

## Planning Board Minutes 09/18/12

### NEWMARKET PLANNING BOARD MEETING SEPTEMBER 18, 2012 MINUTES

Present: Val Shelton (Chairman), Janice Rosa (Vice Chairman), Elizabeth Dudley, Rick McMenimen, Justin Normand, Adam Schroadter, Ed Carmichael (Town Council ex officio)

Absent: Jane Ford (excused)

Called to order: 7:01 p.m.

Adjourned: 9:01 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Public Comments

None.

Agenda Item #3 - Review and approval of minutes

07/24/12

Action

Motion: Rick McMenimen made a motion to approve the July 24, 2012 Planning Board workshop minutes with amendments, if any

Second: Janice Rosa

Chairman Shelton stated, on page 7, line 29, “the changes would make any of the lots”, insert the word “make”.

She stated, on page 8, line 39, it should state “Future Land Use plan”.

She stated, on page 9, line 4, it should say “concern about what”.

Vote: Adam Schroadter and Justin Normand abstained due to absence

All others in favor

08/14/12

## Action

Motion: Rick McMenimen made a motion to approve the August 14, 2012 Planning Board minutes, with corrections if needed

Second: Justin Normand

Vote: Adam Schroadter and Janice Rosa abstained due to absence

All others in favor

## Agenda Item #4 – Regular Business

Consideration of application for appointment of Alternate, term ending 03/14/14 Eric Botterman

Chairman Shelton read from Mr. Botterman's application. He is a registered Professional Engineer. He is well-versed in preparing numerous submittals to Planning Boards in NH and MA. He has served three years in the past as the Town Council ex-officio member of the Planning Board.

## Action

Motion: Rick McMenimen made a motion to approve Eric Botterman as a candidate as an Alternate member on the Planning Board, term to expire March 2014

Second: Janice Rosa

Vote: All in favor

Town of Newmarket/William Morgan-Angel View Pet Cemetery and Crematory – Continuation of Site Plan Review, at 426 Wadleigh Falls Road, Tax Map R6, Lot 52-1, B3 Zone. The proposal is for an animal crematorium to provide crematorium services for equines and large companion pets.

Janice Rosa recused herself, as her property abuts this project's property.

Chairman Shelton stated the Technical Review Committee (TRC) met regarding this project.

Rick McMenimen went over the TRC meeting. The committee met to review the application completeness checklist. All items on the list were complete. The Department of Public Works Director, Rick Malasky, had noted concerns about having access to the well and gravel pits and recommended that all sheds be removed due to their poor condition.

There was a site walk on September 10, 2012. Some of the concerns raised were as follows:

1. There were concerns about the condition of the septic system. The applicant agreed to have a licensed evaluator state the system is usable.

2. The applicant will comply with State and Town rules as to ADA accessibility and provide notes on the site plan.
3. The applicant needs to amend the site plan to show easement for access to power lines, cell towers and water lines and hydrant.
4. The applicant needs to note on the site plan there is a manhole cover on the easterly side of the building and there are floor drains in the building and a holding tank that needs access for maintenance.
5. The TRC did receive revised plans from the engineer. The TRC requested a large set of plans. They will be provided at the meeting with all of the updates they requested.
6. The TRC has concerns about the general appearance of the property within the chain link fence. There were sheds that were in bad condition that should be removed. Grass and underbrush has grown up and needs to be mowed. There are weeds growing up around the parking lot and the edge of the building needs to be trimmed. The pavement is in rough condition. They requested the applicant to advise on whether it will be repaired. The applicant has agreed to clean the surrounding property and the TRC requested the applicant to add some notes to the plan, which are not very definitive.
7. Jane Ford has visited two of the crematorium sites, one which is owned by the applicant, and she thought highly of them. She noted no odor at either site.
8. After the applicant looks at the shed and hanger, they will advise if the buildings will be removed or repaired.
9. The applicant will put grass along the fence and areas near the building.

