

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

- Call to Order:** Chair Denis Hebert called the November 23, 2015 meeting at 6:30 PM.
- Present:** Bernie Christopher; Jack Pare; Mark Phillips; Jim Weiner; Alternate Member, Ken Latchlaw; Board of Selectmen Representative, Rick Stern; Interim Planner, Jerry Coogan and Jane Kendall, Recorder
- Absent:** Vice-Chair Chris Cross; Thomas Morgan, Town Planner
- Public Guests:** John Liatsis; Justin Richardson

Chair Hebert announced that Stoneface Brewery had cancelled their appearance for the meeting so they would need to be scheduled for the next available slot, which might not be until December 14, 2015 considering other applicants were declined for this meeting.

1) **Preliminary Consultation:** Proposal by John Liatsis

John Liatsis of Nimble Hill Road stated that he was not sure if his application would fall under the 50' wetland setback or the newly proposed 100' setback. Chair Hebert said the Board had never seen the proposal before. Mr. Liatsis said he had been working with Town Planner, Tom Morgan since September 2015. He said the parcel consisted of 14 acres of which he wanted to subdivide into 5 lots.

Mr. Liatsis said he was proposing to build a road to Town standards that would provide access to the lots, but the road would be longer than standard and would require an exception.

Chair Hebert said he was concerned that the first curb cut was a quarter of a mile in the woods and that there would be a lot of asphalt for the Town to maintain if it became a Town road and the tax base wasn't that big. Mr. Liatsis said there were other abutters that would prevent him from making the curb cut any closer. Chair Hebert said the other abutters already had curb cuts. He said he wouldn't have a problem with a public way on a privately maintained road built to Town standards for safety in accessing the homes, however. He said Avery Lane and the roads around the malls were all examples of privately built and maintained roads.

Chair Hebert asked if he was proposing to use the right-of-way and Mr. Liatsis said he and his neighbor held the same right-of-way through Jack O'Reilly's property, but there was a garage built on it.

Chair Hebert said it appeared there were substantial wetlands on the property and Mr. Liatsis replied that it was not swampland and the wetlands were only as wide as

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

the stream and not beyond. Mr. Liatsis said the existing road crossed wetlands and he was trying to work with what was there.

Chair Hebert asked about bringing electric service to the lots and said he wasn't sure if there would be adequate return from the sale of the lots to cover the expense of having Eversource upgrade the service, along with the cost of building the road. Mr. Liatsis stated that he was not necessarily subdividing the lots to make profit, but he wanted to know if the proposal was acceptable before he paid an engineer to do the plan.

Board member, Jack Pare commented that he should also do calculations on the said form factor for the circumference ratio to the physical area as listed in the Zoning Regulations to avoid pork chop lots and spite strips. Mr. Liatsis said he was dealing with odd angles that followed the original stonewalls from the old property.

Board of Selectmen Representative, Rick Stern commented that the map Mr. Liatsis presented was based on a 50' setback from the wetlands, but that could change in March 2016 after the Town Meeting vote. Board member, Jim Weiner commented that the application would have had to come before the Board before the new ruling was voted upon. Chair Hebert said Mr. Morgan replied in his letter that the applicant would be following the new rules. Mr. Coogan said the new rules were posted over a month ago and any application submitted and accepted as complete before that date would go by old rules, but anything submitted after the posting would go by new rules. Mr. Stern said the State of New Hampshire didn't have a 100 foot setback, but the Federal setback was 100 feet.

Chair Hebert said no perk test was submitted so the application was rejected as incomplete. Mr. Coogan asked Mr. Liatsis if he had contacted Rockingham County Registry directly and Mr. Liatsis said Mr. Morgan had contacted them. Chair Hebert said he looked at the application package, which was not complete and he checked with legal counsel. He said the Town returned the check with a letter and recommended an informal review until a complete application was submitted. Chair Hebert said meeting the requirements was up to the applicant and informed Mr. Liatsis that the Board would follow the new rules in considering the proposal unless he wanted to wait until March 2016 Town Meeting to see if the new rules passed or not.

Mr. Liatsis said he thought he was supposed to present his proposal a month ago, but was told that night that his application was delayed. Chair Hebert said he was aware that his preliminary discussion was posted before his application was complete. Mr. Liatsis said he submitted his application in October. Mr. Coogan reiterated that the application submitted was not complete with an engineering plan, test pits and wetland reviews. Chair Hebert said engineers would understand State law on missed deadlines.

Mr. Pare added that the current presentation was still not sufficient for a complete application. Chair Hebert said it was not ready to go before the Technical Review Committee (TRC) either. Mr. Liatsis said Mr. Morgan had requested a letter requesting a hearing, but he never heard anything about going before the TRC. Interim Planner, Jerry Coogan said this was only an informal discussion, because there had not been a formally complete application before the Board.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

Chair Hebert said there wasn't even an abandoned Class 6 road for access to the property and they would need a survey by a wetlands scientist to determine if there were enough uplands to build. He said an application review would require plans showing utility and water connections as well.

