**NEWMARKET PLANNING BOARD MEETING**

**JUNE 11, 2019**

**MINUTES**

Present: Val Shelton (Vice Chairman), Diane Hardy (Town Planner), Jane Ford, Jamie Bruton, Bill Doucet, Sarah Finch, Michal Zahorik (Alternate), Gretchen Kast (Town Council ex officio)

Absent: Eric Botterman (Chairman), Zachary Dumont (Town Council ex officio) – both excused

**Agenda Item #1 - Pledge of Allegiance**

**Agenda Item #2 – Public Comments**

Val Shelton appointed Michal Zahorik to replace Eric Botterman.

No public comments.

**Agenda Item #3 - Review & Approval of Minutes**

***05/14/19***

**Action**

**Motion: Bill Doucet made a motion to approve the minutes**

**Second: Jane Ford**

**Vote: All in favor**

**Agenda Item #4 - Regular Business**

***Eric DeWitt – Request for extension of the Conditional Approval of Site Plan for a mixed use development, at 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone. The proposal was to remove the existing buildings and driveways and build a 2,920 square foot, two-story, mixed use (commercial/residential) building, with municipal water and sewer. The site plan included associated parking, drainage, and landscaping improvements.***

If the Board grants this, Diane Hardy stated the new expiration date would be December 2019.

Val Shelton stated his request stated he had made significant progress relative to the punch list for getting final approvals. Eric Dewitt stated they still have to finalize the developer’s agreement and submit to the State for a sewage discharge permit. He sent the operation and maintenance manual and that should be complete. He still needs an excavation permit from the NHDOT.

Diane Hardy stated they need to work with Mr. Dewitt on the wording in the bond letter of credit agreement. It is part of the developer’s agreement.

**Action**

**Motion: Jane Ford made a motion to extend the six month extension on the conditional approval for 81 Exeter Road development project under the Municipal Code Appendix A, Section 2.2 17(C)(2)**

**Second: Sarah Finch**

**Vote: All in favor**

***Eric DeWitt – Request for a Waiver of Impact Fees for the residential units in the mixed use building at 81 Exeter Road, Tax Map U3, Lot 137, B1 Zone. The proposal was to remove the existing buildings and driveways and build a 2,920 square foot, two-story, mixed use (commercial/residential) building, with municipal water and sewer. The site plan included associated parking, drainage, and landscaping improvements.***

Val Shelton stated they have the applicant’s letter of request.

Eric Dewitt stated the total cost of impact fees is over $20,000. It is a significant amount. The fee schedule was developed for a typical multi-bedroom apartment. The proposed units are studio efficiency apartments. The impact would not be as great. These apartments are best suited for a single occupant. That makes it not suitable for school age children, which is a significant part of the impact fee. This project would bring in revenue and that would benefit the public schools. The wastewater and water supply treatment fees were developed assuming there would be a typical multi-bedroom apartment. These units are much smaller. With a three or four bedroom apartment and one bathroom, there is three or four times more waste entering the system. With a single occupant, there would be significantly less. He designed some things in the apartments that would help. There are no garbage disposals, instead there will be onsite composting. Those solids are not entering the system. There will be dual flush toilets and low flow fixtures. There will be cisterns to collect rainwater, which does not draw on the water supply as much. He saw, from reading past minutes, these waivers for accessory apartments are usually granted, because the Town is trying to provide small, affordable residential units for different segments of the population and this request is in keeping with that. It is expensive to do, as the ratio of plumbing fixtures to the overall square footage is much greater than a typical three or four bedroom apartment. The $20,000 is making it more difficult to do. In Section 32-238(F)(4), it says the Planning Board can waive impact fees for conditions specific to the development of a subject property. Based on that, he is asking for the fee waiver. Just trying to do this as a green development makes it more expensive. Things like the permeable parking lot, the cistern, EV charging stations and high efficiency buildings are expensive.

