

**NEWMARKET PLANNING BOARD MEETING**

**APRIL 13, 2021**

**MINUTES**

Present: Val Shelton (Vice Chair), Diane Hardy (Town Planner), Bill Doucet, Jane Ford, Tim Rossignol, Jeff Goldknopf, Michal Zahorik (Alternate), Scott Blackstone (Town Council ex officio)

Absent: Eric Botterman (Chair) excused – left near start of meeting

Val Shelton read a statement regarding the electronic meeting and how to access it.

Val Shelton appointed Michal Zahorik to sit in for Eric Botterman, if he has to leave the meeting, as that is possible.

**Pledge of Allegiance**

**Review and Approval of Minutes**

**03/16/21**

**Action**

**Motion: Bill Doucet made a motion to approve the minutes of 03/16/21**

**Second: Jane Ford**

**Eric Botterman left the meeting and Michal Zahorik filled in.**

**Vote: Jeff Goldknopf abstained**

**All in favor – roll call vote**

**Public Comments**

None.

**Regular Business**

***Continuation of a public hearing for request from John Tyson of Hampton, NH, who has a purchase and sales agreement for property at 75 Neal Mill Road. Pursuant to RSA 674:41 he is requesting permission from the Town Council to build a single family home and driveway access for a single family home at the property at 75 Neal Mill Road, Newmarket, NH 03857 at Tax Map R7, Lot 1. The Town Council has requested review and comment from the Planning Board regarding this request.***

Val Shelton stated she did some research and she and Eric Botterman asked Diane Hardy to send to the Board the memo that was sent 10/15/08 from the Planning Board to the Town Council, when the Board had taken up the same issue for a prior applicant. They did not think it was fair for the current applicant to have to go through time and expense of engineering without knowing whether the Town Council would be granting them the building permit for the single family home on the Class IV roadway. If the Board moves this forward, they will update the 2008 letter with new information, as needed and appropriate.

James Scully, applicant’s attorney, asked if they would be privy to any substantive additions tonight. Val Shelton stated she was only speaking of an update to the letter.

Chris Albert, applicant’s representative, stated he expected this to be a Q and A tonight. He didn’t have anything new to present.

Val Shelton stated the Town Council will be taking on the bigger issues associated with this application. If they give a green light to the applicant and agree with the Planning Board, it would come back to the Planning Board for approval of road construction.

Bill Doucet stated that was also reflected in the 2008 letter.

**Action**

**Motion: Bill Doucet made a motion we provide our recommendations to the Town Council based on Page 3 of the 2008 letter entitled Planning Board Recommendations except for changing owners’ names if they are stated here and construction of a single family home**

Val Shelton stated first she would like to hear more first from the applicant and abutters present.

Jeff Goldknopf asked if all items in the memo were still pertinent. Val Shelton stated the items are still in effect. The zoning, existing conditions and circumstances have not changed.

Scott Blackstone agreed with Val Shelton.

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

Josh Lanzetta, 601 Central Avenue, Dover, NH, stated he is an attorney at Bruton and Berube and he represents Dr. Joff Barnett and Southeast Land Trust (SELT.) His clients are direct abutters. They have concerns. Dr. Barnett’s concerns align with SELT. They are asking that the Board recommend denial of this application. This application is completely deficient. He gave an overview of the approval/denial process. As abutters, they cannot have a coherent conversation about what this means for the road or abutters or the public and region. This abuts the Piscassic Greenway and there are a few Class VI roads and a trail that connect. There are safety concerns not addressed. The Board should mandate proper plans for comment. They have heard different plans for roadbed substrates, grading and fill. There are wetlands not addressed by the applicant. There is allegedly a 2 rod public way. This is not a driveway proposal, it is a public way. We don’t know if the applicant will be doing core drilling. We don’t know where in the public way the upgraded road will fall. There is 700’ from the terminus of the Class V portion of Neal Mill to the driveway to the property. We don’t know where they want to blast or move things to bury the power lines.

What does raising the road do to the topography? Also, this is a Class V road up to the gate. Mechanizing the gate, moving it, removing it causes a safety issue that would end up in parking enforcement issue for the Town. We don’t know what will happen with the gate and it is the Board’s job to sort that out. It’s the applicant’s burden to provide the materials necessary for a robust and full review. That has not been done. If the gate is removed and there is no room to park. 700’ is far. Will people drive on Old Lee Road if the gate is removed? The applicant is proposing a turnaround for emergency vehicles. They looked at that location. It will require hundreds and hundreds of yards of material to fill right next to wetlands. This is a nonconforming lot. It’s the Board’s job before it goes to Town Council to provide comments. We don’t believe the Applicant has provided the appropriate documentation and the plan sets that would allow this Board and the public to have the requisite feedback for the project. The tambour of this neighborhood will forever change if this lot is developed. This will be precedent setting in this town. There is no doubt about that. 700’ down a Class VI road doesn’t happen. He can say that, because he does this work all the time. This will be precedent setting for the entire Greenway. This is an island of unpreserved land amongst conservation land. This Board needs to take control and actually review a properly submitted application. We have safety concerns, we don’t have answers and it is not appropriate to just pump this over to Town Council without vetting this project thoroughly and providing articulate, rational and reasonable recommendations.

