

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, June 11, 2018

- Call to Order:** Chair Denis Hebert called the June 11, 2018 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Bernie Christopher; Rick Stern; Board of Selectmen's Representative, Ken Latchaw; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Jim Weiner and Peter Welch
- Public Guests:** Town Engineering Consultant, Eric Weinrieb, P.E., Altus Engineering; John Lorden, P.E., MSC Division of TF Moran; Attorney Steve Roberts; Town Counsel, Attorney John Ratigan; Mark Phillips; Ryan McCosker; Michael O'Connell; Attorney Steven Dibbell; Brian O'Brien, Charles Ponassis; David Nievens; and Casey Willard

1) Public Hearing: Continuation of proposal for a **100-room hotel** by **Anthony DiLorenzo** regarding property located at 2061 Woodbury Avenue, Tax Map 27, Lot 2.

John Lorden, P.E. with MSC Engineering updated the Board on the most recent changes to their plans. Mr. Lorden discussed the previous plan to build protective stone retaining walls around the existing trees that were in the Town right-of-way. He stated that they were trying to keep the trees, but it was tight with the overhang so upon further review it was determined that one tree could remain, but the other tree might be removed to improve visibility for the access drive and replace it with smaller shrubs. Mr. Lorden replied that the landscape architect recommended removal to avoid issues with the roots for the site development.

Chair Hebert commented that it took a lifetime to grow a tree and he was surprised that they were suggesting removal, but he understood that disturbing the roots could create problems. Board of Selectmen's representative, Ken Latchaw said he looked at the trees and many were old and diseased. Vice-Chair Cross added that he liked the idea of starting from scratch so they could attend to and maintain new landscaping. Mr. Lorden replied that Town Planner, Gerald Coogan said the

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landscaping would be in the Town right-of-way and that it would be their responsibility to maintain.

Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering said he liked the idea and asked for specifics on the replacement, noting that it was a wide right-of-way and it would be nice to have large shade trees to reduce the heat island effect.

Chair Hebert stated that he thought should plant for how large tree would be at full growth. Mr. Lorden stated that they would be replanting Zelkovas and locust trees. Vice-Chair Cross commented that it would take 20 years for a tree to expand and he liked the idea for planting on their own property. Mr. Weinrieb stated that it was a wide right-of-way though and the trees wouldn't be disturbed if there were any site improvements.

Mr. Lorden went on to discuss the engineering of extending the median to the entrance of the second lot. He said their original estimates were based on the road being crowned with a high point in the middle that pitched each way, but after consulting with the Department of Transportation (DOT) it was discovered that the road was elevated as it neared the second lot with seven to eight inches of concrete and differential sediment under the road and all storm water went to a pond across road so the extension of the median would require additional drainage pipes, two catch basins and possibly a manhole. He said they would obtain pricing from DOT's contractor, Severino Construction, but he thought it would be cost prohibitive and they would probably mimic what was already in place.

Attorney Steve Roberts, legal counsel for the applicant, Anthony DiLorenzo commented that the additional construction and expense was not what the Board or Mr. DiLorenzo had anticipated so his preference would be to extend median to the current lot line. Mr. Weinrieb replied that the first half would also require drainage as well and that adding a couple of drainage swales and structures would be standard to extending the median in any case.

Mr. Lorden replied that he didn't think they would need the catch basin if they didn't extend the median to the entrance of the second lot, however. He added that the design was not final to have a good sense of the costs, but that they would need to cross the sewer line and consider the costs of putting in a water line. Mr. Weinrieb commented that the state had spent a lot of time looking for the water line so they needed to work with them in that regard.

Attorney Roberts replied that they were trying to work with the Board, but Mr. DiLorenzo stated that he didn't have an open checkbook. He went on to say that once they had a final number on the costs, they would need to determine if they would agree if the Board made it a condition of approval or if they would fight the request and go to Superior Court. Vice-Chair Cross replied that the Board wasn't requiring a lot of granite curbing at considerable expense the way any other town or city like Portsmouth would, but were allowing the pavement to go to the edge of the property so he thought the

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applicant should consider working with the Board in regard to traffic flow for safety considerations.

Chair Hebert added that they had previously estimated that the cost of extending the median would be around \$70,000. He said the applicant could return to the Board if they determined that they could not meet the condition of extending the median if the costs turned out to be too high, but safety was still a concern. Attorney Roberts stated that the second curb cut for the second lot would be 800 feet from the traffic signal and that their traffic consultant didn't think the second curb cut would be a safety issue.

Mr. Weinrieb stated that the second driveway was active for Wilcox Industry's construction use so the Board needed to consider if they to temporarily allow it to continue because there was no easement. Attorney Roberts said he was confused how the Board would allow another business to use their existing curb cut for access and parking. Chair Hebert agreed that the Ordinance stated that parking was for business on their site only, but he had spoken with Wilcox Industry CEO, Jim Teetzle who made every attempt to be business friendly so he thought it should be a condition of approval as a good neighbor. Attorney Roberts replied that the temporary parking was fine, but he was more concerned about Wilcox using the existing curb cut for access to Woodbury Avenue.

Vice-Chair Cross asked if the applicant would allow Wilcox to use the second lot as access during their temporary construction need. Attorney Roberts replied that they were already doing so, and they could continue during the construction of hotel, but the parking couldn't continue once the hotel construction began. Chair Hebert suggested setting a date for one year.

Board member, Bernie Christopher said he thought allowing Wilcox to park on their second lot was being a good neighbor and didn't require an easement. Attorney Roberts replied that a friendly verbal agreement would suffice and there was no need to grant an easement.

Vice-Chair Cross asked Mr. Lorden to address his concern on how they would connect the sidewalk on the south side of the hotel to the second lot and continue to the edge of the TD Bank lot. Mr. Lorden replied that they had no plans and couldn't commit to it because of the Eversource easement. He added that they had a verbal "Use of Occupancy" approval.

Mr. Lorden informed the Board that they cultural resources inventory form had been submitted by consultants to the Town for review. He said the consultants found some earthenware and thought they may have found an old cellar hole so they wanted to dig some more pits. Vice-Chair Cross asked if they had inventoried the inside of the former DeRoachmont building. Mr. Lorden replied that they had.

Chair Hebert stated the Ordinance required that construction work be contained on given lot, but noted that the hotel took up a lot of square footage and asked if they intended to use the second lot temporarily. Town counsel, Attorney John Ratigan added that would be the case once the two lots were subdivided. Attorney Roberts commented

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that a subdivision approval did not automatically create two lots until it was recorded. Attorney Ratigan replied that the Town would record the lot plans once they were approved. Chair Hebert suggested that it would be good planning if they considered not requesting subdivision approval until the hotel construction was complete to allow the possibility of parking on the second lot. Mr. Weinrieb added that they could request that the second lot be used as a temporary laydown area instead.

Mr. Lorden stated that DOT said they were waiting for a response from Mr. Coogan that the Board would accept the plan. Mr. Coogan said he was waiting to see what was going on with the median, but he would respond.

Attorney Roberts expressed concern regarding delays in the review, stating that they had been before the Board for two years. Mr. Coogan clarified that their application did not come before the Board for design review until May 22, 2017.

Attorney Ratigan pointed out that the final plan would need an access easement and a sewer easement on the subdivision plan. He also recommended a condition to note the existence of a development agreement and to memorialize the agreement upon the sale of either lot. Attorney Roberts agreed.

Mr. Coogan passed out a suggested list of conditions with a motion for approval of the subdivision.

Mr. Weinrieb suggested the reference of the 100-room hotel on the second line was not relevant to the subdivision application, and that the tax map and lots should be updated according to the tax accessor.

Attorney Ratigan recommended that they also add that Wilcox Industries would be allowed to park on the Lot 2 for one year ending June 12, 2019. Attorney Roberts stated that they were parking on Lot 1 currently. Mr. Weinrieb recommended that they say that parking would be allowed on each lot since neither lot had been identified by the tax accessor yet.

Vice-Chair Cross commented that although he understood that the applicant was hesitant to agree to unlimited costs of extending the median, he wasn't in favor of approving the subdivision because there was not an agreement to the right-in only. Chair Hebert agreed that he didn't want to leave the Town vulnerable to a bait and switch after the Board approved the subdivision.

Attorney Ratigan clarified that there should be a condition that stated that the applicant would agree to a right-in only *if* the median was not extended. Attorney Roberts replied that he hoped that the construction costs were under \$100,000, but that the applicant should have the right to return to the Board after finding out the construction cost of the median and possibly go before a third party to determine that a right-in and right-out would not cause a traffic safety issue. Mr. Weinrieb replied that he thought Attorney Roberts had already agreed that there would be no right-in and right-out from the Woodbury Avenue curb cuts. Attorney Roberts replied that the Board could make whatever conditions they wanted, but the applicant didn't have to agree.

