

**NEWMARKET PLANNING BOARD MEETING**

**SEPTEMBER 15, 2020**

**MINUTES**

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

Eric Botterman read a statement regarding the Right-To-Know law and electronic/virtual meetings per the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04.

***Pledge of Allegiance***

***Public Comments***

Eric Botterman read a letter from John Green, a resident of 4 Elm Court, supporting detached Accessory Dwelling Units.

***Review and Approval of Minutes*** Draft Minutes 08/11/20

**Action**

**Motion: Val Shelton made a motion to approve the minutes**

**Second: Bill Doucet**

Eric Botterman stated Jane Ford needed to be added to the members present.

**Vote: All were in favor**

***Regular Business***

***77 Hersey Lane, LLC-Walter Cheney/Chinburg Builders, Inc.-Continuation of a public hearing for an application for an 11-lot Open Space single family subdivision, with municipal water and sewer services, on a twelve acre lot. The lot is located at 77 Hersey Lane, Tax Map R4, Lot 3, R2 Zone.***

Bill Doucet recused himself. Eric Botterman appointed Michal Zahorik to replace him for this item.

Eric Botterman stated, at the last meeting, they had received a memo from Mark West with concerns about wetland buffer impacts. Since then, Gove Environmental responded to that. The TRC met and went over the changes that were made to the plans based on Mark West’s comments.

Jim Gove stated they did a function and value assessment. They agreed the Prime Wetland buffer was outside of any work that would be done. There had been a question about the vernal pool. At that time, there was a 25 foot setback from the vernal pool. There are no direct wetland impacts anywhere. These are all buffer impacts. They increased the buffer to the vernal pool to 50 feet. There is a finger that springs out of the ground at the bottom of the hill and drains toward the prime wetland. There were two concerns about that. Draining was coming close to that finger and the overland flow from the vernal pool went subsurface and broke out at the beginning of the finger. The concern Mark West had was they were combining the flow from the vernal pool with stormwater discharge such that they were mixing the water. They did two things. There was a change in the design, it is now a duplex and they were able to pull the grading way back from the finger. The grading comes within 80 feet on that side, where they have the duplex. The other thing is they have a pipe so the overland flow so it is not mixed with the stormwater. It discharges where the finger starts. There is a large reduction in impact. Regarding the overflow pipe between Lots 5 and 7, the water from the vernal pool would go into the ground, then to the valley subsurface. The concern was they should not be mixing the two sources of water, the clean runoff and road runoff. They added the pipe to avoid that. Eric Botterman stated Mark West had stated this was a much better design.

Ted Seely asked about the overflow pipe. Scott Cole stated it was a standard 24 inch culvert. The intent was to leave it open ended on both ends.

Diane Hardy shared Mark West’s letter onscreen.

Alexx Monastiero read the request. This was drafted in January and they had asked for a 25’ waiver. They are now at 50’. She stated the point of the memo mentioned in the waiver was the function of the vernal pool was fairly low and they felt the protection of the vernal pool was sufficient, as well as the finger of the wetland. The finger is not classified as a wetland because of its size.

Eric Botterman stated they have this plan in front of them and they have wetland buffers. If this was not an open space subdivision, there would be more impacts. The open space regulations are more stringent. The fact they are getting all this open space far outweighs the buffer zones. The applicant has made significant changes and worked with Mark West and Jim Gove. He stated he supports granting the waiver.

**Action**

**Motion: Val Shelton made a motion to grant the waiver as requested by the applicant on the condition that the distances be modified to reflect the plan presented by the applicant this evening**

Val Shelton stated she appreciated the applicant thinking outside the box and making these duplexes.

Diane Hardy asked for clarification that the buffer based on the newest request was for 100 feet, not 25 feet.

Val Shelton stated she was making the motion subject to changing the modification or the request. It is a 100 foot buffer from the vernal pool and they are looking for 80 feet from the finger, as she sees on the plan.

Alexx Monastiero stated she can clarify. She asked Scott Cole to use his mouse to indicate the various buffers, which he did. There is impact for grading and drainage to the 50 foot buffer on one of the fingers at the end of the cul de sac, Lot 11. By the vernal pool there are impacts to the 50 foot buffer.

Val Shelton stated she was fine in granting the waiver of the impacts shown in red on the plan.

Diane Hardy stated the request was for a 100 foot buffer requirement waiver.

Eric Botterman stated they do not need the letter, because Val Shelton made a motion to approve the waiver as requested according to this plan. Val Shelton stated that was correct.

