

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, January 14, 2019

- Call to Order:** Chair Denis Hebert called the January 14, 2019 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Jim Weiner; and Peter Welch; Alternate Erika Mantz; Board of Selectmen's Representative, Ken Latchaw; Planner, Gerald Coogan and Jane Kendall, Recorder
- Public Guests:** Bernie Christopher; Jim Teetzle, Wilcox Industries CEO; Ann Beebe; Christine and Todd Gagliano; Norm LeClerc; Jeff Lundgren; Sandy Sweeney; John Wendell, Alex Ross from Ross Engineering; Board of Selectmen Mike Marconi

Before the discussions began, Chair Hebert presented a plaque of gratitude to former Board member, Bernie Christopher for his years of service.

I) Preliminary Consultations:

- A) Proposal by **Wilcox Industries** regarding a four-story expansion at their property located at 25 Piscataqua Drive, Tax Map 27, Lot 22.

Jim Teetzle, CEO of Wilcox presented preliminary plans to tear down their single-story executive offices and engineering space and replace it with a four-story building to add more capacity for their machine shop. He said the first floor would be a machine shop, storage and parking, the second floor would have clean rooms, a cafeteria and a health club, and the engineers would move to the fourth floor. Mr. Teetzle said JSM Engineering was working on the plans to utilize the same footprint with no basement.

Mr. Teetzle said there would be six employees in the machine shop, and 45 engineers with an expectation to hire another 20-25 in the next three years. He said the cafeteria, the health club, the machine shop and the storage would not be part of the calculation for office or manufacturing space parking. Mr. Teetzle said they ran three shifts with 300 employees so the adequate parking with 271 parking spaces and add another 26 with angled parking.

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Mr. Teetzle said that Northeast Credit Union had purchased the abutting property in front of the building and they might ask for a variance to do a joint venture for a parking garage where the former Great Bay Services' dormitory was located. He said NE Credit Union was also talking about putting in an office building at the former Family Buffet site.

Board member, Jim Weiner said a concern would be with fire department being able to reach a higher building. Mr. Teetzle said he understood, and they would address the issue during the review.

Board member, Peter Welch asked about parking outside of the existing fence. Mr. Teetzle said they talked to their abutter and they planned on hardening the fence on the property line.

Vice-Chair Cross asked if they anticipated any special tests or State permits. Mr. Teetzle replied that they would need to do soil samples to be sure that the new foundation could support a four-story building. He added that they would stay away from processes that required licensing and plating.

Chair Hebert said he needed to consider the number of parking based on square footage and the type of use. Mr. Teetzle replied that he was aware of the requirements, but Wilcox Industries never met the requirement, but they didn't have that many employees. Chair Hebert responded that he didn't have a problem with their use, but the Board had to consider what could be done with the building once their use ceased.

Town Planner, Gerald Coogan commented that it would be nice if there was a unified architectural approach as a gateway into the Shattuck Way. Mr. Teetzle replied that was part of their plan and that they were also considering sidewalks and old antique street lights in corridor from the corner of Piscataqua and Woodbury to the end of the lot, depending what NE Credit Union developed.

Board of Selectmen, Mike Marconi asked when they anticipated the completion of Wilcox Way. Mr. Teetzle replied that they had run into issues with the new owners when they purchased the property, but they had since resolved the issues and anticipated the road being complete by July 2019.

Mr. Teetzle said they anticipated returning to the Board with site plans in the next month as they would like to start construction in June 2019.

B) Proposal by John Wendell, for a two-lot subdivision regarding property located at **188 Little Bay Road, Tax Map 22, Lot 13**

Chair Hebert recused himself as a resident on Gundalow Landing and Vice-Chair Cross ran this item.

Mr. Coogan stated that this was a minor subdivision application despite being highly visible and on the water.

The applicant John Wendell stated that he and his wife had purchased former resident, Gail and Jack Pare's property.

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Mr. Wendell said they planned on building a house on the five-acre subdivision and possibly living there while renovating and possibly renting the older home that was built in 1760 and 1850.

Mr. Wendell stated that he hoped to retain the stately character of the property by splitting off from the existing long driveway rather than creating another curb cut onto Little Bay Road.

Alex Ross with Ross Engineering passed out aerials of the 11.5-acre lot, where the existing house would be on 6.5 acres and a new lot of 5 acres would be subdivided.

Mr. Ross stated that the high tide line on the northwest side of the property had been delineated by soil scientist, Jim Gove who reported that there were no internal wetlands. Mr. Weiner commented that his wife grew up across the street and skated in the yard as a child. Mr. Ross agreed that the yard did not have the best draining soil, but it was not a vernal pool, so it was not classified as wet, hydric soil.

