

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, February 12, 2018

- Call to Order:** Chair Denis Hebert called the February 12, 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; Jim Weiner; Alternate Members: Ken Latchaw and Peter Welch; Board of Selectmen's Representative, Mike Marconi; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Rick Stern
- Public Guests:** Eric Weinrieb with Altus Engineering; Mark Phillips with Storage Barn, LLC; John Lorden, PE with MSC Engineering; Michael and Robin Patenaude; Chris Berry with Berry Engineering; Cindy Balcius with Stoney Ridge Environmental; Attorney Karyn Forbes; Attorney William Shaheen; Craig Daigle; Keith Frizzell; James Fabrizio; Cindy Lyons; Attorney Steve Roberts

I) Public Hearings:

A) Continuation of Site Review request by The Storage Barn of Newington, LLC for a self-storage facility with a manager residence at 2211 Woodbury Avenue, Tax Map 19, Lots 9-1 and 12.

The applicant, Mark Phillips and his representative, John Lorden, PE with MSC Engineering appeared before the Board. Discussion ensued regarding a waiver for impervious materials. Mr. Lorden explained that the site was only 4.5% impervious. Board member, Jim Weiner asked if runoff from the asphalt and buildings would be funneled to the focal drainage at the back and Mr. Lorden replied that it would.

Mike Marconi moved to approve the waiver from the impervious drainage requirements on the site proposal by The Storage Barn of Newington, LLC for a self-storage facility with a manager residence at 2211 Woodbury Avenue, Tax Map 19, Lots 9-1 and 12. Jim Weiner seconded the motion, and all were in favor.

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Discussion regarding outstanding issues raised during review by Town engineering consultant, Eric Weinrieb followed.

Chair Hebert asked if the applicant would be willing to work with Northeast Medical that held an easement through their property, should they need to move the sewer line. Mr. Lorden agreed, but noted that they were proposing the installation of a backup line should their system fail per their deed. Chair Hebert suggested that they talk with the abutter about amending the language to clarify that the abutting property could go around rather than follow the exact easement that ran under their building.

Mr. Weinrieb suggested that they might consider planting a few more trees along the Shattuck Way area as it would take many years for them to grow to full maturity and fill in.

Mr. Weinrieb added that the landscaping plan needed to show what would be planted after clearing had been done. He also noted that the proposed tree line didn't correspond to the grading plan. Mr. Lorden replied that the added berm and grading for additional storage to meet one condition had created another issue that he would address on the next revision.

Mr. Weinrieb added that there might be a need for an alternate design to stabilize slopes on the property line where changes were proposed so might need for. Mr. Lorden replied that he could add a note that rip rap would be added if necessary.

Town Planner, Gerald Coogan passed out a draft of proposed conditions for approval. Mr. Phillips asked that the Board consider allowing the caretaker's residence and connected office to be started before the Alteration of Terrain (AOT) permit was received so that the three modular units from New England Homes could be placed because permit approvals often took four months. Mr. Weinrieb replied that he would have to coordinate that with the building inspector for a Certificate of Occupancy.

Board of Selectmen's representative, Mike Marconi commented that there should be a stipulation that only one unit and an office would be allowed for the caretaker and that it could not be converted into a duplex. Chair Hebert agreed that a caretaker's dwelling was all that was allowed outside of the Residential Zone.

Vice-Chair Cross asked if they were asking for premature occupancy before completion of the entire project. Mr. Phillips replied that they were asking for occupancy before receiving the State permits.

Vice-Chair Cross commented that it seemed like it would be a risk for the Town to give partial approval for the caretaker's unit before the other buildings were done. Mr. Phillips replied that excavation would take two to three months, but then the storage units would go up easily. He went on to say that getting all the approvals from the fire chief for the caretaker's unit would take longer, however, so that was his reason for asking to start before they received all their State permits.

Chair Hebert asked if any children would occupy the caretaker's dwelling. Mr. Phillips replied that there would be children and that children also occupied the caretaker's unit at his storage facility in Dover.

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Chair Hebert asked how the children would get to school and Mr. Phillips replied that the School District would determine where they would be picked up. Alternate Board member, Ken Latchaw pointed out the school bus stopped at Haugh Storage to pick the children that lived in the caretaker's unit for six years before they left town a year ago.