**Second: Sarah Finch**

Jamie Bruton asked about the opening of the pipe being 24 inches. She felt there were safety issues. There will be no cover. Eric Botterman asked Scott Gove if an inlet structure or grate could go over that. Scott Gove stated they could put what is called a bee hive over it.

**Vote: Val Shelton, Sarah Finch, Jamie Bruton, Jane Ford, Eric Botterman in favor**

**Michal Zahorik not in favor**

Eric Botterman stated the applicant will revise the plans based on comments. Alexx Monastiero stated they will now work this into a full plan set.

Diane Hardy stated this will need to go to TRC and Town Engineer and the Board will need the Alteration of Terrain and a 21 day notice for the meeting. Alexx Monastiero asked for clarification reference the AOT. Diane Hardy stated that was a requirement for application completeness. Now that the waiver is granted they need to come forward with that. It needs to be reviewed by TRC. We have focused on the wetlands buffer and have not discussed drainage issues or issues Rick Malasky had, so this will not be ready for the next meeting.

***Jody Rodgers-Public hearing for a Subdivision-Condo conversion 8-11 Elder Street, Tax Map U2, Lot 180***

Diane Hardy recommended the application be accepted as complete.

**Action**

**Motion: Bill Doucet made a motion to accept the application as complete**

**Second: Val Shelton**

**Vote: Val Shelton, Sarah Finch, Jamie Bruton, Jane Ford, Bill Doucet, Eric Botterman in favor**

***Eric Botterman opened the public hearing.***

Paul Dobberstein, Ambit Engineering, represented the applicant. The lot has a duplex on it. They are just changing the units to condos. They will divide the lots by the location of the dividing wall between the units. They will extend the dividing line out from the wall location to the property lines. There will be no change in use.

He had submitted waiver requests for the need for topography and a host of items that are not needed for this approval.

Eric Botterman asked if anyone from the public would like to speak. No one in the auditorium or on Zoom responded.

***Eric Botterman closed the public hearing.***

Diane Hardy recommended the three waivers be approved. Eric Botterman read them.

Waiver from Section 4.10(B)(1)(b) Requiring existing conditions plan

Waiver from Section 4.10(F)(2, 3, 4, 5, 6, 7, 8, 9, 10, 11)

**Action**

**Motion: Bill Doucet made a motion to approve the waivers as submitted**

**Second: Val Shelton**

**Vote: Val Shelton, Bill Doucet, Sarah Finch, Jamie Bruton, Jane Ford, Eric Botterman in favor**

**Action**

**Motion: Bill Doucet made a motion to approve the subdivision, subject to Diane Hardy’s recommendations**

**Second: Val Shelton**

**Vote: Val Shelton, Sarah Finch, Bill Doucet, Jamie Bruton, Jane Ford, Eric Botterman in favor**

Bill Doucet suggested the Planning Board should no longer have jurisdiction over changes to condominiums. Eric Botterman agreed and stated they would be looking at some amendments at a future meeting and this one would be a simple change.

***The Equity Group Realtors/Rockingham Ballroom-Preliminary Conceptual Consultation- The intent is as an investment property. The building will need improvements prior to being marketable. As such, they do not have a specific tenant or use. The use may not change, or anticipated is a much less intensive use. The intent would be e to come back for additional allowed uses with parameters. This is needed in order for them to make a decision on purchase-7 & 22 Ash Swamp Road, Tax Map R3, Lots 20 & 15, B1 Zone***

***Brian Pratt***, of Fuss and O’Neil, the civil engineer representing the applicant, explained that his client wants to make an investment in the property. He is assisting Jim Ward in doing his due diligence. Mr. Ward has a purchases and sales agreement on the property and does not have any specific tenants lined up at this point.

Applicant, **Jim Ward,** introduced himself. He is thinking of some general uses, nothing more specific at this point, but said it will be a less intensive use of the property than the previous use of the property for a ballroom. In tonight’s discussion, he would like to explore whether the adjacent parking area needs to be upgraded and whether the parking lot across the street has to be paved or not. It is very expensive to upgrade it. He wants to discuss if the Planning Board would be inclined to provide waivers for parking. He also wants to know if this will come in under a Minor or Major Site Plan Review, as he stated there will be no exterior changes to the building and site, but any use will be less intensive given traffic demand and the new use, when he identifies a tenant. He believes he should get some credit because the existing site conditions are grandfathered.