Mr. Liatsis replied that it could cost \$30,000 for an engineer to prepare plans and he didn't to pay for plans until he knew what issues he would need to address. Chair Hebert replied that utilities could be an issue, the "finger" of property sticking out of one lot, and wetlands need to be reviewed. Mr. Liatsis said Joe Nowell did the wetlands flagging and Dave Hislop did the mapping. Mr. Coogan asked if Mr. Nowell was a certified wetlands scientist and Mr. Liatsis said he was.

Mr. Coogan told Mr. Liatsis that a complete application would require an engineered plan and a letter from the Portsmouth Water Department showing the availability of water. Mr. Liatsis asked if they could put in wells. Chair Hebert replied that because there were concerns for good water in the area, the Town required a tie in to municipal water. Mr. Pare said Portsmouth Water Department would need to know the length of the road before they could determine if they could make water available. Mr. Liatsis said he thought it was about 1,500 feet long.

Chair Hebert suggested Mr. Liatsis talk with a developer to determine the cost to see if the expenses would bear out. He said after he submitted the application, he would need to submit another \$5,000 in escrow to the Town to cover consultant costs. Mr. Liatsis said he had a rough estimates to develop the road base that was already there. He said he also had splice boxes for power too.

Mr. Coogan said Mr. Liatsis was asking if the Board would grant a waiver for the length of driveway. Mr. Pare said he was not sure that the Board could waive the road length because it would set a precedent, but the applicant could build the road to Town standards. Mr. Phillips said he would also need a letter of acceptance from the fire department. Mr. Liatsis said the fire department had already purchased extra hose to reach his house from the road when the house was built. Mr. Coogan said some towns require cisterns be built.

Mr. Stern asked if the private road would meet the frontage requirement and Mr. Coogan said it would need to meet the Town standard and be accepted.

Board member, Mark Phillips asked Mr. Liatsis if he had discussed getting his abutters involved in the subdivision for more lots and tying into his road for future development. Mr. Liatsis said Craig wasn't interested and Mr. Leedberg and Mr. O'Brien were aware of his plans, but the other lot didn't have frontage to make it subdividable.

Mr. Phillips said hiring Mr. Hislop, who was known and reputable was a good selling point, but he was a surveyor and not a professional engineer. Mr. Phillips suggested asking Mr. Hislop to recommend an engineer to work in tandem and do some preliminary road profile work. Mr. Liatsis said he had already spoken with Joe at Jones and Beach.

Board member, Bernie Christopher said he was seeing private roads more and more in his development work and this would be a perfect scenario to develop an association. Chair Hebert said they would still need to build the road to Town standards.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

Mr. Pare said the applicant would also have to put \$5,000 into escrow to cover consulting fees, including the Town engineering consultant to review the road. Mr. Liatsis said he thought the escrow was for legal and Chair Hebert said it covered engineering, legal, planning and wetlands scientist consultations. Mr. Liatsis said he had paid \$4,000, but Mr. Morgan told him the cost would be \$1,500 plus \$500 per lot and then he was told his application was rejected and his check was returned. Chair Hebert said Mr. Morgan explained that he had received two applications and neither was complete.

Chair Hebert said a professional developer, engineer or surveyor would have reviewed regulations and addressed requests for the conditional approvals needed for the driveways to cross wetlands. He told Mr. Liatsis that he would need to present a wetlands report to be reviewed by the Town wetlands consultant to determine if any wetlands were to be crossed and he would then need a recommendation from the Conservation Commission and the Board to approve a Conditional Use application.

Discussion continued regarding alternate curb cuts on Fox Point or Arboretum Drive. Mr. Liatsis said it would be easier to come out on Arboretum Drive. He said he offered to let Pease Development Authority (PDA) run a road through his property to give them access to Nimble Hill Road if they helped pay for it, but they said they wouldn't. Chair Hebert said he doubted that the gas company or the PDA would allow a curb cut on Arboretum Drive and it would also involve snow plowing and bus pick ups that would be burdensome for the Town. He added that the Board could not engineer an applicant's development and said he needed to hire an engineer. Chair Hebert said it was upon the applicant to invest in an engineered plan.

Mr. Pare suggested that Mr. Liatsis work on a checklist to prepare for the next preliminary discussion. He recommended he have a wetland scientist look at the new rules for a 100' setback to know where he stood. He said he needed to keep in mind that the State might not permit crossing the wetlands for a driveway to Lot 4, and the wetlands setback might affect the frontage on Lot 3. He suggested he explore the possibility of coming out on Fox Point Road.

