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**NEWMARKET PLANNING BOARD MEETING**

**MAY 11, 2021**

**MINUTES**

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

Absent: Michal Zahorik (Alternate)

Eric Botterman read the emergency Covid 19 statement.

**1. Pledge of Allegiance**

**2. Public Comments**

None.

**3. Review and Approval of Minutes**

**a. Minutes 04/13/21**

**Action**

**Motion: Bill Doucet made a motion to approve the minutes Second: Jane Ford Vote: All in favor – roll call vote**

**Regular Business**

***Continuation of a 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...***

Eric Botterman stated there has been interaction with the Town’s attorney and he issued a letter. The Board also received a letter from the Newfields Conservation Commission and one from Southeast Land Trust (SELT). Based on Attorney Ratigan’s letter, he was not comfortable with the applicant going through a huge expense having plans made that may not go anywhere with the Town Council. He suggested the Board move this to the Town Council and they can decide on how they want to proceed. Bill Doucet had a contrary opinion. He stated they should request additional engineering information and data from the applicant, so the Planning Board can make an informed decision and recommendation to the Town Council. He stated the Planning Board needs to reach a level of satisfaction that this was done in such a way it satisfies the Town Engineer, the Town Department Heads involved, and the Board. He stated there should be a full design. Val Shelton stated that should be one of their comments to the Council. Bill Doucet stated it felt like one step too much in speculation. Everyone seems to be pushing off a decision to others and at some point that has to stop. It is in the Applicant’s best interest that the Planning Board is very clear about what they have to do.

**Action**

**Motion: Val Shelton stated in regards to Town Council’s request for the (skip in audio) Planning Board to review and comment on the request by John Tyson of Hampton, NH, to build a single family home and driveway access at 75 Neal Mill Road, Newmarket, NH 03857 at Tax Map R7, Lot 1, which fronts on a Class VI portion of Neal Mill Road she makes a motion to direct the Town Planner to draft a memo to be reviewed and executed by the Planning Board Chair stating the Planning Board has:**

**1. undertaken a review of the request including review of RSA 674:41(I)(C)(1), public hearing information, letters from various interested parties, various Class VI information materials provided by the Town Planner to the Board, member participation in the May 6, 2021, NH law seminar “A Hard Road to Travel”, NH’s law of local highways, streets, and trails, and has consulting with the Town’s legal counsel on the matter;**

**2. As a result of reviews, the Planning Board offers the following comments to the Town Council for their consideration:**

**a. The Town Council should consider the following issues on whether to allow development:**

**1. The condition of the road;**

**2. The width and grade of the road;**

**3. Drainage infrastructure;**

**4. Extent of demands on public services;**

**5. The likelihood of future layout and connection of existing road networks.**

**b. As to the first three items, (audio skip) the Town Council should review the request as it pertains to the adequacy of the road for year round safe access and egress for Town emergency vehicles and that any upgrades be made as may be required by the Town Road Agent in consultation of the Town Engineer to insure the road is upgraded to service the proposed use including weight limits and appropriate access and turnaround for emergency vehicles and any requirements dictated by RSA 231.**

**c. In regards to Item #4 (in 2. a, above), the Town’s legal counsel should review and approve a limit of liability document and (the Town Council) shall not permit a building permit until the limit of liability is filed and all required improvements to the road are complete.**

**d. In regards to Item #5, we do not believe this item applies. There will be no further development in this area due to surrounding conservation lands. We do not see a single family house as premature and scattered development, since there are other houses in the town that are serviced by similar long private driveways or are located on a Class VI road and the likelihood of any further subdivision of the property would be minimally given with the restrictions and conditions of the property and width of the access and having no frontage on a Class V road. We also do not see a single family house in this location as being contradictory to the Master Plan.**

**e. Should the Town Council deny the request to issue a building permit, the Planning Board recommends the Council pursue the comments by the Planning Board in 2008, in regards to reclassifying the Class VI portion of Neal Mill Road to a Class A trail.**

**3. The Planning Board meeting minutes on this matter should be appended to this memo by the Planning Board to the Council.**

**Second: Bill Doucet**

Tim Phoenix, the Applicant’s counsel, asked if there would be an opportunity to respond. The Chair indicated that they would have to re-open the public hearing, but following the Planning Board’s initial comments.

Scott Blackstone agreed with the motion. He noted the roles of the Planning Board and Town Council are different. The Planning Board would be more technical and the Town Council would be more political in nature.