After the review of the new drawings and when the TRCs suggestions have been complied with, the Committee recommends the approval of the plan, subject to certain conditions, such as:

1. A solid waste permit and an air quality permit also from the State Department of Environmental Services (NHDES) are obtained, plus any other permits the Town Planner may be aware of. She recommends, as Mr. McMenimen pointed out, this would be subject to all DES permits, solid waste and air quality permits and there is also an outstanding application to the Department of Transportation. They will be reviewing the existing highway access. She stated before any Certificates of Occupancy are issued, the Town wants to make sure the permits are in hand. Attorney Bruton agreed stating they cannot move forward until they get approvals from DES and DOT.
2. Diane Hardy stated she reviewed the plans and all of the items they had requested to be addressed at the last meeting have been addressed. She stated she would like to see the easement clearly defined on the plan. She did talk with Attorney Bruton before the meeting tonight and he said they would be happy to clarify that on the plan. She stated it is not just an access easement; she wants it to be clear it is an easement for the water line, which services the Town wells. The Department of Public Works needs to be able to get in there to repair water line breakages and they use the hydrant on the site for monitoring the wells. There needs to be maintenance provisions written into the easement to allow them to do that. It should clearly show the dimensions and width of the easement. Attorney Bruton had suggested he could work with her to get all of those legal documents in our hands and have them reviewed by our legal counsel prior to the issuance of the occupancy permit. Diane Hardy suggested this be a condition of approval. Attorney FX Bruton stated the conditions that Diane Hardy set forth are acceptable to the applicant. In terms of context, this parcel is currently owned by the Town and could not grant itself its own easement with respect to the water line. They had agreed the existing water line should have the kind of easement Diane Hardy just identified. He believes it was 15 feet on either side of the water line that was requested by DPW. They will draft the easement, subject to Town Council acceptance.
3. Diane Hardy also stated she was a little disappointed the tree line buffer was not clearly defined on the plans. There is a note saying "existing trees to remain". She would prefer to see the exact language that comes right out of the ordinance that says "The buffer shall be suitably vegetated. Existing trees and shrubs along the perimeter of the site shall be

maintained and protected to the maximum extent practical. Such areas shall not be used for outside storage, display or other uses”.

stated they understood, by putting the note on the plan, the existing trees would remain and they would address the concerns the Town has. The language Diane Hardy quoted from the site plan regulations is acceptable as far as noting it on the plan.

Attorney Bruton stated everything else was in place. It is an odd site plan, because, even though they have talked about this, there are not many changes to the site. It is an existing building that will not change. There is a note on the plan that the area within the chain link fence will be maintained as a lawn. There is a tremendous amount of buffering, in terms of existing trees. They have indicated on the plan this tree line would remain. With respect to the parking lot, they did go on a site walk and they talked about that. The applicant will repair and patch the pavement and make it presentable. They expect only 2-4 people who might come to the site for a mini-service. It is a low intensity use in terms of the general public. He stated they had gone through a lot of the discussion during the Conditional Use process.

Chairman Shelton opened the public hearing.

Peyton Carr, Bay Road, stated, when he was in the Air Force 40 years ago and he flew into a base outside of Tokyo, there was a crematorium right near the base. He guesses it was considerably larger in size. He stated, if the wind was blowing in the wrong direction, it was nauseating. He was sure the technology has changed tremendously, but he wanted to make sure this had been covered in past discussions.

Attorney Bruton stated where that facility was and who may have been operating it, whether it was the government or not, they may not have complied with as many stringent regulations that we have to comply with. The best thing about this project is the applicant operates a very large facility, which contains a cemetery in Massachusetts. It does not emit any odors. While in operation, a member of your board visited that facility and came back and reported on that. These facilities do exist and they perform an important function. If you have been to Margarita's in Dover, you were fairly close to one of these facilities, while perhaps eating on their outside tables. That area near the Dover equine facility, which contains a crematorium, is surrounded by one hotel, the restaurant and a huge medical facility. Being a resident of Dover, it is his understanding that no one has complained about any odor issues. He appreciates the concern.

Janice Rosa, an abutter to the property, stated her daughter lived in North Carolina and she realizes it is a different state. She hoped NH regulations were a lot better, because her daughter passed an animal crematorium almost daily and there was an odor. This was two years ago. She was glad to hear the one in Dover has no odor. She asked if any smoke went into the air and whether any residue came down on surrounding properties. Attorney Bruton stated the technology is such that no particulates leave the facility through the atmosphere at all. There are filters and screens that contain all of the “cremains”. One of the aspects of this operation is to take all of those cremains and move them to the facility in Massachusetts or return them to the owner of the pet. The only thing that is emitted is quite purified water.

There were no further questions from the public.