Mr. Ross stated that the existing house had its own well and a leach field that seemed to be operational. He said they did test pits with the County inspector and passed. Mr. Welch asked if there was enough area for another leach field on the property if the existing septic failed and Mr. Ross said there was, and they would work with the State regarding septic placement.

Mr. Ross showed the area for the proposed split driveway. Mr. Weiner stated that the Board no longer allowed shared driveways and that there was enough frontage for another curb cut. Mr. Ross replied that he thought shared driveways could be reviewed on a case by case basis. Mr. Coogan stated that #3 and #8 under Driveway Regulations stated that more than one driveway entrance per lot was not allowed, but it didn't appear to be an ordinance, so he thought that the Board could waive the regulation. and #8.

Board of Selectmen's representative, Ken Latchaw commented that it would not make sense to put down another 500' of impervious asphalt near the shoreline, but that the property owners could build a second impervious drive adjacent to the existing drive or create a homeowner's association agreement to address maintenance of the driveway as a development on Fox Point Road had done.

Mr. Coogan and Mr. Weiner both commented that the issue was to avoid disagreement among property owners. Vice-Chair Cross stated that he thought shared driveways were in violation of the Ordinance and it would be up to the applicant to address with the Zoning Board of Adjustment, but Mr. Coogan said he could only find a ruling in the Driveway Regulations and not in the Ordinance, so he thought that the Board had the authority to waive their own regulations. Vice-Chair Cross said he thought restricting shared driveways was in the Ordinance as well and asked Mr. Coogan to check before they requested a waiver or determined that they needed to go before the ZBA.

Vice-Chair Cross noted that the driveways also needed to be 30 feet apart.

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Mr. Welch suggested that the applicant propose language to address potential issues and Mr. Wendall agreed that it was in his interest to create covenants in the deeds.

Mr. Coogan asked if a shoreline protection permit would be needed to build an additional house. Mr. Ross replied that the shoreline buffer was 200 feet from the high tide and the shoreline permit required proof that the area was protected. He said the shoreline was elevated with a sharp drop to Great Bay, and they would stay within the Town's 100-foot setback. Mr. Coogan replied that all State permits would need to be submitted and recommended by the Conservation Commission before the application was presented to the Planning Board.

Vice-Chair Cross commented that they would need to be sure that water would not flow onto abutting lots from the large depressed area, and suggested a catch basin or swale to drain the water into a culvert under the driveway to go into the pre-tidal area. Mr. Wendell replied that the water currently drained to the south, but he would put in a culvert to drain toward drive as was former owner, Jack Pare's plan. Mr. Welch expressed concern that the culvert would then drain to the other lot. Vice-Chair Cross responded that they would need to show an easement that would allow drainage to the other side.

Vice-Chair Cross asked if they were planning on any additional structures. Mr. Wendell said they were not, but they would submit any changes at the time of the application.

Vice-Chair Cross stated that the Town's subdivision regulations required that all utilities be placed underground from the frontage for each lot. Mr. Wendell stated that Eversource owned poles three quarters of the way down on the property, so they would prefer to trench once and then split the utilities off from there. Mr. Ross added that they might request an easement across the additional lot if they requested a waiver for a shared drive. Mr. Welch responded that they would also need legal language in the deed as to who would assume responsibility for what.

Vice-Chair Cross expressed concern that there would be a problem if there was a utility shutoff for either property. Mr. Wendell stated that he was just looking to share the trench.

Mr. Welch asked if they would bring in public water and Mr. Wendell replied that he thought they would, and he would confirm with his wife who was not present. Mr. Coogan informed the applicant that a public water connection was a subdivision regulation requirement. Vice-Chair Cross added that it would be the applicant choice on whether to use their well water or public water once they brought the line in.

Mr. Ross stated that they had talked with the City of Portsmouth Water Department and were told that the eight-inch cast iron line would be enough to serve both lots. Vice-Chair Cross pointed out that a letter of confirmation from the Portsmouth Water Department was required.

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Mr. Weiner asked if it would be possible for the main house to share well water with the second lot. Mr. Wendell replied that the well was currently being tested once a year by the Federal government and he wouldn't want to share it.

Acting Chair Cross opened the discussion to the public for comments.

Denis Hebert of Gundalow Landing said he was concerned with contaminants flowing through town from Pease and that clean wells today might not be clean water tomorrow. Mr. Wendell said he would be putting new filters in everything.

Mr. Hebert said he liked the proposal and asked where second house would be placed. Mr. Wendell showed the building envelope and proposed split drive. Chair Hebert asked that the applicant identify the second septic system because of concern where water perked up in other areas.

