

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, May 14, 2018

- Call to Order:** Chair Denis Hebert called the May 14, 2018 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Jim Weiner; Rick Stern and Peter Welch; Board of Selectmen's Representative, Ken Latchaw; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Bernie Christopher
- Public Guests:** Eric Weinrieb, P.E. with Altus Engineering; John Lorden, P.E. with MSC Engineering; Attorney Steve Roberts; Steve Haight with Civil Works New England; Ken Anderson with Riverside Pickering Marine; Town counsel, Attorney John Ratigan; Hershey Hirschkop with Portsmouth Housing Partnership; Board of Selectmen, Board of Selectmen, Mike Marconi

I) Public Hearings:

- A) Continuation of Site Review for a **100-room hotel** proposal by **Anthony DiLorenzo** for property located at 2061 Woodbury Avenue, Tax Map 27, Lot 2.

John Lorden, P.E. with MSC Engineering informed the Board that he had revised their plans and presented them to Town engineering consultant, Eric Weinrieb with Altus Engineering who had followed up with additional comments.

Mr. Weinrieb reviewed his recent list of outstanding items that was included in the Board's packets and noted that he hadn't been informed on whether Article 2 and 4 of the Design Review criteria had been submitted and reviewed. Mr. Coogan replied that the applicant had prepared a narrative and asked if there was anything different in their plan from the Site Review Regulations. The applicant's legal counsel, Attorney Steve Roberts stated that he thought that they had addressed all the issues in their site design, setting, landscaping, and parking plans.

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Chair Hebert commented that he hadn't seen the results of their landscape plan. Board member, Jim Weiner stated that they had appeared before the Newington Conservation Commission and the Commission was comfortable with their plan.

Mr. Weinrieb suggested that they might need a waiver from the requirement for landscaping islands on every five parking spaces. Mr. Lorden stated that they had determined that there were no interior parking spaces, only perimeter parking so he didn't think they needed to meet that requirement. Chair Hebert asked the Board and they found the request to be acceptable.

Mr. Weinrieb continued to read through his list of outstanding issues on the following items:

- Submission of a subdivision plan, including easement crossings
- Completion of their documentation and photographs for the cultural resources review with SHIPO and the Newington Historic District Commission
- Notation of any utility lines
- Letters of approval regarding Eversource easement and stormwater devices and snow storage
- Letters that utilities meet requirements
- Parking consideration for tour buses
- Letter of comments and approval from the Newington Fire Department
- Address the canopy and drain for erosion control with stone
- Be sure that the sewer line is tested for sags and infiltration with a witness from Newington Waste Water and replace the manhole
- Address cover over driveway culverts to prevent crushing or damage from frost heaves
- Providing a stamp on the final plans by a licensed landscape designer
- Identify and report to the Town any invasive species found
- Seek approval from Board of Selectmen for tree retaining wells in right-of-way off Piscataqua Drive
- Move "do not enter" and "exit only" signs down to make them more visible at the Woodbury Avenue entrance and include pavement markings

Discussion ensued regarding the extension of the median strip up to the right-in and right-out curb cut on Woodbury Avenue for the second lot. Chair Hebert said the Board of Selectmen had just signed a document stating that the median strip should be continued and match the green space on the northern part of Woodbury Avenue.

Mr. Weiner asked what portion of the median the applicant would pay. Attorney Roberts replied that they had only agreed to paying for extending the median. Mr. Weinrieb responded that the Department of Transportation (DOT) plans listed specimen trees every 50 feet and that it would cost less to put in landscaping in than concrete. Mr. Lorden disagreed because he thought there would be more excavation and curbing and Attorney Roberts commented that they would want to see the costs. Chair Hebert

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suggested an estimate of \$70,000 and anything not used would be returned to them. Attorney Roberts replied that they only expected to contribute \$25,000 for curbing and would want to talk with the applicant, Anthony DiLorenzo before deciding on anything more. Mr. Weinrieb commented that he didn't know where they got the idea that it would only cost \$25,000 because 850 feet of cost \$25,000 to \$30,000 alone. He added that there would not be a significant change in curbing, but they were asking for landscaping.

Mr. Weiner read the letter from the Board of Selectmen and stated that the Town was looking to bring greenspace in and solid concrete wasn't an option. Mr. Coogan asked if it should be in the same style and Mr. Weinrieb said it should be in keeping with the median from Piscataqua Drive up to the Fox Run Mall entrance. Mr. Weinrieb added that the island should bow out and be wider for green space and to avoid conflict.

