, beginning with accessory apartments as an allowed use in the residential district, which the Board members agreed upon. Mr. Coogan said they would be subordinate to the primary structure and 750 square feet was listed as the maximum size. Chair Hebert suggested that the size be increased.

Mr. Coogan said boarding or rooming was listed as not permitted and wondered if the definition should be added. Mr. Morgan noted that B&B's were discussed at the last meeting and he thought a definition should be included. Mr. Coogan and Mr. Stern said the definition wouldn't be needed if B&B's were not a permitted use, but Mr. Morgan said definitions were helpful in making determinations and Chair Hebert added that they were important because applicants could propose the use under a different definition.

Discussion ensued regarding whether to allow B&B's and number of rooms if they were allowed.

Mr. Stern agreed that 8 guest rooms would be too many, but agreed that it would not be profitable if there were less than 4 guest rooms. Chair Hebert said he was

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

leaning toward not allowing B&B's or allowing fewer guest rooms. Mr. Morgan said as a result of his previous experience with a B&B in Portsmouth, it was determined that 8 rooms were the number that allowed a permit because 6 were too few to cover the expenses. Chair Hebert and Mr. Weiner agreed that they would be fine with eliminating the use, but Mr. Stern and Vice-Chair Cross said they wanted to retain the use. Vice Chair Cross said the town agreed to the use 15 years earlier.

Mr. Weiner said he was concerned that an attorney could say Air B&B's were the same as B&B's. Mr. Coogan replied that Air B&B's were not regulated, but B&B's were.

Mr. Weiner said he didn't have a problem putting B&B's in another zone, but he was against allowing them in the residential zone. Vice-Chair Cross said some residents might not want B&B's in the residential zone, but others might want to maximize their property so they should discuss the matter further.

Mr. Phillips said during the Board had recommended that B&B's be owner occupied during their last discussion. Chair Hebert said the residential area was not for home businesses. Mr. Phillips suggested it was a gray area, but they should consider circumstances such as large farms or homes with many rooms on many acres far from others that could be approved by provisions or special exception,. Mr. Morgan said the ordinance already read that way. Vice-Chair Cross agreed that B&B's could be viable for locations.

Chair Hebert replied that B&B's with 8 guest rooms should be allowed as a conditional use or special exception. Mr. Morgan said they effectively were already and the Board could review the applications to determine if the septic and parking provided were adequate. Vice-Chair Cross said he thought the number of guest rooms should be removed and determined upon review.

Mr. Coogan discussed changing the Pease Development District to one district to be consistent with the map. He said he spoke with Maria Stowell at Pease and Newington could still review proposals informally. Vice-Chair Cross said the PDA followed their own ordinance and Chair Hebert said Newington's findings would be non-binding.

Mr. Morgan said as a planner he felt the Zoning Ordinance should reflect planning. He said the town would be better prepared for what might happen if the PDA changed and then the ordinance changes would be easy just as it was when the Air Force left, whereas the City of Portsmouth and the State were not ready. Vice-Chair Cross said the Air Force did not plan, but Pease Development Authority did.

Mr. Weiner asked Mr. Morgan if he wanted to put together an outline plan for the PDA and Mr. Morgan said he would be glad to do that at anytime. Mr. Coogan agreed with Mr. Morgan that it would be good to do a plan, but the proposed changes would not prohibit that. Vice-Chair Cross said they were only looking for a definition for the time being. Chair Hebert said there was no time to discuss in depth and it wouldn't matter if there were one district or four if Pease Development Authority goes away. He said the deadline for warrant article proposals was January 28, 2016 and suggested that Mr. Morgan address the plan at a later date. Mr. Morgan said the current plan was antiquated and he wanted the Board to spend time on planning in the future, but the current changes were okay for now.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

Mr. Coogan asked if the Board wanted to add accessory restaurants in the office district. Chair Hebert said they had previously allowed restaurants and then there were too many. Vice-Chair Cross agreed and Mr. Stern added that there was no way to regulate the number of restaurants. Chair Hebert proposed that they strike the proposal and Mr. Weiner also agreed.