Board of Selectmen Marconi asked how old the septic system was for the main house. Mr. Wendell replied that the two thousand-gallon tanks had been pumped and the Pares had the septic repaired before he bought the house.

Chair Hebert returned to the table to assume chairing the meeting at the end of this item.

II) **New Business:**

A) Proposed Residential District "R2" Buffer Zoning Amendment for **Patterson Lane**

Chair Hebert announced that this was only a work session discussion with the residents of Patterson Lane to review a proposed 200-foot residential buffer zone amendment. Chair Hebert said he put some ideas together about future development between the waterfront industrial and residential areas, and Mr. Coogan sent a letter inviting the residents of Patterson Lane to the discussion.

Chair Hebert stated that he had originally talked about a 200-foot no-build buffer on the north side of Patterson Lane, but Town legal counsel determined that it had to be done on all sides or it would appear to be disadvantaging the property owners on that side, so it had to be all sides.

Chair Hebert said years before former Board members had zoned the lot to the north of Patterson Lane as residential to prevent further industrial development, but now that the lot had been sold, he was concerned that further residential development could occur close to the industrial area which the Board didn't think was a good idea.

Mr. Coogan added that the residential area would be changed to Residential 2 (R2) and no duplexes, no accessory dwelling units (ADU), no Bed and Breakfast guest establishments would be allowed, only single-family dwellings.

Discussion ensued regarding potential developments in the area and restrictions from the gas pipeline. Chair Hebert stated that the Board could get a proposal in the

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coming year and unless they put a zoning change on the books now, the Board could do nothing about it.

Jeff Lundgren of Patterson Lane stated that he was opposed with increasing the Industrial Zone as he would prefer to not lose residential area on Patterson lane. Chair Hebert explained that they were trying to protect the residential area from industrial use, but they had to respect laws by establishing the same with industrial area with a buffer on both sides.

Sandra Sweeney of Patterson Lane said she would rather have more residential development than industrial on Patterson Lane.

Ann Beebe of Patterson Lane stated that she didn't approve of increasing the Waterfront Industrial Zone and she thought there already was a 400-foot residential buffer between her house lot and Riverside Pickering's site. She said there also was a berm on the abutting industrial lot so there was no need for another buffer. Chair Hebert replied that there was no buffer between Keith Frizzell's abutting residential lot and Riverside Pickering, however.

Mr. Latchaw said he thought there was going to be a buffer on the Riverside Pickering property, but nothing could be done on the residential lot. Chair Hebert replied that originally Keith Frizzell was going to merge the two lots to meet the setbacks for an expansion, but he unmerged them to sell one lot to Riverside Pickering Marine and left the other residential. He said it was a 471-foot-wide lot and the Board was proposing to create a 200-foot buffer between the residential lot and Riverside Pickering Marine so that no more residential homes could be built between Riverside Pickering and the existing residential zone.

Norm Leclerc of Patterson Lane asked why they couldn't leave the residential lot as a buffer. Chair Hebert replied that there would be 271 foot remaining from the 471-foot-wide lot that could still be developed as industrial on Frizzell's lot. Mr. LeClerc responded that he didn't think much could be done with a 271-foot-wide lot. Mr. Weiner agreed that 271 feet was not a big space for industrial development, but perhaps Riverside Pickering Marine might want to buy the lot to expand or they could opt to create another dead zone.

Vice-Chair Cross noted that there was also a clear-cut laydown area of the last 100 feet to lay pipe down with a 50-foot setback, which would always be field.

Christine Gagliano of Patterson Lane asked for clarification on the buffer zone. Vice-Chair Cross replied that it would be a 200 foot no cut, no build buffer, but more trees or shrubs could be added.

Mr. Weiner added that this proposal put in a buffer where there was none. He said the 200' buffer was as far as they could go because the pipeline had the right to clear-cut the remaining 200 feet. Mr. Welch noted that the setback was 15 feet on one side and 35 feet on the other.

Mr. Lundgren expressed concern that the buffer could be shrunk in the future. Chair Hebert acknowledged that any zone could be rezoned by town vote.

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Mr. Lundgren asked if the buffer would encroach on Sprague's loading docks? Chair Hebert replied that the buffer would only prevent further expansion.

Todd Gagliano of Patterson Lane asked what could be built by the gas line. Chair Hebert said currently 400 feet of the parcel was zoned residential, and the rest was industrial. Mr. Weiner said nothing could be built in the buffer if the proposal was passed.