Arlon Chaffee stated going back to 2008, he noted it was recommended the Council develop a committee to look at Class VI roads. From the last meeting, the Conservation Commission was holding their cards for the time being. In the event the site walk doesn’t happen, he would like to see or hear their take on this. The sentence structure from 2008 letter flows like this is being approved. There are ifs in there. They should be mindful of that in updating the new recommendation.

Joff Barnett, Neal Mill Road, stated there had been discussion of a site walk. They need to look at the site rather than just taking what was written thirteen years ago and forwarding it to the Council. Things have changed. It would behoove the Board to walk the road with the applicant. He expressed surprise they are picking up something from thirteen years ago and are just going to send that forward. He requested the Planning Board do more and find out whether those points in the 2008 letter apply.

Val Shelton spoke on the contents of the 2008 letter for the public.

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

Jeff Goldknopf stated when this comes back to the Board after Town Council review, is this a blank slate where they start designing. It is like a clear path to approval. Val Shelton stated if the Council sends it back and the applicant comes in with full plans, they can’t meet all of the regulations unless they get waivers. They will have to meet engineering requirements and wetlands issues.

Bill Doucet stated subdivision regulations do not speak specifically to this application. This for access to reach a residential use instead of this applicant facing considerable engineering design and satisfying of every item. The concerns raised here have not fallen on deaf ears. The attempt is not to spend time on all of that, TRCs, etc., if the Council does not want to do this for a technical reason. This parcel was a lot before these abutting parcels were lots. I doubt they were paid damages that forced them to no longer have rights along this Town road. Let’s find out what the Council thinks before we lead this applicant into considerable burden.

***Val Shelton reopened the public hearing.***

Chris Albert, the applicant’s representative, stated he has been working with Diane Hardy over the last couple of weeks. The course of action makes sense. This is a substantial amount of money. He had done a 2000 foot Class VI road in Epping and they are willing to work on the gate issue.

Attorney Sculley agreed with Bill Doucet and Chris Albert. This is a viable approach, as this would be exorbitantly expensive for the applicants, not knowing if getting the permit was a possibility. The decision is up to the Planning Board on what to put forward to Town Council.

Attorney Lanzetta stated the most important word in 674:42(b)(1) is the word “after”. The local governing body after review and comment by the Planning Board. The review and comment needs to be more robust than referencing a document from 2008 from a different applicant for a different project. He understands modifications will be made, but you do not have enough information to make proper review and comment. The Town Council does not have your expertise. The statute is designed for the Board to review a full application. He understands this is an expensive process, but you have to get the right answers before you go to the next level. You don’t get to double dip with contemporaneous filings. You don’t get out of jail free by kicking the can to a different board to review and say our review will be subject to further review again. That is not the legal standard in NH. He does not think subdivision regulations apply. It is not subdivision. If it goes to Town Council, it would come back to the Planning Board for full public review. The Board should make robust comments on an appropriately filed application. They request the Board continue this and ask for a better plan set so there can be an actual conversation with the applicant and make real recommendations or kick it back to the Town Council and recommend denial.

Attorney Sculley stated it was the Board’s decision whether to move forward.

*Val Shelton closed the public hearing.*

Diane Hardy wanted to make sure the Board understands the language says “after review and comment”. It says nothing about submission and review of details of the project. She discussed this with the Town’s legal counsel and he said ultimately the decision is the Town Council’s. We need feedback from him to clarify what the expectations are for the Board in doing their job, which is to “review and comment.” It is not necessarily to review detailed plans at this stage.

**Action**

**Motion: Bill Doucet made a motion to continue, we need to get some information from our Town Attorney**

**Second: Jane Ford**

Val Shelton stated it needed a date specific.

**Action**

**Motion: Bill Doucet made a motion to continue to May 11, 2021, and requested Diane Hardy to contact Town Legal Counsel for advice moving forward**

**Second: Jane Ford**

**Vote: All in favor – roll call vote**

***CRC Future Corp -There will be a public hearing for an application for an amendment to the final subdivision and major site plan, requested by CRC Future Corp, for a site plan approved on 11/12/19, to increase the number of units from 28 to 38, there will be six single family homes, where seven were previously approved, and the remaining previously approved single family homes will become duplexes. The lot is located at Hersey Lane, Tax Map R5, Lot 132, R2 Zone.***

Bill Doucet and Jeff Goldknopf recused themselves.

Paul Kerrigan, Chinburg Development, represented the applicant. The previous application was for 28 single condo units. The amended plan is for 16 duplexes and six singles. He went over the previous meeting. There are ten units built already on Green Road. They eliminated one of the units on the knoll and shifted things around.