Jeff Goldknopf asked a few procedural questions. He thought the Planning Board would be reviewing and approving the plan. Would this come back to the Planning Board? Val Shelton explained that it could, but that would be up to the Town Council to decide. She re-stated that the Town Attorney’s opinion is that the Planning Board’s role is only to “review and comment”.

Tim Rossignol asked if what Val Shelton had said about zoning keeping the subdivision from occurring was accurate. Val Shelton explained that in order to subdivide the lot they have to have frontage on a Class V road which is dictated in the Zoning Ordinance. She did not think the width of the right-of-way and conservation restrictions on the adjacent lands would allow it. Of course, that would mean the road access would have to be paved and upgraded to a Class V road standards.

Tim Rossignol stated the gate situation should be resolved. Val Shelton stated the gate is at the beginning of the Class VI road and cannot be locked.

Jane Ford asked if this would be a precedent setting ruling for Newmarket. Diane Hardy’s opinion that it would be. Val mentioned there was another Class VI road in Town, Hersey Lane, where over the years five or more houses have been built.

Bill Doucet stated Planning Boards routinely review road design, but Town Councils do not. He felt it would be more appropriate for the Planning Board to review the plans. It was noted that the Town Council could hire engineering consultant to work at a staff level to review and approve the plans.

Jeff Goldknopf stated there is nothing in the motion that was a recommendation, it was guidelines. It was noted that there is no language in the State statute saying the Planning Board has to provide recommendations.

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

Tim Phoenix, the applicants’ attorney, stated they did not want to spend a lot of money before this Board and then go to Council. In 2008, it was a more impactful project. He confirmed that according to the motion that ultimately this would be a Council decision. Val Shelton stated it was their decision. The Town Administration, Road Agent and Engineer could review the plans and report to the Town Manager and Town Council.

Josh Lanzetta, attorney for SELT and Dr. Barnnett, an abutter, asked if the Board could put in a contingency that if approved by the Town Council that this comes back to the Board for full review. It was his opinion that the Council is not equipped to review this. The motion should include a recommendation if approved this comes back to the Planning Board for full review.

Eric Botterman disagreed as the Council can hire the same experts as the Planning Board.

Tim Phoenix stated he had the same concerns as Attorney Lanzetta.

Joff Barnnett, Neal Mill Road, was concerned that the public needs to have a dialog on how this is developed. It should come back to the Board for more comments. Eric Botterman stated there has been a public process and there will be one with the Council.

Josh Lanzetta stated this was the better Board to handle this.

Tim Phoenix stated the motion asks for things that take time, money and effort.

Val Shelton stated she could amend her motion stating that the Council should consider having the Planning Board work with the Road Agent and engineer.

Eric Botterman stated this has to go through review with experts. He supports sending it to Town Council.

He asked if the Board would prefer to continue the discussion or vote. The Board was comfortable voting.

**Action**

**Motion: Scott Blackstone made a motion to amend #2 to read:**

**b. As to the first three items (stated above..audio skip) the Town Council should review the request as it pertains to the adequacy of the road for year round safe access and egress for Town emergency vehicles and that any upgrades be made as may be required by the Town Road Agent in consultation of the Town Engineer to insure the road is upgraded to service the proposed use including weight limits and appropriate access and turn around for emergency vehicles and any requirements dictated by RSA 231 *or to have the Planning Board do said review and (plan) approval.***

**Second: Jane Ford**

**Vote: Val Shelton, Jeff Goldknopf, Jane Ford, Tim Rossignol, Scott Blackstone, Eric Botterman – Aye**

**Bill Doucet - Nay**

Val Shelton read her motion again adding “or” under 2 b.

**Action:**

**Motion:**

**Val Shelton stated in regards to Town Council request for the (skip in audio) Planning Board to review and comment on the request by John Tyson of Hampton, NH, to build a single family home and driveway access at 75 Neal Mill Road, Newmarket, NH 03857 at Tax Map R7, Lot 1, which fronts on a Class VI portion of Neal Mill Road she makes a motion to direct the Town Planner to draft a memo to be reviewed and executed by the Planning Board Chair stating the Planning Board has:**

**1. undertaken a review of the request including review of RSA 674:41(I) (C) (1), public hearing information, letters from various interested parties, various Class VI information materials provided by the Town Planner to the Board, member participation in the May 6, 2021, NH law seminar “A Hard Road to Travel”, NH’s law of local highways, streets, and trails, and as consulting with the Town’s legal counsel on the matter.**