Mr. Coogan asked for the Board's opinion on caretaker buildings in the industrial and waterfront industrial district. Mr. Stern said he didn't see the necessity of caretakers with security systems available now. Mr. Weiner said there was a good case for them for self-storage units. Mr. Phillips agreed that it was essential to have management living on site for self-storage. He also commented that the John Paul Jones house had been broken into all the time until they built an apartment for a caretaker.

Vice-Chair Cross said he would be concerned that the buildings might be rented out once the need for a caretaker went away so he wanted to be sure there was no provision to continue living in industrial area after the use culminated. Chair Hebert said it was a conundrum because it did work in some places, but was abused in others. Mr. Morgan suggested they might want to consider restricting children. Mr. Phillips said HUD would not approve restricting children. Mr. Morgan said his hesitation with children was with them living in the industrial area and with school buses. Chair Hebert said there might be exceptions and they would need to show that the caretaker was employed as a caretaker. Mr. Stern said to avoid the possibility of a rental situation, they might consider that the housing could be provided as compensation for staying and not pay rent.

Chair Hebert suggested they consider granting conditional uses for caretakers. Mr. Morgan said they would need criteria for approving the conditional use.

Mr. Phillips suggested that they could require an annual license. Mr. Morgan said the Board of Selectmen function was to administer licenses.

The Board also discussed regulations on duplexes. Mr. Weiner suggested that they increase the road frontage for duplexes because there was twice the traffic. Mr. Morgan said frontage is dimensional control for density. Mr. Phillips said duplexes would need separate septic systems.

Chair Hebert said he was not in favor of duplexes that could be converted to condos, which were never the intention of the Board. Mr. Weiner said different cities put limits on the number of new constructions allowed each year. Chair Hebert said those limitations were based on infrastructure limitations, but Newington's school actually needed more students.

Mr. Morgan said the Board might need to scientifically defend their reasoning for limiting lot size. Vice-Chair Cross said they could defend lot sizes for duplexes the same way they defended them for single-family dwellings on single acres. Chair Hebert wondered how some towns had larger minimum lot sizes and Mr. Morgan said the law says that the town can't arbitrarily take property rights. He said the Master Plan addressed soil conditions and wetlands. Chair Hebert said the purpose was to restrict residential density as was also referred to in the Master Plan. Mr. Stern said they could address septic conditions and Mr. Coogan agreed that soil conditions in town were not

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

that great. All the Board members liked the change in lot size dimensions for duplexes except for Mr. Morgan.

Mr. Coogan asked the Board to consider whether to keep or change the requirements for traffic and air mitigation. Mr. Morgan agreed with the change to traffic mitigation, but said it was adopted at the direction of former Town legal counsel, Attorney Peter Laughlin. Mr. Coogan said he spoke with current Town counsel, Attorney John Ratigan and the requirement was already in site plan regulations and was not necessary. He said legal research was still being done on air mitigation so they would keep for the time being.

Mr. Coogan said he would send a summary memo on the changes out to Board members.

Chair Hebert asked the Board if they wanted to address the current description of duplexes that could later be converted to condos or to leave it as it was. He said any home could be changed into a duplex as a result of allowing accessory apartments, and he thought allowing duplexes was changing the town's character. He said lots in town were expensive and duplexes made developments more profitable, but doubled the density. Vice-Chair Cross added that single family homes could be sold and turned into larger duplexes as well.

Mr. Phillips asked Mr. Morgan what the Master Plan said about duplexes and Mr. Morgan said the Master Plan focused on protecting the town from law suits. He went on to point out that if someone moved out of an accessory apartment attached to a single family home, the apartment could be condominiumized and eliminating duplexes would not prevent that. Chair Hebert said he was more opposed to equally sized duplexes. Mr. Morgan replied that an accessory dwelling could still be condominiumized whether it was large or small.

Chair Hebert pointed out that the State legislature, RSB 146 allowed for accessory apartments to account for work force housing, which was another reason for allowing accessory apartments within single resident dwellings. Mr. Weiner asked if Newington had a designated area for low income housing. Mr. Coogan replied that the work force housing law required multi-family dwelling of 3 or more units with a median family income for 50% of the town's median income. He said accessory apartments, either for in-laws, young professionals or college students would be step in right direction and then the Board could consider multi-family dwelling units in another area of town for another Town meeting, but at this point it wasn't likely that anyone would try to develop lots for multi-family housing because the price of lots in town were too high.

