

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, August 28, 2017

- Call to Order:** Chair Denis Hebert called the August 28, 2017 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Bernie Christopher; Jack Pare; 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
- Public Guests:** Ken Anderson with Riverside and Pickering Marine; Steve Haight; Anne Beebe; Al Cummings; Jeff Lundgren; Norman Leclerc; Paul Reardon; Larry Rubin with Bernie and Phil's Furniture; Gary Thompson with North Point Construction; Mark Phillips

### I) New Business

- A) **Preliminary Consultation by Riverside and Pickering Marine** regarding their proposal to expand a non-conforming lot located at 34 Patterson Lane, Tax Map 19, Lot 16.

Chair Hebert announced that this was an informational discussion only, but he would open questions up to the public after the Board reviewed the preliminary proposal.

Steve Haight with Civil Works Engineering presented the Board with a site plan for Riverside and Pickering Marine's (R&P) proposal to expand their company offices, float manufacturing and indoor storage facility. Mr. Haight said R&P currently worked out of Eliot, Maine, Shaftmaster Lane in Newington, and West Road in Portsmouth, where they intended to leave when their lease was up in September.

Mr. Haight said they intended to renovate and add a 60'x60' shop to the existing "L" shaped building. He added that the existing, non-conforming building was on 2.6 acres and they would need to go before the ZBA for a variance from the setback requirements.

Mr. Haight stated that ten to twelve employees would build commercial and residential docks and floats from 7 a.m. to 4 p.m., four days a week, to be moved down to barges off Shaftmaster Lane. Ken Anderson, co-owner of R&P added that they

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employed a field crew of six to eight workers that took two to three trucks out during the day, returning in the evening and there were one to two employees in the shop.

Board member, Ken Latchaw asked what the traffic expectations were and Ken Anderson replied that their employees using small parcel box trucks called rolling shops that met the boat crews and pickup trucks, as well as delivery of materials once or twice a month. Mr. Anderson added that clients came in to discuss projects on an average of two to three times a week.

Chair Hebert asked how big the floats that they transported were and Mr. Anderson said they averaged 10 to 20 feet and were on wide-load flatbed trucks because anything over eight feet was considered wide load, but they didn't require police escorts.

Chair Hebert stated that Patterson Lane was not built for industrial use. Doug Anderson asked what the weight limit was and Chair Hebert replied that a limit was set when the Air Force was going in so they could check on that.

Vice-Chair Cross noted that they needed to look at the pavement width on Patterson Lane and the shoulders in front of the two entrances. He said he would expect to see the shoulders beefed up, adding that Town engineering consultant, Altus Engineering and the Board of Selectmen should also be involved with improvements to the road.

Board member, Jim Weiner asked if they would have a fence to obscure storage and Mr. Haight said they planned on installing a 10' high security fence.

Chair Hebert asked how high the floats would be stacked and Mr. Anderson replied that they would typically be stacked three to four high measuring eight feet up. Chair Hebert requested that they guarantee that the floats would not be visible above the fence. Mr. Haight agreed as they would be damaged if stacked too high and they wanted their office to be presentable.

Board member, Bernie Christopher asked about trees and Mr. Haight said trees would be outside the fence on the residential side.

Chair Hebert asked if there were any hazardous materials on site. Doug Anderson said all the pressure treated lumber, plastic float tubs, steel connectors used were delivered for their assembly center.

Mr. Marconi asked if any fuel oil would be stored on site. Doug Anderson replied that they had a 275-gallon diesel tank and a 275-gas tank, which had to meet EPA and fire codes.

Chair Hebert asked if there would be any drilling, hammering, or nailing outside. Co-owner, Doug Anderson added that their operation in Eliot, Maine was surrounded by residents and they were respectful and did not have any issues.

Mr. Marconi asked if there were any plans for sound proofing the building. Doug Anderson replied that it had not been discussed. Mr. Anderson said most of their tools were traditional carpentry tools including cutoff saws, air tools, and skill saws. Mr. Marconi suggested they consider insulation.

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Mr. Weiner also asked if they would be upgrading their lighting. Mr. Haight replied that they would only be working during the day and wouldn't need yard lighting for night work.

Mr. Latchaw asked about drainage coming off front of building. Mr. Haight said the green area in the front was a wetlands pocket because the culvert was blocked. He said they would build a detention pond in front as proposed for the lot development previously to enlarge the wetland and absorb runoff.

