

Planning Board Minutes 03/08/11

NEWMARKET PLANNING BOARD
TOWN COUNCIL CHAMBERS
MARCH 8, 2011
7:00 P.M.

Present: John Badger (Chairman), Eric Botterman (Town Council Representative), Elizabeth Dudley (Alternate), Diane Hardy (Town Planner), Rick McMenimen, Janice Rosa, Peter Roy (Vice-Chairman), Val Shelton, George Willant

Absent: Justin Normand (Alternate), Adam Schrodter (alternate)

Chairman Badger called the meeting to order at 7:04 p.m.

Pledge of Allegiance

Public Comments

No comments.

Review and Approval of Minutes: 02/15/2011, 11/09/2010

February 15, 2011

Action

Motion: Rick McMenimen made a motion to approve the minutes from the February 15, 2011 Planning Board meeting.

Seconded: Eric Botterman

Vote: All in favor – Chairman Badger, Eric Botterman, and Janice Rosa abstained

Chairman Badger, Eric Botterman and Janice Rosa abstained from voting because they had not been present at the meeting.

November 9, 2010

Action

Motion: Rick McMenimen made a motion to approve the November 9, 2010 Planning Board meeting minutes.

Seconded: Vice-Chairman Roy

Vote: All in favor – Chairman Badger, and George Willant abstained

Chairman Badger and George Willant abstained from voting, because they had not been present at the meeting.

Regular Business

Applicant: Cheney Property Management Corp/MJS Engineering, PC

Location: 54-56 Exeter Road, Tax Map U4, Lots 12 & 13, B1 Zone

Application: Design Review

Proposal: The proposal is to redevelop two parcels by removing the existing commercial building and residential duplex and constructing a two-story mixed use building with parking area. The two lots would be incorporated into the Newmarket Business Park Condominium area. Continued from 02/15/11.

Chairman Badger noted the applicant has asked for this application to be continued.

Action

Motion: Eric Botterman made a motion to continue the application for Cheney Property Management Corp/MJS Engineering, PC located at 54-56 Exeter Road, Tax Map U4, Lots 12 & 13, B1 Zone, to the April 12, 2011 Planning Board meeting.

Seconded: Vice-Chairman Roy

George Willant noted the Board had continued this application at their last meeting. He asked why there was a request for another continuance. Town Planner Diane Hardy explained the applicant has not yet received the variance approvals required from the Zoning Board of Adjustment. The applicant appeared before the Zoning Board last night, but the Board did not deliberate on the application due to the lateness of the meeting and instead postponed the application until March 21, 2011.

Vote: All in favor

Applicant: Solon Realty Co, LLC

Location: 438 Wadleigh Falls Road, Tax Map R6, Lot 50, B3 Zone

Application: Site Plan Review

Proposal: The proposal is to revise the existing site plan to allow the storage of containers & trailers in the limits of the gravel area and allow containers in the previously delineated container area. Also requested is to allow an old office trailer to be used as a warming hut for the workers who move the containers. They are also requesting the storage of fourteen ice cream trucks on site, which will be used from the site during the season and stored there off-season. This use would include a dumpster on the site. The owner would also like to include the storage of snow removing equipment to include a loader & bulldozer onsite year round. This site plan also includes additional screening from the roadway.

Tobin Farwell, of Farwell Engineering Services, representing the applicant, explained, in 2007, the property owner had come before the Planning Board for approval to store trailers in the gravel pit area of the property. The Planning Board approved the storage of 40 storage trailers and 10 storage containers. The previous site plan did not include equipment storage on site, the office or warming hut. These deficiencies were discovered during a recent site visit he attended with the property owner and Town Planner Diane Hardy. Following the site visit, the site was brought into compliance with the exception of the stored ice cream trucks, which have been snowed in.

Chairman Badger noted the Planning Board had performed a site walk, when this application originally came before the Board. It was his opinion a buffer that had been there has been destroyed. Tobin Farwell explained the applicant is working with RCCD (Rockingham County Conservation District) to create a restoration plan. Agricultural and forestry use is an allowed use in this area, although the applicant should have received a permit. Chairman Badger explained agricultural and forestry use was not in the spirit of the approvals that were granted. Tobin Farwell explained the applicant had filed an intent to cut permit with the Town of Newmarket. This action was not done secretly. Town Planner Diane Hardy explained this would have been filed with the Tax Assessor's office. The Planning Office does not receive notifications of this action. The disappointing thing is the trees had provided a significant buffer to adjacent properties. With the trees having been cut down, the buffer has now been eliminated. Mr. Farwell has provided a revised screening plan including a berm, fence and trees. Ms. Hardy hopes this provides the buffer necessary to screen this from the road.