Val Shelton stated it would be her opinion that Section 32-238(F)(4) does not apply to this. If you read that language, they could waive an impact fee, where it finds conditions specific to a development agreement or written conditions or lawful restrictions applicable to the subject property. It has to be one or the other. The development will not increase the demand on the capacity of the public capital facility or system for which the impact fee is assessed. Neither of those apply, as there are no restrictions in the development agreement to limit the number of people in the studio apartment. There is no legal right. They are limited as to when they can waive impact fees other than accessory apartments, because it is right in the ordinance. The points made are very valid and the Board has granted waivers in the past for other projects, particularly for the school fees. The Board can grant waivers, but only under specific conditions. The conditions for this project do not exist under the ordinance, in her opinion. In order to waive, it has to be deed restricted to 55 and older or 62 or older. The applicant was not planning to do that. They could grant it, if, in lieu of a cash payment, if they were making some kind of cash payment to the utilities, as an offsite improvement. They waive a fee for a particular capital facility, where it finds the subject property has previously been assessed for its proportionate share of public capital facility impacts or has contributed payments or capital facility improvements equivalent in value to the dollar amount of fees waived.

He has a case, in the fact there are two residential units there now. Mr. DeWitt stated they were independently metered for water. Val Shelton stated he was paying into the water and sewer capital by virtue of that being included in the water and sewer fees and he has been paying residential taxes. The Board might determine they could qualify this. They had talked about the next item on the list already, but, when you read it the Board does not have the authority. The next criteria would require an independent study from a real estate perspective. Diane Hardy stated it would have to be supported with real data.

Val Shelton stated they needed to treat each aspect independently. In the past, they have waived certain capitals. Diane Hardy stated, at a minimum, it would be advisable to charge the impact fees for the additional units. In the interim, Mr. DeWitt may want to have an independent study done to document some of his points made.

Bill Doucet asked about the development of the fee schedule. The current rates haven’t changed since 2001 and are documented in the original impact fee report. Diane Hardy stated the Town has hired Bruce Mayberry to put together a schedule of impact fee rates for accessory dwelling units.

Bill Doucet stated the units are not restricted to a single occupant. Eric DeWitt stated you cannot legally discriminate based on the type of occupant. The apartment is best suited for one person. It is a micro-unit. Val Shelton stated there could be some exceptions because, in reality, there could be school aged children living there.

Jane Ford asked if he was targeting the college aged community, young professionals, etc. Eric DeWitt stated, with his business plan and having owned a tiny studio himself for ten years, he knows how popular small units are. When he lists the unit, he gets people beating down the door. There is a population that got out of school, had roommates for a while, and are done with it, but are not ready to jump up to a big, expensive rental. He has been very successful with both units and has gotten great tenants.

**Action**

**Motion: Bill Doucet made a motion that they consider crediting two units based on the existing units on the property and crediting a third unit for a total of six units, based on if your average apartment has a density of three and this could argue one, but he thinks it is a more solid argument to say two, that ratio ends up with two occupants here, with the equivalent of three occupants in six units elsewhere, so his argument is this is the equivalent of six units**

**Second: Jamie Bruton**

Sarah Finch asked if they could also remove the public school fees. The folks renting these units will likely will not have school age children. There is a strong argument there. Diane Hardy stated she tends to agree, but thought they should have some hard data to support that argument.

Bill Doucet stated there are two occupants per unit and that is a total of eighteen. If a typical multi bedroom has three occupants that would be equivalent to six units. There are already two on site reducing it to seven additional units.

Val Shelton stated there are already two units there, so there will be seven new units. They are studios. The fee schedule for multi families was generated for two bedrooms. So it is like having three and a half two bedrooms. They still need Section 5. It would be in the applicant’s best interest to provide more formalized data from a third party, so they would really have the authority to be able to grant the waivers. Diane Hardy asked if the Board might give him time to go back and get that data.