Justin Normand asked about the floor drains that tie into the holding tank. He asked if the holding tank had been evaluated for integrity. Attorney Bruton stated there was no intent to use the floor drains in this operation at all. They are dealing with cremains that will go into a holding bin. Even the rag used to wipe down with respect to those cremains will be taken to the Massachusetts facility and washed there. The only thing used here is the standard toilet and sink for normal use. The floor drains exist from when the DPW was there.

Attorney Bruton stated there are two sheds on the property that will be removed. Public Works will pick up the large bucket that is there.

Elizabeth Dudley asked, in terms of the septic system's proximity to the wellhead protection area, if the septic system had been evaluated. Attorney Bruton stated the Director of Public Works indicated that the septic system was functioning

when they were there. Chairman Shelton stated one of the conditions of site plan approval was that this system has to be certified by a licensed inspector, as operational, before they can get an occupancy permit. Attorney Bruton stated that was Note 3 on the site plan.

Chairman Shelton closed the public hearing.

#### Action

Motion: Rick McMenimen made a motion for the Town of Newmarket/William Morgan–Angel View Pet Cemetery & Crematory Site Plan Review & Conditional Use Permit at 426 Wadleigh Falls Road, Tax Map R6, Lot 52-1, B3 Zone, proposal for an animal crematorium to provide crematorium services for equines and large companion pets to be approved with the following conditions:

1. Solid waste and air quality permits from the NH Department of Environmental Services and a NH Department of Transportation permit.
2. Easement for water line and hydrant to show on the plan.
3. The buffer shall be suitably vegetated. Existing trees and shrubs along the perimeter of the site shall be maintained and protected to the maximum extent practical. Such areas shall not be used for outside storage, displays or other use.
4. The floor drains to the holding tanks have to be inspected, plugged and capped.

Second: Justin Normand

Elizabeth Dudley asked if there should be a condition in case there is an odor from the facility. Diane Hardy stated DES will be monitoring air quality issues. The applicant has to file reports with the State on a regular basis and there is a certain amount of monitoring and enforcement by the State. Chairman Shelton stated everything conditional has to be related to the rules and regulations and not subjectivity. If they are not in compliance with DES regulations, DES will enforce those. She was not sure the Town has regulations relative to odor. Attorney Bruton stated the DES regulations are there for that purpose. They should meet that standard. There are extensive regulations they have to follow.

Chairman Shelton suggested amending the motion to say the floor drains would have to be plugged and capped. Attorney Bruton stated, if there is a need for them, which they do not expect, they be inspected by the Code Enforcement Officer. Chairman Shelton stated she would further amend the motion to say, “unless approved otherwise by the Code Enforcement Officer”.

Motion: Rick McMenimen stated he would like to amend his motion to include the amendment suggested by Ms. Shelton.

Second: Justin Normand

Vote: All in favor

Chairman Shelton explained there was a 30-day appeal process.

Newmarket Mills, LLC - Revision to an approved site plan related to parking, which was conditionally approved on October 27, 2009, with a location of Main Street, Tax Map U2, Lots 365, 366, 367, in the M1 Zone and Tax Map U2, Lots 56C, 57, 60A, 60B, and 61 the B1 Zone for the redevelopment of the Newmarket Mill buildings to include residential units at each of the two mill buildings, as well as space for public and non-residential uses, and with parking provided on-site and at lots on the west side of Main Street, all as shown on the approved final Plan Set, signed by Newmarket Planning Board Vice Chairman on 10/27/2010.

Eric Chinburg, Newmarket Mills LLC, stated they are here about three years after getting the conditional approval to rejuvenate the mills. The site plan was implemented almost to the letter to what was approved. There were a few changes along the way, most of which were minor enough that they were handled administratively. He stated they had done a site walk with the Board earlier this evening to show those changes, mostly improvements to the landscaping.

He stated the reason they are here this evening is there is one change to the approved plan deemed substantial enough that it requires a public hearing to amend the plan. That change is the reduction of parking on the millyard, the east side of Route 108. The approved plan showed 23 interior spaces on the basement level of Buildings J, K, L, and M. When they got into the design, feasibility, and structural analysis, it was deemed to be unfeasible to do this. There was additional incentive to remove the parking, in that the primary concern of the abutting Rivermoor property owners was traffic through the easement area along their waterfront. By reducing the number of parking spaces in the millyard, it also has the beneficial impact that it would lower the amount of potential traffic through their easement.