Tobin Farwell explained there was no dredging and filling of the site or stump removal. Town Planner Diane Hardy explained a site restoration plan has been filed and will be reviewed.

Town Planner Diane Hardy asked if Val Shelton would like this information sent to the Conservation Commission for their review and comment. Val Shelton asked if all of this property is in the aquifer protection area. Town Planner Diane Hardy explained the property is located in the aquifer protection area. Her understanding is the cutting did not impact the prime wetlands in the vicinity.

Vice-Chairman Roy asked what necessitated the tree removal, if the stumps didn't have to be removed as well. Tobin Farwell explained the applicant was concerned with the number of trees that had fallen towards different structures on the property.

Val Shelton noted this property is located in the B3 Zone; forest and agricultural use are not allowed in this zone. Town Planner Diane Hardy agreed stating the Table of Permitted Uses does not allow forestry and agriculture. The Board discussed this with the applicant. Town Planner Diane Hardy explained the site plan approval from 2007 very clearly indicated the vegetative buffer would remain to screen this property from adjacent properties.

Town Planner Diane Hardy noted she has reviewed the application against the checklist and finds it to be thorough and complete. She recommended the Board accept the application for review. She also recommended, as part of the Board's review, to perform a follow-up site visit and to work with the Code Enforcement Officer to see if there can be remedy to provisions that have not been complied with.

Action

Motion: Val Shelton made a motion to accept the application for Solon Realty Co, LLC located at 438 Wadleigh Falls Road, Tax Map R6, Lot 50, B3 Zone for site plan review. The proposal is to revise the existing site plan to allow the storage of containers & trailers in the limits of the gravel area and allow containers in the previously delineated container area. Also requested is to allow an old office trailer to be used as a warming hut for the workers who move the containers. They are also requesting the storage of fourteen ice cream trucks on site, which will be used from the site during the season and stored there off-season. This use would include a dumpster on the site. The owner would also like to include the storage of snow removing equipment to include a loader & bulldozer onsite year round. This site plan also includes additional screening from the roadway.

Seconded: Vice-Chairman Roy

Vote: All in favor

Chairman Badger opened the floor for public comments.

No comments.

Chairman Badger closed the floor for public comments.

Town Planner Diane Hardy explained this property is on the boundary of the Town of Lee and Durham. The Strafford Regional Planning Commission and the abutting towns should be notified that the Board has received an application under the Regional Impact Criteria. Because of the extent of the violations, it would behoove the Planning Board to solicit feedback from the adjacent towns. It is her understanding there has been a variance application, with the Town of Lee, to allow continuation of the development. Tobin Farwell noted this has not been filed yet, but it is the applicant's intent to file.

Town Planner Diane Hardy referenced the site plan approved in 2007 discussing the site walk the Planning Board had taken during the site plan review process.

Tobin Farwell noted he met with Town Planner Diane Hardy several times. He is of the opinion that agricultural and forestry is an allowed use. A stabilization plan is being reviewed by RCCD. He has responded to the comments RCCD provided, which is now being reviewed again by RCCD.

Vice-Chairman Roy noted he had been under the impression this would remain buffered. He expressed his concern with the lack of compliance with the site plan approval the Board granted in 2007.

Val Shelton suggested the next steps would be to set up a Technical Review Committee and site walk. She asked if the wellhead protection overlay district is anywhere near this property. She asked if this use is consistent with the B3 Zone. She noted stored vehicles could leak contaminants into the ground. She noted there is a warming hut; she asked if there would be employees on site. Town Planner Diane Hardy explained the applicant has suggested there would be no employees on the lot for periods of time. The Board had also prohibited the storage of hazardous materials on site. These vehicles would have antifreeze, oil, and other petroleum products.

Chairman Badger, Vice-Chairman Roy, and Eric Botterman agreed to be on the Technical Review Committee for this application.

