

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, December 8, 2014

Call to Order: Chair Denis Hebert called the December 8, 2014 meeting at 6:32 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross (arrived late); Jack Pare (left early); Justin Richardson; Alternate Members, Peggy Lamson and Ken Latchlaw; Board of Selectmen Rep, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Bernie Pelech; Joe Calderola; Doug LaRosa with TriTech Engineering; Alan and Lillian Wilson; Bill Gregsak with Gregsak Engineering; John Bernier with Bernier Corporation; Keith Frizzell; Attorney Steven Roberts; Steve Haight with Haight Engineering; Dr. Kim Hazarvartian, Ph.D. Traffic Engineer; Ann Beebe; Paul Reardon; Bill and Sandy Sweeney; Lisa Grundel

1) Public Hearings:

A) Proposal by **Bruce C. Belanger** for a 3-lot subdivision at the **corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.**

Chair Hebert said the applicant's counsel had asked for a continuance to January 12, 2015.

B) Proposal by Estate of Paul J. Beane for a 3-lot subdivision at **233 Nimble Hill Road, Tax Map 17, Lot 4.**

Mr. Doug LaRosa with TriTech Engineering informed the Board that they had made changes as requested by Altus Engineering, and had received State subdivision and septic approval.

Attorney Bernie Pelech said they would be returning to the Zoning Board of Adjustment (ZBA) for clarification of their conditions of approval on the variance request. He said ZBA member, John Frink had expressed concern that the appearance of the barn addition remain as a barn and they had agreed they would retain the appearance as shown in the architectural rendering, but the Minutes of the November 3, 2014 ZBA listed that there were to be no changes to the entire building without ZBA approval, which they had not agreed to.

Board member, Justin Richardson said he had made the motion and thought it was clear that the Board was concerned with retaining the historic architectural style of the entire structure so he was not sure what the ZBA would change. He said another condition was that the condominium instruments would be reviewed and approved by the Planning Board to ensure the design would match the architectural style. Mr. Richardson said the suggestion was that the applicant would something in the

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condominium document that would specify the architectural style for the Planning Board to approve.

Attorney Pelech said they had presented architectural renderings to the ZBA and would also provide condominium documents. Chair Hebert asked if the Board had received a copy of the architectural renderings and Attorney Pelech said he didn't have them in his file at the time. Vice-Chair Marconi said the ZBA had expressed concern with maintaining the historic appearance of the house and barn.

Alternate Board member, Peggy Lamson said she was concerned with the length of the building and asked if the ZBA was also concerned and Vice-Chair Marconi said they also expressed concern with the 165' length of the house along the road. Mr. Richardson said the ZBA had no authority on the length because it was in compliance. Chair Hebert agreed that the 165' length of the building was a concern. Developer, Joe Calderola said each addition would be stepped back, they were saving two ash trees, and planting a low flowering crab apple garden in front to break up the buildings. Mr. Calderola said ZBA members liked the concept of the barn and additions staggering back, but they were concerned a future owner would change the exterior, however he said Mr. Morgan had said the exact plans weren't complete so the third condition for approval of the variance was homeowners could not change to the exterior of the barn on Nimble Hill Road without approval of the ZBA.

Board of Selectmen representative, Rick Stern said he would like to see the existing historic appearance farmhouse remain as it was. Mr. Morgan agreed with Mr. Stern, commenting that Newington was running out of historic houses. He said the ZBA was concerned with retaining the appearance of the barn, but he was more concerned with the 200-year-old house. He said a preservation easement would be more effective, but they would need a third party listed on the easement to act on paper as an enforcement party. He said he had approached the historic society and Mr. Stern also asked for other alternatives.

Board member, Jack Pare said the Historic District Commission (HDC) could be a watchdog member, but have the NH Historic District Society have the enforcement authority. Mr. Morgan said they could draft a preservation easement. Mr. Pare said the HDC would attend the next meeting for approval of a sign in the District. Ms. Lamson said she thought the State Historic District Society would be a better choice than the Newington Historic District Commission.