Mr. Gagliano said it sounded as if Ms. Beebe wouldn't be happy with another industrial property next to her property. Chair Hebert said there wouldn't be anything within 200 feet because of the buffer. Mr. Gagliano said he understood, but it sounded as if residents would prefer having more residents abutting them than industrial use. Ms. Beebe agreed.

Chair Hebert asked if there was anyone in Frizzell's house on the abutting residential lot. Mr. Gagliano said someone was renting the house.

Chair Hebert stated that the Board wouldn't recommend the proposal if Patterson Lane residents didn't support it. Mr. LeClerc stated that the general attitude of Patterson Lane residents was that they don't want the zoning amendment.

Chair Hebert pointed out that there would be no buffer for the new people in the newly developed abutting residential lots, however. Mr. Welch agreed that the idea of the buffer was to protect new residents as well as existing residents from industrial encroachment.

Ms. Sweeney said she didn't have a buffer because the railroad line ran right past her house, so a buffer wouldn't help her.

Mr. Lundgren asked if the decision could be tabled. Mr. Coogan stated that a notice for a public hearing would need to be posted for Monday, January 28, 2019 to decide whether to put the proposal on the ballot or not. Chair Hebert added that the Board had to get it right because rezoning could affect property values and property owners could challenge the change.

(Mr. Coogan left at this point at 8:48 p.m.)

B) 2019 Zoning Amendments: Ballot Language Review

Board members discussed the language of zoning amendments and made the following recommendations.

Zoning Amendment #1: **Article II Definitions – Warehouse:** Add new definition:

Mr. Welch suggested adding the words "enclosed structure". Chair Hebert said could have open warehousing with just a roof. Discussion ensued regarding whether a warehouse needed to be enclosed or not. Mr. Latchaw stated that he thought an enclosed building would prohibit lumber yards. Mr. Welch responded that a fenced yard would be considered an enclosure. Vice-Chair Cross expressed concern that an open

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area allow open bulk storage. Chair Hebert and Mr. Latchaw said containers from container ship wouldn't be stored under a structure, but Chair Hebert said this was the definition of a warehouse.

*Chris Cross moved to recommend an administrative change to Article II Definitions – to say: **Warehouse** - "An enclosed structure or room for the storage of merchandise or commodities or other items related to a principal use in the zoning district. This does not include a self-storage facility or the like." Peter Welch second and the motion passed 4-1 with Ken Latchaw opposing.*

Zoning Amendment #2: **Article II Definitions – Self-storage** – Add new definition:

Chair Hebert noted that a small business owner might store items related to their business and asked if the word private should be deleted. Discussion ensued noting that the second sentence included personal belongings. Board members decided that a distinction was not necessary.

Self-storage – *Building that are used for private storage. Typically, a single self-storage facility will contain a variety of individual units that are rented out for storing personal belongings."*

Zoning Amendment #3: **Delete Article VIII – Air Pollution Mitigation**

Vice-Chair Cross expressed concern that the term "preempts" did not adequately explain that the EPA determined that Air Pollution Mitigation was no longer valid in Newington.

Mr. Weiner moved to recommend the administrative change to say: **Air Pollution Mitigation** – The EPA has determined that the ozone quality in the Seacoast region has improved to an attainment level and the penalty is no longer justified." Peter Welch seconded, and all were in favor.

Zoning Amendment #4: **Article III, Section 1 – Residential "R" – Description and Purpose** –

Board members agreed to change the last sentence to: "Any future development which does not perform a neighborhood function is not allowed. ~~May require conditions of approval imposed by the Planning Board on a case-by-case basis.~~

Zoning Amendment #6: **Article IV General Provisions: Section 13 – Existing Employee residences:**

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Board members requested administrative correction of omitted word in last sentence to say: *“If the resident is no longer an employee of the business, the building shall no longer be used as their residence”*

Zoning Amendment #7, **Article XVI – Small Wind Energy Systems, Section 2, Procedure A – Location:** Add the following new language: “except in the Residential District “R” zone.” Now reads: Small wind energy systems and MET towers are an accessory use that is permitted in all zoning districts *except in the Residential District “R” zone.*

Chair Hebert stated that the change should be listed in all zones, but they were out of time so this change that was Mandated by the State would suffice for now.

Zoning Amendment #8, **Article IX, Wetlands Overlay District:** The amendments include updated definition of Vernal Pool, Delineation Requirements, clarification to Driveways by Conditional Use Permit, change in the size of the resource and clarification to Section 7 – Structural Setbacks, the category of “All Wetlands” identifies four streams relative to their relationship to surface waters. The intent of the proposed amendment is for clarification.