George Willant suggested historical information for this application would also be helpful. He suggested the plan should show what was approved; what exists, and what is proposed would be good information to compare. Town Planner Diane Hardy asked Tobin Farwell to provide a series of overlay maps showing this information.

The Planning Board set a site walk for Friday, March 18th at 2:00pm.

Action

Motion: Eric Botterman made a motion to continue this application to the April 12, 2011 Planning Board meeting.

Seconded: Rick McMenimen

Vote: All in favor

Applicant: Eric DeWitt

Location: 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone

Application: Design Review

Proposal: The proposal is to subdivide the land into two lots. An easement and culvert will be created to access the rear lot. There are two houses currently on the lot. The existing house at 79 Exeter Road will be removed. The current driveway will be relocated and a parking lot will be created. The other existing house will remain and be renovated into a mixed-use building.

Janice Rosa explained Mr. DeWitt has called her husband for information about doing some excavation work. Currently, no contract is in place. If at some point a conflict of interest does occur, she will recuse herself at that time.

Eric DeWitt, owner of the property, explained currently there are two residential buildings on the property with a garage and a shed. He would like to remove the smaller building, while putting an addition on the second building in order to create a commercial space on the first floor with residential use on the second floor. This design review is being done in an effort to keep costs on the project lower. Once the Board provides input and comment on the design review, he will hire an engineer to create the site plan documents that will be required as part of the site plan review process.

Eric DeWitt explained the lot does comply with the Town's subdivision regulations, considering the wetlands in the rear of the property. The lot is 5.29 acres. Access to the site will be through an easement on the other property.

Elizabeth Dudley suggested the proposed layout of the parking is not as advantageous as it could be considering the Village Main Street concept. She suggested a different concept may be bringing the building closer to the street with associated parking behind the building; this would create a more pedestrian friendly appeal. She suggested landscaping and sidewalks would also provide a friendlier appeal. Eric DeWitt explained he had looked at a couple of different parking layouts; due to wetlands buffer constraints and existing buildings, this parking layout was the best design.

Val Shelton asked what the parking setbacks are for parking lots in the B1 Zone. Town Planner Diane Hardy explained parking lots are not considered structures. Parking must be set 15 feet from the road and 25 feet from the side property lines. She suggested the applicant would need to get a waiver for the parking setbacks, if this design is to come forward.

Eric Botterman referenced the wetland crossing stating the applicant/land owner cannot create their own hardship in order to cross a wetland. He asked if the applicant has spoken with the NH Department of Environmental Services (DES). Eric DeWitt answered he had spoken with Dori Wiggin, from DES. Dori Wiggin had suggested she would approve the proposal; the crossing is where it should be. She is aware this would be a newly created lot.

The Board discussed parking configurations and storm water management. Eric Botterman understood the reasons the applicant wanted the parking lot where it is, but he didn't feel the Planning Board had enough information to determine whether this is the best parking design for the project.

The Board discussed the best way to proceed including whether the applicant should get the wetlands crossing permitted, before coming to the Board for the subdivision, in the event this would create a non-buildable lot due to the wetlands. The wetlands permit could be a condition on the approval.

Eric DeWitt explained the garage is storage now and will remain storage for the meantime. In the future, he would like to convert the garage to rentable commercial space like a small retail store. Town Planner Diane Hardy explained the residential use on the property is a grandfathered use. The applicant would like to convert the use on the property to a mixed-use development.

Chairman Badger opened the floor for public comments.

Richard Badger, owner of Seacoast Machine Company, stated his driveway would be directly across from this proposal. He felt it was a great improvement for the area. This is a very difficult lot to work with. He felt the proposal was likely the best design for the project. He supported this project 100%.

Chairman Badger closed the floor for public comments.

Elizabeth Dudley still felt the parking layout could be improved; she felt there are opportunities to avoid one block of parking. She suggested smaller parking areas and landscaping to create a village center feel rather than a block mall lot. Town Planner Diane Hardy like the idea and suggested Elizabeth Dudley work with the applicant to create sketch plans of possible parking scenarios. Eric Botterman and Val Shelton did not feel it was appropriate for a Board member to help the applicant with design of a project, no matter how good the intentions were. Town Planner Diane Hardy noted Elizabeth Dudley is a landscape design architect and had felt her expertise would be beneficial in this area.