Chair Hebert commented that the Board would follow up with the costs and would make it a condition of approval. Attorney Roberts replied that the traffic consultant stated that a right-in and right-out was safe without a curb, so he didn't think they could make it condition. Chair Hebert disagreed that it would be safe without a median. Attorney Roberts replied that they would review the safety to determine if they needed to go to court.

Chair Hebert replied that he understood their need for a finite number and asked Mr. Weinrieb to provide information on how they came up with the cost. Mr. Weinrieb suggested that they should do their own design, but that they could still look at Severino Construction's number and needed to consider removal of pavement for the greenspace.

Mr. Coogan asked what Severino's deadline for extending median and Mr. Weinrieb replied that it would be soon. Chair Hebert asked Mr. Lorden how soon he could work with Mr. Weinrieb for a simple design and get back to the Board of Selectmen. Mr. Lorden replied that he could get something out in the next couple of weeks.

Board of Selectmen's representative, Ken Latchaw asked if the curb cut would be 600 feet back from the lights and Mr. Lorden replied that they had agreed at the last meeting and would put it on the plans.

Discussion continued regarding the easements. Attorney Roberts stated that the entity would stay the same for a standard utility easement because an easement can't be granted to oneself, but it would need to be changed for a potential buyer.

Mr. Weinrieb stated that he understood that they couldn't act on easements because it was under the same ownership, but it would be good to have hypothetical easements crafted. Attorney Roberts agreed that they could do a generic easement, but that it couldn't include meets and bounds because they didn't know where the back access would end up.

Town counsel, Attorney John Ratigan asked about cross easement for access. Mr. Weinrieb agreed that the subdivision plan should include all cross easements and

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restrictions. Attorney Roberts replied that the hotel lot would have a sewer easement, but it might not need access easement onto the Lot 2 because the use wasn't known yet. Chair Hebert commented that they wanted to be sure that the hotel lot would have access to Lot 2 to address any potential issues if it was sold to another entity in the future.

Vice-Chair Cross commented that sewer easements were not usually allowed on subdivision approvals, but it was being allowed in this case. He noted that most of the easement was within the building setback and suggested that no building occur on the easement that was on Lot 2.

Vice-Chair Cross added that it also needed to be noted that there could be no building over the Tyco water line easement unless it was rerouted. Attorney Roberts agreed that made sense.

Mr. Weinrieb stated that he didn't think the private easement for Tyco could continue a public right-of-way. Attorney Roberts said it was null and void, but they could eliminate it from the plan because it was not viable and Attorney Ratigan agreed.

Vice-Chair Cross noted that the previous fire chief had required three hydrants for a smaller hotel proposal and he was concerned. Mr. Latchaw stated that he had discussed the hydrants with the current deputy chief who stated that they were comfortable with the location of the hydrant for connection and serving the hotel. Attorney Roberts added that it was in Mr. Coogan's memo of the Technical Review Committee (TRC) Minutes that the hydrant had been approved during their review. Chair Hebert stated that the TRC could make recommendations, but they didn't have authority to make decisions for the Planning Board. Vice-Chair Cross commented that the memo was not clear and that he wanted a specific statement to show that the hydrant was sufficient for both lots.

Discussion ensued regarding sidewalks. Vice-Chair Cross asked for a complete depiction of all the sidewalks and access around the building and to connect the sidewalk to Piscataqua Drive. Vice-Chair Cross added that the Town would not be looking for sidewalk along Woodbury Avenue at this time because it was a big intersection.

Vice-Chair Cross suggested that there be a future provision to connect the southwest corner to the other lot. Mr. Lorden replied that the connection would be steep. Mr. Weinrieb suggested that the sidewalk could meander to address the steep grade. Mr. Lorden replied that they would need approval from Eversource and Mr. Weinrieb suggested that it would be a good time to do so while both lots were under the same ownership.

Chair Hebert asked if there would be a pedestrian crosswalk to the Fox Run Mall entrance. Mr. Weinrieb replied that DOT wouldn't want a crosswalk because there was no sidewalk on the other side, but they were putting in hardware in light controls for future use. Chair Hebert commented that he thought the hotel patrons might want a

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crosswalk to get on the other side to go to the restaurants and to shop. Attorney Roberts replied that he thought people would want to take their cars over.

Attorney Roberts stated that they had worked through the larger issues and suggested that the Board grant an approval with the stipulation that they meet the outstanding issues of the minor points remaining. Chair Hebert replied that the Board had never gave conditional approvals with this many outstanding items, but he hoped that they would be addressed and that they could meet the following week.

