**NEWMARKET PLANNING BOARD MEETING**

**FEBRUARY 11, 2020**

**MINUTES**

Present: Val Shelton (Vice Chairman), Diane Hardy (Town Planner), Jane Ford, Jamie Bruton, Sarah Finch, Michal Zahorik (Alternate), Ted Seely (Alternate)

Absent: Eric Botterman (Chairman), Bill Doucet, Gretchen Kast (Town Council ex officio), Zachary Dumont (Town Council ex officio Alternate) – all excused

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

Val Shelton appointed Ted Seely to sit in for Eric Botterman and Michal Zahorik to sit in for Bill Doucet.

**Agenda Item #2 – Public Comments**

None.

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

***01/28/20***

**Action**

**Motion: Ted Seely made a motion to approve the 01/28/20 meeting minutes**

**Second: Jane Ford**

**Vote: All in favor**

**Agenda Item #4 - Regular Business**

***Pelczar Realty LLC/Michael Pelczar – Continuation of a public hearing for an application for Site Plan Review, regarding adding a 40’x40’ accessory building to the existing funeral home at the rear of the lot, with additional parking and utilities. The building will be used for crematory services. The lot is located at 77 Exeter Road, Tax Map U3, Lot 136, B1 Zone.***

John Lorden, Tighe & Bond, represented the applicant. They received additional comments from the Town and from Underwood Engineering. Those comments have all been addressed. They already have a letter from them stating they accepted the comments. They show snow storage areas with gravel below to help with drainage. They are putting granite slabs around the propane tank and in front of the shed. They will do some minor grading around the parking area. They revised their plan and pulled the parking back from the side setback. As far as adding utility poles, they are now proposing coming off the existing building. He showed the path on a plan. It would be underground, so no poles would be added. This will now require a Special Use Permit, as they are disturbing earth within the wetland buffer. He showed the buffer on the plan. They are trenching (an 18 inch wide trench) through the area and installing a 2-2 ½ inch conduit. There would be less than 300 sq. ft. of disturbance. They will submit that application for next meeting. They hope to get conditional approval tonight and submit a revised application for the Special Use Permit for the next meeting.

***Val Shelton opened the public hearing.***

No comments.

***Val Shelton closed the public hearing.***

**Action**

**Motion: Jane Ford made a motion to grant a waiver of Section 4.10(C)(4) regarding the need to show pedestrian, bicycle, and transit amenities**

**Second: Sarah Finch**

**Vote: All in favor**

Diane Hardy went over conditions of approval.

1) As per NH DOT letter of January 31, 2020, the applicant shall install “Do Not Enter” and “Stop” signs on the southern driveway, as per the original permit plans.

2) The Applicant shall secure a Special Use Permit, pursuant to Sec. 32-155 Wetlands Protection Overlay District *(e) Driveway and Utility Crossings* from the Planning Board for the wetland buffer impact due to the alternative utility option involving the installation of underground utilities via the previously disturbed ground surfaces, prior to the signing of the plans by the Chairman.

3) The Applicant shall provide the Town will an updated utility plan which shows the installation of underground utilities and pole and overhead wire removal as agreed to by the Eversource Company and the wetland area and its corresponding buffer to be impacted.

4) The Final Plans set shall be stamped and signed by the Licensed Professional Engineers.

She recommends approval.

**Action**

**Motion: Ted Seely made a motion to approve the application with the conditions stated**

**Second: Jane Ford**

**Vote: All in favor**

***Jonathan Kiper – Continuation of a public hearing for an application for a waiver of full requirements for a Major Site Plan Review pursuant to Section 1.05(C)(1) to establish a nonresidential use of 700 sq. ft. where no non-residential use currently exists. If a waiver is granted, the application will be reviewed under Minor Site Plan review. The application is for a change of use for the second floor from residential to commercial to allow for a lounge to be added above the existing restaurant. The proposal also includes a 10 seat outdoor patio in the back of the building to be used in summer as a “beer garden”. The applicant also requests a waiver from the requirement of on-site parking, as described in Site Plan Appendix B (Section 3.02 Parking (A)(3), (4) and (5)). The lot is located at 170 Main Street, Tax Map U3, Lot 175, M2 Zone.***

Val Shelton stated they first need to see if they can hear this under minor review.