Mr. Weinrieb asked Mr. Phillips to explain what level construction would be completed before occupancy. Mr. Phillips replied that they would need to tie the utilities in and because the climate-controlled storage was trickier, it would take more time.

Vice-Chair Cross commented that having heavy equipment access the site from the Woodbury Avenue entrance would be an issue for the Town. Mr. Phillip replied that he didn't think there would be an issue considering he had a two-million-dollar policy. Chair Hebert agreed that he didn't think there would be much danger because most of the construction would be done at the back, not to mention that it was common to have construction done around houses. Mr. Marconi and Mr. Latchaw also agreed.

Mr. Weinrieb added that the storm water management would be done, and he thought there probably would be less site work when the house was occupied and followed by the rest of the building construction.

Chair Hebert asked that only the River Road entrance be used for heavy construction vehicles once the caretaker assumed occupancy with children. Mr. Coogan added that they could use the Woodbury Avenue entrance once DOT granted the curb cut. Board member, Jim Weiner commented that it would seem reasonable for residents to use the Woodbury Avenue entrance for their personal vehicle.

Mr. Weinrieb commented that approval should also include a condition that they received a permit from the Department of Transportation (DOT) to use the River Road access for construction. Mr. Lorden expressed concern that delays in receiving permits from the State would delay their construction. Chair Hebert said he didn't want to cause hardship but asked if they would agree that there would be no occupancy until they received their permits.

Mr. Phillips stated that he thought that 10% of the site costs, which could add up to \$800,000 was steep considering that this was not a subdivision and the lot was staying in his possession. He added that the City of Dover only charged \$2,500 for a site bond to solve erosion if the site development failed. Mr. Coogan commented that the Town of Deerfield charged \$5,000 per acre. Mr. Weinrieb commented that the focal point drainage system was expensive and added to the calculation.

Board member, Bernie Christopher stated that he had no issue with the applicant starting construction on the caretaker's site early. He said he also agreed that 10% of construction costs seemed excessive and that \$10,000 seemed more reasonable.

Mr. Weinrieb agreed that \$10,000 was more reasonable than \$2,500 considering that the Town would need to call the bond and hire legal counsel before stabilizing the site if the project failed.

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Chair Hebert recommended a bond of \$25,000 to cover the stabilization of everything. He added that starting the caretaker's dwelling prior to receiving permits would be done at his own risk, but that a Certificate of Occupancy wouldn't be granted prior to receiving the permits. Mr. Phillips agreed.

Vice-Chair Cross asked that the applicant file all required permits and paperwork including Eversource approving power connections, design approval from the fire department, and utility approval letters from Newington Waste Water Treatment and the City of Portsmouth Water Department.

Vice-Chair Cross also reminded the applicant that the sign advertising the abutters' businesses needed to be removed, consultant and legal fees needed to be paid and a build plan needed to be filed within 30 days before occupancy.

Bernie Christopher moved to approve the Site Review request by The Storage Barn of Newington, LLC for a self-storage facility with a manager residence at 2211 Woodbury Avenue, Tax Map 19, Lots 9-1 and 12 with the following conditions:

- *That the applicant would grant an easement for the private sewer line*
- *That the applicant would correct any technical issues identified by Town engineering consultant, Altus Engineering*
- *That the applicant would obtain all NH State DES, DOT and other permits as needed*
- *That the applicant would record the stormwater management maintenance requirements*
- *That the applicant would provide an annual inspection and report for the "Focal Point" stormwater management system*
- *That the applicant would meet with the Board one year after occupancy regarding the rear access road and drainage issues*
- *That the residence was for the manager and family only and the residential use shall expire if the storage facility ceases to exist*
- *That all construction vehicles are to enter and exit from the River Road access and only the residents can enter and exit from the Woodbury Avenue curb cut*
- *That work was not to be started before final plans are approved and the mylar was signed and State Permits have been received*
- *That the applicant shall provide funds for third party engineering and inspection services*
- *That the applicant provide 100% of the total landscaping costs to be determine by final approved plant count for a period of two (2) growing seasons to guarantee the survival of the landscaping installation*
- *That a payment of \$25,000 bond will be deposited to escrow for site stabilization as a performance guarantee to be held until the applicant*