Chair Hebert requested that they include the wetland areas on the plan.

Chair Hebert stated that they would also need an Alteration of Terrain permit (AoT). He informed the applicant that the Board of Selectmen recently requested that clean topsoil be kept in town as they were rapidly disappearing, however he was not sure how that would be handled if the soils were contaminated. Mr. Haight replied that everything had been tested.

Chair Hebert suggested they could also use the top soil for a berm between the industrial and residential lots. Mr. Haight replied that the abutter, Ann Beebe had said she wasn't in favor of a berm in the previous proposal.

Board member, Jack Pare pointed out that the Zoning Ordinance only allowed mobile storage containers and trailers to be on site for 90 days. Mr. Haight replied that they would have a canopy above the storage trailers. Chair Hebert replied that they were still not allowed because trailers were showing up everywhere.

Chair Hebert added that the proposal to expand would be making a non-conforming lot more non-conforming. He reminded Mr. Haight that the owner's previous plan to combine the industrial lot with the adjacent residential lot was approved to make that plan more conforming, but they had since requested that the lots be again separated, which created their own hardship. Mr. Haight replied that they were attempting to present the best approach and he understood that the issue was theirs to resolve with the Zoning Board of Adjustment (ZBA) or they would return with a different site plan if it was still a problem.

Chair Hebert added that the fifty-foot laydown area was supposed to be for a grass buffer between lots.

Chair Hebert opened comments to the public.

Paul Reardon of Patterson Lane expressed concern that the heavy equipment would be a problem in the wetland area where the water table was only two feet below the surface. Mr. Reardon said he thought the EPA would want to review.

Mr. Reardon asked if the applicant was planning on storing boats on the site. Ken Anderson replied that they didn't have a lot of spare space on the site and most of the sixteen to twenty-foot skiffs they worked on were in the water, but they might store a spare on site occasionally.

Mr. Reardon asked if they would use the Town ramp off Patterson Lane and Ken Anderson replied that they wouldn't need to because they had a ramp at their Shaftmaster dock.

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Abutter, Anne Beebe of Patterson Lane asked if they were purchasing or leasing one or both properties. Mr. Haight replied that they had a purchase and sale agreement on the Industrial zoned parcel only and had no plans for the residential parcel. Ken Anderson clarified that they currently had a lease with an agreement to own in nine months.

Al Cummings of Patterson Lane stated that he had worked for Riverside and Pickering Marine for fourteen years and could vouch for their character and consideration of neighbors.

Norman Leclerc of Patterson Lane asked how soon they would be moving in. Doug Anderson replied that they would take possession next week, but they wouldn't be able to do anything more than light assembly and run their office.

Mr. Leclerc asked what would happen to the abutting residential lot. Chair Hebert replied that the owner asked for the lot merger to revert to the original separate condition, which was permitted under law whether it had been recorded or not.

Chair Hebert reiterated that he was not happy with the idea of using storage containers versus a building on the site. Mr. Haight replied that it was a matter of cost savings.

Mr. Pare suggested that they consider parking sheds that were slightly more expensive than Conex boxes, but less expensive than buildings. Ken Anderson replied that they would be open for those ideas. Chair Hebert commented that he was not sure if the rest of the Board would agree with one member's opinion.

Chair Hebert asked why the setback for the parking lot for their trailer storage was not 50 feet. Mr. Haight replied that zoning came in after the lot was established and taking 50 feet off the sides and 75 feet off the back would create a hardship. Chair Hebert commented that they couldn't ask the Board to ignore the Zoning Ordinance just because this lot had a lot of hardships that didn't meet their needs.

Chair Hebert reminded them that meeting the setback requirements weren't an issue when the lots were combined. Mr. Haight replied that Riverside and Pickering Marine had nothing to do with that development proposal. Chair Hebert stated that Keith Frizzell agreed that anyone purchasing the property would understand that that both lots were available to enable expansion on the Industrial lot or any development on the Industrial zoned lot alone would need to build within the existing setback constraints. He added that they were asking for a lot of variances for hardships that had been self-imposed because of wanting to build on one lot. He also pointed out that there were other lots up for sale along Shattuck Way. Mr. Anderson replied that the other lots had higher listings, to which Chair Hebert replied that was not up to the Board.

Ken Anderson asked if there was anything preventing Riverside and Pickering from utilizing the Industrial lot in its existing condition. Chair Hebert replied that they could continue with previous use, but they couldn't obstruct traffic.