Eric DeWitt noted he intends to put a landscape design plan together as part of the project.

Chairman Badger suggested the Board supported the concept of the project. He noted the applicant has received feedback on the design concept specifically relative to the parking layout. He suggested the applicant continue to work with Town Planner Diane Hardy to bring forward an application.

Applicant: Gayle McConnell/Fraternal Order of Eagles

Location: 41 Exeter Road, Tax Map U3, Lot 40, M2 Zone

Application: Site Plan

Proposal: The proposal is to change the use of the building from office/retail sales to a private membership social club. The building will house the Fraternal Order of Eagles social room and meeting rooms and club offices.

Chairman Badger read a letter from Gayle McConnell into the record:

"Dear Board,

"On February 23, 2011 I received a registered letter from the Planning Board that addressed a public hearing requested by: "Gayle McConnell/Fraternal Order of Eagles." I then learned there was a meeting planned on March 8, 2011. I did not

initiate this request; this was requested by the legal counsel for the Fraternal Order of the Eagles. It is unfortunate that with such short notice I am unable to attend this meeting. I would like this letter to be entered into the record at this hearing. While it is true I am currently in negotiations to sell the above referenced property to the Fraternal Order of the Eagles, that sale has not been finalized. I understand the Fraternal Order of the Eagles wants to ensure they would be able to conduct business as required and that would mean they would need to change the current use. However, that change can only take place when the title passes over to the Fraternal Order of the Eagles. I reiterate, any change of use is to be contingent upon sale of the property.

“Respectfully, Gayle McConnell, 1018 Bennett Road, Newmarket”

Chris Burns, applicant and President of the Fraternal Order of Eagles, noted he has not seen a copy of the letter, but agreed the change of use would be contingent upon the sale of the property. He discussed this with Gayle McConnell to ensure approval of the change of use was contingent upon the sale of the property, in the event the sale fell through. This would ensure Gayle McConnell would not have to come before the Board to change the use back.

Town Planner Diane Hardy explained the owner of the property must authorize the applicant to act on the owner's behalf in order to move forward. This is a deficiency of the application she had noted while reviewing the application for completeness. She noted other areas of deficiency with the application. She explained there are very specific requirements for applications submitted for site plan review. She would fax these requirements to the applicant in the morning. She did not feel the application was complete for the Board to review. She suggested the applicant to come to the Planning Office for additional assistance.

Val Shelton asked if this application would fall under a minor site plan review. Town Planner Diane Hardy suggested this change of use, based on the application submitted, would be considered an increase in the intensity of the use. She felt the impacts would be significant enough to warrant a complete site plan review. She noted there is a provision for a waiver from full site plan review; this is an avenue the applicant may be able to pursue.

Chairman Badger opened the floor for public comments.

Walter Johnson, of 245 South Main Street and member of the club, noted he was under the impression after the conversations he had with Town Planner Diane Hardy, this would be considered a minor site plan review. He noted the purchase of this property is contingent upon getting a proper review from the Planning Board. Gayle McConnell's concern is the use of the property would be changed and she would have to come before the Planning Board to change the use back in the event the sale does not go through as expected. Val Shelton explained granting of the change of use is just a permit to change the use; it doesn't mean the approved use must be implemented.

Town Planner Diane Hardy asked the Board if they felt this would be a more intensive use of the property. Val Shelton explained, even though the permitted use for this property is retail, the property has not been used for this purpose. She expressed concern with being misleading, by suggesting the use is more intensive or less intensive. When the funeral parlor was there, the use was intense: there was high traffic volume; and multiple access points. When it changed over to retail, had it been a successful operation that would have been a high use. She suggested relative to what this lot is approved for, she did not feel this was a large change in intensity of the use.

Vice-Chairman Roy asked if there are plans to change the use for this building from what was used at the other building. Walter Johnson explained there would be no function hall in this building. The first floor would be the social club; the second floor would be offices. This proposal is actually downsized from what was at the other building.

Town Planner Diane Hardy suggested it would be helpful to know how the use will operate so the Board can make a better judgment as to whether this project will fall under the minor site plan or major site plan regulations. After looking at the definitions and reviewing the materials submitted, she got the impression there would be more impact, which would require a higher level of review. This information should include the number of members, the number of vehicles, hours of operation. Walter Johnson noted there is not a lot of vehicle traffic as most of the members are walkers.