He stated, when the idea came along to eliminate this, they consulted with Steve Pernaw, who was the Traffic Engineer for the project. He did an analysis to confirm the remaining number of parking spaces on the site, which included the remaining surface parking spaces on the east side of Route 108 in the millyard and the 200+ spaces on the west side in the Town parking lots. There is still excess parking of between 45 and 68 spaces, depending on how you count it. This report was submitted to the Planning Board a couple of months ago and they are here tonight to seek approval of the plan as built and amended.

Chairman Shelton opened a public hearing.

Byron Bedard stated he was there on behalf of Rivermoor Landing Condominiums. He stated he has been authorized, by the Board of Directors, to indicate to the Planning Board that they support the amendment proposed by the Newmarket Mills.

Rick McMenimen asked what some of the changes had been in the parking. Eric Chinburg stated they took out 23 spaces from below the surface and added three to the surface. They took out surface dumpsters and put all trash and recycling inside to add the three spaces. Those are now a fifteen minute loading zone, where tenants can unload groceries and move in and out. The net reduction was 20 out of a total of 262.

Diane Hardy stated the original plan was approved with 271 parking spaces. With the revised figures that were provided it is down to 262. It is a reduction of nine parking spaces.

Chairman Shelton stated, on behalf of the Planning Board, that Mr. Chinburg has done a great job with the project. They are a huge benefit for the town.

Action

Motion: Rick McMenimen made a motion to approve the Newmarket Mills LLC revision to an approved site plan relating to parking, which was conditionally approved on October 27, 2009, with a location on Main Street, Tax Map U2, Lot 365,

366, 367, M-1 Zone, Tax Map U2, Lot 56C, 57, 60A, 60B, 61 in the B-1 Zone for the redevelopment of the Newmarket Mill buildings to include residential units at each of the two mill buildings, as well as space for public and non-residential uses, and with parking provided on-site and at lots on the west side of Main Street, all as shown on the approved final Plan Set, signed by Newmarket Planning Board Vice Chairman on 10/27/2010 with a reduction of parking from 271 to 262 spaces.

Second: Janice Rosa

Vote: All in favor

Russell C. Serbagi, Jr./Acadia Engineers & Constructors – Continuation of a public hearing for an application for major site plan review, at 13 Water Street, Tax Map U3, Lot 4, M2 Zone. The proposal is for the razing of the existing structure and construction of a four-story building with mixed-use development to include retail, commercial (professional office) and residential condominiums.

Tim Nichols, Acadia Engineers & Constructors, was present at the meeting. He is withdrawing this application.

Chairman Shelton read his email stating he was withdrawing the application and submitting a new site plan shortly. She stated it was her understanding that Mr. Nichols would like to have a Design Review tonight. This has not been publicly noticed. She would like to hear from the Board on this. Mr. Nichols has brought people with him tonight including his preservation consultant and a staff person from the State Historic Preservation Office. She asked if the Board was comfortable with letting Mr. Nichols move forward. The application that was posted on the agenda was withdrawn, so theoretically, she would move to the next agenda item. Mr. Nichols did not request to come before us with a Design Review consultation, which would require public notice and would have been specifically noticed on the agenda as a Design Review. The continuation of the prior meetings had set up for the abutters to be here, if they were following the application. It is a technical issue. The application has been withdrawn. He is coming before us in the future with a new application. Tonight, Mr. Nichols will be presenting a new concept. The Board was comfortable with hearing the presentation.

Mr. Nichols stated this is a revision to the previous design. They will be resubmitting a new site review application based on the concept he will present now. He brought Lynn Emerson Monroe, who is their architectural historian. Peter Michaud is also present from the NH Division of Historical Resources.

Mr. Nichols presented a PowerPoint presentation. He stated that Lynn Emerson Monroe did a review of the building. As part of that, the building was determined to be an eligible property for the National Register of Historic Places, as a contributing structure to the existing historic district. The current concept is to restore the Effie Lang Blacksmith Shop according to the National Park Service (NPS) Standards for the Rehabilitation of Historically Significant Buildings. They would like to preserve the existing American Elm tree, which is one of the oldest in New England. They would renovate the building to meet the current energy codes and implement renewable energy systems. As part of that, there will be a new independent “green” building that will be constructed in the parking area, consisting of four (4) residential townhouse units. The restored building will provide space for their business, other professional office space and three residential apartment units. He showed elevations of the concept from various points.