Mr. Calderola reminded the Board that he could simply demolish the historic building if he wanted to, however, he met the previous owners and didn't want to offend them, recognizing that it was a special building, but it was not in the historic district and there was no authority to require a preservation easement. He said although he wanted to preserve the historic appearance, he didn't want to be bound to historic preservation. He said he intended to replace the existing windows with energy efficient windows, removed the siding and cover the house with a Styrofoam insulation and a low maintenance siding and trim because that is what buyers would want.

Mr. Richardson said the ZBA intended something along the line of a deed restriction to maintain the building's style for the Planning Board's approval and any other changes to the building besides maintaining in kind would need the Board's approval. He said the Board was looking for more guidance on specifying the historic style of the barn for future maintenance. Mr. Calderola agreed that they could write something in the

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condominium declaration that no modification to the building could be made without going back to the ZBA. Mr. Richardson said he would like to see the agreement recorded with the deed.

Chair Hebert agreed that it was a valuable historic home and the applicant was saying they would do their best to maintain the style, but some replacements were for energy efficiency, safety and ease of maintenance. He wondered what would happen if the changes were not approved. He said as had been stated, the applicant could knock the building down. Mr. Richardson said there would be a conflict between the ZBA's condition for approval if the Planning Board agreed to changes.

(Board member, Chris Cross arrived at 7:22 p.m.)

Mr. Richardson said the Planning Board was dealing with a subdivision and rather than go back to the ZBA, they should come back to the Planning Board who had the authority to make an amendment. Attorney Pelech asked how they would get around the ZBA's condition and Mr. Morgan said they would sort it out at the ZBA meeting the following night. Chair Hebert said the Board they would need to wait for another meeting after the ZBA provided clarification on the conditions before they could make any decisions on the matter.

Chair Hebert said the Board hadn't had a chance to review the applicant's response to Altus Engineering's recommendations, but reminded the applicant that Altus would provide an estimate for the bond that would be required.

Chair Hebert asked for an update on the status of the utilities and Mr. Joe Calderola, the developer said the PSNH engineer had reviewed and signed off on the plans. Chair Hebert said they would need to get another engineer look at them because the telephone and electrical lines were in the same manhole. Mr. Calderola said he met with PSNH engineer, Mr. Rick St. Cyr who reviewed the electrical layout and Mr. St. Cyr signed off on the plan. Chair Hebert said the cable and telephone lines wouldn't go into a transformer. Mr. Calderola said they would work it out and Chair Hebert said PSNH usually coordinated the plans.

Town Planner, Tom Morgan said Town counsel, Attorney John Ratigan had suggested the Board consider whether the Town should obtain the right to go into the retention pond if necessary, but not own the pond or be responsible for the routine maintenance. Attorney Pelech said Attorney Ratigan's office had asked where the retention pond location of retention pond was located and he had informed them that it was in the middle of the cul-de-sac. He said he also provided additional documentation on the retention pond.

Ms. Lamson expressed concern with the construction in such a wet area. Mr. Richardson added that he was concerned with the utilities going under the road because of the wetlands buffers on either side. He wondered what would happen to access to homes if repairs were needed. Chair Hebert said water lines typically ran along the middle of road, but if they needed to dig near someone's driveway, they would because the utilities could not all be in one trench.

Vice-Chair Marconi asked if the City of Portsmouth had looked at the water line plan and Mr. Calderola said he had a letter that said they would approve the plan. Chair Hebert said there was a requirement that the complete plan would go before the Board, but they couldn't get into the business of engineering, however he was concerned that the 1" water line wouldn't have enough pressure for the long distance. Mr. LaRosa said

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he spoke with City of Portsmouth engineer, Terry Desmaris who said he thought it was in a high-pressure zone so they shouldn't have line loss. Chair Hebert said he would refer the question to Altus Engineering. Mr. LaRosa said he would get definitive letter from Mr. Desmaris.

Discussion ensued regarding sufficient emergency vehicle access and turning space for all the lots if there were social gatherings at the homes with cars parked along the road. Mr. Richardson said at the risk of having the fire chief come in to answer questions, he wondered if access would be even more difficult along the narrow drives during snow accumulation. Chair Hebert said the Fire Chief Andrew Head sent an email that he was comfortable with the access.

