

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, December 15, 2014

Call to Order: Chair Denis Hebert called the December 15, 2014 meeting at 6:30 PM.

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

Absent: Bernie Christopher; Alternate Member, Ken Latchlaw

Public Guests: Edna Mosher; Sharon Allie; Linda Gurubhai Khalsa; Dave Hislop; Cindy Gunn; Paul Pelletier; John Lamson; Attorney Alec McEachren; David Choate; Dawn Lewis; Rich Swietek

1) Public Hearing:

A) Proposal by **Edna Mosher** for a 2-lot subdivision at 97 Nimble Hill Road, Tax Map 12, Lot 10

Chair Hebert asked if she was also asking for a curb cut and the applicant,. Edna Mosher said she was. Chair Hebert asked if the application was a formality and Mr. Morgan said a curb cut could be reviewed along with the subdivision. Chair Hebert asked if the proposal met all the setbacks and Ms. Mosher said it did.

Ms. Mosher said she was waiting for Portsmouth Water Department to provide a written confirmation that water was available to the house even though she had water to her house. She said she was also waiting for approval from the Department of Environmental Services. Mr. Morgan said he was surprised that a proposal for an existing lot over five acres with perk tests that passed and a functioning septic would need DES approval, but Board member, Justin Richardson said he suspected it would still need State approval regardless of the lot size. He said it appeared that there was sufficient frontage and setbacks that the 50' buffer wouldn't apply, has frontage and setbacks.

Mr. Richardson said his only concern was if there would be an area of uplands that anyone would want to access. Ms. Mosher said in her opinion there was no uplands unless the pine trees were considered uplands.

Mr. Morgan said he would be comfortable with the request so long as no one asked for additional division of the lot at a later date. Mr. Richardson said that could be put on the plan that the purpose of the subdivision was for a single-family dwelling. Chair Hebert said notes often get overlooked and motions often held more weight. Mr.

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Richardson said putting a note on the plan and making a motion would be belt and suspenders.

Vice-Chair Marconi said there had been an incident with another property in town where someone purchased a single-dwelling lot and then wanted to subdivide further so they wanted to be sure that a buyer would understand it was a single-dwelling lot. Ms. Mosher said all those points would be in the deed. Mr. Richardson added that they would be required to modifying the subdivision approval.

Mr. Richardson asked Mr. Morgan if he did a notice on the driveway application and if the grading on the driveway would be critical to the review. Chair Hebert said they had already discussed the curb cut in another meeting, but could the Minutes could mention that the driveway curb cut was on the drawing. Mr. Richardson said he was more concerned with the issue of construction for Public Works Highway Department regarding runoff. Chair Hebert said they didn't know who would purchase the property and exactly what kind of driveway they would propose, but they would be required to follow the Driveway Regulations. Mr. Richardson said they could stipulate that the building inspector would determine the driveway grading.

Chair Hebert added that final approval would depend on DES approval, having a plan for underground utilities and that the lot would not be subject to further subdivision.

Alternate Board member, Peggy Lamson said it was a simple application and the motion could cover all the bases.

*Justin Richardson moved to **approve** the proposal by Edna Mosher for a 2-lot subdivision at 97 Nimble Hill Road, Tax Map 12, Lot 10 with the condition that it would be recorded on the plan that it would remain a single residence. Mike Marconi seconded the motion.*

Ms. Mosher said she hoped the condition wouldn't exclude someone building a mother-in-law apartment because the lot was big enough to accommodate one. there's enough area for it. Board member, Jack Pare said they could change the motion from single-family to single-residential dwelling. Mr. Richardson agreed that was a friendly amendment and Mike Marconi seconded the amendment.

Chair Hebert and Mr. Morgan said duplexes were already allowed so they only needed to say the lot will not be subdivided further.

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

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2) New Business:

A) Proposal by **Sharon Allie** and **Gurubhai Khalsa** for a lot line adjustment and a 2-lot subdivision off **Fox Point Road**, south of Old Post Road, **Tax Map 11, Lots 21 and 22**.

Mr. Dave Hislop said the applicant owned 6 acres, but didn't have sufficient frontage for two lots so her neighbor Gurubhai Kahlsa was conveying 150' to create sufficient frontage.

Mr. Richardson informed the Board that he was a neighbor in case there were any concerns, but no one objected.