Lynn Emerson Monroe stated she has been working in NH for about 35 years. She first met with Tim about this building in anticipation of tearing it down. They have come a really long way since then. She originally felt apathy toward this project and she is now incredibly excited. This has turned into something quite wonderful. She stated the building has had board and batten siding on it since 1974, so maybe people don't know what it looked like before that. This building is on the Town seal. (Old photographs of the building and downtown area were being shown in the presentation.) The building is in two parts. The older wing has three chimneys, because there were three forges. This is originally the Lang Blacksmith Shop. The right side, which was built about two years after the original structure, was carriage painting and repair. The building, as shown in the old photos, looks very much like what Tim Nichols is proposing. It will have the clapboard siding, the windows, and the original paint scheme. He is willing to put the chimneys back on it and the dormers. It is an exciting restoration for this area. He is also proposing to put the gable back on the building, as it was originally. She is in the process of writing the history of the building and documenting it, to submit to the National Park Service, as the first part of the historic preservation tax credit. This is to determine the significance of the building and show it is a contributing building to the National Register Historic District. The next part is to make sure the work being proposed complies with the NPS guidelines. This will be an in-depth exploration of the history. The Newmarket Historical

Society has been helping them.

Peter Michaud, from the NH Division of Historical Resources, works as the National Register Preservation Tax Incentives and Easement Coordinator. He stated he runs three programs for the Division. One of them is the historic preservation tax credit program. The Newmarket Mills project was made possible, because Chinburg could utilize that credit. It made his project feasible and allowed him to spend extra time, money and effort in planning what he did there and Newmarket is reaping the results of that in a very nice way.

The Newmarket "Commercial and Industrial Historic District" was put on the National Register in the late 1970s and was sponsored by the Strafford Regional Planning Commission (SRPC). The reason for that was to take advantage of the tax credit program. It began in 1976 and several communities utilized funds that were available to list their downtowns to the National Register. It is nice to see Newmarket finally taking advantage of that investment. His office became involved when they received a call from the Town asking about this building. They looked at it and the integrity issues and they thought it looked like it would contribute to the district and it did. They were concerned as the Preservation Office, as blacksmith shops throughout NH were prevalent. Every community had at least one, several had many more. They find they are not prevalent now. They are not structures that naturally lend themselves to reuse. It is odd to have one of this magnitude. They are dealing with a once common, but now rare resource, within a very nice, lovely National Register Historic District and, when they were hearing it was going to be demolished, they were concerned. They are glad to have an open ear with the developer to talk about utilizing this tax credit. They are pleased with this so far. This is a three-step process. The first is proving that it contributes to the district. The second step is the scope of work. The third is proving that you have done the work you said you would do. That is when the developer can take the tax credit. Work is reviewed by his office first. Once they have signed off on it, it goes to the Park Service and they have the final say. Some aspects of this project, like the related construction, are a little tricky. His office has talked to the Park Service. His office will request a preliminary review of the project to get some guidance ahead of time.

He stated the biggest thing is sustainability. Preservation and sustainability are often seen at odds for usually the wrong reasons. Preservation by its definition is sustainable. There are some aspects of the project that this building lends itself easily to, because it is a blacksmith shop. There are not a lot of precious interior finishes, like woodwork or wainscoting that get in the way of insulating walls. There is a wonderful opportunity with this building to highlight the very best that sustainable efforts could provide, as well as what preservation can provide. When they look at this in a statewide context, there is potential for a really amazing project that could gain statewide recognition from a preservation and sustainability point of view and how those two can be married together.

Chairman Shelton opened public comments.

Barbara Briggs, 20 Chapel Street, stated she walks down the hill every morning. She is concerned about the volume of the proposed buildings blocking the view of the river. She also said this is a huge improvement over the original design. She asked they keep it small enough, so they can still see the river. That would be a plus.

Mark McKinsey, 6 Washington Street, stated he would like to apologize to the developer for a letter to the editor that was published today in the Exeter Newsletter based on the old plans. He stated the new plan proves he was wrong in his opinions.

Attorney Byron Bedard spoke in behalf of Rivermoor Landing. He stated the picture of the full development still looks similar to what was previously proposed. He stated Rivermoor was not opposed to the restoration of the old blacksmith building in a historic and sustainable manner. They are concerned about the proposed development fronting the easterly side of the lot in the existing parking area in front of the Rivermoor parking garage. They are concerned about the visual obstruction caused by this building being higher than the parking garage. The building will also take away what little green space is there and several shade trees. You would also be losing any natural light coming into the garage. He stated it does not fit. From every point in town, you can see the river over the parking garage. The resurrection of the blacksmith building should not be done based upon new development that makes what is there now worse. They need to preserve the natural light coming into the parking garage and what green space there is to make it seem like a riverscape.



Jim Wibel, Rivermoor Landing, stated Attorney Bedard had addressed most issues. He would like to underscore this is the last open vista to the river from downtown Newmarket. For these proposed housing units to fit, they have to be smack up against the lot line at the parking garage. Once this view is gone, it's gone. He has lived in downtown Newmarket for ten years. It is a beautiful view in downtown Newmarket. These buildings would project to about where the tops of the trees are now and a lot of that view would be obscured. There would be safety issues, as well. It will be quite dark in the garage. They would like to see the redevelopment of the blacksmith building. He applauds the developer and the spirit in which he has done everything so far. He is disheartened to see the four townhouse units where they are. It is a tight space and the view will be gone.

Skip Manseau, Kimball Way, stated he was there on behalf of the Newmarket Community Church. He stated, from their perspective, this new proposal certainly is a breath of fresh air. Even though they have not seen a site plan or rendering, it is indicated that what is now the present parking area between the rear of the church and existing building will not be a four story building six feet away from their property line. It would appear that area will remain the open space it is now and they assume it will be parking space. He stated this was a great proposal.

Gerry O'Connell, 26 Grant Road, stated he is the agent representing the seller of the property. He has been working with Tim Nichols. He stated they have heard from the Rivermoor people and he understands their opinions and about the views coming down to the river. This property has given up its front portion as an easement to the Town for the Riverwalk. That Riverwalk was supposed to go all along the river, through the Rivermoor property, but the Rivermoor people didn't want it to do that. It is a great view and river. It would be nice if the rest of the Town could have that view all the way down along the river. He stated he was talking about fairness.

Penny Hassen, a member of the Board of Directors at Rivermoor Landing, stated she would like to underscore they were in support of renovating the blacksmith shop. She was uneasy about condominiums at the parking garage. She had safety concerns, as it seals in the garage, so it blocks light and means of getting in and out if someone needs to.

Peter Sawtelle, 4 Ham Street, stated he thought the plan looked very good. His family walks along there every day. Right in front there is a beautiful walkway. He stated the garage already has very minimal light through there. He was curious what the blacksmith shop would be used for once restored. Chairman Shelton explained the proposal.

Joe Persechino, 10 Fogg Circle, stated he would like to reiterate about the Riverwalk. He stated, looking back from the river toward the parking garage, he has often thought this garage was not what Newmarket used to look like. Presenting something like this proposal, with residential units in the theme of the historic district, would be a great addition. It would help frame the Riverwalk.

Mark McKinsey asked what the height of the added structures would be. Tim Nichols stated they were approximately 31 feet high. It will exceed the parking garage's height by 7-8 feet.

Chairman Shelton closed the public comments.

Chairman Shelton asked if any variances were required to move this application forward. Tim Nichols stated they would require a new area (setback) variance. That will be submitted this week. Chairman Shelton stated it would be important to the Planning Board, when the site review application comes before them, that it is substantially complete and that there would not be conditions that would have to be placed on this relative to getting variances or tax credits. That really held up the past application. They would like to move this through the Planning Board process as quickly as possible and these sorts of issues have really held up their process in the past. They look forward to having him before the Board, again.

Marion C. Hatch 2nd Irrevocable Trust, James Gray Trustee - Public hearing for an application for Minor Subdivision, at 210 Bay Road, Tax Map R1, Lot 37, R1 Zone. The proposal is for a two lot subdivision. The lots will be 6.4 and 13.5 acres each. This will be dividing two existing structures onto their own lots using an existing common driveway as a portion for their access.

Chairman Shelton stated she was recusing herself from this application and Vice Chairman Janice Rosa would step in.

Jason Pohopek, a land surveyor with Pohopek Land Surveying, represented the applicant.

Diane Hardy stated she has reviewed the application against the checklist and it is substantially complete and she recommends the Planning Board accept it for review.