**2. As a result of said review, the Planning Board offers the following comments to the Town Council for their consideration:**

**a. The Town Council should consider the following issues on whether to allow development:**

**1. The condition of the road;**

**2. The width and grade of the road;**

**3. Drainage infrastructure;**

**4. Extent of demands on public services;**

**5. The likelihood of future layout and connection of existing road networks.**

**b. As to the first third items, (audio skip) the Town Council should review the request as it pertains to the adequacy of the road for year round safe access and egress for Town emergency vehicles and that any upgrades be made as may be required by the Town Road Agent in consultation of the Town Engineer to insure the road is upgraded to service the proposed use including weight limits and appropriate access and turn around for emergency vehicles and any requirements dictated by RSA 231 or to have the Planning Board do said review and approval.**

**c. In regards to Item #4, the Town’s legal counsel should review and approve a limit of liability document and (the Town Council) not permit a building permit until the limit of liability is filed and all required improvements to the road are complete.**

**d. In regards to Item #5, we do not believe this item applies. There will be no further development in this area due to surrounding conservation lands. We do not see a single family house as premature and scattered development, since there are other houses in the town that are serviced by similar long private driveways or are located on a Class VI road and the likelihood of any further subdivision of the property would be minimal given the restrictions and conditions of the property and the width of the access and having no frontage on a Class V road. We also do not see a single family house in this location as being contradictory to the Master Plan.**

**e. Should the Town Council deny the request to issue a building permit, the Planning Board recommends the Council pursue the comments by the Planning Board in 2008, in regards to reclassifying the Class VI portion of Neal Mill Road to a Class A trail.**

**3. The Board meeting minutes on this matter are to be attached to this memo by the Planning Board to the Town Council.**

**Second: Jane Ford**

**Vote: Eric Botterman, Val Shelton, Jane Ford, Tim Rossignol, Scott Blackstone - Aye**

**Bill Doucet, Jeff Goldknopf – Nay**

***11 Chapel Street LLC - Continuation of 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.***

Diane Hardy gave an update on what has happened since the last meeting. She stated there was a TRC meeting on April 29. It was very productive. The applicant did modify the site plan. They reviewed the parking layout, ADA access, the need for more grading data, removal and protection of trees, erosion controls, snow storage, retaining walls, and adding protective bollards to protect the propane tanks. In response, the Applicant resubmitted plans and reconfigured parking for more width for the travel lanes and relocated the ADA space to the southerly boundary. They removed the three off site parking spaces and recalculated the parking. He provided an ADA lift to the barn and added notes regarding hours of operation and stating there would be no new lighting added. The Board received correspondence from the Newmarket Historical Society, who are abutters. There have been some conflicts between them and the Applicant in the last 24 months involving the passage of construction vehicles through the Stone School property and the addition of fire pits, chairs, picnic tables, gardens, that encroached upon the Stone School property, which is owned by the Town. There were concerns the encroachment would continue and about snow removal that was pushing crushed stone across the property line. The Historical Society suggested some reasonable conditions. Val Shelton asked if the applicants engineer was present and asked to get the plan online.

Eric Weinrieb, Altus Engineering, showed the revised plan. He showed the new parking locations, they added the hours of operation, no new lighting, and a fence may be installed to prevent access to the abutting property. They had on the plan the second floor would be an office. That did not get in front of the ZBA and they will take that off. They recognize the encroachment. If the Historical Society did not want to install a fence, they would be willing to install a wood type fence with wood posts and a chain, but not a six foot privacy fence. It is small lot and would be imposing.

Diane Hardy stated she would like a note on the plan. Val Shelton asked about drainage. Mr. Weinrieb showed it on the plan. Val Shelton asked if the building by the Town property had a gutter system. Mr. Weinrieb stated the building has a pitched roof and water had flowed off it since it has been there and they are not changing that. Val Shelton stated if any plantings are removed they should be replaced. Mr. Weinrieb stated that was why they were putting up a fence.

Val Shelton wanted a more decorative fence, something more in keeping with the neighborhood.

Diane Hardy stated there had been some confusion on the ZBA approval. She would like to see a note added to the plan that clearly states what the ZBA approval was. They only approved a variance for use of the first floor, which is 650 sq. ft. They did not approve the second floor office use or any other use.