Mr. Hislop said Town environmental consultant, Mark West had walked the wetlands. Chair Hebert said he received the wetland report by email earlier in the evening and would forward it to Altus Engineering for review.

Vice-Chair Marconi said it looked as if the back lot ran into the "do not disturb, do not cut" buffer. Mr. Hislop said he went before the ZBA and received their approval. Mr. Morgan said he received a letter from Mr. West on Thursday and he solicited a response from the Conservation Commission who did not like the idea of the driveway going through the wetlands buffer and so they recommended a shared drive with a single wetlands crossing. Conservation Commissioner, Cindy Gunn said although the Town was against shared driveways, she suggested they consider them case by case basis to avoid going through the buffer and affecting wetlands as much.

Mr. Richardson said there was a lot of amphibian activity and he was concerned there was a vernal pool on the lot. He said he didn't think it would affect the project because the setback for drives would be exempt. He said they were already granted a variance, but there would be a greater setback if it was determined it was a vernal pool. Chair Hebert said there was no way of telling this time of year. Mr. Hislop said there was standing water there when it rained. Ms. Lamson said the area had always been that way, but it didn't dry up like a vernal pool. Mr. Richardson said the wetlands were year round, but there also was seasonal waters with amphibians that dried up, however, it was only academic if it was a vernal pool or not. Mr. Hislop said the setbacks were already indicated.

Board member, Chris Cross asked if it would be important to have a culvert for the amphibians to travel back and forth from one vernal pool on one side of the road to the another on the other side. Mr. Richardson agreed and said it would also be important to keep the level same.

Regarding the shared driveway, Mr. Cross said many conflicts had developed between property owners, which had become problematic and the Town now wanted each lot to stand on their own so that property owners could have independent access to their utilities and plowing. Ms. Gunn said she understood, but as a real estate broker of many years, her experience was that it was incumbent on the seller and buyer entering an agreement so that they could protect the remaining wetlands and she hoped they would consider developments on a case-by-case basis. She said it would also be helpful to map wetlands and prioritize for consideration in development. Chair Hebert

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said he agreed with everything she said about the wetlands, but it was difficult to make work and there were unintended consequences.

Mr. Richardson said they could consider designing a system of agreements for private roads to serve an entire development, but this was only two lots and it didn't make a lot of sense if two owners didn't agree with maintenance and then there would be a problem so for that reason he was against the shared driveway idea.

Chair Hebert said they needed to determine if the plan was substantially complete. Mr. Richardson said the only thing missing was whether there was a vernal pool on the lot. Chair Hebert said they would probably not know until the spring around April or May 2015. Mr. Richardson said they might be able to see frog eggs as soon as the ice thawed, but Mr. West could make that determination.

Mr. Cross asked if they could put the stipulation on the as built plan and Mr. Richardson said they could or they could amend the plan. Mr. Pare said Mr. West also might have a memory of the site from his previous report on the abutting Watson and Mathes properties.

*Jack Pare moved that proposal by Sharon Allie and Gurubhai Khalsa for a lot line adjustment and a 2-lot subdivision off Fox Point Road, south of Old Post Road, Tax Map 11, Lots 21 and 22 was **substantially complete**. Mike Marconi seconded the motion. The motion was **passed** with all in favor.*

Chair Hebert said he still wanted to hear an official recommendation from the Conservation Commission. Chair Hebert continued the hearing to January 26, 2015.

B) Proposal by the **Historic District Commission** to erect a freestanding sign at the corner of Nimble Hill Road and Little Bay Road.

Newington Historic District Commissioner, Paul Pelletier stated they that the sign proposal would be for the public good. Chair Hebert said there would be a safety problem if the sign blocked the view of traffic. Mr. Pelletier said he spoke with the chief of police and would also speak with the Board of Selectmen to determine placement so it would not obscure traffic.

Mr. Morgan said ordinarily the Board of Selectmen would determine the placement, but the Selectmen asked the Planning Board to do the review. Ms. Lamson said the cemetery abutted the corner and the cemetery trustees had not met to review the sign and give comment. Historic District Commissioner, Cindy Gunn asked if there was anything the Board would not approve and Chair Hebert said the meeting was for the public to make recommendations to the Selectmen, but he still needed to know the exact location.

Discussion ensued regarding possible locations. Mr. Pelletier said the Board could make a condition on the placement.