**Brian Pratt** explained there were four lots involved. The Ballroom property is slightly larger than the existing footprint of the building. Mr. Ward only intends on purchasing two of the lots. There are 27-28 parking spaces in the parking lot which is shared with the Hair Salon next door. There is a shared parking agreement between the property owners. There are 11 spaces used by the Hair Salon. The ballroom property has 16 parking spaces. Also across the street is a gravel lot that has no buildings on which can be used for surplus parking. That was used by the Ballroom during major events for additional parking. Part of that property is located in Newfields. They don’t intend to do anything with the lot across the street.

**Brian Pratt** then reviewed some of the uses that are allowed in the B-1 zoning district. In that zone, major permitted uses such as hotel, conference center, and indoor recreational facility, which would require more parking and demand on the septic system, would not be feasible for his client. So, they are looking at, maybe some retail, a clothing boutique, day care facility, office suites, a dance or yoga studio, workshop, wholesale, light manufacturing and research development. They are willing to consider multiple tenants, but would entertain one owner who would be interested in the entire square footage of 8,600 square feet.

**Jim Ward**. They are hoping for a low impact use and are targeting budget-minded tenants who are looking for affordable rentals in the region, such as a yoga studio, bike shop, specialty gym, a wood working shop and services that will might serve the hikers and bikers who use the Rockingham Recreation Trail. They are also looking to receive waivers for the boundary survey, detailed engineering, topography, landscaping, lighting, and other amenities that go along with higher priced rentals that would increase their overall project costs. He is looking at low cost spaces what won’t require maybe more than 10 parking spaces. Given that, it doesn’t make sense to me to have to make the kind of investment that you would see for a restaurant or bar which would require a paved and engineered parking lot. They are questioning whether they really want to buy the parking lot across the street and anticipate no more than a few cars per day would park there on a typical day. They will do some parking calculation but don’t really want to make any extra improvements. What does the Board think about our plan?

**Brian Pratt** stated the current septic system allows 2,000 gallons per day. The demands of the existing uses (hair salon and when the ballroom is operating) are slightly under 1,000 gallons per day at around 925 gallons per day, so there is some excess capacity in the system. The applicant recognizes that the existing septic system is deficient and they know they will have to bring up it up to current State standards and noted they have not yet finished their due diligence in this regard. He then proceeded to show an engineering plan of the proposed septic system of how it would work.

**Bill Doucet** asked if this meeting had been publically noticed. The answer was no. It was then explained that we cannot have a scaled engineering drawing presented as part of this discussion because that is outside of the realm of a conceptual plan review, which would abutter notification and public notice. The applicant understood and took the slide of the plan down.

**Brian Pratt** said he would be more general. He said they would likely will be putting a new septic system in using the gravel area across the street. The current system rules out any major high intensity uses such as a major water user for industry or even a restaurant use. They want to get a waiver for the boundary survey and detailed engineering, as it gets expensive.

**Eric Botterman**, Chairman of the Planning Board, then opened the discussion to Planning Board members who had questions and comments.

**Val Shelton** said she is trying to conceptually understand what they want to do with the site, and is having a difficult time doing so and making comments without knowing what the uses are that are being proposed.

**Jim Ward** stated they would to like provide some broad parameters and see what the Board’s reaction and expectations are. And, then, he would like to get some broad parameters back from the Planning Board as to what is going to be required. I see others come forward and present their plans on a speculative basis, get their approvals and they go out and market the property and find their tenants. That is what I would like to do.

**Brian Pratt** said in other towns where he works they have provided some broad uses on what the property would be used for and would provide parking, traffic and water and sewer capacity data to design the site around those likely uses and provide conservative estimates for site design process. Then, as the spaces is filled, the Town’s staff would administratively determine if those parameters are being met under the original assumptions. If not, they would have to go back to the Planning Board for further review. The applicant stated they did not want to have come back every time a new user comes along. We would like some feedback on that approach.