Eric Botterman did not think the proposed fence was adequate. He would like a split rail fence.

Mr. Weinrieb stated the Town Manager had stated the Town would install a fence. Val Shelton stated she did not understand why the Town Manager would put tax dollars toward a site plan improvement.

Jeff Goldknopf asked about stabilization of the slope. Mr. Weinrieb stated it was just a 2:1 slope and he did not anticipate problems.

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

Mike Provost, Newmarket Historical Society, stated the reason they are asking for a fence was the construction vehicles were going through their lot, even though they had asked the owner to cease and desist. He seems to think it is okay to go through that way whenever he wants. That is why they want a substantial fence. Last winter he plowed through the museum lot and connected the two lots. They ended up with crushed stone all over the museum lot. They do not want to keep discussing it. People walk through now and will just climb over a split rail. They need to get the encroachments out. There are gardens and a fire pit. Last year there were lobster traps.

Eric Botterman suggested they put substantial plantings rather than a fence. This issue is between the private parties.

There was discussion of plantings and fences.

Mr. Weinrieb stated they had no problem with a 4’ split rail fence. The Board agreed.

**Action**

**Motion: Bill Doucet made a motion to approve the site plan as submitted with the following conditions:**

**1. The installation of a 4 foot high wood split rail fence to be provided, installed and paid for by the Owner/Applicant.**

**2. A note specifying the details of the granted variance of March 8, 2021 be added to the plan.**

**3. The two trees that are identified to be moved shall be replaced with two shrubs.**

**4. That the adjacent property owner and his tenants remove all encroachments from the Stone School property.**

**5. That all access between the properties be ceased, including the passage of construction vehicles.**

**6. The plan title be corrected to say “Planning Board” Approval” rather than “Zoning Board of Adjustment”.**

**7. The data plan for parking associated with the second floor be removed and clarification of the number of spaces required.**

**8. The responsibility for the cost of fence to be changed to “at the expense of the applicant.”**

**Second: Tim Rossignol**

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

***Northpoint Realty Inc. - There will be a public hearing for an application for subdivision, at 258 Wadleigh Falls Road A & B, Tax Map U4, Lot 68, R2 Zone. The proposal is to convert the existing apartment units into condominiums.***

Eric Botterman recused himself.

Diane Hardy stated, she initially thought the application was complete, but then a question came up. She asked Bill Doucet in most conversions there are notes on the ownership of spaces on the lot. Also, anything held in common or convertible space is identified. She did not see that kind of detail and wondered if it was required by State condominium law. Val Shelton stated she only saw an existing conditions plan. She did not feel they had a completed application. Bill Doucet stated they do not have a site plan or floor plan, which is a minimum standard. Therefore, Diane Hardy recommended a continuance until the next meeting or until such time as the information for the Condominium Conversion can be submitted by the applicant. Paul Rabinius stated that would be forthcoming.

**Action**

**Motion: Bill Doucet made a motion to continue to June 8, 2021**

**Second: Jane Ford**

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

***Eversource Energy - This public hearing is scheduled in accordance with RSA 231:158, to engage in tree pruning and cutting along Bay Road in the Town of Newmarket. The proposed activity will include, but not be limited to, tree cutting, trimming, and removal of brush and trees. All proposed activity and criteria for action by the applicants will be presented and reviewed at this public hearing.***

Diane Hardy stated the application was complete.

**Action**

**Motion: Val Shelton made a motion to accept the application**

**Second: Jane Ford**

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

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

Robert Berner presented the application. He described the trees involved. The property owners were notified. He will contact the DPW Director to coordinate.

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

**Action**

**Motion: Tim Rossignol made a motion that they accept the application from Eversource as stated**

**Second: Jane Ford**

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

**New/Old Business**

**a. Appointments to subcommittee**

**Capital Improvements Program**

Eric Botterman volunteered. Jane Ford is Alternate.

**Strafford Regional Planning**

Diane Hardy has not heard back from the member whose terms expired. They will wait until the next meeting.

**Conservation Commission**

Jeff Goldknopf volunteered.

**7. Committee Reports**

**8. Planner's Report**

Diane Hardy mentioned the Planning Conference on May 15.

**9. Adjourn**

**Action**

**Motion: Bill Doucet made a motion to adjourn at 8:53 p.m.**

**Second: Val Shelton**

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