**Vote: Val Shelton & Jane Ford opposed**

**All others in favor**

Val Shelton stated this vote was made without prejudice, if the applicant wants to come back to the Board.

***Robert & Phyllis Paige/William Benedetto – Continuation of a public hearing for an application for Major Site Plan Review, at 10 Norton Lane, Tax Map R5, Lot 11-1, B3 Zone. The proposal is to develop the property as a golf driving range and practice area. The site development will include a new driveway, parking, tee boxes, gravel walkways, putting greens, chipping areas, landscaping, and utilities***

Val Shelton stated this application has been withdrawn.

**Agenda Item #5 - New/Old Business**

Diane Hardy stated the Town has been working on permitting the Tucker Well, for several years. This is off of Ash Swamp and Neal Mill Roads. The Town has been working with Wright Pierce Engineers and today they submitted their wetlands permit for the project. She had a copy of the plan. As part of the project, in order to provide a temporary crossing for the Town to get in there to do pilot testing, there is a need to get a wetlands permit to provide temporary impact to roughly 4800 sq. ft. of prime wetland. There is a provision in the law, where anybody presenting testimony can ask for a waiver of a 20 day time period that is required after DES sends its decision to the municipality for review. The Town is interested in trying to get this pilot testing done in this construction season. Due to the wetlands the State and Fish & Game and the wildlife and fisheries people advocate that this kind of work get done during low flow periods, when the river is at its lowest point to minimize the impacts on wildlife. It is in the Town’s best interest to get this work done this summer and by August. She received an email from the Director of Environmental Services indicating they have requested a waiver. He is hoping to get a letter of support from the Planning Board and Conservation Commission. This was suggested by the Wetlands Specialist, Stephanie Giallongo, with NH DES and she said, if the Town can organize this in a coordinated fashion and get it in as soon as possible after the application for the wetlands permit is issued, then they can move on it and expedite the process. She has drafted a letter subject to review by this Board. It requests that NH DES consider issuing this waiver to help expedite the process and it indicates the Town has engineered the project to minimize impacts and talks about the importance of developing this site for a reliable water source for the future. She referred to the CIP process, which identified this as a high priority project and also the Master Plan.

Val Shelton stated she thought they should support this. She would make it subject to the process outlined in the 10/10/18 Wright Pierce memo to NH DES. It spells out the process they will do for the drilling and testing. She would make it contingent on Conservation Commission approval. The Board is voting on whether to authorize the Acting Chair to sign the letter. She would add, “…subject to the waiver request put together by Wright-Pierce and support by the Town Conservation Commission”. Sarah Finch will pass this information to the Conservation Commission.

**Action**

**Motion: Bill Doucet made a motion to authorize the Chair to sign the letter with those changes**

**Second: Jane Ford**

**Vote: All in favor**

***Committee Reports***

Gretchen Kast stated, for Town Council, they had the first reading for a resolution to approve the Cingular Wireless option to lease purchase agreement. They also discussed a Community Revitalization Tax Relief Incentive related to the redevelopment of the Selectwood building.

***Planner’s Report***

Diane Hardy stated they got a notice for training in October at a Land Use Law Lecture. She encouraged attendance.

Diane Hardy stated they have been talking to Bruce Mayberry about helping to come up with standards for impact fees for accessory dwelling units. They received a proposal from him and the Town Administrator approved it. She expected to receive materials from him for review. She asked for volunteers to work with her on this. Val Shelton stated she and Eric Botterman would be interested in taking this up with the Town Council on whether to continue with impact fees. They are so out of date. If they intend to stay with it, the whole impact fee ordinance should be updated. It will be on next month’s agenda for discussion.

Val Shelton suggested everyone take a look at the ordinance and review the RSA on impact fees.

**Agenda Item #6 - Adjourn**

**Action**

**Motion: Jane Ford made a motion to adjourn at 7:50 pm.**

**Second: Jamie Bruton**

**Vote: All in favor**