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**B) Preliminary Consultation by Bernie and Phil's Furniture** for a store at 30 Fox Run Road, Tax Map 26, Lot 2.

Mr. Coogan informed the Board that the property owner, Planet Fitness still some outstanding site development issues for parking and landscaping, and this proposal would require an updated parking and lighting plan for the loading and unloading of furniture.

Gary Thomas with North Point Construction stated that this was mostly an informational to determine the parking requirements for a Bernie and Phil's Furniture store that would be a showroom, not a warehouse. He explained that most store orders would be shipped to the customer or delivered to the store for pickup.

Mr. Thomas stated that they would most likely have one truck delivery a day or every other day during weekdays only. He said they intended to remove a few rows of parking on the left side of the building for truck delivery.

Larry Rubin, son of Bernie and Phil stated that their hours of operation would usually be from 10 a.m. to 9 p.m. and 5:30 p.m. on Sundays.

Mr. Thomas said their primary focus would be on the Planet Fitness Headquarters primary entrance and they might add an elevator inside for an addition to the back to utilize the second-floor mezzanine for a display area. He said they would be adding new finishes and large windows for a Bernie and Phil's signature look from Route 16, but they wouldn't be adding a lot of lighting in the showroom, just table and floor lamps. Chair Hebert stated that he had no problem with interior lighting except that they needed to be sure that none of the lighting shone out toward oncoming traffic.

Chair Hebert asked if they would be doing anything with the poor condition of the parking lot and poor lighting. Mr. Thomas replied that the Rubins were in communication with the previous owners because they were being held up by what someone else was supposed to do eight years before.

Board member, Peter Welch asked if the building was at grade and Mr. Thomas replied that the handicapped parking came up to grade.

Vice-Chair Cross commented that the amount of solid surface was extensive for the lot so he hoped they would look carefully at the drainage.

Chair Hebert stated that as far as he knew Planet Fitness updated the drainage plan, but they wouldn't want water to run into the lower level. Mr. Thomas replied that he knew they did the yard basins in front.

Vice-Chair Cross asked if there was a roadway easement. Mr. Rubin replied that his attorney found the easement. Chair Hebert commented that it would be a plus to clean up any old easements that encumbered properties.

Vice-Chair Cross added that it was an old building and they would want to be sure it was earthquake and snow safe because it would make a good shelter building in an emergency.

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Chair Hebert asked what their timeline was for opening and Mr. Rubin said Mr. Thomas was hiring a civil engineer and were hoping to present their proposal by October. Mr. Coogan asked if the Board if they would consider allowing the applicant to start site work prior to approval to get ready for the holiday season. Chair Hebert commented that it would be at their own risk. Mr. Rubin replied that they still had to give Chuckee Cheese a 90-day notice to evict, so they knew they wouldn't be ready for the holiday and would wait until they received approval.

### C) Discussion on **Workforce Housing**

Mr. Coogan passed out a document explaining workforce housing law, RSA 674:58-61, land use board processes, appeals and definitions of affordable housing, income levels for for maximum rents and housing purchases.

Mr. Coogan said no one from the State would force a town to establish workforce housing zoning ordinances, but the challenge was if a developer came in with a proposal and was denied so the law says that a town must provide reasonable regulations that aren't too restrictive. Mr. Coogan went on to say that Newington currently had a very defined ordinance and there were few areas that would meet workforce housing criteria.

Mr. Coogan said he talked with New Hampshire Finance Authority recently. He went on to say that to make workforce housing viable, a higher density population would require municipal water and sewer, which was not currently available in Newington for residential use. Mr. Coogan added that other reasons for denying could be environmental or public safety issues.

Mr. Coogan explained that both single family ownership and multi-family dwellings of five units or more qualified as workforce housing and one of the issues was how to make workforce housing affordable and ensure that the developer wouldn't seek a windfall when selling to next buyer.

Mr. Coogan suggested that the Board review the existing landscape and do some brain storming on locations and zoning to consider what the Town should do. He added that New Hampshire Finance Authority had a mini grant program that could hire a professional to help the Town sort out the issues.

Chair Hebert commented that former Board member, Mark Phillips and developer of Hodgson Farm Lane had raised a red flag for the Board and he encouraged open discussion to be sure the subject was carefully considered and researched rather than rejecting the idea outright.