Mr. Morgan asked Board what differences they foresaw between the density of an accessory apartment and a duplex. Mr. Stern said he pictured an accessory apartment to be around 750 square feet in dimension. Chair Hebert said he thought 750 square feet might be too small and 1,000 square feet might be better, but he did want to limit the number of renting residents in accessory apartments. He said the Board would also need to address the need for separate drives, septic and utilities if they wanted to keep duplexes.

Vice-Chair Cross said many lots had been rural farmland, but had been sold by heirs for their maximum value, but access to the subdivision was only suitable for one

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

curb cut and they became condominiums. He wondered if the Board might consider designating an area of town that would only allow single family dwellings to focus on good neighbors with familiarity and longevity.

Chair Hebert wondered if Vice-Chair Cross's suggestion could be posed for a vote. Mr. Stern said they would need to determine if that was what the town really wanted. Chair Hebert said people who voted the Board members into office did so to determine what the town wanted. Vice-Chair Cross said they could make a case for it if it was presented as maximizing the value of a residential area, but he didn't know how much of the population would be in favor because of renters. Chair Hebert said renters would have a profound affect on town government and the character of the town by doubling the density of the town over the next 25 to 50 years if they allowed every lot to be a duplex. Mr. Phillips said he didn't think there was much land left in town to develop and Vice-Chair Cross replied that there were still six parcels that could be put on the market and developed over the next 20 years.

Mr. Phillips said he would like to see the housing portion of the Master Plan to know what the demographics of the town were presently. He said there were ten lots with 17 people residing on Hodgson Lane and none in school, which was not typical. Mr. Morgan said the Board collected data at the time the duplex ordinance was adopted and it was determined at that time that one out of four residents in town were not residing in a single family dwelling.

Mr. Weiner said he and his wife chose to live in town partly because his father-in-law advocated the location in a rural setting with good lots, good services, and a great tax rate. He stated that he was against duplexes and had spoken with several other residents in town who were also against them although he acknowledged that he didn't speak with anyone that owned or resided in a duplex.

Mr. Stern said land in town was valuable and people were trying to squeeze dwellings onto marginal lots and he thought the Board was making strides, but he was not sure how the Board could slow growth down without restricting property owners' rights. Chair Hebert said the Board had seen the ugly side of duplexes built on marginal lots and they wanted to address those issues with ordinance changes. Mr. Morgan replied that the Board approved a development that was in close proximity to a swamp, and one way they could address those issues would be to allow denser developments and counter them with more open space to preserve the town's rural character. Chair Hebert and Mr. Weiner both said they did not like the idea of cluster developments.

3) **New Business:**

A) Update NPB and NPD WebPages – Discussion

This item was continued to the next available time.

B) Update Subdivision Regulations and Site Plan Review Regulations

This item was continued to the next available time.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 28, 2015

4) Planning Initiatives:

A) Woodbury Avenue and Corridor Streetscape Design: Vote to Recommend when appropriate

This item was continued to the next available time.

B) Proposed Zoning district for electrical generating plants: Discussion

This item was continued to the next available time

Minutes: Chair Hebert asked that the Minutes for the September 14, 2015 meeting be included in the next packet to give Board members time to read them.

Report by Town Planner

A) Mr. Coogan handed out a proposal for improvements to the Town web page. Mr. Morgan said he didn't see anything objectionable.

B) Mr. Coogan reported that the first Technical Review Committee meeting held the previous week went well. He commented that the applicant still needed to do more work on their proposal. Chair Hebert said he thought the plan appeared detailed and Mr. Morgan said it appeared that way, but the datum was assumed, and that oversight could set the review back for months. He said the engineer had informed him that they might not be ready to return before the Board until December.

Adjournment: *Jim Weiner motioned to adjourn, and Mark Phillips seconded. All were in favor and meeting adjourned at 10 p.m.*

Next Meeting: Chair Hebert said unfinished items on the agenda would be continued to the next meeting on Monday, October 13, 2015.

Chair Hebert announced that there would be three meetings in the month of October, including a meeting with Great Bay Wildlife Refuge representatives on October 19, 2015 with Great Bay Wildlife Refuge representatives, and urged Board members to attend all meetings.

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary