

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, December 11, 2017

- Call to Order:** Chair Denis Hebert called the December 11, 2017 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Member: Jim Weiner; Alternate Members: Ken Latchaw; Rick Stern and Peter Welch; Board of Selectmen's Representative, Mike Marconi; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Bernie Christopher
- Public Guests:** Attorney Suzanne Brunelle representing Bernie and Phyl's Furniture; Larry Rubin; Scott Lawler, PE with Norway Plains Associates; Gary Thomas, General Contractor; Bob Keating with Little Bay Lobster; Jennifer Cole; Paul Reardon; Tim Walsh; Glenn Greenwood, Assistant Director with Rockingham Planning Commission

I) Public Hearings:

- A) Continuation of Site Review for proposal for a change of use to a furniture store by **Convertible Castle**, Inc. regarding property located at 30 Fox Run Road, Tax Map 26, Lot 2

Scott Lawler from Norway Plains Associates, Larry Rubin from Convertible Castle, LLC, Attorney Suzanne B and Scott? with? Sign returned before the Board to discuss updates to their site review for a change of use at the former Planet Fitness and Chuckee Cheese location in response to comments from the Board and Town engineering consultant, Eric Weinrieb with Altus Engineering. Mr. Lawler said they addressed Mr. Weinrieb's initial comments and agreed to follow up with the remaining eight comments as described in his letter of December 11, 2018 that was addressed to Mr. Coogan.

Mr. Lawler said they did not agree with Mr. Weinrieb's opinion that the existing dumpster enclosure was inadequate as it was screened from public view on three sides and there would be a new gate. Chair Hebert and the Board accepted the proposal.

Discussion continued regarding trucks entering the driveway and Mr. Lawler said they agreed to instruct company employed drivers with delivery trucks to reverse direction at the cul-de-sac at the end of Fox Run Road to make a right turn instead of a left turn, as well as post a sign restricting left turns.

Board member, Jim Weiner agreed that having worked for furniture company that company driven trucks were usually compliant, but suggested that the Town fine them if there

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was any violation. Chair Hebert replied that the turn at the cul-de-sac could be a condition of approval and that the Board could call the applicant back to the Board if there was a problem rather than imposing fines.

Mr. Lawler went on to say that they also talked with a landscape architect so that new plantings would not obstruct the sign. He said they would present their landscape plan to the Conservation Commission on Thursday.

Alternate Board member, Ken Latchaw suggested adding a small swale to alleviate water running down the shoulder. Mr. Lawler agreed that they could install a low point when grinding and regrading the parking lot. Chair Hebert suggested that sloping the driveway on both sides would help drain the water without a significant dip.

Regarding the lighting, Chair Hebert added a comment that he wanted to be sure that there was no glare for drivers from the light pole light closest to the highway.

Town Planner, Gerald Coogan said he and Mr. Weinrieb had discussed the bond agreement, which seemed reasonable.

Chair Hebert asked that they also address their request for waivers.

Mr. Lawler passed out a letter dated December 4, 2017 that stated that they were requesting a parking waiver and noted that they would rather paint the mediums rather than plant in them. Chair Hebert agreed that painting wouldn't require watering and would making plowing easier. Mr. Lawler said their plan would mimic the existing parking lot, but they also created three landscape islands.

Chair Hebert opened comment to public and there were no comments.

Mike Marconi moved to accept the parking lot planting waiver by Convertible Castle, Inc. regarding property located at 30 Fox Run Road, Tax Map 26, Lot 2. Chris Cross seconded the motion, and all were in favor.

Mr. Coogan passed out a proposal for a motion with a list of conditions that Chair Hebert had requested.

Jim Weiner moved to approve the change of use site plan for a furniture store by Convertible Castle, Inc. regarding property located at 30 Fox Run Road, Tax Map 26, Lot 2 with the following conditions:

- 1. That the applicant would address Altus Engineering's items 1-8 as listed in their letter of December 7, 2017*
- 2. That the applicant would return to the Planning Board after one year should the Planning Board determine that the traffic flow creates a safety issue to discuss upgrades to the site entrance within six months*
- 3. That the applicant would provide funds for third party engineering inspection*
- 4. That the applicant would deposit 100% of the total cost of landscaping costs in the amount of \$32,000 into escrow to be held for a period of two growing seasons to guarantee the survival of the landscaping installation.*
- 5. That the applicant would deposit 10% of the site work in the amount of \$30,000 into escrow to be released upon occupancy as a performance guarantee.*

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6. *That the applicant shall provide a Mylar suitable for recording at the Rockingham County Registry of Deeds with appropriate recording fees, with a separate fee to the Land Conservation Investment Program (LCHIP), made payable to Rockingham County Registry of Deeds, and three copies of the final plan as approved by the Newington Planning Board. The final plan shall reflect all changes required as part of the approval process.*
7. *That all final approvals by the Planning Board shall expire within two years from the date of approval, unless the Board grants an extension (see Section 23: Site Approval Expiration in Site Plan Review Regulations).*
8. *That construction is not to begin before final plans are approved and the Mylar is signed by the Newington Planning Board Chair.*

Rick Stern seconded the motion, and all were in favor.