Mr. Phillips passed out handouts from the Workforce Housing Coalition of the Greater Seacoast. He pointed out that the Town's ordinance on accessory dwelling units provided workforce housing for a single "family", and the former Great Bay Services met the criteria for multi-family housing when it was in town, but now that it had been sold, there was no provision for multi-family workforce housing.

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Mr. Phillips informed the Board that workforce housing was income restricted for working people earning a minimum of \$13 an hour, not those qualified for Section 8 subsidized housing, although a developer meeting the criteria would qualify for a subsidy with tax credits.

Chair Hebert wondered who would administer the workforce housing and how it would continue into perpetuity rather than change from improvements. Mr. Phillips stated that the State would govern the housing for the first twenty years and it would have to be designed to continue generation after generation.

Mr. Latchaw brought up the issue of fair market values for lots and discussion ensued regarding the cost of lots in town not being a viable option for a workforce housing developer. Vice-Chair Cross commented one article stated that a Portsmouth developer determined that a workforce housing unit couldn't be both affordable and economical unless there were sixty units.

Vice-Chair Cross added that not only was there a concern that residential lots in town too expensive for affordable multi-family housing developments, rezoning to allow workforce housing near the Waterfront and Industrial Zones would constrain the development of business, which had been supported by congressional actions to keep the Piscataqua River a viable seaport.

Vice-Chair Cross noted that workforce housing would not cause any impediments to the Newington Public School, however, which had been expanded to hold 120 in anticipation of growth. Mr. Latchaw replied that they should consult with the school board and superintendent considering changes in laws on inclusion for disabilities and special education requirements had changed since the school was built.

Mr. Latchaw went on to say that workforce housing could not force a school expansion. Mr. Stern replied that the Town couldn't restrict workforce housing because the school couldn't support it.

Mr. Latchaw agreed, but said workforce housing and a new school would require a huge septic system. Mr. Weiner replied that new septic systems were capable of handling heavier use. Mr. Pare agreed so long as the property owner and the building inspector agreed on rigorous enforcement of maintenance.

Mr. Latchaw and Mr. Weiner suggested that Mr. Coogan compare other towns with high property values, small populations and no public sewage to see how they were addressing the issue of workforce housing. Chair Hebert replied that except for Newcastle, which had public sewage, that Newington didn't want to build and a different population, few small towns with high property values were like Newington's unique composition that was composed of a variety of land uses including conservation easements, Great Bay Wildlife Refuge, commercial, industrial, office, residential, Pease Development Authority and the Spaulding Turnpike.

Vice-Chair Cross commented that Rockingham County Planning recommended that towns consider fair share of housing of 70 units in the 1990's, but every town objected. He added that the Portsmouth Housing Authority and other groups were

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advocating meetings with planning boards to change workforce housing ordinances. Mr. Stern commented that the Town needed to establish restrictions, not in regulations.

Mr. Coogan stated that there was no requirement for towns to have workforce housing, only to provide reasonable opportunities for its development. Mr. Marconi commented that the City of Dover was working on a plan, but the question was still where to zone it. He said he thought the thing that made the most sense was to convert an inactive mill somewhere.

Mr. Christopher commented that he developed a multi-family workforce housing unit in Newburyport, but he didn't think it would be economically viable in Newington. He said their progressive mayor was now pushing for combination of commercial and residential developments.

Mr. Pare reminded the Board that they should also discuss the possibility of utilizing the top of the Fox Run Mall for workforce housing that was already having financial difficulties. Mr. Stern added that the City of Dover was requiring that all new commercial developments established residential space on the upper levels as downtown Portsmouth was doing.

Vice-Chair Cross commented that when discussions of converting the mall to workforce housing was brought up, some considered the possibility, but others expressed concern that it would become another Gosling Meadows housing development. Mr. Stern replied that workforce housing was not the same thing as low-income housing, however.

Chair Hebert expressed concern with what would happen to the housing development if the mall stores failed. Mr. Phillips replied that Alisha Busconi, Vice-President for KeyPoint Partners, property managers of the Crossing Mall suggested that they could put housing around the perimeter of the building or build a wing.

Mr. Christopher commented that Market Square in Lynnfield was a good working example of workforce housing surrounded by restaurants and stores. Chair Hebert commented that he thought it would work with small shops, but didn't think it would with large box stores.

Mr. Latchaw asked what the cost of the housing developments were and Mr. Christopher replied that they ran seven figures and up. Mr. Coogan asked if those developments qualified as affordable housing and Mr. Christopher replied that he thought they had to because there was a high demand for workforce housing.