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satisfactorily completes all site work as agreed prior to the issuance of a certificate of occupancy

- *That the applicant would correct contacts and department heads on the cover sheet*
- *That the applicant shall provide a PDF of the final approved plans, reflecting all changes required as part of the approval process, including technical review comments*
- *That the applicant provides three (3) copies of the final plan as approved by the Newington Planning Board and a Mylar suitable for recording at Rockingham County Registry of Deeds (RCRD) with appropriate recording fees and separate fee for Land Conservation Historic Investment Program payable to RCRD*
- *That all final approvals by the Planning Board shall expire within two (2) years from the date of approval unless the Board grants an extension*

Jim Weiner seconded the motion, and all were in favor.

Chair Hebert informed the Board that he could sign a lot merger form according to RSA 674:31A with the Board's approval.

Mike Marconi moved to approve the signing of a merger of Tax Map 19, Lots 9-1 and 12 at 2211 Woodbury Avenue for The Storage Barn of Newington, LLC per RSA 674:31A. Bernie Christopher seconded the motion, and all were in favor.

B) Conditional Use proposal by Michael and Robin Patenaude regarding impacts to jurisdictional wetlands and buffers in the development of property located at 65 Nimble Hill Road, Tax Map 12, Lot 10B.

Vice-Chair Cross and Alternate Board member, Ken Latchaw recused themselves on this item.

Town Planner, Gerald Coogan distributed new information on the application, including a letter received from the applicant's legal counsel, Attorney William Shaheen and Attorney Karyn Forbes, and an email response from Town counsel, Attorney John Ratigan.

Mr. Coogan stated that the January 30, 2018 letter clarified that the applicant would not be conducting his business from the proposed garage and questioned whether there was an Town ordinance restricting their ten-acre lot to one septic for both the proposed house and garage.

Mr. Coogan stated that the letter also pointed out that the proposed wildlife pond was permitted in wetlands and was under the jurisdiction of the New Hampshire

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Department of Environmental Services (DES) and the Newington Conservation Commission, but not the Planning Board. He added that Attorney Ratigan's email reply indicated that the Board could address the proposed siting of pond if it interfered with the driveway or septic systems. Mr. Coogan went on to say that it was also up to the applicant to show whether the pond could affect the flow of drainage onto abutting properties only as it related to the Conditional Use Permit before the Board.

Mr. Coogan went on to say that he had also received an email from one of the applicant's abutters, Robert Byrnes who was not able to attend, but expressed wanted to be assured that the proposal would not increase runoff to his property, noting that the culvert that went from his property under Nimble Hill Road seemed to be undersized.

Chris Berry with Berry Engineering stated that he had reviewed comments from the last meeting by Town engineering consultant, Eric Weinrieb with Altus Engineering regarding the proximity of the proposed driveway to the abutting property lot line. Mr. Berry sited culverts, increased grades and elevating the driveway to one side, super elevated to reduce flows. He stated that he had keyed the analysis points at the boundary lines to be sure no water flow impacts increased.

Mr. Berry went on to say that they had already gone through a two-step process with DES and the Newington Conservation Commission for approval of their proposal for a wildlife pond. He stated that the applicant felt the pond was outside of the Planning Board's jurisdiction and that was the reason Attorney Shaheen and Forbes wrote the letter to the Board.

Mr. Berry added that the applicant had removed the second septic system proposal from the garage because he didn't think it was relevant to the Conditional Use Permit application for the driveway, but there was a possibility that he might return to the Board if there was an issue with the building inspector.

Mr. Berry went on to discuss their responses to Mr. Weinrieb comments, noting that many outstanding items had to do with the pond. Chair Hebert commented that they were not so concerned with the idea of the pond itself, but whether the impervious surface flow would go to the elevated pond and where it would during a storm even or if they hit a spring and how it might affect abutters.

Mr. Berry replied that he originally thought that the entire area flowed to the back of the lot, but it Google maps and the recent rains showed that there was a break in the middle of the lot with one side flowing toward the Nimble Hill Road culvert and the other side flowing toward the back ditches that run to the stream that ran to Great Bay.