#### Action

Motion: Elizabeth Dudley made a motion to accept the application for technical review

Second: Justin Normand

Vote: All in favor

Jason Pohopek stated the narrative describes what they are looking to do. Lot 37 has 19.9 acres. The property has two dwellings on it. He indicated the location of the dwellings on the plan. Both are serviced by one driveway. The applicant is proposing to divide the lot into two lots, one 6.4 acres and one 13.5 acres. They are located in the R-1 zone and encumbered by the Shoreland Protection and Wetland Protection Overlay Districts. They have applied all of the setback requirements to the building setback lines shown on the plans. There are two structures, both serviced by their own well and septic system. He showed the locations of the wells and septic systems.

He asked the Board to make an evaluation. As part of this application, they have submitted a waiver request from the site distance requirement. Subsequently, they have received additional information about the site distance requirement. They have two forms of documentation saying the site distance is complied with. The first document is an email from Rick Malasky, Director of Public Works. He went out to the site and the existing driveway will meet the required site distances with some minor trimming of vegetation. The second document is a study done by Mike Sievert, of MJS Engineering. He looked at the site and he felt the driveway met the standards and distances. He asked the Board to consider if the waiver of site distance is actually required or if the documents are sufficient.

Diane Hardy stated the required distance is 125 feet, at 25 mph. Jason Pohopek stated they have over 200 feet looking to the left and they meet or slightly exceed the 125 feet looking to the right. The only reason that is slightly limited is because the road curves away to the left. They asked for the waiver prior to receiving some of this documentation in preparation in case it did not comply. They would like to formally withdraw the waiver request, if the Board feels it is not necessary. The Board did not feel the waiver was necessary and Jason Pohopek formally withdrew the waiver request.

Vice Chairman Rosa opened the public hearing.

Peyton Carr, Bay Road, stated he lives across the street. He was in favor of the concept, but would like to urge them to consider some things when they do the site evaluation. He stated, having observed and having spoken to occupants living there, this is a very steep driveway. The top portion was paved by a previous tenant about five years ago. This greatly improved the access, especially in winter conditions, as the cars get a running start to the top of the hill. He stated the posted speed limit on Bay Road is 25 miles per hour. He stated the vehicles go faster than that. For this site, coming from the east, there is a curve, which slows the vehicles. There was a fatal accident coming the other way where they were going too fast around the corner. There is a hill from the other direction and that tends to reduce speeds, too. He urged the Board to consider that 25 mph may be the speed limit, but he was not sure how many cars are actually going that speed. He stated he was talking with someone who was hoping they would consider getting in and out using

Barberry Coast Road, but that may not be feasible. If this driveway is maintained, it needs to be paved all the way to give proper traction. Having to make a running start and have someone coming, it is difficult to stop at the top of the driveway, if there is snow. The concept of dividing the lot is fine.

Elizabeth Dudley agreed that 25 mph is a theoretical speed limit on that road. It is a concern. She also has a steep drive, but has a plateau at the top. That might be an idea for the owners. Jason Pohopek states it is steep to the very top. It would be difficult to create a platform there.

Diane Hardy asked if the Board would want an independent evaluation of the driveway access, in light of the testimony.

Janice Rosa stated she would hate to see someone have extra expenses. There are two houses there now that will not change, with an existing driveway. Why make them go through that expense? Adam Schroadter stated a few months ago the Board deemed to trust the licensed Professional Engineer's stamp in a recent case. Jason Pohopek stated it is an existing driveway that services the two residences. They are proposing no changes to the use of that driveway or the access to it. There will be no increased volume, as a result of this subdivision.

Rick McMenimen stated they indicate, at the end of the driveway, very poorly drained wetlands and then it says proposed 30 foot wide driveway easement. Jason Pohopek stated, because the proposed Lot 2 on the plan encompasses 13.5 acres, it does not have its own access on Bay Road. They would have to formally generate a 30 foot wide easement that would encumber the 6.4 acre Lot 1, so the property would always have the right and use and access of the existing driveway. The very poorly drained soils are a hardship they were stating in the waiver request. There is no other access point without impacting the associated wetlands. He did not think the applicant should be punished for the doings of others in town in regard to the speed on the roadway. They have the right to use and enjoy of their property as others do.