Diane Hardy stated, if you have an addition of nonresidential space greater than 500 sq. ft. it kicks it into the next category of major site plan. The application for the waiver is complete.

***Val Shelton opened the public hearing whether the application was complete for the waiver.***

No public comments.

***Val Shelton closed the public hearing.***

**Action**

**Motion: Jamie Bruton made a motion to accept the application for waiver for Minor Site Plan as being substantially complete**

**Second: Jane Ford**

**Vote: All in favor**

Val Shelton stated they can now discuss the application.

Jonathan Kiper showed photos of the rear of the building showing the driveway next to the building. His survey deems the right of way as ownership unknown. He was told by the previous owner that his building and the Riverworks and Jade Garden have an easement in the driveway, so he parks cars there, as well as the other owners. He parks on Tong Zheng’s (owner of Jade Garden) property. He showed the deck and stairs. There is a railing separating the deck from the driveway. It is on his lot. He showed a survey showing the deck and the Riverworks and Pocket Park around his building. He marked out the parking and showed where the beer garden would be located. He showed photos that included looking down Zion Hill toward the back of the building and covered various angles around the building. He showed a layout of the proposed lounge. He is asking for a minor review, because the lounge layout is almost the same as the layout right now. The restroom would be where the bathroom is now, they are moving a door, they will remove French doors, the kitchen sink will be swapped out, and he will be adding bar space and a kegerator. He is really doing very little construction, almost none. This was a tavern built in 1835. It has 9 ½ foot ceilings. There are almost no walls. This would make a great addition to the restaurant.

***Val Shelton opened the public hearing.***

Patty Visconte, owner of 165 Main Street, stated this is a great idea and she is totally supportive of it. Her only concern is she does have a parking lot behind her building. With more people at his restaurant, she did not want to have to police her lot. She did not know if the major site review would include going over parking or if there could be a parking restriction on the minor review. There are also three spaces in front of her building, which is public parking. She wanted to make sure that construction trucks don’t park there.

Diane Hardy stated this is a somewhat typical lot for a downtown area. There are older buildings and the land use patterns are established. They are small lots and there isn’t a lot of room. Not a lot of space between buildings. Our zoning regulations recognizes that there are constraints in the downtown. There are certain flexibility on parking and requirements that apply to downtown that would not apply to undeveloped land in another zone. They are always grappling with finding a balance for downtown to encourage development to bring jobs and economic prosperity to the town. The site plan regulations are not as stringent in the downtown area. In light of that, she felt they could be flexible about not requiring full blown engineering plans. There isn’t any land to engineer anything. There is no land for parking and the lot is almost entirely taken up by the building. That is a constraint. There isn’t much opportunity for expansion on the lot. In light of that, they have been fairly lenient in applying regulations and offering some kind of relief to downtown properties. It’s great to see a thriving downtown and we should encourage property owners to make investments in their properties that will keep the process going.

Val Shelton read a letter from an abutter, Jennifer Jarvis owner of The Riverworks. She had concerns. She did not support a waiver of full requirements of major site plan review. She did not see how turning the residential upstairs, where three people reside, into a lounge and beer garden, where a potential thirty people will be, would be a minor change and meet the criteria for a minor review. She had safety concerns with the access. The stairway is next to the driveway of her property. She has concerns about an additional thirty people using the stairway along a dangerous driveway. She asked how adding thirty customers would not require any parking plan.

Val Shelton stated they need to discuss whether to have a major review with several waiver requests or should they look at it under minor review.

Sarah Finch agreed with Diane. This is a small lot and there will be limited changes to the building.

Val Shelton stated it was really about the change of use.

Jonathan Kiper stated there would be 20-30 people. He saw it as the beer garden would be more likely used in the summer and the inside would be in the winter. It is feasible to have thirty people in there at once.

Val Shelton stated they want to encourage business in the downtown and they are allowed to use offsite parking.

Jonathan Kiper stated he gets a lot of people ordering a beer while waiting for their food. He would like to get them out of the first floor and into the second. A lot of his traffic is takeout. It would give his customers a place to go before or after eating in the restaurant, too. It would increase the time the same people are spending in the building. He did not see an extra thirty people every day. He sees it as the same people potentially spending more time there. They will serve food upstairs and in the beer garden. He is planning on this as a lounge space, but if people want food they will serve it. Diane Hardy stated there is a zoning requirement to serve food on outdoor patios.