Board of Selectmen's representative, Mike Marconi also asked that there be ongoing cleaning of culverts and Mr. Rubin agreed.

Discussion on signage ensued. Mr. Coogan stated that he had consulted with Town legal counsel, Attorney John Ratigan who agreed that they could retain the same amount of signage that Chuckee Cheese and Planet Fitness had on the building so long as it was in the same general location. Chair Hebert replied that he didn't agree with Attorney Ratigan and that he thought a redevelopment should follow the Ordinance and the applicant could request a variance if they wanted additional signage. Chair Hebert added that the Board also wanted to know if the sign would be an electronically illuminated or blinking. The sign vendor replied that it was not likely because there was not much traffic on Fox Run Road.

Chair Hebert stated that he thought the Board should add a condition that the applicant would present a sign proposal to Mr. Coogan for approval. Attorney Suzanne Brunelle commented that it was unusual for a Planning Board to review whether signage was compliant or not and to make it a condition of approval. Chair Hebert stated that signage was usually a part of submittal, but applicants did have the right to talk with the ZBA.

Mr. Coogan replied that the sign permit issued by the Town planner and could be handled administratively with the building inspector who could keep the Board informed.

B) Proposed 2018 Zoning Amendments:

Chair Hebert considered delaying this item to discuss the Master Plan before a brief recess, but Vice-Chair Cross suggested that they continue with the public hearing considering residents were in the audience.

Bob Keating of Little Bay Lobster, and Shattuck Way residents Jennifer Cole and Tim Walsh identified themselves as being present (Paul Reardon of Patterson Lane had left during the recess).

- 1) Amendment #1: Article II, Definitions Section 2 – List of Definitions, **Building Height:**

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Mr. Coogan pointed out that "a special exception could be granted by the Planning Board" had been added.

Discussion ensued on whether the measurement of a foundation would be at the base or at the top and how a taller foundation could affect the height. Vice-Chair Cross agreed that the definition was not based on a structure.

Board members agreed on the removal of the terms building, structure and wall.

Mr. Coogan pointed out that major changes would require another public hearing for approval. Chair Hebert replied that the changes would only be administrative and not major.

Ken Latchaw moved to bring Amendment #1: Article II, Definitions Section 2 – List of Definitions, Building Height to the town as a warrant article. Peter Welch seconded the motion, and all were in favor.

2) Amendment #2 Change of Uses to Article III, Zoning Districts Section 6 – **Waterfront Industrial and Commercial District**

Mr. Coogan read through a list of new additions and stated that the intent of the change was to identify uses that would be either appropriate or inappropriate for the Waterfront Industrial area.

Tim Walsh of 166A Shattuck Way expressed concern that residents in the area were not noted as a permitted use. Chair Hebert replied that mixed residential use was not part of the Commercial, Industrial and Waterfront Industrial Use due to safety considerations ever since zoning had been established, but that existing residential use in the area was grandfathered. Mr. Walsh asked what considerations would be allowed if a residential home in the area was destroyed by fire. Chair Hebert replied that the State allowed twelve months for a resident to rebuild after requesting a building permit.

Vice-Chair Cross commented that Newington's Ordinance stated that a resident would be allowed two years to rebuild. He added that part of the zoning clarification was to discourage a residential developer from enticing a denser population in the Industrial Zone.

Jim Weiner moved to bring Amendment #2 Change of Uses to Article III, Zoning Districts Section 6 – Waterfront Industrial and Commercial District to the town as a warrant article. Chris Cross seconded the motion. The motion passed 6-1 with Denis Hebert, Chris Cross, Jim Weiner, Ken Latchaw, Rick Stern and Peter Welch in favor and Mike Marconi opposing.

3) Amendment #3: Article XVII, Administration, Section 3 – **Building Permit Time Restrictions:**

Mr. Coogan informed the Board that Town counsel, Attorney John agreed that this amendment would apply to any building permit that had not been completed in ten years.