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Bernie Christopher moved to approve the subdivision plan of property owned by Anthony DiLorenzo and located at 2061 Woodbury Avenue, Tax Map 27, Lot 2 with the following conditions, incl. #4 to allow parking for Wilcox on either lot until. Rick Stern seconded and the motion passed with all in favor, including Chair Hebert, except for Chris Cross who abstained.

Mr. Coogan read through a suggested list of conditions with a motion for approval of the 100- room hotel proposal.

Discussion ensued and clarification was added on item #7 that hotel patrons could not claim residency after a 90 day stay. Attorney Roberts replied that he would need to talk with Mr. DiLorenzo, but he thought that would be fine.

#11 that the tree wells would be removed, that the applicant would bring the plans to Rockingham County Registry of Deeds for pre-approval before the Mylar would be signed.

Rick Stern moved to approve the proposal for a 100-room hotel by Anthony DiLorenzo regarding property located at 2061 Woodbury Avenue, Tax Map 27, Lot 2 with the following conditions: Bernie Christopher seconded the motion passed with Chair Hebert voting and Chris Cross abstaining.

Vice-Chair Cross stated that he thought approval was premature.

II) Preliminary Consultations:

A1) Discussion with Mark Phillips regarding legal frontage and access for proposed storage facility at River Road and Shattuck Way, Tax Map 13, Lot 7A.

Mr. Coogan informed the Board that property developer, Mark Phillips and John Lorden, P.E. with MSC Engineering were before the Board to discuss the possibility of allowing the address of the corner lot with access on River Road to have an address on Shattuck Way.

Mr. Coogan read the definition of frontage in the Newington Zoning and Regulations book and stated that the Planning Board was to determine the curb cut access when the linear frontage on a public road was on a corner lot. Mr. Latchaw asked what Mr. Coogan what his thoughts were and Mr. Coogan replied that Shattuck Way could be the legal access, but there might be an issue if there was no access to the 911 emergency address.

Mr. Lorden discussed lot limitations to the setback requirements from Shattuck Way. Mr. Phillips suggested a setback of 50 feet for the pavement. Mr. Weinrieb noted that there was very little set back on the lot for landscaping on Shattuck Way.

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Vice-Chair Cross replied that a corner lot would have setback requirements of 75 feet on both roads. He said the Board might consider waiving setbacks on public ways in some circumstances when they knew what was involved, but he couldn't see having reduced frontage on second and thirds road.

Vice-Chair Cross added that the Board typically had not granted frontage on Shattuck Way in the Industrial Zone for some time and he was uncomfortable with the idea. Chair Hebert said he understood that the Board had already discussed their reluctance to grant curb cuts on Shattuck Way and wondered why Mr. Phillips wasn't interested in having the frontage and address on River Road. Mr. Phillips replied that it made more sense for the address on Patterson Lane for emergency, but he thought having the address on Shattuck Way would work better for the setback requirements

Mr. Weinrieb read through the definition that stated that the side yard shall conform to those of the front yard and asked if they should request relief from the Zoning Board of Adjustment (ZBA) rather than a waiver from the Planning Board. Mr. Christopher replied that he thought it would be under the definition of a waiver. Vice-Chair Cross commented that his interpretation was that it would be up to the Board to determine where the front setbacks would be, and the others would revert to the side setbacks as was the case of the former Home Quarters at the current Walmart location that never requested a variance. Chair Hebert commented that there might be a conflict with one definition and another, but he knew that the Board determined where the curb cut would be when the lot was on a corner.

Vice-Chair Cross suggested granting a waiver to allow a reduction to the side and rear setbacks. Chair Hebert replied that the Board could not make a motion during this meeting because there was no application for a public hearing.

A2) Discussion with Mark Phillips regarding for lot on River Road and Shattuck Way, Tax Map #, Lot

Mr. Phillips passed out a photo of the Armored Roofing building on the other corner of River Road and Shattuck Way. Mr. Phillips stated that the non-conforming building stood on part of a 6.33-acre lot that was bifurcated by wetlands that he was having difficulty finding a developer for a new building except for a company that was interested in a place to park their oil trucks to be closer to Sprague Energy. As a result, Mr., Phillips was hoping to subdivide the lot through the wetlands.