Michal Zahorik had concerns regarding parking and about the stairway. Jonathan Kiper stated there is a fence along the stairway and they can install a gate at the gap. It will be lit up. The whole deck is on his lot. There is an employee staircase inside.

Jonathan Kiper mentioned he tries to police parking. He stated, with Lyft and Uber, parking demand will be less and less of an issue.

Jamie Bruton stated she was inclined to go with minor review. There is not much construction involved and parking is a much bigger town conversation. He is in a zone that already has that kind of a use.

Ted Seely agreed. Parking is a larger issue and he made a good point about the ride sharing services.

Jane Ford agreed.

***Val Shelton closed the public hearing.***

**Action**

**Motion: Sarah Finch for granting the waiver of full requirements of major site plan to review this application as a minor site plan**

**Second: Jane Ford**

**Vote: All in favor**

Diane Hardy stated she did review the application against the minor review checklist. For the most part, the plan is complete with the exception of parking, which they will take up as a separate issue. One thing she noted was ADA issues were not addressed. It is a concern with any business. She was not sure how those laws apply to this, with an existing building and use. They should get more information on how this affects a historic building and whether there are waivers. The only other thing that was missing were notifications and plans to Department Heads. The applicant will get plans to them. She said the application is in a form to be accepted as a minor site plan.

**Action**

**Motion: Ted Seely made a motion to accept the application as substantially complete on the condition that the Department Head letters are submitted to the Town Planner prior to approving the application**

**Second: Jane Ford**

**Vote: All in favor**

Diane Hardy stated she went through the Zoning Ordinance and there are specific regulations in the M2 Zone for property on the Main Street, where they are trying to encourage a pedestrian orientation to the streetscape. One requirement on the main street is the primary access point to the business needs to be on the main street. Currently, the main access is there. If they are making the second floor accessible and the access is on the side, does that mean that they would need a variance or can they interpret it that the walkway extends to the sidewalk and is okay. Val Shelton stated this would be enclosed with some type of gated entry. The access is off of Main Street.

Jonathan Kiper stated just past the staircase there is a paved hill to the beer garden. The fence opens. You could get in there with a wheelchair with a couple of small ramps. Right now he technically has an easement that belongs to the Jade Garden property. He rents the parking space from Tong Zheng and he uses the area. He has trash out there. You could get someone up there in a wheelchair, but it would not meet the grade requirements of ADA. People have gone up the hill to get into Riverworks by wheelchair to get into the back door. He would like to allow people in wheelchairs to the back area. He is not making any alterations, so he did not believe he needed to make it ADA compliant. Diane Hardy stated there is an Accessibility Coordinator at the State level whose job it is to work with municipalities and private property owners to help bring buildings into compliance with ADA. There was an architect in Stratham that assisted the Town in the past. It would be helpful if they got clarification on how to apply these laws to historic properties. This should be part of the technical review process.

Diane Hardy stated she was not familiar with Life Safety Codes. The fact there is separate access to each floor may not meet those requirements. They could get input from the Fire Department and Building Official on that particular issue.

Diane Hardy recommended they have a limited TRC meeting to get more information. She would also like to have a site walk. The Board decided to have a site walk on Saturday, February 15, 2020, at 9:00 a.m. A TRC meeting will be scheduled thereafter. Jane Ford and Ted Seely volunteered for TRC.

**Action**

**Motion: Jane Ford made a motion to continue the hearing to the March 17, 2020, meeting**

**Second: Jamie Bruton**

**Vote: All in favor**

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

***Chairman’s Report***

Val Shelton stated they got a request from Town Council to revisit ADU zoning to permit ADUs in detached buildings. The State laws allows them in the primary residence or a detached building. There have been several variances granted for this. The Board agreed to discuss it.

***Committee Reports***

Diane Hardy stated the Water Resource Committee will meet on February 20.

***Planner’s Report***

Diane Hardy mentioned the Spring Conference which will be held on Saturday, May 30 in Concord.

**Agenda Item #6 - Adjourn**

**Action**

**Motion: Ted Seely made a motion to adjourn 8:05 pm.**

**Second: Jamie Bruton**

**Vote: All in favor**