Mr. Welch asked if a cease and desist order would be issued and Mr. Coogan replied that a C&D order probably would be issued. Chair Hebert added that it would be up to the building inspector and that an applicant could request an extension for another year, but the building inspector would put them on notice.

Mr. Marconi commented that this Ordinance was common in other towns.

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Discussion ensued regarding the Ordinance that only allowed one residential structure per lot unless they were connected by a breezeway and that this amendment would apply to the building permit for both structures.

Chris Cross moved to bring Amendment #3: Article XVII, Administration, Section 3 – Building Permit Time Restrictions to the town as a warrant article. Peter Welch seconded, and all were in favor.

4) Amendment #4: Article IV, General Provisions adding new Section 11 – **Separate Septic Systems for Duplexes**

Mike Marconi moved to bring Amendment #4: Article IV, General Provisions adding new Section 11 – Separate Septic Systems for Duplexes to town as a warrant article. Jim Weiner seconded, and all were in favor.

5) Amendment #5: Article XVII – adding requirement for **Certified Foundation and Plat Plan:**

Mr. Coogan reported that Attorney Ratigan the recommended amendment to give the building inspector authority to require a certified foundation plan and a certified plat plan was standard.

Mr. Welch suggested striking out the foundation plan to give the building inspector more flexibility and Mr. Weiner and Mr. Marconi agreed.

Chair Hebert stated that the building inspector had requested both foundation and plat plans. Discussion ensued regarding the necessity of wording and interpretations of foundations and plat plans and Mr. Welch suggested “foundation location” plan”.

Peter Welch moved to bring Amendment #5: Article XVII – adding requirement for Certified Foundation Location Plan to town as a warrant article. Ken Latchaw seconded the motion.

Discussion continued. Chair Hebert stated that the building inspector’s request was so that he could be sure that setbacks would be shown on the foundation and plat plan. Mr. Latchaw commented that the distance of the foundation from the pins would be shown on a foundation plan, whereas a plat plan was costly and included extraneous information with the contours, driveway and septic.

Mr. Weiner expressed concern that the building inspector needed to identify setbacks from wetlands as well. Mr. Latchaw agreed that structures had to meet all setbacks, but noted that the building inspector was already aware of existing ordinances and regulations that required setbacks.

Mr. Latchaw added that every lot didn’t have all these variations, and some building permits were only for a garage. Chair Hebert agreed that both plans might not be necessary for every lot or permit, but the amendment was requested to give the building inspector the authority to request them when there was a concern. Mr. Stern suggested adding and/or rather than requiring both foundation and plat plans. Mr. Latchaw agreed that would work.

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Glenn Greenwood, Assistant Director at Rockingham Planning Commission (RPC) commented that he had heard the same discussion in four other communities and that the issue wasn't regarding clear regulations for subdivisions, but for redevelopments. He said it was important to note that the State had no definition of what a certified plan must entail. Mr. Greenwood went on to say that a certified foundation plan prepared by a licensed surveyor for under \$500 was less costly than a plan done by a licensed engineer.

Mr. Coogan added that an engineer usually subcontracted a surveyor to be sure the lot dimensions were correct. Mr. Greenwood added that was most likely because many licensed surveyors also had their wetlands certification. Mr. Welch added that the State's law changing so that engineers could not do site plans.

Mr. Welch withdrew the motion. Ken Latchaw seconded the withdrawal.

Chair Hebert disagreed with specifying a licensed surveyor or engineer because he thought anyone could measure from pins and Mr. Greenwood agreed.

Chair Hebert suggested administratively adding that the building inspector would have authority to establish the requirement when it was determined to be necessary.

Rick Stern moved to bring Amendment #5: Article XVII – adding requirement for Certified Foundation and/or Plat Plan to town as a warrant article. Ken Latchaw seconded the motion and all were in favor.

2) **New Business:**

A) 2018 Zoning amendment proposal to **Driveway Regulations:**

Mr. Coogan read "Driveways shall be designed and constructed so that run off water does not flow onto a public or private way or travel way"

Chris Cross moved to adopt the 2018 amendment proposal to Driveway Regulations to say, "Driveways shall be designed and constructed so that run off water does not flow onto a public or private way or travel way". Rick Stern seconded the motion, and all were in favor.

Vice-Chair Cross inquired about a petition to amend the requirement of a four-foot fence around swimming pools if they had a certified pool cover system as per specifications. Vice-Chair Cross asked if the Board should consider the matter. Mr. Coogan replied that the Board could not change the wording of a petition with 25 signatures.