Mr. Latchaw stated that he could not understand the explanation for the changes to setbacks. He said he read the 2005 wetlands report and found inconsistencies regarding the prime wetlands listed by the State that did not include Newington’s prime wetlands. Mr. Latchaw said he called Town wetlands consultant, Mark West who said Newington’s list of prime wetlands were either not send to Concord or lost in Concord. Mr. Latchaw said Mr. West didn’t think it was a problem, but Mr. Latchaw felt the prime wetlands needed to be reviewed and approved by the State, and therefore did not support the recommendation for an update to the Wetlands Overlay District.

Chair Hebert said even if Concord didn’t have a copy of Newington’s wetlands, the town took a vote, so it was law. Mr. Latchaw said the Town vote to accept the prime wetlands in 2005 was 140-111. Mr. Weiner agreed that prime wetlands should be cleaned up and sent to Concord.

Mr. Weiner, Conservation Commission Co-Chair responded that the Mr. West had made recommendations to clarify vague definitions of wetlands and setbacks, including the term contiguous as a significant body of water that lead to Great Bay. Mr. Weiner said the Town already had a listing of bodies of water that met the definition of prime wetlands and had also listed four contiguous streams that lead directly to Great Bay, and now the Commission was hiring Mr. West to identify other significant wetlands. Mr. Latchaw asked that the Commission have Mr. West clarify the prime wetlands and complete the mapping before the Planning Board passed the Wetlands Overlay District.

Chair Hebert said he asked Mr. Coogan to delay a final decision until Mr. West could come in to explain the proposal and the situation with the prime wetlands better. Chair

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Hebert said he did recall that the proposed changes would be less restrictive except for the 50-foot setback from wetlands other than prime, contiguous and vernal.

Chair Hebert read the Wetlands Ordinance chart on page Z26 from left to right. Mr. Latchaw said he still didn't understand the chart or Mr. Coogan's email explanation from Mr. West and wanted further clarification. Mr. Latchaw said he didn't like the wording and wanted it reworded because he didn't think the language referred to the chart. Chair Hebert responded that Mr. West presented these changes as a start changes to identify streams because it was vague before. He added that the Board had provided longer explanations to Ordinance changes in the past and they found that everyone objected so they decided to go back to being brief.

C) PDA Stormwater Discharge Permits

Mr. Latchaw announced that Pease Development Authority (PDA) lost their challenge against the Clean Water Act and the Conservation Law Foundation (CLF) won the case that would require the PDA to apply for the same stormwater discharge permits as anyone else. Mr. Latchaw wondered if the Town could demand that the PDA clean their ditches up. Chair Hebert recommended calling CLF. Vice-Chair Cross recommended calling Newington's PDA representative, Margaret Lamson, who had also service on the Conservation Commission.

III) Old Business

A) Legal information regarding **Sea-3, LLC Approval Condition #3**

Chair Hebert stated that Town Counsel, Attorney John Ratigan reviewed an informational notice from Attorney Alec MacEachren, legal counsel for Sea-3 regarding Condition #3 regarding Sea-3's equipment and the leasing of Boston and Maine and Pan Am's property. No action was required.

B) **Master Plan: Update on**

Chair Hebert announced that there would be a meeting on Tuesday, January 29, 2019 at 3 p.m. to go over existing and future land use, and Theresa Walker with Rockingham Planning Commission would go over updates.

Vice-Chair Cross stated that he would provide a printout of everything that the subcommittee had done.

IV) Additional Discussions

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Chair Hebert referenced correspondence from Newington’s Pease Development Authority representative, Margaret Lamson regarding an article on housing in a shopping mall. Chair Hebert commented that the Board needed to bear in mind that there could be problems with abutting mixed uses and that once a commercial zone was changed to residential, it seldom reverts back to commercial.

Chair Hebert announced that Lonzo Biologic declared that their expansion that would involve an increase of 3,000 jobs was a regional impact due to impacts to traffic on Route-33 and the north entrance to Pease from the Spaulding Turnpike Route-16. He said their site review was on the City of Portsmouth Planning Board agenda for January 17, 2019.

Jim Weiner moved to nominate Erika Mantz as full Board member. Ms. Mantz agreed, and Peter Welch seconded the motion. All were in favor.

Chair Hebert said he was still looking for another member and a couple of alternates.

Minutes: Chris Cross *moved to approve the Minutes for the December 17, 2019 meeting with corrections as noted. Peter Welch seconded, and all were in favor.*

Adjournment: *Peter Welch moved to adjourn the meeting. Erika Mantz seconded the motion and the meeting adjourned at 10:45 p.m.*

Next Meeting: Monday, January 28, 2018

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

These Minutes were approved and adopted at the January 28, 2019 Planning Board Meeting.