Mr. LaRosa said it was not uncommon for fire departments to ask residents to move their cars to make room for emergency vehicles. He added that the condominiums might not be kid friendly or wouldn't have more than two children so most homes would only have two cars. Mr. Richardson said he was still concerned that there wouldn't be sufficient area for turning.

Board member, Bernie Christopher asked why the Town would pay fire chief to make professional decisions if everyone questioned his opinions. Ms. Lamson agreed that the Chief Head had already sent the required response. Mr. Richardson said he didn't understand the emergency access plan and asked questions rather than have the fire chief come before the Board, but he didn't mean to sound as if he was questioning the fire chief.

Mr. Richardson went on to ask if snow removal would be covered in the Homeowners' Association and Chair Hebert said they could make that a condition. Mr. Calderola said he was not yet sure how that would be handled, but he thought owners could take care of the driveways. Vice-Chair Marconi said it would be a problem if a homeowner went away during snowstorms. Mr. Morgan said the Homeowners' Association would own the driveway. Chair Hebert said who ever owned the driveway would need to be on the document as responsible for maintenance and Attorney Pelech agreed.

Mr. Morgan said the project began as a subdivision proposal and then they discovered the developer was proposing multiple dwelling units on the lots and now they were proposing condominiums. He said this was the second condominium project in Newington's history and the Board was not well versed in the requirements. He said the first requirement was that the Board adopt the conditions for condominiums as noted on page 13 of the Ordinance and then they needed to determine how to handle the condominium conversion site plan regulations. He said the applicant met most of the requirements, but they hadn't sent notices to abutters that it was a condominium project. He suggested they review the condominium project as a separate application to avoid confusion in the future with other projects, including large houses that could be converted to condominiums.

Mr. Pare asked if they would review the condominium requirements as a separate step or if they could review under the same hearing once they sent notices. Mr. Morgan said they could hold the hearings concurrently with two separate motions and votes.

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Chair Hebert said there was a requirement to approve floor plans, but he was not so concerned with the floor plans as the driveways. Mr. Morgan said State laws that regulate condominiums required the floor plan approval.

Mr. Morgan asked if the plans showed common area and Mr. Calderola said he hadn't submitted the condominium plan yet.

Chair Hebert continued the hearing to Monday, January 12, 2015.

C) Proposal by Wilcox Industries to expand their facility at **25 Piscataqua Drive, Tax Map 27, Lot 22**, and to extend Shattuck Way in a southerly direction.

Mr. Bill Gregsak said he sent a letter to Mr. Morgan in response to their review by Altus Engineering. Chair Hebert said there was nothing for the Board to do except to determine if they would recommend the returning the small triangle of property at the Town Meeting. He said he thought the Planning Board and the Board of Selectmen should support the transfer of property. Mr. Stern said the Board of Selectmen discussed approval at their last meeting.

Mr. Richardson said all the plans referred to the Shattuck Way extension proposal as "Wilcox Way" and the Board needed to decide if it would be called Wilcox Way or not before it got recorded so public safety officials would not be confused. Chair Hebert said the applicant was just having fun, but the Board of Selectmen determined the naming of roads. Mr. Morgan clarified that the Planning Board had the authority to determine the naming of roads until they became a public way and then the Selectmen made the determination. Mr. Stern said the Selectmen hadn't discussed it yet, but it would probably remain Shattuck Way. He said he would put it on their December 29, 2014 agenda.

Mr. Morgan said Attorney Ratigan and Eric Wienreib with Altus Engineering reminded them that they needed to address the issue of easements. Mr. Gregsak said he was working on the easement with Tyco on the construction easements.

*Mike Marconi moved to **approve** the proposal by Wilcox Industries to expand their facility at 25 Piscataqua Drive, Tax Map 27, Lot 22, and to extend Shattuck Way in a southerly direction. Peggy Lamson seconded the motion.*

A brief discussion regarding inspection of the road construction ensued and Chair Hebert said that would be done in stages by Altus Engineering.

Chair Hebert proposed amending the motion to add the conditions that the applicant address Altus Engineering's technical recommendations and that they transfer of ownership for the triangle of property from the Town. Vice-Chair Marconi and Ms. Lamson agreed to the amendment.