Mr. Pare suggested that he also have Dave Hislop do the form factors aspect ratio to avoid the teapot spout on Lot 2, which might not meet the form factor.

Mr. Pare said they would also need a letter from Portsmouth Water Department that water would be available and a letter from the fire chief. Chair Hebert said he and Mr. Coogan needed to talk with fire chief first.

Chair Hebert informed the applicant that the former owner, Randy Watson acknowledged that he was not able to subdivide the property. He added that he needed to keep in mind that the upland regulations would limit the development to single family homes.

(Justin Richardson appeared at 7:22 p.m. at this point in the meeting.)

2) Belanger powerline review

This item was taken out of order.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

3) Proposed Zoning Amendment Discussion

This item was taken out of order.

Mr. Coogan asked Board members for feed back from last week's public hearing.

Chair Hebert said he thought doubling the uplands requirement for a duplex to 1,200 square feet from 80,000 made more sense than a 100' setback that became huge when considering a circle that went from 150% to 300%. He said Portsmouth had a 100' setback, but there wasn't any available land left to develop in Portsmouth so it wasn't pertinent.

Mr. Pare said would like to hear Mr. Morgan's rationale. Mr. Stern said Mr. Morgan said a 100' setback from wetlands was could be backed up scientifically if challenged. He said Laurie Summers at the Department of Environmental Services (DES) said the Federal government followed the 100' setback. Chair Hebert said Mr. Morgan told him that it came from the City of Portsmouth. Former Board member, Justin Richardson said the DES website had a report done by the Audubon Society used in advocacy material from 1990. He said over the years there have been recommendations to increase wetlands setbacks to protect the watershed.

Mr. Coogan said the Town currently had a 100' setback, but the word contiguous was scratched out so all wetlands would be included. He said he thought increasing the square footage requirement for uplands for duplexes would be a better way to manage them, but they could have Mark West review the subject.

Mr. Richardson said he had discussed the meaning of contiguous with Mr. Morgan back in '06 and it was their understanding that contiguous meant perennial waters and temporary and vernal pools would have a specific setback. He said the question was that if contiguous waters started at the Piscataqua, the question would be how far in they went. Chair Hebert said he had that discussion with Mr. Morgan who suggested getting rid of the term contiguous, but he got a lashing from Marlon Frink who was concerned that the setback would limit development around his pond.

Chair Hebert said he brought the issue up because of recent developments where dual dwellings were built so close to wetlands, but he thought increasing the square footage of uplands for duplexes would address the issue; however he was concerned that the Board might be proposing too many changes for one year.

Mr. Coogan said he had also discussed the setback with Town counsel, Attorney John Ratigan regarding the Commercial and Industrial zones, which were on the municipal sewer system.

Mr. Weiner said development had been going on for hundreds of years, but many of the remaining lots had wetlands so they were coming up with new rules for setbacks.

Mr. Weiner said he knew the tongue lashing the Board received at the last meeting was not personal, but he took offense with the remark that the Board was anti-development because it was not. He said few could speak on behalf of many, but when the votes were counted it didn't add up.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

Mr. Stern said he agreed with Marlon Frink that a 100' setback wouldn't be defensible, but he said they could bring their regulations in line with State regulations.

Mr. Richardson said no one could ever make a perfect ordinance and many were losing sight, thinking the Board was taking away property rights, but that was not the case because the Zoning Board of Adjustment provided a relief valve when the application of rules seemed unfair and punitive with no relation to the rational protection of water quality. He went on to say that many of the problems in the last two years were buried in compromises and mistakes. He said they couldn't address problems half way.

Chair Hebert said he still thought there was a lot for the town to consider and they could do other things like increasing the square foot requirement of uplands for duplexes to address the issue and still protect the town and property owners' rights to build duplexes.

Mr. Pare said he agreed with Chair Hebert's reasoning to leave the wetlands boundaries and table alone. He said the thought they were doing a good job of addressing the issue of squeezing development into marginal spaces, but he would like it if Mr. Coogan would work on the definition of contiguous. Chair Hebert said Mr. Morgan had said the ZBA was confused with definitions. Mr. Pare said he thought they had a defensible definition and leaving it alone would be best thing right now. Mr. Coogan said definitions could be tricky and they could work with Mark West.

Mr. Coogan opened the discussion on accessory dwelling units and owner occupation of the primary units. He said the Board had discussed putting a maximum square footage of 750' square feet. Mr. Pare suggested they raise the dimensions to 800' for architectural flexibility.

Alternate Board member, Ken Latchlaw said splitting an older home of 1,500 square feet would require a larger space. Chair Hebert said splitting a home could become a duplex. Mr. Latchlaw asked why it wouldn't be an accessory apartment and Chair Hebert said an accessory was a secondary dwelling to a primary homeowner's dwelling. Mr. Latchlaw asked why the Board was making a distinction and Mr. Pare replied that duplexes required more uplands living space area and separate septic systems. Mr. Coogan said accessory dwelling units were defined as being less space than the primary dwelling unit. Chair Hebert said usually the upper and lower levels would be a duplex because they would be the same size. Mr. Latchlaw said some homes could be designed at 60/40 lower and upper levels, however.