There was discussion regarding Bay Road's status as a scenic road and how that would affect the trimming of vegetation along the right-of-way.

Val Shelton, 124 Cushing Road, stated, and clarified that, when the Board dealt with the Scenic Road tree clearing by PSNH, the RSA requires public hearings if the utility company or the Town does the clearing. It does not impact private property owners. The abutting property owners on Bay Road own to the middle of the road. The road was never deeded to the Town, so if the property owner does the clearing, the Scenic Road RSA doesn't apply.

## Action

Motion: Elizabeth Dudley made a motion to approve the application of Marion C. Hatch 2nd Irrevocable Trust, James Gray Trustee for Minor Subdivision, at 210 Bay Road, Tax Map R1, Lot 37, R1 Zone. The proposal is for a two lot subdivision. The lots will be 6.4 and 13.5 acres each. This will be dividing two existing structures onto their own lots using an existing common driveway as a portion for their access with the following conditions:

1. A request shall be forwarded to the Highway Safety Committee of the Town of Newmarket to evaluate excessive speeding on Bay Road with consideration given to slowing traffic to the posted 25 miles per hour to assure required stopping distances are achieved.
2. There shall be minor trimming of vegetation along Bay Road within the required sight triangle to achieve the required site distance to the satisfaction of the Town's Public Works Director, prior to the signing of the subdivision plan. The site triangle shall be maintained and be kept clear of any obstructions between 0 and 4 feet above the ground on a regular basis thereafter, to maintain the required site distance.

Second: Rick McMenimen

Vote: All in favor

## Agenda Item #5 – New and Old Business

### Chairman's Report

Chairman Shelton stated there is a Municipal Law Lecture Series happening this fall. Everyone should have received the information. It will be at the Newington Town Hall. She recommended, if anyone has not attended this particular lecture on Procedural Basics for the Planning Board, that they consider doing so. Even members who have been on the Board a while might benefit. She has attended several of these and usually there is a good turnout of multiple members of Boards from the communities. She suggested car pooling.

She requested that Diane Hardy follow up with the Town Council Chairman on the status of the Economic Development Committee.

### Committee Reports

### Town Council

Ed Carmichael stated, on September 5, Mr. Brown from Wright Pierce Engineering, gave a presentation, which was a rebuttal to a previous presentation in August to the waste to energy plant in town. There will be a follow- up meeting. It is in the works.

Chairman Shelton stated the Planning Board would not be involved with an energy plant. It is a State permitting process, unless the Town Council requires us to be involved.

### Landscaping Regulations

Elizabeth Dudley stated the Committee met and they have done a lot of work on this. She stated Strafford Regional Planning Commission can complete the draft regulations, given the Committee's input. It should be completed soon.

### Advisory Heritage Commission

Elizabeth Dudley stated they met and the scope of the Commission was explained to the members. They are ready to receive interested and relevant projects and provide an advisory role. There are no projects before the Commission right now. New members are needed.

## Conservation Commission

Janice Rosa stated there had been a concern about the septic system at the animal crematorium. The Planning Board addressed it and she did not need to bring it up during the application hearing.

She stated they are still concerned with the Acadia project on Water Street with the additional lighting that could affect certain aquatic species.  
The Conservation Commission is going to do an educational walk on Wiggin Farm during the upcoming weekend.

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## CIP Committee

Rick McMenimen stated they met with all of the departments. The next meeting will be on September 27. They will begin making decisions on recommendations to the Town Council and Budget Committee.

## Planner's Report

Diane Hardy stated they would like to set up a meeting soon to start work on the update to the Land Use chapter of the Master Plan. They would also like to schedule a meeting in October with Cameron Wake from UNH from the "Earth, Ocean, and Science" program, regarding climate change adaptation and resiliency and its impact on land use.

There are still two vacancies on the Strafford Regional Planning Commission.

## Other Business

Chairman Shelton stated there is a workshop scheduled on September 25, which will be publicly noticed for discussion on proposed B-1 to M-2 zoning change from the Durham town line to the car wash property south of the downtown.

Justin Normand spoke about the lighting issue regarding the Acadia Water Street project and its effect on certain organisms. There is validity to this issue as there has been a huge decrease in the number of fish coming up the river.

## Agenda Item #6 - Adjourn

## Action

Motion: Rick McMenimen made a motion to adjourn at 9:01 p.m.

Second: Justin Normand

Vote: All in favor