Vice-Chair Cross stated that the NH Legislation had a bill in motion to approve technology for keypad controlled covers that gave responsibility to applicants in the same way they were responsible for keeping gates closed.

Chair Hebert stated that he was not in favor of such an amendment in town or the State bill because it was not a permanent obstruction like a fence and someone could leave the cover open and an unattended child could fall in and drown in their pool. Vice-Chair Cross commented that the same thing could happen if someone put a bucket in front of a gate. Mr. Weiner added that there was a manual over-ride if the system failed, but noted that children could still reach

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through fences to flip gates open as well. Chair Hebert replied that was purposeful, whereas the other could be an omission where a toddler could wander into a yard with a pool.

Chair Hebert commented that the legislative bill was a result of a company that had a vested interest in its passing. Mr. Latchaw noted that insurance companies could care less about the pool cover companies or the legislative bill as they had seen too many drownings and would still require fencing.

Mr. Latchaw stated that he still thought there should be fencing around drainage ponds as well.

Chair Hebert said the Planning Board's comments would be shared even though it was a petition. Mr. Greenwood agreed that it was necessary for the Board to have comments on a citizen petition on whether the Board recommended the petition or not and that the Board of Selectmen only voted on the form.

3) Other Business:

A) **Voluntary Merger: HD Caswell Properties** (aka Portsmouth Sign Company)

This item was delayed to hear the next item on the agenda first.

B) **Master Plan: Update Presentation** by Glenn Greenwood, Assistant Director of Rockingham Planning Commission

Vice-Chair Cross informed the Board that there had been light attendance for two out of the three two-hour public forums, but there had been some good discussions and comments were recorded in shorthand and would be included as an amendment at the back of the updated Master Plan.

Vice-Chair Cross added that there had been light response to the public comment survey link that had been posted on the Town website, so the tax collector included a note in her mailing to invite comments, which boosted responses to the 10% response goal. He said the survey has been left open if anyone wanted to add any additional comments.

Vice-Chair Cross said the Board's contract with Rockingham County Planning (RPC) included an initial analysis to compare public comments this year with the last Master Plan to show how sentiments changed.

Vice-Chair Cross said RPC was also updating an edited draft of existing conditions and future conditions that would include updated maps. He said they would remove many photos to reduce the size of the document and add broader aerial views of the zoning districts. Vice-Chair Cross said the layout would not be completed by the end of the month, so they signed an extension to be finalized by the end of March before Town Meeting and the final update would be done in a year.

Mr. Greenwood narrated a PowerPoint presentation to show the Board the existing Master Plan and the proposed edits. Mr. Greenwood noted that the current document contained a lot of information, but agreed that they could remove many of the larger photos that were not necessary.

Mr. Greenwood stated that the first order of business was to update the vision statement, and the future and exiting land uses that were required by the State and then

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additional information could be added if wanted. He said the goal was to make the Master Plan interesting for someone new coming to town.

A) Voluntary Merger: HD Caswell Properties (aka Portsmouth Sign Company)

This item was delayed to hear the previous item first.

Mr. Coogan informed the Board that the Town had provided Portsmouth Sign Company with a voluntary merger form. He said it was thought that the two lots would have been merged when the site was approved five to six years earlier parcels, but it had not been down after the approval. Chair Hebert said wanted Board to be informed before the form was signed.

Mike Marconi moved to approve the voluntary merger of Lot #, Map # and Lot #, Map # owned by HD Caswell Properties located on Mitchell Lane. Peter Welch seconded the motion, and all were in favor.

(Mr. Coogan left the meeting at 9:25 p.m. at this point in the meeting.)

C) Appointment to Planning Board

Chair Hebert stated that the RSA stated that the remaining Board members, not Alternates could vote to appoint a new member to fill a vacancy, there were only four members present, not five for a tie breaker so he thought it best to put the vote off until the next meeting in January 2018 when all members were present.

Vice-Chair Cross commented that all alternates were members of the Board, whether they were full board members or not.

Chair Hebert thanked all the Board members and the recorder for all their hard work over the last year. Mr. Marconi thanked everyone and Chair Hebert and Vice-Chair Cross as well.

Minutes: *Mike Marconi moved to approve the Minutes for the November 27, 2017 meeting. Jim Weiner seconded, and all were in favor.*

Adjournment: *Peter Welch moved to adjourn the meeting. Jim Weiner seconded the motion and the meeting adjourned at 9:33 p.m.*

Next Meeting: Monday, January 8, 2018

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

These Minutes have been approved and adopted at the January 8, 2018 Planning Board Meeting.