*The motion **passed** with all in favor.*

2) Preliminary Discussions

A) Proposal by Keith Frizzell to construct an industrial building at **34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11**

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Mr. Morgan passed out a confidential legal opinion from Town counsel, John Ratigan for the Board's consideration. Chair Hebert said the applicant was merging two lots and if they took one building down, the other building became the primary use and the other building would be non-conforming,

Attorney Steven Roberts said he respectfully disagreed with Attorney Ratigan. He said they believed the residential building would be an accessory structure to the principle structure so they would request a variance so they could retain the old residential building, which they understood the town had an affinity. He said they could remove the house if the variance was not granted.

Mr. Richardson said his interpretation of Attorney Ratigan's opinion was that an accessory building could not encroach on the Industrial Zone. Chair Hebert said it was up to the Board to interpret.

Board member, Chris Cross said a caretaker use of the residential building could be problematic because it could be difficult to enforce. He also asked where the opinion that Town desired to keep the building came from. He said he objected to keeping the building that was not old residential building, was in the setbacks and would create problems for future road development. Mr. Richardson agreed there was a question of whether it made sense to have a residential use so near an industrial use and if that would set a precedence. Chair Hebert said they had been talking about using the residential building as an auxiliary use to the principal structure. Mr. Pare said the auxiliary use would be in a different zone. Attorney Roberts **said** the applicant proposed keep the residential building as a peacekeeping offer to the town, but would be fine with removing it and just keeping the industrial building.

Mr. Bill Sweeney of Patterson Lane said he thought it would be fine if they removed the house, but he wanted to be sure the industrial building kept the setbacks from the residential zone. Mr. Richardson said he didn't see any plans for grading or a buffer between the residential and industrial zone lines.

Chair Hebert said it didn't sound as if the Board wanted to retain the house as a caretaker's cottage, but he wanted to know if anyone wanted to preserve it. Attorney Roberts said they would need a variance to keep the structure. Mr. Richardson said they would also need a variance for the lot line adjustment.

Mr. Morgan said he had not seen the inside of the house and although it was a vernacular style, typical of old Newington and was not high style, he was concerned that Newington was losing so many of their older houses. He said Patterson Lane was the oldest street in Newington and he was afraid they were not making an informed decision by engaging anyone that knows old architecture.

Ms. Lamson said before the Yeton family owned the house, the Downeys, the oldest family in town owned the house. She said the house was falling down, but she hated to see them infringe on the residents. Chair Hebert agreed that they needed to determine what was inside the house, but they should get variance first and then determine if the structure had significant value that added to Newington.

Mr. Pare suggested they ask Mr. Jim Garvin at the Department of Historic Registry to look at. Mr. Richardson said the ZBA had the authority to hire consultant, but regardless of the value of the house, it was still up to the owner. Chair Hebert agreed.

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Ms. Sandy Sweeney of Patterson Lane said she had understood that the house had been remodeled inside so the original interior was not there Mr. Pare said they could sell the structure for a \$1 to move the house or a timber framer who wanted the materials could deconstruct the post and beam building. Mr. Cross said even if the house was worth keeping for historic significance, they would still need to upgrade of waterlines and utilities to make it livable. He said he might remove objections if they moved the house outside the setbacks on a new foundation to make it conforming instead of continually in violation of the Ordinance.

Mr. Steve Haight of Haight Engineering said they met with the fire chief who said they needed access around building so he showed the industrial building plans for truck traffic at the back.

Dr. Kim Hazarvartian, Ph.D. Traffic Engineer with TEPP LLC reviewed his traffic study and responded to questions from the Board and abutters.

Mr. Paul Reardon of Patterson Lane said it was a steep grade coming down on Shattuck Way and difficult to stop on snow and ice. He said he was concerned that a truck wouldn't make the corner and hit the gas pumping station on the corner. Mr. Hazarvartian said a truck would slow down to make the turn so he didn't think it likely that a truck would go off the road. Ms. Christine Galliano of Patterson Lane said her son waited for the school bus on the corner at the end of the street and she had concerns for his safety with trucks turning there.

Ms. Anne Beebe of Patterson Lane said she had to wait for a 53' Penn truck turning on to the lane that morning before she could turn in. Mr. Hazarvartian said trucks had to make wide swings for right turns and every intersection couldn't be built that wide because it would encourage standard vehicles to take corners too fast.