Chair Hebert commented that he would hate to see a conforming lot turned to a non-conforming lot and would prefer to see a proposal for larger lot. Mr. Phillips stated that he was still reviewing development possibilities for a larger lot and would expand the other lot.

Vice-Chair Cross said he would want to see a plan that showed the hardship in parking the oil trucks on the current lot. Mr. Phillips replied that the hardship was that

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the lot was bifurcated by wetlands that would require two entrances and there would not be enough room to turn the trucks around.

Mr. Latchaw stated that he wouldn't have a problem with developing the property for the oil trucks and Mr. Christopher agreed. Chair Hebert replied that there was an active brook nearby and the concern would be with an oil spill. Chair Hebert said he wondered if the wetlands could be restored for mitigation.

Chair Hebert asked about consideration for the other lots. Mr. Phillips replied that the long piece was wetlands and unusable, but he was thinking of developing a 4,500-square foot RV storage building on the other lot.

(The Board took a five-minute break at 8:14 p.m. and Vice-Chair Cross left at this point in the meeting. The meeting continued at 8:19 p.m.)

B) Regarding conversion of the former Country Curtains to a medical office at property located at 2299 Woodbury Avenue, Tax Map 19, Lot 9

Builder, Ryan McCosker appeared before the Board to discuss the conversion of the non-conforming former Country Curtains site to a conforming dermatology medical office. Mr. Coogan informed the Board that the intent was to remodel the non-conforming commercial retail space in the Office Zone and a site review would not be required.

Mr. Coogan stated that the 1998 site plan showed that 83 parking spaces were required, but there were 87 parking spaces available. Mr. McCosker passed out the parking plan.

Chair Hebert responded that a variance wouldn't be required, but recommend that the applicant returning with a more in-depth plan. Mr. McCosker replied that the entire building was medical. Mr. Coogan agreed that medical offices were allowed in the Office Zone, the parking was all set and they weren't doing any site changes so he didn't need any need for other approvals. Chair Hebert replied that he didn't see any harm in the Planning Board reviewing the change of use even if it was conforming. Mr. Coogan replied that he would agree if there was a change to the building footprint or if they were intensifying the use and parking, but they were only remodeling former retail interior.

Mr. Coogan stated that he and the Town building inspector, Kevin Kelly considered an administrative review, but decided to share the change with the Board. Chair Hebert stated that he preferred a formal site application for a public hearing that would notify the abutters rather than leave it up to the building inspector and asked if the fire department had been involved. Mr. Coogan replied that the applicant had met with them. Mr. McCosker added that they were required to comply with all the codes to obtain a building permit

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Mr. Christopher said the parking looked fine and disagreed that the change required a site review. Mr. Coogan added that this would be less of a change than a local restaurant that only informed the Board that they wanted to add outside dining.

Chair Hebert asked why a variance was suggested in the presentation and Mr. McCosker replied that he was told that a change of use required a variance and that it was recommend that he inform the Board of their plans first. Chair Hebert replied that it was not a change of use if it was already allowed in the zone, but he was concerned with setting a precedent with changes of business going in without the Board being informed.

Mr. Latchaw expressed concern with an unnecessarily drawn out review and suggested an expedited review. Mr. Stern suggested that the Board get a legal opinion and get back to the applicant in a day or two and Mr. McCosker replied that he would appreciate the Board seeking legal counsel to expedite the process rather than waiting for a public hearing.

The owner of the building, Michael O'Connell commented that he thought they were encouraged to bring the entire building into conformity. The applicant's legal counsel, Attorney Steven Dibbell stated that his letter stated that they didn't need a variance and he didn't believe the Board could deny their request because they were only doing an interior renovation on a conforming use and he believed that they were entitled to a building permit so long as it complied with codes and the Ordinance and there were no site changes that would require a site review.

Rick Stern moved to take no action to the request for a conversion of the former Country Curtains to a medical office at property located at 2299 Woodbury Avenue, Tax Map 19, Lot 9 unless legal counsel advised otherwise. Bernie Christopher seconded the motion, and all were in favor.

- C) Regarding conversion of the former L.A. Beats to Anytime Fitness at property located at 109 Gosling Road, Tax Map 28, Lot 1

Brian O'Brien, Charles Ponassis; David Nievess; and Casey Willard appeared before the Board to discuss a pending lease on the building space that Mr. O'Brien had recently purchased.