Mr. Weinrieb asked if they would be able to push the Alteration of Terrain (AOT) and DOT permits along since the application had been in for over 60 days. Mr. Lorden replied that AOT didn't like changes, but now that they could apply now that they were all on the same page. Attorney Roberts added that they could proceed with their demolition permit before getting the AOT permit, and they could forward the easement agreements to Attorney Ratigan, but they would still need an estimate for the median strip costs.

Chair Hebert stated that the Board could vote to grant the waiver for the driveway access.

Chris Cross moved to allow for the driveway access within 15 feet of the setback to allow a build out for safety issues due to the gas line easement for the shared access of the second lot to the 100-room hotel proposal by Anthony DiLorenzo for property located at 2061 Woodbury Avenue, Tax Map 27, Lot 2. Jim Weiner seconded the motion, and all were in favor.

Chair Hebert suggested continuing the hearing to Monday, May 21, 2018. Mr. Latchaw and Mr. Weiner said they would not be available, but Board of Selectmen, Mike Marconi said he would be available to fill in for Mr. Latchaw and four other members would make a quorum.

The Board took a brief break at 7:55 p.m. and returned at 8:07 p.m.

B) Continuation of Site Review for expansion proposal by **Riverside Pickering Marine** at 34 Patterson Lane, Tax Map 19, Lot 6.

Steve Haight with Civil Engineering New England stated that their plans had been stamped and they believed they were in compliance with the regulations.

Chair Hebert stated that the Board granted a parking waiver, but they wanted to be sure that it was not grandfathered to the next owner and was included as a condition of the waiver and Mr. Coogan's letter of decision.

Mr. Haight stated that they would provide a construction cost estimate to Mr. Coogan. Pickering Riverside Marine co-owner, Ken Anderson added that they were still

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getting site bids, but had estimates and would work with Town engineering consultant, Eric Weinrieb with Altus Engineering.

Mr. Haight reviewed Mr. Weinrieb's recent report of outstanding issues.

Mr. Coogan asked if the applicant had received a special exception from the Zoning Board of Adjustment (ZBA) for water and power. Chair Hebert replied that the special exception was granted for the combined Industrial and Residential lots that had since been separated so it would be important that the conditions of approval include that it be submitted prior to the title being changed and the mylar being signed. Mr. Coogan noted that the process requiring a Special Exception from the ZBA had since changed to the granting of a Conditional Permit from the Planning Board. Chair Hebert clarified for the record that the residential lot would not have a conditional use permit.

Mr. Haight added that they had already obtained their wetlands permit, but they were waiting on an amendment for the Industrial lot alone.

Mr. Haight recalled that they had also received a Special exception for the directional address sign to prevent tractor trailer trucks from continuing down Patterson Lane. Mr. Weinrieb suggested that it would make sense to add that it was the delivery entrance on the same sign.

Mr. Haight noted that they would clarify that the site would be paved for drainage calculations even though they would only pave in sections as needed.

Vice-Chair Cross commented that the culvert that the drainage basin that was to drain into across the street was filled with sediment. Mr. Haight replied that they had already agreed to clean that culvert out as part of their work and it would be included in their erosion control manual. Vice-Chair Cross asked if they could inspect the old pipe and include riprap because of the sediment at the middle of the culvert. Mr. Haight replied that they would agree to cleaning out and maintaining the culvert, but replacing pipe was beyond their scope. Mr. Weinrieb added that he was not sure they could put riprap in the outlet either because it was not in the right-of-way and he thought there was a wetland there. Mr. Weinrieb suggested that Mr. Coogan add the clean out as a condition, however.

Chair Hebert stated that the Board had granted a waiver regarding maximum coverage, but he was concerned that the pipe could not handle the drainage crossing Patterson Lane and suggested offsite improvements if needed because he wanted to be sure that there would be no liability to the Town road. Mr. Haight replied that the culvert was not working as it was, and that was the reason for the wetlands, but they agreed to clean the culvert out.

Mr. Weinrieb suggested that the culvert might need to be replaced. Vice-Chair Cross agreed that replacing the culvert was not the applicant's concern as there was little runoff from their site to the west. He added that runoff drained between the site from the Shattuck Way hillside as well as from Sponge Jet. Mr. Weinrieb suggested that the Air Force might address the issue while they were removing their pipeline.

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Vice-Chair Cross noted that the embankment dropped three to four feet and the wooden guard rail had fallen over. Mr. Haight replied that sounded more like a Board of Selectmen issue.

Vice-Chair Cross expressed concern that heavy rain would fill detention pond. Mr. Haight replied that the plan would show that they were installing a berm, widening the swale and that flow velocity would be handled.