Mr. Berry stated that the proposed pond would not be bermed on either end, but rather trenched in the ground like a bathtub with an outlet at the lowest elevation to avoid backing up.

Mr. Marconi asked if runoff would go toward Byrne's or Frizzell's properties or into the pond. Mr. Berry replied that the topography was subtle, and the pond was positioned to take flow from the abutter's site, but also the natural flow pattern from offsite and berming would cause problems.

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Chair Hebert opened comments from the public.

Craig Daigle of Nimble Hill Road commented that Newington had a lot of clay soils that didn't percolate runoff and he was concerned that water from the new houses that were being built up on mounds and from the shallow, elevated pond would run off.

Chair Hebert asked if drainage from the house roof would run to the pond or field. Mr. Berry replied that runoff from the house would stay on the owners' property, be distributed to the wetlands and then exit to the channel at the back. Mr. Berry added that the garage was built on the divide in the wetlands, so the runoff would flow to the analysis points. Chair Hebert asked if it was possible to use four-inch rain gutters to direct the flow from the garage toward the pond to prevent sheeting over the driveway. Mr. Patenaude replied that he intended to put them in. Mr. Coogan reminded the Board that this was a hearing for a Conditional Use Permit for the driveway access.

Keith Frizzell of 24 Fox Point Road asked how they could be sure that pine needles and leaf debris wouldn't accumulate on the surface of the pond and block the outflow, causing runoff toward his property. Mr. Berry replied that there would need to be a private agreement between Mr. Frizzell and with Mr. Patenaude. He added that water would need to build up two and a half feet before it altered the flow of the pond and it would still flow in its current direction, so he didn't think it would back up onto the Frizzell property. Chair Hebert commented that it would take a lot before the flow changed, but they could make it a condition of approval that flows couldn't be blocked.

The applicant, Mike Patenaude commented that the outflow was within the wetlands buffer, so there was there was an enforcement order, and that he would maintain the pond to prevent it from filling in. Chair Hebert commented that he would be more concerned with the creation of a berm, so he would want that condition to go with the deed.

Mr. Daigle asked if the builder had ever built a pond before. Mr. Patenaude replied that he had been doing excavation for 40 years.

Nancy Gowell of 57 Nimble Hill Road stated that she and her husband welcomed the Patenaude's as neighbors. She said Mr. Patenaude had built two homes for them in two years and they were very pleased with the outcome and the landscaping and had no concerns with the driveway being close to their property line or runoff from the pond.

Ms. Gowell added that the previous house on their site had a basement and septic full of mold so after studying the area for months, they determined that they had to build the house up to keep water out of their basement and said she resented people referring to their home as the house built on the mound. Chair Hebert apologized, but said they were concerned with runoff at the low points.

Mr. Daigle commented that most houses in town were built at grade and many basements flooded, including his, so it shocked everyone to see the house across the street be built up so high, but he understood.

Mr. Marconi asked where the water from the 12" culverts would flow, and Mr. Berry stated that the water would flow back on the property.

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Mr. Weiner asked if laydown area would encroach on wetlands and Mr. Berry replied that they would use silt socks and mulch berms. Mr. Patenaude added that they would stockpile the soil from the pond so that they would not need to transport fill in construction trucks over the town road.

Chair Hebert stated that the Conditional Use Permit did not include a curb cut, which required a separate permit that should be submitted for another meeting.

Chair Hebert closed the public hearing.

Mr. Weinrieb commented that the applicant stated that there would only be 61,000 square feet of clearing, but it appeared that it might be closer to 100 square feet, which would require an Alteration of Terrain permit. Mr. Berry replied that the applicant would commit to keeping the clearing under 100 square feet.

Mr. Berry added that much of the area had already been cleared and they were proposing to maintain the open field without the creation of a large lawn. Mr. Weinrieb said he would want to see limits of lawn so that there wouldn't be more clearing after construction. Mr. Patenaude replied that he didn't want to agree that they would never do any clearing in the future because his wife might want garden. Chair Hebert replied that it had already been a stipulation during the subdivision.