Mr. Pare pointed out that the crux of the issue was that most of the workers that supported the community had to commute from other towns because there was very little affordable housing nearby. Vice-Chair Cross replied that Newington had contributed land for the State to build a multi-lane bridge that was supposed to improve workers' commutes.

Chair Hebert informed the Board that they could work on designating an area for workforce housing or wait to see if a developer came in and had a qualifying proposal, but they needed to be aware that not deciding to do anything was still deciding.



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### D) Discussion on **Elderly Housing**

Chair Hebert suggested that the Board consider possibilities for elderly housing in town considering many existing members of the communities were getting older and many empty nesters and retirees were buying properties in town because lots were not affordable for many moderate income young families. He said in addition to converting the malls, the Town easement at Fox Point was another possibility.

Chair Hebert commented that it was good to have a mixed community of ages, family composition, incomes and generations, however so that was something to consider.

E) Discussion of **Potential 2018 Zoning Amendments:** Article VII: Dimensional Requirements (Maximum Building Height) and Article IV: General Provisions Section 10, Buildings Per Lot

This item was postponed for the following item.

### F) **Additional Discussions**

Mr. Welch provided a summary of his research on possible Waterfront Industrial Zone uses. Chair Hebert commented that he also wanted to identify uses that didn't fit in. He said that he was not in favor of container ship deliveries because there was a high storm water impact from large paved areas along the shore.

Mr. Marconi recommended that the Board of Selectmen and Planning Board meet with his brother, Geno Marconi, Director of Ports and Harbors for New Hampshire Port Authority in October.

Discussion ensued regarding pollutants coming into Little Bay and pooling and pooling. Vice-Chair Cross mentioned that Portsmouth was considering the possibility of building a massive sewage plant and perhaps Newington should consider the possibility of a regional sewer plant as well.

Mr. Marconi said Board of Selectmen, Ted Connor was the Town's point person with water problems.

Mr. Welch suggested that eight Board members join him for a waterside tour of the Waterfront Industrial area on Tuesday, September 12 at 5 p.m. or an alternate date of Wednesday, September 13.

### E) **Discussion on potential 2018 zoning amendments**

*This item was delayed to for the previous discussion.*

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Vice-Chair Cross commented that any changes to the Zoning Ordinance should reflect values rather than list specifics so that the Planning Board could make a case by case determination.

### 1) **Article VII Dimensional Requirements** (maximum building height)

Mr. Pare proposed that the definition of building height specifies that it be measured from the lowest point to avoid four-story buildings from walkout basements.

Chair Hebert commented that he was disappointed that a recent building permit applicant asked for a fire code waiver instead of a variance because they took the average roof height rather than from the lowest point to the highest.

### 2) **Article IV General Provisions Section 10, Buildings per lot**

This item was postponed to the next meeting.

## II) **Other Business**

### A) **Master Plan Update**

Vice-Chair Cross informed the Board that he was still waiting for an update from Rockingham County Planning and would not be paying the bill until he received a response. Chair Hebert commented that they might need to talk to the new director.

### B) **Status Report**

Mr. Coogan passed out a memo reviewing the status of recent applications that would go before the Board in upcoming meetings.

### C) **Announcements**

Mr. Marconi informed the Board that the Board of Selectmen voted in support of an economic development committee that he would head with five to seven other members.

Mr. Marconi announced the Board of Selectmen had voted to reduce the speed limit to 30 miles per hour on McIntyre Road and Nimble Hill and to reduce the speed limit past the school to 15 miles per hour when the light was blinking for student arrivals and departures.

Mr. Marconi also announced that Little Bay Road would be closed in September while the Town was working on paving a two-foot shoulder on Little Bay Road for walking safety.

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Mr. Marconi also mentioned that Town engineering consultant, Altus Engineering looked at the leaking roof problem in the Town Hall auditorium, and repairs would be done on the carriage house, chicken coop and mooring dock at Fox Point.

**Minutes:** *Mike Marconi moved to approve the Minutes for the August 14, 2017 meeting with corrections as noted. Ken Latchaw seconded, and all were in favor.*

**Adjournment:** *Mike Marconi moved to adjourn the meeting. Bernie Christopher seconded the motion and the meeting adjourned at 9:58 p.m.*

**Next Meeting:** Monday, September 11, 2017

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

*These Minutes were approved and adopted at the September 11, 2017 Planning Board Meeting.*