Mr. Haight stated that the Newington Fire Department Read had identified which buildings would require sprinklers and that the City of Portsmouth Water Department would provide a letter confirming that there would be plenty of pressure for water service.

Mr. Haight noted that they had already requested a waiver from the maximum site lighting requirement and Mr. Coogan stated that the Board had agreed to the waiver for less lighting at the previous meeting.

Mr. Haight added that they could consider mounting an MTD light on the utility pole if Eversource allowed the power to go underground. Chair Hebert replied that the Town paid for the light and it would be an issue if it was using on private property and the Town didn't want to get into collecting costs. Mr. Haight stated that they could take over the costs. Mr. Weinrieb commented that they would need to determine if street light provided necessary light into the parking lot or if there was any need for additional lighting.

Chair Hebert asked if they would be using primary voltage or secondary and if there were transformers. Mr. Haight replied that they would be using primary and putting a transformer underground. Mr. Anderson added that they wanted to put the pad in with the transformer.

Chair Hebert stated that utilities needed to be run underground per the Town Ordinance. Mr. Haight replied that this was an existing building and the Ordinance only required underground utilities for a new building. Chair Hebert replied that it was also required when doing upgrades. Mr. Anderson stated that they had received a quote that it would cost \$30,000 to put the utilities underground to the pad. Chair Hebert replied that he thought they could do own work, but that Eversource would need to pull the cable. Mr. Haight said would amend to show underground.

Chair Hebert reminded the applicant that off-street parking was not allowed and would be a condition of approval and Mr. Anderson agreed.

Board member, Peter Welch asked if there would be drainage under the gravel where the heavy cranes would be going over the wetlands. Mr. Haight replied that there would be under drains and Mr. Weinrieb stated that it would be up to the applicant to repair any damage to their pavement.

Mr. Haight informed the Board that they had presented landscape designer, Robbie Woodburn's landscape plan to the Newington Conservation Commission meeting on the previous week. He said they provided comments that there should be three species of trees instead of two and that they return to the Commission with

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approval, but they didn't think it would be necessary since they sent an email reply to Mr. Coogan.

Mr. Weiner, who was also Co-Chair of the Conservation Commission commented that the Commission had suggested that giant arborvitae growing 30 to 60 feet was taller than recommended and that it was susceptible to deer browse.

Vice-Chair Cross agreed that it would be difficult to make trees grow at the top of a mound and thought they were going to stagger the plantings on the east side. Mr. Haight replied that they determined that three feet in width at the top was enough for planting and that they would stagger another row below. Jane Kendall who also was a Conservation Commissioner stated that their representative had agreed not to plant tall trees at risk of blow down at the top of the mound.

Mr. Haight replied that they make it a condition of approval that they would address the outstanding issues at the next Conservation Commission meeting. Mr. Weinrieb asked that they update the plan to include the most recent revision date.

Mr. Coogan read through the prepared conditions of approvals.

Attorney Roberts stated that the site costs were only an estimate. Mr. Weinrieb replied that he had not yet reviewed the site costs. Attorney Roberts suggested that the site costs be amended to 10% of the final cost and that the Patterson Lane, LLC decision should go to them.

Vice-Chair Cross asked to update the plan to show that the other side was waterfront industrial and not office zone.

Chair Hebert stated that all waivers were only for this applicant and not grandfathered for a future owner.

Ken Latchaw moved to approve the Site Review for the expansion proposal by Riverside Pickering Marine and Patterson Lane, LLC at 34 Patterson Lane, Tax Map 19, Lot 6 with the following conditions as outlined and discussed:

1. *Regarding specific site issues:*
 - a. *Provide an annual inspection and report for the stormwater management system, including the cleaning and repair of the culvert across the street on Patterson Lane.*
 - b. *Submit and receive a Conditional Use Permit for construction of a water impoundment area in the wetlands*
 - c. *Address all outstanding issues identified I the Altus review letter of May 6, 2018 and receive a letter from Altus stating that all issues have been satisfactorily addressed*
 - d. *Obtain amended State permits, from NHDES Wetlands Bureau and NHDES AoT*