Mr. Nievess, owner of the franchise said that he and Ms. Willard had both worked at the Planet Fitness Corporate Headquarters when it was at the Chuckee Cheese site on Fox Run Road. Mr. Nievess said that the local Planet Fitness had 3,000 members, whereas their Anytime Fitness franchise proposal at the former L.A. Beats site was forecasted to have 800 members. at the former L.A. Beats site. Mr. Nievess stated that the operation would be open 24 hours, seven days a week with staffing during the peak times before and after standard office hours, and have a 24-hour keycard access and a security detection system that would only allow one member at a time to enter.

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Mr. Nievess stated that ten parking spaces were allotted to their business and that they anticipated carpooling for a maximum of 16 members at a time.

Mr. Latchaw asked if they had checked with the local police department regarding security during unstaffed evening hours. Mr. Nievess replied that they had, and they had also set up alert buttons around club. Mr. Latchaw asked if there would be lighting from dusk to dawn and Mr. Nievess replied that there would be and that they were upgrading the outdoor lighting to LED lighting.

Chair Hebert commented that most people in the area didn't like to carpool and expressed concern with parking for 800-1000 members and asked how they would prevent more than 18 patrons showing up at a time. Mr. Nievess replied that the 4,000 square feet of space couldn't house that many patrons at once. He said numbers had been reviewed in franchises across the country and it was common for only 40% of members to remain active after the New Year sign up.

Chair Hebert replied that he had observed parking on the side of the road by Portsmouth Sports Club on Saturdays and asked Mr. Nievess how he intended to prevent an overflow of parking. Mr. Nievess replied that there was no way to control additional parking with holiday shoppers, but they would be scheduling personal training and patrons wouldn't attend if parking wasn't available.

Mr. Stern asked how many parking spaces were allocated for LA Beats. The property owner, Mr. O'Brien replied that he didn't know that the spaces for each business were controlled. Chair Hebert suggested that he check with the tenant agreements.

Mr. Christopher asked how many businesses there were and how many parking spaces there were for each. Mr. O'Brien replied that there was a used children's clothing store, a comic book store, a nail salon and the former L.A. Beats space in the plaza with 48 parking spaces for the entire 12,000 square foot building. Mr. Christopher agreed that the lot never seemed that crowded and added that he counted 56 spaces on the proposed plan.

Chair Hebert asked how many parking spaces were taken for the Batteries Plus plaza truck access and turn around. Mr. O'Brien replied that he had a title search done and was going to have the lot resurveyed to verify the cross easement and snow storage, but that he didn't believe that any parking spaces were lost.

Chair Hebert responded that the Board had required a truck delivery access agreement when Batteries Plus went into the abutting plaza and that would stay with the property. Mr. O'Brien replied that he had only found mention of a cross easement when he did the title search, but nothing had been recorded at the Rockingham Registry of Deeds. He added that this business was one of the best uses in regard to parking as the highest use would be during off peak hours and noted that this use would be less intense than the former L.A. Beats use. He also commented that the Baseball Academy and Karate center at the 3,500-square foot former Sears building only had 17 parking spaces.

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Chair Hebert said he wanted to see the agreement between them and Batteries Plus and asked Mr. Coogan to look up the Minutes and approval for both businesses before any other decisions were made. Mr. Coogan replied that he would have office assistant, Victoria Eversman do the research.

III) Other Business: Master Plan: Update

Mr. Coogan informed the Board that he and Chair Hebert had discussed updates to the Master Plan further and had decided to take a step back. Mr. Coogan recommended that Theresa Walker with Rockingham Planning Commission meet with him and anyone else that was available during a day meeting to go through the Master Plan page by page over three work sessions before they write any new changes.

Mr. Stern asked if Board members could receive a copy of the Master Plan and Mr. Coogan replied that he could make copies of the PDF.

Mr. Christopher expressed disappointment that more hadn't come out of all the time that Vice-Chair Cross and Peter Welch had spent editing the Master Plan and thanked them for all their work. Chair Hebert agreed and also expressed appreciation for their commitment.

Minutes:

Approval of the May 14, 2018 Minutes were tabled again as they had not been included in the agenda or packet for Board members to read.

Rick Stern moved to approve the Minutes for the May 14, 2018 meeting with corrections as noted. Bernie Christopher seconded the motion, and all were in favor.

Adjournment: *Bernie Christopher moved to adjourn the meeting. Rick Stern seconded the motion and the meeting adjourned at 9:54 p.m.*

Next Meeting: Monday, June 25, 2018

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

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