Mr. Cross said he was also concerned with the appearance and that it look natural in its setting, similar to the sign at the school, the fire station, and the Town Hall and not like a billboard. He said the sample shown looked more like a commercial

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directional sign. Mr. Pelletier said the Library and the Historic District Commission agreed to collaborate to minimize the number of signs and the sign was designed and sized to be comparable with others at the Fire station and Town Hall.

Mr. Richardson said he thought the Historic District sign and the Library announcements were too loud and clashed. Mr. Pelletier asked if aesthetics was the purview of the board. Ms. Lamson agreed that they needed to improve the lettering. Mr. Cross said the sign could be lower if separated. Chair Hebert took a poll and Board members said they were okay with the upper end, but not the lower portion. Mr. Pare said the Library did need to get rid of the unattractive plastic sandwich board. Chair Hebert said most patrons followed Library events by going directly to the library or online and they would not drive up the road to read events.

Ms. Lamson added that she and Ms. Dorene Stern did the beautification plantings around town and vehicles coming up Little Bay Road or Nimble Hill Road went fast and were not attentive. She said it was a dangerous corner and they needed to consider the distraction of a sign on the corner. Mr. Richardson agreed that the maple tree would block the view of the tree and it should not be placed near the road.

Ms. Lamson asked if would the Board would like to hear from the Cemetery Trustees and Chair Hebert said it should not become a political issue. Chair Hebert said they couldn't put posts in the frozen ground now anyhow, but they could have Altus Engineering review the placement with Mr. Morgan and come back Jan 26, 2015.

3) Public Hearing:

A) Proposed amendment to the **Zoning Ordinance**

Mr. Morgan said a new State statute required that abutters in the Office and Commercial Zones be notified of any changes to the Zoning Ordinance. He said the changes in the notice were numbered slightly different than what was on the agenda.

Attorney Alec McEachren, representing Great Bay Services who owned property at 261 Woodbury Avenue in the Office Zone. He said Article 5, Section 2B, addressed the deletion of facilities to treat the developmentally disabled. He said Great Bay Services had been a member of the community for over 60 years. He said the original schools mission had changed and they now provided adult day service to 80 clients and 20 residents. He said they were concerned because it the Ordinance change appeared to be directed at them, suggesting the Town didn't want them and they wanted to know why. He said the Ordinance change would render Great Bay as nonconforming and would force them to obtain a variance any time they proposed a change. He said it had been public knowledge that there had been potential for a sale to their abutter, but the sale fell through and currently they had no plan to sell.

Chair Hebert said it was correct that they might have to get a variance if they proposed any changes, but the Board was not saying don't want. He said the Ordinance change was in response Federal laws that allowed large groups to practice their beliefs wherever gatherings were allowed, and the change was not directed at Great Bay. Mr.

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Pare said it was a wake up call when they received a proposal for a place of worship with a children's nursery in the Office Zone across the road from potential industrial hazards. Mr. Cross said the industrial uses with safety hazards in the nearby area that could expose people to chemicals and explosions so they were concerned with not encouraging people who stay overnight. Chair Hebert clarified that meant places where people spent the night without means of evacuating independently. Mr. Pare added that the Minutes of the meetings noted that Great Bay was grand fathered.

Discussion ensued regarding evacuations risks in the case of an industrial accident. Ms. Dawn Lewis, Director of Great Bay Services said Great Bay Services was there long before the industrial use, but their facility had an approved evacuation plan just as any hospital would have, whereas a conference center or office with handicapped people might not. She said if they were concerned for safety, they could say they shouldn't have office use near industrial use at all..

Mr. Richardson said the Board was trying to solve the zoning problem they were aware of and the evacuation they were talking about was a little different considering the Newington Energy plant had colorless and odorless bromide storage containers. Ms. Lewis said their evacuation plan was governed by the State for fires, explosions and noxious gases as well as hurricanes and tornados. Chair Hebert said with bromide there would be no surviving and they couldn't fault the Board for trying to protect people. He said they couldn't spot zone so they had to look at the entire Office Zone, but they never targeted Great Bay Services. Board of Selectman representative, Rick Stern said the idea was more to protect from expansion, not existing facilities.