2. *Regarding administrative activities:*

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- a. *Pay all review fees associated with the application*
 - b. *Provide funds for third party engineering inspection services*
 - c. *Provide a PDF of the final approved plans, which reflect any and all changes required as part of the approval process, including technical review comments*
 - d. *Provide a mylar suitable for recording at the Rockingham County Registry of Deeds with appropriate recording fees and separate fee for Land Conservation Historic Investment Program (LCHIP), payable to Rockingham Country Registry of Deeds, and three (3) copies of the final plan as approved by the Planning Board.*
 - e. *Address issues and concerns raised by Altus Engineering, Inc.*
3. *One hundred percent (100%) of total cost of landscaping (\$11,3901) shall be held for a period of two (2) growing seasons to guarantee the survival of the landscaping installation.*
 4. *Ten percent (10%) of the site improvement cost estimate (\$40,146) shall be provided as a site improvement and restoration security, a performance guarantee to be held until all site improvements are completed in a satisfactory manner; the applicant shall complete all site improvement work prior to the issuance of a certificate of occupancy*
 5. *Work with the Newington Conservation Commission regarding any outstanding issue with the landscape plan*
 6. *All final approvals by the Planning Board shall expire within two (2) years from the date the Board approved the site plan, unless the Board grants an extension. See Section 23 – Site Approval Expiration, Site Plan Review Regulations*
 7. *Work is not to be started before final plans are approved, the mylar is signed, all fees have been paid and bonds are in place*

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

II) New Business:

A) New Site Plan Application and Review Procedure:

(This item was delayed to take the following item first.)

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B) Discussion on Affordable Workforce Housing: Update on

(This item was taken out of order.)

Hershey Hirschkop with Portsmouth Housing Partnership appeared before the Board to lead a discussion and answer questions on possibilities and financing for affordable workforce housing.

C) New Site Plan Application and Review Procedure:

(This item was delayed to hear the previous item first.)

Mr. Coogan passed out a sample of the application, noting that it followed the same template as the Lot Line Adjustment application and procedure.

Discussion ensued regarding costs for the application, building permit fees, planner, engineering consultant, legal counsel and other consultants. Vice-Chair Cross stated that he thought that the estimates just scratched the surface.

Chair Hebert replied that they needed to review charges for losses as well as to be sure that they were complying with the law that said they could not make a profit. He continued the discussion to the next meeting on Monday, May 21, 2018.

III) Other Business:

A) Master Plan: Update

Vice-Chair Cross stated that Mr. Welch had discovered inconsistencies with mismatching colors to the maps and legends and that they didn't expect any additional information to be available until the following week.

Chair Hebert commented that he had just read the Master Plan from cover to cover to review what updates to Ordinances and fees were necessary.

Mr. Marconi announced that the Town had new map of all culverts, sizes, and lengths that had been inspected by the Newington Public Works Department to assess their functioning and any repairs or replacements that were needed. Vice-Chair Cross asked if the Rockingham Planning Commission's (RPC) survey had been included. Mr. Marconi replied that he didn't know if that information had been available. Mr. Welch suggested getting that map from RPC.

B) Additional Discussions:

Chair Hebert informed the Board of Selectmen had issued a notice that any member of the Planning Board, Zoning Board of Adjustment (ZBA) or Conservation Commission that wished to conduct a site walk would be required to only do so after 1)

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receiving a majority vote during a publicly posted meeting; 2) Receiving written permission from the property owner(s); and 3) Provide notification to the Town Administrator.

Chair Hebert informed the Board that Melissa Prefontaine had sent in a letter of interest for a seat on the Board, but that she couldn't do meetings past 9 p.m. Mr. Latchaw suggested that they post a request for alternates on the Town sign again.

Chair Hebert announced that they were putting off a vote for a Planning Board representative on the ZBA as Board of Selectmen, Ted Connors received a recommendation from Attorney Peter Laughlin that it would be better to avoid any possibility of liability to the Town.

Minutes:

Chris Cross moved to approve the March 26, 2018 Minutes. Ken Latchaw second the motion and all were in favor.

Jim Weiner addressed the Board with an apology for his outburst at the end of the last meeting and thanked them for their acceptance of his apology.

Discussion ensued regarding the Minutes of April 23, 2018. Mr. Latchaw suggested that the Minutes be amended to say that a digital recording would be on file at the Town Hall. Vice-Chair Cross stated that the Minutes were to record discussions pertinent to the decisions on the agenda and other discussions on how people felt was irrelevant and he thought they should be struck from the record. Mr. Stern added that commentary that hadn't been stated at the meeting couldn't be added later. Chair Hebert agreed as did Mr. Weiner and Mr. Welch.

Chris Cross moved to approve the Minutes for the April 23, 2018 meeting with corrections as noted and to delete the end of the last sentence. Mr. Welch seconded the motion. The motion passed 4-1 with Ken Latchaw opposing.

Adjournment: *Mr. Weiner moved to adjourn the meeting. Mr. Latchaw seconded the motion and the meeting adjourned at 10:35 p.m.*

Next Meeting: Monday, June 11, 2018

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

These Minutes were approved and adopted at the June 25, 2018 Planning Board Meeting.