**Bill Doucet** had some further comments. If you have read our regulations and you understand what triggers a minor and a major site plan review you will see our site plan review standards are pretty much what you will see in other communities in the state. Bill continued, so you see if it triggers a “major” review then you are doing every that is required to meet the regulations for a major site plan review. If you are anticipating some flexibility (for example a waiver here and/or there), the only way you will accomplish that is to file an application for a full Major Site Plan Review. Bill Doucet emphatically stated that the criteria for a major and minor is clearly written out in the regulations. The criteria is there for a change of use, expansion of use by square footage etc. You are not going to do a great leap going from a Major to Minor Site Plan Review. The applicant responded but can we ask for a waiver here and there. Yes, Bill said “ but I wouldn’t budget on it. “ Bill Doucet said this is a large surface area. It is unlikely you are going to find this is a Minor Site Plan approval. You are going to have to bring it up to full standards, the whole nine (9) yards…NH DES AOT approval, paved parking, drainage, and upgraded conditions. The applicant asked if they don’t buy the lot across that street, does that make a difference. No if you don’t own the lot (or have an intent to purchase it) then you can’t include in the application. You will be required to bring things up to current code. Bill Doucet referred to the aerial with the parking lot sketch on it and said if you look at that layout, you can see none of it is in compliance with our current regulations and yes you would have to bring it up to code. If you are asking if the Board would consider a minor change like an 8 ½ width parking space instead of 9 feet, yes in the past we have discussed waiving requirements of that nature.

**Eric Botterman**- I agree with everything that Bill Doucet and Valerie Shelton have said. If you meet the criteria for a major site plan then you need to file an application. His take on it is that any applicant can ask for any waivers, he wishes, and then it is up to the Planning Board to take up each waiver request individually and decide what is appropriate. It is pre-mature for us to be discussing waivers at this point. When we have an application before us that is when we can review and take action on it. It is also very complicated if someone else owns the property. You need to work that out ahead of time and get a specific plan before us. It is difficult for us to give you any more feedback than that.

**Val Shelton** - I am in support 100% of the comments that Eric Botterman and Bill Doucet have made. She noted the industrial park has come in with site plans on a speculative process without a definitive tenants.

**Diane Hardy** – Diane Hardy confirmed that yes, they came before us without the tenants known but with full engineering plans and they followed the Town’s Major Site Plan requirements with only a few waivers. Prior to the meeting she had reviewed all this with the applicant and confirms she is in agreement with everything that the Planning Board has stated this evening.

**Eric Botterman** said you don’t have to come before the Board with the tenants but we need to know what the uses are. He agrees that they have every right to come for a conceptual review and hopes the information the Board has provided is helpful. We have heard from three (3) members of the Board tonight, and it clear that you need to come in with a full Major Site Plan development, include full topography, survey and engineering. But we can’t tell you we will be issuing you a large number of waivers. If after, you weigh the costs of this, and the project is not viable, then so be it. Eric Botterman asked if any of the other members had any comments including Sarah Morris, Jamie Bruton, and Jane Ford. There were no further comments from the Planning Board.

Mr. Pratt and Mr. Ward said they appreciated everyone’s willingness to provide direction and feedback. I appreciate your time and comments. We are only trying to do our due diligence before making what is a huge investment.

***Request for a Preliminary Consultation pursuant to Chapter 32 Appendix B Site Plan Regulations, Sec 2.01 by Condor Capitol LLC for property located at 3 and 5 Railroad Street, owned by Sidmore Revocable Trust, New England Innovation Corporation, and Five Railroad LLC at Tax Map U3, Lot 138, 138 A, and Map U-4, Lot 16. Condor Capitol proposes to develop a 50 unit apartment building on said property.***

Ben Stebbins, Condor Capitol LLC, stated he has been buying properties in Newmarket for the last two years and renovating them. He thought this would be a great location for workforce housing. He would need a density variance. He did a preliminary zooning analysis. There is an M2A zone and R2 zone. The goal is to merge two lots into an M2A zone. Val Shelton stated she could not give feedback without a variance. Eric Botterman agreed.

Bill Doucet asked how this fits with the Master Plan. Dian Hardy stated the density for the M2A zone was 6 units per acre. This proposal is eight times what is allowed. Even the mills were not that dense. This would have to go before the ZBA and meet the criteria for a variance.

Val Shelton stated they have to ask if the town has enough diversity in types of housing for different income levels.

Eric Botterman stated if they get variances and come before this Board, they can evaluate it then. Val Shelton agreed. Bill Doucet stated they have been hearing there is a need for affordable housing with the ADU discussions. Maybe this is not terribly different from that.

***New/Old Business***

***Planner's Report***

Diane Hardy gave an update on the Water Resource chapter. There is assistance needed with the implementation matrix. Michal Zahorik volunteered. Val Shelton suggested the committee reconvene. Diane Hardy suggested it be a small group.

She also mentioned the joint meeting on October 14 at 6 pm.

They also made the CIP deadline.

***Adjourn***

**Action**

**Motion: Val Shelton made a motion**

**Second: Jane Ford**

**Vote: All in favor**