Mr. Rich Swietek, an employee of Great Bay worker asked whether it would be a day or nighttime evacuation and what the timeline would be. Chair Hebert said it could be anytime and there wouldn't be anyone with a stopwatch. wouldn't want to allow any more gatherings than others. Mr. Richardson said it didn't matter whether people were athletes or disabled, the idea was to get as many large gatherings out of the area as possible. Chair Hebert said they didn't want anyone hurt and evacuating someone waiting for an attendant to move them from a facility would be slower than people who were able to respond to an alarm independently.

Ms. Lewis said she was concerned about continuing what they did there. She said she was the voice of 85 people with limited understanding and 100's and 1000's of families since 1983 and she was concerned that they would need variance approval to make any changes. Chair Hebert recommended that Attorney McEachren speak with town counsel, Attorney John Ratigan. He said they might have to go before the ZBA if they wanted to expand, but he couldn't imagine there would be any objections.

Mr. David Choate of Colliers International said places of worship were not mentioned in the Ordinance changes. He said Great Bay Services abutted Wilcox Industries, the buffet restaurant, and the bank and he disagreed with their interpretation. Mr. Cross said Great Bay Services was grand fathered, but the Ordinance change had to apply all the way down from the Industrial and Waterfront Industrial Zones between Shattuck Way and the Spaulding Turnpike. Mr. Choate said the change would also create a limited use for the property and make it difficult to find a buyer. He said they should have been invited to the discussion. Mr. Morgan said abutters were notified.

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Mr. Choate asked what the next process was and Mr. Morgan said they would close the public hearing, either revise, vote for or against it and if they were for it they would send it to Town Meeting for approval.

Mr. Richardson asked if they could continue the hearing on this matter until they sought an opinion regarding facilities for the developmentally disabled from Town counsel and Chair Hebert said they could. Chair Hebert said they could continue the hearing to Thursday, January 8, 2015.

The Board reviewed the proposed Amendments to the Ordinance as listed under items 1-7 in the Public Notice.

*Vice-Chair Marconi moved to **recommend** the change of wording from “continuous” to “contiguous” under **Table VI-1 in Article II** and in the footnote as written under item A1 in the Public Notice. Rick Stern seconded the motion and all were in favor.*

The Board agreed to send item A2 of the Public Notice to Amend Article V Section 2B that lists permitted uses in the Office Zone to another public hearing in January 8, 2015. Mr. Morgan said the Board voted in favor of the amendment at their November 24, 2014 meeting, but were required to have another public hearing because of the changes. Chair Hebert said everything that was removed from principal uses permitted was to go to Article V Section 3B, including a revision that would add the developmentally disabled.

*Chris Cross moved to **recommend** going to another public hearing to recommend the amendments as discussed to **Article V Section 2B and Section 3B**. Peggy Lamson seconded the motion and all in were in favor.*

Discussion of Article X, Section 4B(6) ensued. Mr. Richardson said the wording in the Public Notice was slightly different than they had discussed last time, but it was cleaner. Chair Hebert said he thought they had originally thought they should strike out all the variations and just use the term “access ways”.

*Mike Marconi moved to **recommend** the amendment of **Article X** by replacing Section 4B(6) as discussed and written under item “A5” of the Public Notice. Rick Stern seconded the motion and all were in favor.*

The Board discussed the Article X Section 5 – Minimum Lot Size Requirements. Mr. Morgan said the changes were to address duplexes. Chair Hebert added that it was to be sure residents had sufficient living space around their homes. Discussion ensued regarding the wording for the number of dwelling units versus the number of families in a dwelling unit. Mr. Morgan said the dwellings could be for individuals and not families, but Article 4 did specify that there was only to be one principal dwelling per lot. Chair Hebert said they should use the term “two-family dwelling” as used elsewhere to be consistent.

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*Mike Marconi moved to **recommend** the amendment to **Article X, Section 5 – Minimum Lot Size Requirements** go to Town Meeting as worded in the Public Notice. Justin Richardson seconded the motion and all were in favor.*

Discussion ensued regarding amendments to Table VI-1 of the Ordinance as written under item 7 of the Public Notice. Mr. Morgan said the changes went back to their October meeting discussion to avoid strangely shaped “pork chop” lots. He said everyone was not in favor, but he was still told to put the item in the public hearing for further discussion.