Jim Weiner moved to approve a Conditional Use proposal by Michael and Robin Patenaude regarding impacts to jurisdictional wetlands and buffers in the development of property located at 65 Nimble Hill Road, Tax Map 12, Lot 10B with the following conditions:

- That the applicant would correct all technical issues raised by Town engineering consultant, Altus Engineering
- That all third-party engineering reviews and inspection fees would be paid
- That the total land disturbance would stay under 100 square feet
- That the existing water flow from the site would be maintained
- That the water flow from the proposed pond to Flagstone Brook shall be maintained
- That all wetlands buffers would be flagged

Mike Marconi seconded the motion, and all were in favor.

Vice-Chair Cross and Alternate Board member, Ken Latchaw returned to their seats.

II) Other Business:

- A) Proposed 2018 Zoning Amendment #6:** Delete the term "Exception:"

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This item was delayed to hear the next item first.

- B) Discussion of rear driveway for proposal by **2061 Woodbury Ave, LLC** for a 100-room hotel on property located at 2061 Woodbury Avenue, Tax Map 27, Lot 2

Attorney Steve Roberts and John Lorden with MSC Engineering returned to the Board to have an informal discussion regarding the incorporation of a 24-foot-wide rear drive access from Piscataqua Drive designed to service the southern lot.

Chair Hebert asked how they moved the building placement forward to keep the access drive within the setback and out of the easement. Mr. Lorden replied that they gave up a few parking spots.

Chair Hebert commented that the Board usually frowned upon encroachments on setbacks, but because the easement would remain, it would create a permanent buffer which was the purpose of setbacks.

Attorney Roberts added that the rear access was a compromise, but they still wanted a right in and right out curb cut on Woodbury Avenue.

Attorney Roberts stated that the two curb cuts that were granted by DOT were grandfathered. He said Mr. DiLorenzo wanted to keep the curb cut because he intended to subdivide the two lots and wasn't sure what use the other property would require.

Discussion ensued regarding turning in and out of the site from Woodbury Avenue and Piscataqua Drive and avoiding crossing traffic and U-turns near the intersection. Wayfinding signs for the back entrance to go south was also discussed.

Mr. Weinrieb commented that multiple access points created confusion and asked if they would consider a boulevard separated by low landscaping to access both lots from Woodbury Avenue. Mr. Lorden replied that because they still didn't know what use would go in the other lot, Mr. DiLorenzo wouldn't necessarily want a shared driveway.

Chair Hebert commented that the Town had hired a traffic expert for a future meeting, so they could review one another's studies.

Mr. Weinrieb recommended that the applicant completed their plan and construction, especially the utility work before the State started doing work on Woodbury Avenue.

Mr. Weinrieb asked if it made sense to postpone the next meeting and Mr. Lorden agreed and suggested utilizing the Technical Review Committee process to save money rather than repeated redesign.

- A) **Proposed 2018 Zoning Amendment #6: Article VI, Section 1 – Expansion**

This item was delayed to hear the previous item first.

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Mr. Coogan recommended that the word "exception" be deleted regarding the expansion of non-conforming uses, structures and properties to avoid confusion. He added that Chair Hebert, Vice-Chair Cross and Town counsel, Attorney John Ratigan concurred. Chair Hebert added that the change was merely administrative and wouldn't change the content.

Bernie Christopher moved to recommend the administrative amendment to delete the word "exception" from Article VI, Section 1 – Expansion. Jim Weiner seconded the motion, and all were in favor.

B) Updates: Town Planner Report

Mr. Coogan informed the Board that the State said they would be done with their reports by the end of the year, but FEMA was considering delays. He asked if the Board wanted final maps in 2018 or when others were done in 2020.

Mr. Marconi said he thought it would be confusing to get two reports. Chair Hebert commented that someone could review the changes, but he thought they should receive the 2018 report for insurance purposes. Alternate Board member, Peter Welch commented that the report should be updated on the Town website.

C) Master Plan Update

Vice-Chair Cross stated that he was still waiting for updates from the Rockingham Planning Commission.

Minutes: *Mike Marconi moved to approve the Minutes for the January 22, 2018 meeting with corrections as noted. Peter Welch seconded, and all were in favor.*

Adjournment: *Mike Marconi moved to adjourn the meeting. Peter Welch seconded the motion and the meeting adjourned at 9:50 p.m.*

Next Meeting: Monday, February 26, 2018

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