Mr. Latchlaw said he was comfortable with 750 square feet for an accessory apartment. Mr. Christopher agreed that 750 square feet was standard and they were beautiful. Mr. Stern and Mr. Weiner both agreed that 750 square feet would be sufficient, but Mr. Phillips said he thought it should be larger, considering a situation he knew of where there were two in-laws that were incapacitated and requiring another bedroom for a caretaker. Chair Hebert said he thought 900 square feet would be good. Mr. Stern said anyone requiring more space could go before the ZBA and request a variance. Chair Hebert said he hoped they could find a compromise that would keep everyone from going before the ZBA.

Mr. Coogan noted that a municipality may not require a familial relationship of occupancy and could require additional lot size for accessory apartments, but the septic

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

systems still had to handle however many bedrooms were in the structure, whether it was a house with three bedrooms and a one bedroom accessory or a four bedroom house with a two bedroom accessory.

4) Report by Town Planner

- Mr. Coogan said he met with Altus Engineering regarding the Fabyan Point subdivision and informed the applicant that Altus Engineering needed the revised plans by December 7, 2015 to give them time to review them for the December 14, 2015 Planning Board meeting.
- Mr. Coogan said they would have the second public hearing on the Zoning Amendments and also a preliminary discussion on a proposal by Stoneface Brewery on December 14, 2015.

5) Planning Board Budget FY 2016

Chair Hebert said the Board of Selectmen had requested that Boards keep their 2016 budgets the same as 2015, but the Board had gone over their legal budget in 2015 so he wanted to increase the legal budget to \$25,000. Chair Hebert said he would also like to add \$25,000 to contract services for consultants. He said the costs would be returned to the Town when used for development consultations, but not for preliminary inquiries that hadn't made a payment. Chair Hebert said he was not in favor of increasing payments to COAST Transportation whom he did not believe were doing due diligence to keep their costs down. Mr. Richardson said the Town was still holding air pollution mitigation funds for impact fees paid by a developer that went Chapter 7 and they should be used. Chair Hebert agreed to make the recommendation to the Board of Selectmen.

Jack Pare moved to accept items as discussed with legal and contract service increases and keep COAST the same, and setting GIS t to \$100. Bernie Christopher seconded the motion and all were in favor

Correspondence and Discussions:

Mr. Pare said he had noticed that the illumination of the signs at the Crossings Mall and Rockingham Electric were higher and running every eight seconds, which was greater than agreed upon. Mr. Richardson said the mall was also advertising and he thought there was a condition of approval that they would not. Chair Hebert said they could look into the subject further next year.

Mr. Pare recommended a two directional sign by Mitchell's Gulf near Exit 4. Chair Hebert said Mr. Coogan had been contacted and he spoke with the Board of Selectmen because Joe Mitchell said his business was down 40%. He said DOT was proposing to put in a traffic light at Shattuck Way, but he didn't think it was necessary yet and would

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, November 23, 2015

only slow traffic down and anger drivers. He said he asked Mr. Coogan to check talk with DOT. Mr. Stern said there had been meetings with DOT for years and this was part of their plan. Mr. Pare said it would be helpful to put up informational signs.

Chair Hebert said he visited Bruce Belanger with the building inspector regarding a violation of riprap and putting stone down. He said he would sweep the street in the next couple of days

Chair Hebert said the building inspector wanted to know if they would connect their power to the pole on the other side of the road, but he was concerned it would spoil the pavement. Mr. Richardson said they would need to renotify and notify abutters if the Board wanted to amend the plan.

Mr. Stern said the problem was in setting a precedent and then no one would want to put their power under ground.

Mr. Weiner suggested requesting a bond from the applicant to ensure that the cost of the road repair would be covered. Chair Hebert said they already did that.

Mr. Pare said he was in favor of applicants putting the power under the road. Mr. Phillips said they could core under the road. Chair Hebert said they would need to bore across the street and go down to next pole.

Chair Hebert said he was told they were trying to get an answer for two months, but he had just heard about it earlier in the day. Mr. Stern said perhaps the delay was with Eversource. Mr. Richardson said the engineer was delaying a month ago. Chair Hebert said that engineer had been fired.

Minutes: *Bernie Christopher moved to approve the Minutes for the November 9, 2015 meeting. Jim Weiner seconded, and all were in favor.*

Adjournment: *Bernie Christopher motioned to adjourn, and Jack Pare seconded. All were in favor and meeting adjourned at 8:40 pm*

Next Meeting: Monday, December 14, 2015 and another

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