Mr. Cross said people understood the road frontage requirements and they needed to keep it simple, without ambiguity and yet New England was full of odd shaped lots that were not on grids, based on terrain and old cart paths. Chair Hebert recommended they were not ready to bring the item forward to Town Meeting. Chair Hebert said he would be willing to keep the amendments as discussed earlier, but recommended skipping lot width and lot depth columns.

*Mr. Cross **recommended** the amendment on minimum setbacks in **Table VI-1** as written on item A7 of the Public Notice go to Town Meeting. Mike Marconi seconded the motion and all were in favor.*

*Justin Richardson moved that the board **not recommend** the amendment to lot width and depth **Table VI-1** as written on item A7 of the Public Notice. Mike Marconi seconded the motion and all were in favor.*

B) Proposed amendments to the **Subdivision Regulations**

*Chris Cross recommended that the Board **take no action** on **3C(1) Zoning Box** as listed under item B1 of the Public Notice. Mike Marconi seconded the motion and all were in favor.*

Mr. Morgan said he was concerned that the “form factor” modeled after Newbury, New Hampshire’s form factor subdivision regulations would be too complicated and might overwhelm the average citizen. Mr. Cross said it was well written with a lot of design recommendations, but there were no enforceable numbers for the subdivision regulations and might cause speculation and arguments between Board members and developers. Chair Hebert said it made good points, but he would like to see something simpler.

Mr. Richardson said the current regulations had no power to do anything because the subdivision regulations said the Board had to approve applications unless there was a threat to the public safety or it violated the Zoning Ordinance. He said a threat to the public safety was sometimes difficult to quantify, but thought many developments were too intense or didn’t make sense, and there might be some value in providing a tool. Chair Hebert agreed that it might be better to have something than

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nothing. Mr. Richardson said they could also waive the subdivision regulations if they didn't make sense. Mr. Stern said he thought the form factor would give the regulations some teeth and Vice-Chair Marconi and Ms. Lamson agreed.

*Vice-Chair Marconi moved to **recommend** the adoption of the "Form Factor" under Section 5 as written under item "B2" of the Public Notice. Rick Stern seconded the motion.*

Mr. Cross said they should change the reference to "access" on the bottom line of page 4 of the Public Notice. Mr. Richardson said State law says that frontage has to be frontage to the structure. Mr. Morgan suggested deleting that sentence.

Mr. Richardson said they should also take out the reference to "lakes" and Mr. Pare said it should be changed to "shoreline". Mr. Morgan said they should delete the whole sentence that referred to an island on a lake.

*Mike Marconi **amended** the motion as discussed. Rick Stern seconded the motion and the motion passed with Chris Cross opposing.*

*Justin Richardson moved to **adopt** a new definition to **Section 2 of the Subdivision Regulations** for the term **Form Factor** as written on item 3 of the Public Notice. Mike Chair Marconi the motion with Jack Pare's recommendation that the last sentence should read: "/ by A". The motion passed unanimously with all in favor.*

Minutes: Mike Marconi moved to approve the Minutes for the November 24, 2014 meeting with corrections. Peggy Lamson seconded, and all were in favor.

Discussions:

Chair Hebert said Mr. Morgan had written a memo of recommendations in the Board meeting packet regarding shared driveways. keeps coming up, especially in regards to condominium developments. Mr. Morgan said it had only been a recommendation for the Belanger property. Chair Hebert said he understood he was trying to do the right thing regarding wetlands impacts, but he was concerned with unintended consequences where the Town would get thrown under the bus as a result land use regulations that were less than desirable. Mr. Morgan said he had been asked to write a memo of recommendations for meetings and had learned from past experience that there were times that he had to speak up. Chair Hebert said he wanted to approve the memos before they went out.

Chair Hebert said the land use regulations still needed work and wondered if throwing them were throwing the baby out with the bathwater. Mr. Morgan agreed, but said many of the subdivision regulations were written during President Eisenhower's era and should be updated. Chair Hebert said the Board had worked hard, but there might be more that they needed to do.

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Announcement: Ms. Lamson informed the Board that Chairman of the Pease Development Authority's Board of Directors, Art Nickless was in hospice. Ms. Lamson suggested that the Board send a fruit basket or donation to the family from the Planning Board.

Adjournment: *Mike Marconi motioned to adjourn and Peggy Lamson seconded. All were in favor and meeting adjourned at 9:45 p.m.*

Next Meeting: Monday, January 12, 2015

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