Liz Morse, owner of 39 Exeter Street, noted she is very supportive of this plan, but is concerned with the lighting due to the extreme close proximity of the house on her property and this property. She also expressed concern with possible noise levels.

Gene Robidere, of 1 New Road, noted her property abuts on two sides of this property. She noted Gayle McConnell did a survey within the past few years, so that information is available. She expressed concern with the conservation of the land behind the building, which is very wet. There is a stream that runs behind the building. When there is flooding, that area floods between three and six feet deep. She expressed concern with hours of operation and vehicle traffic. This can be a dangerous intersection and she has witnessed a number of accidents in this location. She asked if liquor would be sold at this location. Walter Johnson answered a liquor license would be required, as liquor would be sold. She suggested trash removal could be difficult given the shortened turning radius.

Karen McIntosh, of 47 Exeter Road, suggested it would be great not to look at a dumpster in a parking lot. She asked if a small buffer zone between the road and the parking lot could be made to help make the lot more aesthetically pleasing. She is in favor of having something in this area.

Chairman Badger closed the floor for public comments.

Chris Burns noted this is not an overly populated club which will be moving from downtown closer to residential property. During the last six months, he and Walter Johnson have been conducting informal surveys. During the weekends they would count vehicles and members. As previously stated, most of the members are walkers. On the busiest nights, even with live music, the number of vehicles never exceeded 12. The facility the organization will be moving to has over 20 parking spots. He suggested the use would be less intensive. There are approximately 20 members. Most likely, there will be no vehicles in the parking lot during the day. As for lighting, they would be happy to work with the neighbors to make sure their needs are met, as well. As for hours of operation, they don't open early in the morning and are usually closed by midnight on weekends and 10:00pm on weeknights.

Cheryl Turnhill, a member of the Fraternal Order of Eagles, noted they have already spoken with the members relative to one way into the lot and one way out of the lot.

Applicant: Vincent Jarosz

Location: 10 Langs Lane, Tax Map R5, Lot 62-2, R1 Zone

Application: Waiver of Impact Fees

Proposal: Request for a waiver of impact fees for an accessory apartment recently approved by the Zoning Board of Adjustment

Vincent Jarosz noted he submitted a letter to the Board relative to an accessory apartment, which was approved at 10 Langs Lane. He requests the impact fees associated with the accessory apartment be waived.

Eric Botterman felt this was consistent with the waivers the Board has granted in the past. Chairman Badger agreed.

Val Shelton referenced Town Planner Diane Hardy's memo to the Board suggesting the applicant provide a letter from a realtor or other professional stating there will be no impact on the school system.

Action

Motion: Eric Botterman made a motion to grant the waiver as requested for Tax Map R5, Lot 62-2, R1 Zone relative to

school, recreation facility, water supply impact fees with the condition the applicant submit a letter from a realtor or other professional stating there will be no impact on the school system from the accessory apartment.

Seconded: Janice Rosa

Vote: All in favor

Old Business/New Business

Chairman Badger noted he spoke with Town Planner Diane Hardy relative to the subcommittee working on the impact fee review. They feel there is a need for a third party consultant to help with this study. In this year's budget, there was funding set aside for consultant work. A consultant has been hired to work with the Economic Development Committee to finalize the changes to Chapter 6. A report will be to the Board by the end of the month. There are still funds available to engage a consultant for the impact study. There is funding in next year's budget for consultant work if needed. The consultant that would be hired would be Bruce Mayberry, who helped the Town with the initial impact fee ordinance.

Vice-Chairman Roy explained he was part of the Impact Fee Subcommittee. The Committee had gotten to a point where expertise was necessary to continue their work. He supported hiring the consultant.

Town Planner Diane Hardy noted she spoke with Finance Director Don Parnell, who has more time now that he is over the major hurdles of the budget. Finance Director Don Parnell will work with Planning and Zoning Administrative Assistant Sue Jordan on getting the financial information together for the subcommittee.

The Board agreed to hire the consultant for assistance with the impact fee study.

Adjournment

Action

Motion: Janice Rosa made a motion to adjourn at 8:52 p.m.

Seconded: Rick McMenimen

Vote: All in favor