Scott Cole, Beals & Associates, showed a plan of the project.

Paul Kerrigan stated on Summit Circle they were able to push one of the units away from the existing duplexes. They were also able to maintain more of a buffer between those areas. They talked about more screening. They went to duplexes because they had 28 units on the lower street and were able to make changes that gave them more open space. There have been no road changes. They have the AoT permit back, the DES water board signed off, Severino is ready to go. The only difference in plans is they created a couple of landscape entries. The total unit count was 28, it is now 38. The total units was 52 and it is now 48.

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

Tom Grilli, President of the Hersey Green Condo Association, stated they were on board with this revised plan. They were very pleased with this.

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

Diane Hardy presented her recommendations. She gave a history of the development. This is a vested project. The developer had incurred substantial costs in upgrades. She suggested the following conditions:

1. The Applicant shall provide a detailed stormwater management plan to the Town of

Newmarket that is equivalent to the revised plan which has been submitted to the State

Department of Environmental Services (NH DES) under the Alteration of Terrain (AOT)

Program.

2. A copy of all State and Federal permits and corresponding drainage reports and engineering plans shall be provided to the Planning Department prior to the start of construction.

3. Final “as built” drawings of site improvements constructed under this modified plan shall be provided to the Town prior to the issuance of Certificates of Occupancy under this 38 unit Phase Two Plan.

They have also had discussions regarding construction oversight by the Town. The development agreement may include funds in escrow for construction engineering.

She recommended approval of the application.

**Action**

**Motion: Jane Ford made a motion that they approve the plan as is, with the Town Planner’s recommendations**

**Second: Tim Rossignol**

**Vote: All in favor – roll call vote**

***11 Chapel Street LLC - There will be a public hearing for an application for Minor Site Plan Review, requested by 11 Chapel Street LLC, for the conversion of the first floor (+- 600 square feet) of a barn to a commercial use for bicycle sales and repair and for construction of parking/access to support the use. The lot is located at 11 Chapel Street, Tax Map U2, Lot 3, M2 Zone.***

Eric Weinrieb, Altus Engineering, represented the applicant, Keper Connell.

Diane Hardy stated she reviewed the application, everything is in order, so she recommends acceptance for technical review.

**Action**

**Motion: Bill Doucet made a motion to accept the application as substantially complete Second: Jane Ford**

**Vote: All in favor – roll call**

Eric Weinrieb showed an overview of the lot. It has two single family residences on it. The barn was torn down and reconstructed. He showed the site plan. They got zoning relief to use the barn for retail use, which is a bike shop. The basement would be for storage, the first floor will be the bike shop. There are three existing parking spaces in the street historically used by the residents there. They are improving the access off Granite Street, widening the driveway. They asked for a waiver of aisle width. Some vehicles can maneuver on-site, some larger ones will need to make multi point turns. The parking spaces on Main Street are within 500”. They have a van accessible parking space on-site. There is little change in runoff. When the building was constructed, they installed a dry well. The van accessible space will be permeable. Snow storage will be depicted. Bill Doucet stated there will be additional vehicles. There was a discussion of the three spaces.

Jane Ford asked if cars carrying bikes on the back and pulling trailers were part of the calculations for parking spaces. Eric Weinrieb stated they are the standard spaces.

Tim Rossignol asked if it was critical to have parking spaces. He was told he could walk to free parking in the downtown if he were a tenant.

Scott Blackstone asked if there was a travel width on Granite Street, Val Shelton said that would be a TRC item.

Diane Hardy recommended review by the TRC. This is a difficult lot. She thanked the engineer for his due diligence in making improvements with each iteration of the plans to date. It is barely .2 acres. There is a lot of activity on the lot. When the barn was located there was not a lot of consideration of how the site would work for commercial use and anticipated parking. The Building Official was very clear at the time with the applicant that the barn could not be used for commercial without variances. It could only be used as an accessory building. They are only talking about 650 square feet of retail space, it is very tight parking, and the Public Works Director had told her there was not enough space for three parking spaces in front of the building on Granite Street. There is also a stop sign at the intersection of Granite and Chapel. There are also retaining walls proposed on-site that may need to be designed by structural engineer. The TRC should focus on grading, drainage, and waivers for parking.

Bill Doucet, Tim Rossignol and Jeff Goldknopf will be on the TRC.

**Action**

**Motion: Bill Doucet made a motion to continue to the May 11, 2021 meeting**

**Second: Jane Ford**

**Vote: All in favor – roll call vote**

**New/Old Business**

Diane Hardy stated there is a virtual program put on by NH Office of Strategic Initiatives (OSI) on May 15. It is good training for new members. Susan Jordan will send out information to the Planning Board

She will make a list of committees for Board members’ service so appointments can be made at the next meeting.

**Adjourn**

**Action**

**Motion: Tim Rossignol made a motion to adjourn at 8:46 p.m.**

**Second: Jeff Goldknopf**

**Vote: All in favor – roll call vote**