Ms. Lamson asked if large tractor-trailer traffic would be frequent or occasional. Mr. Haight said that would depend on the tenants. Ms. Lamson said will make an impact on Patterson. Mr. Reardon said rd posted for no more than 3 axles. Mr. Richardson asked how many truck the site could handle and Mr. Haight said it was not a truck terminal.

(Mr. Pare left at 8:53 p.m.)

Chair Hebert agreed that they didn't know who the tenants would be, but the Board would like to know what they are approving. He said he understood they had to look at allowed uses, but if the site was not appropriate for the largest tractor-trailer, then should consider as a limitation. He said they did not have carte blanche and the Board could stipulate allowed use and restrictions.

Mr. Reardon said there were 15 families living on the dead end road and were concerned with emergency access. Chair Hebert said the road had already been developed. Mr. Richardson pointed out that uses allowed in the Industrial Zone were not as hazardous as those allowed in the Waterfront Industrial Zone. Mr. Reardon said they should set limits to prevent accidents. Chair Hebert said many people in town lived on dead end roads, and it was not possible to deny reasonable risks in the Industrial Zone, which had already been approved. Mr. Reardon said the industrial expansions were increasing the odds of accidents and Chair Hebert said he understood certain risks were possible.

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Ms. Beebe said in an emergency Sprague could be contacted to open their gates, but she didn't know who communicated that to them. Chair Hebert said the fire department would take care of that, but it had been rare

Chair Hebert said one of the positives was that the proposal for the new building would set the building back further from the road and there was also a possibility that they could develop the lot to its maximum potential if this proposal was not approved.

Mr. Richardson commented that it was clear at the last meeting that the Board wanted to see a buffer for the residential zone. Chair Hebert said the applicant didn't commit to it because they weren't sure if they would go through with this plan or not. He said he was still in favor of putting the residential area into conservation to create a nice buffer between. Vice-Chair Marconi, Ms. Lamson agreed and Mr. Richardson all agreed that they should have some kind of buffer.

B) Proposal by **Cindy Nix to establish a dance studio at **109 Gosling Road, Tax Map 28, Lot 1****

Ms. Lisa Grundel said she was the owner and operator of the dance studio. She said property owner, Cindy Nix informed her that there were parking concerns. She said students might use the front door at first, but they would then be instructed to enter through the back where there were parking spaces at the back. She said most parents parked briefly to drop students off, and then returned after lessons were over.

Chair Hebert asked for a parking plan and also the hours of operation. Ms. Grundel said there was a pilates class at 8:10 a.m. to 9 a.m., afternoon dance classes on Monday and Wednesday from 1 p.m. to 2 p.m. for small children, and then after school dance classes would begin at 3:30 p.m. so that the majority of classes would run after the Children's Orchard shop was closed in the afternoon.

Chris Cross moved to take no action on the new use and Mike Marconi seconded the motion. All were in favor.

Discussion:

Chair Hebert said the Planning Board had a representative serve on the ZBA since the 1950's, but it was recently discovered that the position was removed in 1987. He said he was going to meet with the Board of Selectmen and the ZBA Chair to decide if the Selectmen could reverse the decision or if it required a Town vote. He said they would work on a resolution because he thought it would be helpful to have a representative from each board.

Mr. Richardson said the section of the zoning ordinance that was adopted in 1957 specified the existence of the ZBA, but there was a reference in 1987 that abolished the ZBA altogether. Mr. Morgan said the RSA's were laid out so that towns had to be a ZBA if there was a Planning Board. He said the RSA also says the appointing authority was the Board of Selectmen with five regular members and one alternate. Mr. Richardson said the minutes said he and Mike Marconi had been appointed as Planning Board representatives to the ZBA, but they had never taken an

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oath of office and there was some confusion in the minutes and voice recording that suggested they were permanent members instead of alternates.

Minutes: *Mike Marconi moved to approve the Minutes for the November 17, 2014 meeting. Chris Christopher seconded and all were in favor.*

Adjournment: *Mike Marconi motioned to adjourn, and Peggy Lamson seconded. All were in favor and the meeting adjourned at 9:41 pm*

Next Meeting: Monday, December 15, 2014

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